THIS IS THE SECOND PART OF THE NOVEMBER 1991 ADMINISTRATIVE REGISTER

Due to the size of the November Administrative Register, it could not be stapled in one publication. This is the second portion - DO NOT THROW THIS AWAY

perpendicular to the plane of the image receptor and align the center of the x-ray field with the center of the image receptor to within two (2) percent of the SID, or means shall be provided to both size and align the x-ray field so that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor; or

(b) Shall meet the requirements for a general purpose x-ray system as specified in subsection (1) of this section; or

(c) If alignment means are also provided, an assortment of removable, fixed-aperture, beam-limiting devices sufficient to meet the requirement for each combination of image receptor size and SID for which the unit is designed with each device having clesr and permanent markings to indicate the image receptor size and SID for which it is designed or a beam-limiting device having multiple fixed apertures sufficient to meet the requirement for each combination of image receptor size and SID for which the unit is designed. Permanent, clearly legible markings shall indicate the image receptor size and SID for which each aperture is designed and shall indicate which aperture is in position for use.

[(b) The sum of the difference between any two (2) perpendicular dimensions of the x-ray field and the respective perpendicular dimensions of the image receptor intersecting at the center of the x-ray field shall not exceed four (4) percent of the source to image receptor distance. This paragraph shall not be construed to require enlarging the x-ray field size when the x-ray field size is less than the size of the image receptor.]

[(2) A means shall be provided to align the center of the x-ray field with the center of the image receptor to within two (2) percent of the SID;]

[(3) General purpose stationary x-ray systems certified under the federal performance standard shall also meet the following requirements;]

[(a) There shall be provided a means for stepless adjustment of the size of the x-ray field. The minimum field size at any SID (the distance from the x-ray tube anode to the x-ray film) of 100 centimeters shall be equal to or less than five (5) by five (5) centimeters;]

[(b) A means shall be provided for visually defining the perimeter of the x-ray field. The total misalignment of the edges of the visually defined field with the respective edges of the x-ray field along either the length or width of the visually defined field shall not exceed two (2) percent of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the x-ray beam;]

[(c) A means shall be provided to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor, to align the center of the x-ray field with respect to the center of the image receptor to within two (2) percent of the SID, and to indicate the SID to within two (2) percent; and]

[(d) The beam-limiting device shall numerically indicate the field size in the plane of the image receptor to which it is adjusted. Indication of field size dimensions and SID's shall be specified in inches or centimeters, and shall be such that aperture adjustments result in x-ray field dimensions in the plane of the image receptor which correspond to those of the image receptor to within two (2) percent of the SID when the beam axis is perpendicular to the plane of the image receptor.]

[(4) Mobile x-ray systems certified under the federal performance standard shall also meet the following requirements:]

[(a) There shall be provided a means for stepless adjustment of the size of the x-ray field. The minimum field size at an SID (the distance from the x-ray tube anode to the x-ray film) of 100 centimeters shall be equal to or less than five (5) by five (5) centimeters; and]

[(b) A means shall be provided for visually defining the perimeters of the x-ray field, the total misalignment of the edges of the visually defined field with the respective edges of the x-ray field along either the length or width of the visually defined field shall not exceed two (2) percent of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the x-ray beam.]

Section 4. Field Limitation and Alignment on General Purpose X-ray Systems. (1) For stationary, general purpose x-ray systems which contain a tube housing assembly, an x-ray control, and, for those systems so equipped, a table, certified in accordance with 21 CFR 1020.30(c), positive beam limitation shall be provided if the following conditions are met:

(a) The image receptor is inserted into a permanently mounted cassette holder;

(b) The image receptor length and width are each less than fifty (50) centimeters;

(c) The x-ray beam axis is within plus or minus three (3) degrees of vertical and the SID is ninty (90) centimeters to 130 centemeters inclusive or the x-ray beam axis is within plus or minus three (3) degrees of horizontal and the SID is ninety (90) centimeters to 205 centimeters inclusive;

(d) The x-ray beam axis is perpendicular to the plane of the image receptor to within plus or minus three (3) degrees;

(e) Neither tomographic nor stereoscopic radiography is being performed; and

(f) The positive beam limitation (PBL) system has not been intentionally overridden in accordance with subsection (3) of this section.

(2) PBL shall prevent the production of x-rays if:

(a) Either the length or width of the x-ray field in the plane of the image receptor differs, except as permitted by subsection (5) of this section, from the corresponding image receptor dimensions by more than three (3) percent of the SID; or

(b) The sum of the length and width differences as stated in paragraph (a) of this subsection without regard to sign exceeds four (4) percent of the SID.

(3) If a means of overriding the PBL system exists, that means:

(a) Shall be designed for use only in the event of PBL system failure or if the system is being serviced;

(b) Shall require that a key be utilized to defeat the PBL, that the key or key remain in place during the entire time the PBL system is overriden and that the key switch be clearly and durably labeled "For X-ray Field Limitation System Failure" if the means of overriding the PBL system is in a position that the operator would consider it part of the operational

controls or if it is referenced in the operator's manual or in other materials intended for the operator; and

(c) Shall be used only for that period of time necessary for the repair or service of the system.

(4) Compliance with subsection (2) of this section shall be determined if the equipment indicates that the beam axis is perpendicular to the plane of the image receptor and the provisions of subsection (1) of this section are met. Compliance shall be determined no sooner than five (5) seconds after insertion of the image receptor.

(5) The positive beam limitation system shall be capable of operation, at the discretion of the operator, so that the size of the field may be made smaller than the size of the image receptor through stepless adjustment of the field size. The minimum field size at an SID of 100 centimeters shall be equal to or less than five (5) by five (5) centimeters.

(6) The PBL system shall be designed so that if a change in image receptor does not cause an automatic return to PBL function as described in subsection (2) of this section, then any change of image receptor size or SID shall cause the automatic return.

Section 5. [4.] X-ray Control (Exposure Switch). (1) A control shall be incorporated into each x-ray system so such that an exposure can be terminated instantly [at any time] except for exposures of one-half (1/2) second or less, or during serial radiography [when] a means shall be provided to permit completion of a [any] single exposure of the series in process.

(2) The location of x-ray exposure controls on stationary x-ray systems shall be regulated as follows:

(a) Stationary x-ray systems shall be required to have the x-ray control permanently mounted in a protected area so that the operator is required to remain in that protected area during the entire exposure; and

(b) The exposure controls shall be behind a window of lead equivalent glass equal to that required by the adjacent barrier or an appropriate viewing system shall be provided so that the operator can see the patient without having to leave the protected area during the exposure.

(3) Mobile and portable x-ray systems which are used for one (1) week or more in one (1) location (one (1) room or suite), shall be considered stationary for the purposes of this administrative regulation and these [such] systems shall meet the requirements of subsection (2) of this section.

(4) Mobile and portable x-ray systems which are used for greater than one (1) hour and less than one (1) week in one (1) location (one (1) room or suite) shall meet the requirement of subsection (3) of this section or be provided with a protective barrier one and nine-tenths (1.9) meters in height having a window of lead equivalent glass equal to that required of the barrier and placed at least one and eight-tenths (1.8) meters from the tube housing assembly and at least one and eight-tenths (1.8) meters from the patient.

(5) Mobile and portable x-ray systems which are used for one (1) hour or less in one (1) location (one (1) room or suite) shall meet the requirement of subsection (3) or (4) of this Section or be provided with a method of x-ray control that permits the operator to be at least three and six-tenths (3.6) meters from the tube housing assembly during an exposure [in one (1) location less than one (1) week, shall be controlled in such a way as to allow the operator to be at least three and six-tenths (3.6) meters from the tube, patient, and from the useful beam during an exposure].

Section 6. [5.] Automatic Exposure Controls (Phototimers). If [In the event] an automatic exposure control is utilized, the following requirements shall be met:

(1) An indicator shall be provided on the control panel to indicate if [when] this mode of operation is selected;

(2) If [When] the x-ray tube potential is equal to or greater than fifty (50) kVp, the minimum exposure time for field emission equipment rated for pulsed operation shall be equal to or less than a time interval equivalent to two (2) pulses;

(3) The minimum exposure time for [all] equipment other than that specified in subsection (2) of this section shall be equal to or less than one-sixtieth (1/60) second or a time interval required to deliver five (5) mAs, whichever is greater;

(4) The [Either the] product of peak x-ray tube potential, current, and exposure time shall be limited to not more than sixty (60) kWs per exposure or the product of x-ray tube current and exposure time shall be limited to not more than 600 mAs per exposure except if [when] the x-ray tube potential is less than fifty (50) kVp in which case the product of x-ray tube current and exposure time shall be limited to not more than 2000 mAs per exposure; and

(5) A visible signal shall indicate that [when] an exposure has been terminated at the limits described in subsection (4) of this section, and manual resetting shall be required before further automatic time exposures can be made.

Section 7. [6.] Source to Skin or Image Receptor Distance. (1) All mobile or portable radiographic x-ray systems shall be provided with a durable, securely-fastened means to limit the source to skin distance to not less than thirty (30) centimeters.

(2) [All] Radiographic x-ray systems shall be equipped with a device or reference, other than a collimator light localizer, which shall indicate reference, or measure the selected source to receptor distance to within two and five-tenths (2.5) centimeters.

Section 8. [7.] Standby Radiation from Capacitor Energy Storage Equipment. Radiation emitted from the x-ray tube if [when] the exposure switch or timer is not activated shall not exceed a rate of two (2) milliroentgens per hour at five (5) centimeters from an [any] accessible surface of the diagnostic source assembly, with the beam-limiting device fully open.

Section 9. [8.] Personnel Monitoring. Personnel monitoring shall be required for [all] individuals operating portable or mobile x-ray systems.

Section 10. [9.] Linearity. On x-ray systems certified under the federal performance standard, if [when] the equipment allows a choice of x-ray tube current settings and is operated on a power supply as specified by the manufacturer in accordance with the requirements of applicable federal standards, for a [any] fixed x-ray tube potential within the range of forty (40) to 100 percent of the maximum rating, the average ratios of exposure to the indicated milliampere-seconds product obtained at [any] two (2) consecutive tube current settings shall not differ by more than one-tenth (0.1) times their sum $|\bar{X}_1 - \bar{X}_2| \leq 0.10\ (\bar{X}_1 + \bar{X}_2)$.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services 2nd Floor Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe
(1) Type and number of entities affected: Approximately 2900 facilities utilizing diagnostic x-ray.
(a) Direct and indirect costs or savings to those affected: No measurable direct or indirect costs or savings are associated with these amendments.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements associated with these amendments.
(2) Effects on the promulgating administrative body: No measureable direct or indirect costs or savings are associated with these amendments.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Minor changes in completing inspection reports will result from these amendments.
(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues resulting from these amendments.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives methods exist to maintain conformity with the U.S. Food and Drug Administration's suggested state regulations.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: These amendments will not conflict, overlap or duplicate any statute, regulation or policy.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. This regulation is tiered by establishing different requirements for equipment, based upon operational characteristics and date of manufacture of the equipment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. While not federally mandated state radiation control programs conform to the suggested state regulations promulgated by the Conference of Radiation Control Program Directors and the U.S. Food and Drug Administration.
2. State compliance standards. The amendment to this regulation will maintain compliance standards equivalent to the suggested state regulations.
3. Minimum or uniform standards contained in the federal mandate. These uniform standards are designed to minimize radiation exposure from diagnostic x-ray machines.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment to this administrative regulation will be identical to the suggested state regulation requirement.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___ (If yes, complete questions 2-4)
2. State what unit, part or division of local government this administrative regulation will affect. These amendments will effect only a part of local government.
3. State the aspect or service of local government to which this administrative regulation relates. County operated health facilities such as hospitals and health departments will be affected by amendments to this regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation: The amendments to this regulation will have a minimal effect on diagnostic x-ray technique.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:125. Fluoroscopic x-ray except for computed tomography x-ray systems.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this administrative regulation is to provide special requirements for the possession, use, and operation of [all] fluoroscopic x-ray systems in the healing arts.

Section 1. Applicability. This regulation shall apply [applies] to [all] fluoroscopic x-ray systems and to [all] persons, equipment and materials used in connection with the possession and use or operation of these such systems.

Section 2. Equipment. [All] Fluoroscopic x-ray systems shall meet the following requirements:
(1) The tube housing assembly shall be of the diagnostic type;
(2) Cones or shutters used to restrict the size of the useful beam shall provide the same degree of attenuation as required of the tube housing; and
(3) Fluoroscopic imaging devices used for optical viewing which are not mechanically linked to the x-ray tube shall not be utilized.

Section 3. Protective Barrier and Field Size. (1) The fluoroscopic tube shall not be capable of producing x-rays unless the primary protective barrier is in position to intercept the entire useful beam.
(2) The entire cross-section of the useful beam shall be intercepted by the primary protective barrier of the fluoroscopic image assembly at every [any] SID (e.g., source to image receptor distance).

Section 4. Limitation to the Imaging Surface. The x-ray field shall be restricted so [such] that the following requirements are met:
(1) On nonimage-intensified fluoroscopic x-ray systems, the x-ray field shall not extend beyond the entire visible area of the image receptor. This requirement applies to field size during both fluoroscopic procedures and spot filming procedures. In addition:
(a) Means shall be provided for stepless adjustment of the field size;
(b) The minimum field size at the greatest SID shall be equal to or less than five (5) by five (5) centimeters;
(c) Equipment manufactured after February 25, 1978, if [when] the angle between the image receptor and the beam axis of the x-ray beam is variable, shall be provided with the means to indicate if [when] the axis of the x-ray beam is perpendicular to the plane of the image receptor; and
(d) Compliance with this subsection shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor. [; or]
(2) On [noncertified] image-intensified fluoroscopic systems with manual shutter controls, the x-ray beam shall not exceed the area of the largest image receptor, if [when] measured with the fluoroscopic image assembly positioned thirty-five and five-tenths (35.5) centimeters from the table top or panel surface, and with the manual shutter controls opened to the fullest extent. Collimators located between the image receptor and patients shall not be used to fulfill this requirement. Means shall be provided to reduce the x-ray field size to five (5) by five (5) centimeters or less at the maximum SID; or
(3) For image-intensified fluoroscopic equipment [with automatic shutter controls], neither the length nor width of the x-ray field in the plane of the image receptor shall exceed that of the visible area of the image receptor by more than three (3) percent of the SID. The sum of the excess length and width shall be no greater than four (4) percent of the SID.
(a) For rectangular x-ray fields used with circular image receptors, the error in alignment shall be determined along the length and width dimensions of the x-ray field which pass through the center of the visible area of the image receptor.
(b) Means shall be provided to permit further limitation of the field. Beam-limiting devices manufactured after May 22, 1979, and incorporated in equipment with a variable SID or [and/] or a visible area of greater than 300 square centimeters shall be provided with means for stepless adjustment of the x-ray field. Equipment with a fixed SID and a visible area of 300 square centimeters or less shall be provided with [either] stepless adjustment of the x-ray field or with means to further limit the x-ray field size at the plane of the image receptor to 125 square centimeters or less. Stepless adjustment shall, at the greatest SID, provide continuous field sizes from the maximum obtainable to a field size of five (5) by five (5) centimeters or less.
(c) For equipment manufactured after February 25, 1978, if [when] the angle between the image receptor and beam axis is variable, means shall be provided to indicate if [when] the axis of the x-ray beam is perpendicular to the plane of the image receptor.
(4) Spot film devices which are certified components shall meet the following additional requirements:
(a) Means shall be provided between the source and the patient for adjustment of the x-ray field size in the plane of the film to the size of the portion of the film which has been selected on the spot film selector. This [Such] adjustment shall be automatically accomplished except if [when] the x-ray field size in the plane of the film is smaller than that of the selected portion of the film. For spot film devices manufactured after June 21, 1979, if the x-ray field size is less than the size of the selected portion of the film, the means for adjustment of the field size shall be only at the operator's option;
(b) It shall be possible to adjust the x-ray field size in the plane of the film to a size smaller than the selected portion of the film. The minimum field size at the greatest SID shall be equal to, or less than, five (5) by five (5)

centimeters;

(c) The center of the x-ray field in the plane of the film shall be aligned with the center of the selected portion of the film to within two (2) percent of the SID; and

(d) On spot film devices manufactured after February 25, 1978, if the angle between the plane of the image receptor and beam axis is variable, means shall be provided to indicate if [when] the axis of the x-ray beam is perpendicular to the plane of the image receptor, and compliance shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor.

(5) If a means exists to override the automatic x-ray field size adjustments required in this section, that means:

(a) Shall be designed for use only if the system fails;

(b) Shall incorporate a signal visible at the fluoroscopist's position which shall indicate if the automatic field size adjustment is overriden; and

(c) Shall be clearly and durably labeled as follows:

"FOR X-RAY FIELD LIMITATION SYSTEM FAILURE".

Section 5. Activation of the Fluoroscopic Tube. X-ray production in the fluoroscopic mode shall be controlled by a device which requires continuous pressure by the fluoroscopist for the entire time of an [any] exposure. If [When] recording serial fluoroscopic images, the fluoroscopist shall be able to terminate the x-ray exposures [at any time], but means may be provided to permit completion of a [any] single exposure of the series in process.

Section 6. Exposure Rate Limits. The entrance exposure rate allowable limits and requirements are as follows:

(1) The exposure rate at the point where the center of the useful beam enters the patient shall not exceed ten (10) roentgens per minute, except during recording of fluoroscopic images or if [when] provided with optional high level control;

(2) If [When] provided with optional high level control, the equipment shall not be operable at a [any] combination of tube potential and current which [will] results in an exposure rate in excess of five (5) roentgens per minute at the point where the center of the useful beam enters the patient unless the high level control is activated.

(a) Special means of activation of high level controls shall be required. The high level control shall only be operable if [when] continuous manual activation is provided by the operator.

(b) A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(3) Certified systems which do not incorporate an automatic exposure control shall not be operable at a [any] combination of tube potential and current which [will] results in an exposure rate in excess of five (5) roentgens per minute at the point where the center of beam enters the patient except during recording of fluoroscopic images or if [when] provided with an optional high level control;

(4) Compliance with the entrance exposure rate limits shall be determined as follows:

(a) Movable grids and compression devices shall be removed from the useful beam during the measurement;

(b) If the source is below the table, exposure rate shall be measured one (1) centimeter above the tabletop or cradle;

(c) If the source is above the table, the exposure rate shall be measured at thirty (30) centimeters above the tabletop with the end of the beam limiting device or spacers positioned as closely as possible to the point of measurement;

(d) C-arm fluoroscopes, both stationary and mobile, shall meet the entrance exposure rate limits in subsections (1), (2) and (3) of this section thirty (30) centimeters from the input surface of the fluoroscope imaging assembly with the source positioned at an available SID if the end of the spacer assembly or beam-limiting device is not closer than thirty (3) centimeters from the input surface of the fluoroscopic imaging assembly.

(5) Periodic measurements of the exposure rate shall be made. An adequate period for these [such] measurements shall be annually or after [any] maintenance of the system which might affect the exposure rate;

(a) Results of these measurements shall be posted where a [any] fluoroscopist has [may have] ready access to them while using that fluoroscopic x-ray system and in the records required by these administrative regulations. Results of the measurements shall include the exposure rate in roentgens per minute, as well as the physical factors used to determine the [all] data, the name of the person who performed the measurements, and the date the measurements were performed;

(b) Conditions of periodic measurement of entrance exposure rate are as follows:

1. The kVp shall be the kVp typical of clinical use of the x-ray system;

2. The measurement shall be made under the conditions of subsection (4) of this section;

3. Fluoroscopic x-ray system(s) that incorporate automatic exposure control (e.g., automatic brightness control) shall have sufficient material placed in the useful beam to produce a milliamperage typical of the use of the fluoroscopic x-ray system; and

4. Fluoroscopic x-ray system(s) that do not incorporate automatic exposure control shall utilize a milliamperage typical of the clinical use of the fluoroscopic x-ray system. Materials (e.g., an attenuation block) shall [should] be placed in the useful beam to protect the imaging system.

Section 7. Radiation Rate Limits Transmitted Through the Primary Barrier. The exposure rate due to transmission through the primary protective barrier with the attenuation block in the useful beam, combined with radiation from the image intensifier, if provided, shall not exceed two (2) milliroentgens per hour at ten (10) centimeters from [any] accessible surfaces of the fluoroscopic imaging assembly beyond the plane of the image receptor for each roentgen per minute of entrance exposure rate. The transmitted exposure rate shall be measured so that the following requirements are met:

(1) The exposure rate due to transmission through the primary protective barrier combined with radiation from the image intensifier shall be determined by measurements averaged over an area of 100 square centimeters with no linear

dimension greater than twenty (20) centimeters;
(2) If the x-ray source is below the table top, the measurement shall be made with the input surface of the fluoroscopic imaging assembly positioned thirty (30) centimeters above the table top;
(3) If the x-ray source is above the table top and the SID is variable, the measurement shall be made with the end of the beam limiting device or spacer as close to the table top as it can be placed, except [provided] that it shall not be closer than thirty (30) centimeters;
(4) Movable grids and compression devices shall be removed from the useful beam during the measurement; and
(5) The attenuation block shall be positioned in the useful beam ten (10) centimeters from the point of measurement of the entrance exposure rate and between this point and the input surface of the fluoroscopic imaging assembly.

Section 8. Indication of Tube Potential and Current. During fluoroscopy and cinefluorography, x-ray tube potential and current shall be continuously indicated on the control panel or within view of the fluoroscopist.

Section 9. Source to Skin Distance. The source to skin distance shall not be less than:
(1) Thirty-eight (38) centimeters on stationary fluoroscopes certified under the federal performance standard;
(2) Thirty-five and five-tenths (35.5) centimeters on stationary fluoroscopes which are not certified under the federal performance standard;
(3) Thirty (30) centimeters on [all] mobile fluoroscopic x-ray systems; or
(4) Twenty (20) centimeters for image-intensified fluoroscopes used for specific surgical applications. The written safety procedures shall provide precautionary measures to be adhered to during the use of this device.

Section 10. Fluoroscopic Timer. A means shall be provided to preset the cumulative on-time of the fluoroscopic x-ray system. The fluoroscopic x-ray system shall not be able to be activated without this timer also being activated. The end of the predetermined period of irradiation shall be indicated by an audible signal [or by interruption of the irradiation]. The [Such] audible signal [or interruption] shall continue until the timing device is reset. The maximum cumulative time of the timing device shall not exceed five (5) minutes without resetting.

Section 11. Mobile Fluoroscopes. Mobile fluoroscopic systems shall [always] be provided with image intensification. It shall be impossible to operate mobile fluoroscopic systems unless the useful beam is intercepted by the image intensifier.

Section 12. Control of Scattered Radiation. (1) Fluoroscopic table designs combined with procedures utilized shall expose [be such that] no unprotected part of [any] staff or an ancillary person's body [shall be exposed] to unattenuated scattered radiation which originates from under the table. The attenuation required shall not be less than 0.25 mm lead equivalent; and
(2) Equipment configuration design [when] combined with procedures shall expose [be such that] no portion of [any] staff or an ancillary person's body, except the extremities, [shall be exposed] to the unattenuated scattered radiation emanating from above the tabletop unless that individual:
(a) Is at least 120 cm from the center of the useful beam, or
(b) The radiation has passed through not less than 0.25 mm lead equivalent material (e.g., leaded drapes, Bucky slot cover panel, or self supporting leaded curtains) in addition to [any] lead equivalency provided by protective aprons.
(3) Exceptions to subsection (2)(a) and (b) of this section may be made in some special procedures if [where] a sterile field does [will] not permit the use of the normal protective barriers. If [Where] the use of prefitted sterilized covers for the barriers is practical, the cabinet shall not permit an [such] exception.

Section 13. Operating Procedures and Auxiliary Equipment. The following operating procedures and auxiliary equipment shall be utilized, if [where] applicable, in the operation of a fluoroscopic x-ray system:
(1) Fluoroscopy performed by technologists shall be under the direction of a radiologist and be exclusively for localization purposes [to obtain images for interpretation by licensed practitioners of the healing arts];
(2) Spot film images shall be obtained only by a licensed practitioner of the healing arts;
(3) Protective gloves of at least 0.25 mm lead equivalent shall be readily available to the fluoroscopist during every examination;
(4) [(3)] The eyes of the fluoroscopist shall be adequately dark-adapted before using nonimage-intensified fluoroscopic x-ray systems;
(5) [(4)] Extraneous light that interferes with the fluoroscopic examination shall be eliminated;
(6) [(5)] Hand-held fluoroscopic screens shall not be used;
(7) [(6)] Protective aprons of at least 0.25 mm lead equivalence [equivalent] shall be worn by the fluoroscopist and by [all] persons in the fluoroscopic room except the patient during each examination;
(8) [(7)] Fluoroscopic x-ray systems designed strictly for fluoroscopy shall not be used for spot filming or radiography; and
(9) [(8)] Dental fluoroscopic x-ray systems without image intensification shall not be used.

Section 14. Radiation Therapy Simulation Systems. Radiation therapy simulation systems shall be exempt from the requirements of Sections 4, 6, and 10 of this administrative regulation if [provided that]:
(1) [Such] Systems are designed and used in [such] a manner that no individual other than the patient is in the x-ray room if [during periods of time when] the system is producing x-rays; and
(2) Systems which do not meet the requirements of Section 10 of this regulation are provided with a means of indicating the cumulative time that an individual patient has been exposed to x-rays. Procedures shall require in these [such] cases that the timer be reset between examinations.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services 2nd Floor Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe
(1) Type and number of entities affected: Approximately 150 facilities utilizing fluoroscopic diagnostic x-ray.
(a) Direct and indirect costs or savings to those affected: No measurable direct or indirect costs or savings will result from these amendments.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will result from these amendments.
(2) Effects on the promulgating administrative body: No measureable direct or indirect costs or savings will result from these amendments.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Minor changes in the completion of inspection reports will result from these amendments.
(3) Assessment of anticipated effect on state and local revenues: These amendments will have no effect on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist to maintain conformity with the U.S. Food and Drug Administration's suggested state regulations.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any state, regulation or policy.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. Tiering of this regulation was based upon design characteristics and date of manufacture of fluoroscopic x-ray equipment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. While not federally mandated state radiation control programs conform to the suggested state regulations promulgated by the Conference of Radiation Control Program Directors and the U.S. Food and Drug Administration.
2. State compliance standards. The amendment to this regulation will maintain compliance standards equivalent to the suggested state regulations.
3. Minimum or uniform standards contained in the federal mandate. These minimum standards are designed to minimize radiation exposure from fluoroscopic diagnostic x-ray.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment to this administrative regulation will be identical to the suggested state regulation requirement.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___ (If yes, complete questions 2-4)
2. State what unit, part or division of local government this administrative regulation will affect. These amendments to the regulation will have no significant effect on local government health facilities utilizing diagnostic fluoroscopic x-ray.
3. State the aspect or service of local government to which this administrative regulation relates.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:130. Dental.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of any sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this administrative regulation is to provide special requirements for the possession, use and operation of [all] intra-oral dental radiographic x-ray systems.

Section 1. Applicability. This regulation shall apply [applies] to [all] dental intra-oral radiographic x-ray systems and to [all] persons, equipment and materials used in connection with the possession, use or operation of these [such] systems.

Section 2. Source to Skin Distance. Each radiographic x-ray system designed for use with an intra-oral image receptor shall be provided with a means to limit the source to skin distance to not less than:
(1) Eighteen (18) centimeters if operable above fifty (50) kilovolts peak; or
(2) Ten (10) centimeters if not operable above fifty (50) kilovolts peak.

Section 3. Field Limitation. Each radiographic x-ray system designed for use with an intra-oral image receptor shall be provided with a means to limit the x-ray beam.
(1) If the minimum source to skin distance (SSD) is eighteen (18) centimeters or more, the x-ray field, at the minimum SSD, shall be containable in a circle having a diameter of no more than seven (7) centimeters; or
(2) If the minimum SSD is less than eighteen (18) centimeters, the x-ray field, at the minimum SSD, shall be containable in a circle having a diameter of no more than six (6) centimeters.
[(3) All intra-oral radiographic systems registered after the effective date of this regulation shall be used with an open ended, shielded position indicating device.]

Section 4. Operator Protection. Each installation shall be provided with a protective barrier for the operator or shall be so arranged that the operator can conveniently stand, in the judgment of the cabinet, at least one and eight tenths (1.8) meters from the patient, the tube housing assembly, and the useful beam if [provided that] the exposure to the operator is within the limits provided by 902 KAR 100:020, Section 20.

Section 5. Operating Procedures. In performing intra-oral dental radiography the following rules shall apply:
(1) Film holding devices shall be used if [when] technique permits;
(2) Neither the tube housing assembly nor the position indicating device shall be hand-held during an exposure;
(3) The x-ray system shall be arranged and operated in [such] a manner that the useful beam at the patient's skin does not exceed the dimensions specified in Section 3 of this administrative regulation.
(4) Each patient undergoing dental radiography shall be draped with a protective apron of not less than 0.25 mm lead equivalent to cover the gonadal area;
(5) Film of a USASI (USA) speed group rating of "D" or faster shall be used;
(6) All dental radiographic x-ray systems registered after March 2, 1977, shall be provided with electronic timers; and
(7) If [Whenever] patients are [must be] immobilized during an x-ray exposure mechanical restraints shall be used if [when] technique permits.

Section 6. Filtration. In addition to the requirements of 902 KAR 100:115, Section 6, all intra-oral dental radiographic systems manufactured on and after December 1, 1980, shall have a minimum half-value layer not less than one and five-tenths (1.5) millimeters aluminum equivalent filtration permanently installed in the useful beam.

Section 7. Linearity. On dental intra-oral radiographic systems certified under the federal performance standard, if [when] the equipment allows a choice of x-ray tube current settings and is operated on a power supply as specified by the manufacturer in accordance with the requirements of applicable federal standards, for any fixed x-ray tube potential within the range of forty (40) to 100 percent of the maximum rating, the average ratios of exposure to the indicated milliampere-seconds product obtained at any two (2) consecutive tube current settings shall not differ by more than one-tenth (0.1) times their sum.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services 2nd Floor Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe
(1) Type and number of entities affected: Approximately 1400 facilities utilizing dental intraoral radiographic x-ray systems.
(a) Direct and indirect costs or savings to those affected: An estimated $200 will be saved by registrants possessing dental intraoral x-ray units manufactured prior to 1980. These estimated savings will be the same each year.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will result from these amendments.
(2) Effects on the promulgating administrative body: No measureable direct or indirect costs or savings will result from these amendments.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Minor changes in the completion of inspection reports will result from these amendments.
(3) Assessment of anticipated effect on state and local revenues: These amendments will have no effect on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist to maintain conformity with the U.S. Food and Drug Administration's suggested state regulations.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any state, regulation or policy.
(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. This regulation is tiered based upon date of registration of equipment, manufacture date of equipment and operational characteristics of equipment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. While not federally mandated state radiation control programs conform to the suggested state regulations promulgated by the Conference of Radiation Control Program Directors and the U.S. Food and Drug Administration.

2. State compliance standards. The amendment to this regulation will maintain compliance standards equivalent to the suggested state regulations.

3. Minimum or uniform standards contained in the federal mandate. These minimum standards are designed to minimize radiation exposure from dental intraoral x-ray systems.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment to this administrative regulation will be identical to the suggested state regulation requirement.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?
Yes X No___ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. These amendments will effect only a part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. These amendments relate to county health departments and hospitals.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: These amendments will have no significant impact on county services.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:136. Therapeutic systems below one (1) MeV.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and the handling, and disposal of radioactive waste. The purpose of this administrative regulation is to provide special requirements for the possession, use, and operation of [all] therapeutic x-ray systems which operate at energies below one (1) MeV.

Section 1. Applicability. This administrative regulation shall apply [applies] to [all] therapeutic x-ray systems which operate at energies below one (1) MeV and to [all] persons, equipment and materials used in connection with the possession, use or operation of the [such] systems.

Section 2. Leakage Radiation. If [When] the x-ray system is operated at its leakage technique factors, the leakage radiation shall not exceed the value given below:

(1) For contact therapy systems the leakage radiation shall not exceed 100 milliroentgens per hour measured five (5) cm anywhere from [any part of] the tube housing;

(2) For systems operating between zero and 150 kVp and which are registered prior to March 2, 1977, the leakage radiation shall not exceed one (1) roentgen in one (1) hour at one (1) meter from the source;

(3) For systems operating between zero and 150 kVp and which are registered after March 2, 1977, the leakage radiation shall not exceed 100 milliroentgens in one (1) hour at one (1) meter from the source;

(4) For systems operating between 151 and 500 kVp the leakage radiation shall not exceed one (1) roentgen in one (1) hour at one (1) meter from the source; or

(5) For systems operating between 501 and 999 kVp the leakage radiation at one (1) meter from the source shall not exceed one-tenth (0.1) percent of the useful beam one (1) meter from the source.

Section 3. Permanent Beam Limiting Devices. Permanent fixed diaphragms or cones used for collimating the useful beam shall provide the same or higher degree of protection as required by the tube housing assembly.

Section 4. Removable Beam Limiting Devices. Removable beam limiting devices shall, for the portion of the useful beam to be blocked by these devices, transmit not more than one (1) percent of the useful beam at the maximum kilovoltage and maximum treatment filter. This requirement does not apply to auxiliary blocks or materials placed in the useful beam to shape the useful beam to the individual patient.

Section 5. Adjustable Beam Limiting Devices. Adjustable beam limiting devices shall meet the following requirements:

(1) Devices installed after March 2, 1977 shall, for the portion of the useful beam to be blocked by these devices, transmit not more than one (1) percent of the original beam at the maximum kilovoltage and maximum treatment filter; or

(2) Devices installed before March 2, 1977,

shall for the portion of the useful beam to be blocked by these devices, transmit not more than five (5) percent of the original beam at the maximum kilovoltage and maximum treatment filter.

Section 6. Filter System. The filter system shall be designed to meet the following requirements:
(1) The filters cannot be accidentally displaced at [any] possible tube orientation;
(2) Each filter shall be marked as to its material of construction and its thickness and, for wedge filters, the wedge angle shall appear on the wedge or wedge tray; and [or wedge angles for wedges, and the filters shall be individually distinguishable.]
(3) The radiation at five (5) centimeters from the filter insertion slot opening does not exceed thirty (30) roentgens per hour under operating conditions. [Each x-ray system equipped with a beryllium or other low filtration window shall be clearly labeled as such upon the tube head housing and upon the control panel.]

Section 7. Focal Spot Marking and Assembly Immobilization. The tube housing assembly shall be marked so that it is possible to determine the location of the focal spot to within five (5) millimeters and the [such] marking shall be readily accessible for use during calibration procedures. In addition the assembly shall be capable of being immobilized during stationary treatments.

Section 8. Contact Therapy Beam Block. Contact therapy tube housing assemblies shall have a removable shield of at least five-tenths (0.5) mm lead equivalent material at 100 kVp that can be positioned over the entire useful beam port during periods that [when] the beam is not in use.

Section 9. Beam Monitor System. Therapy x-ray systems registered after March 2, 1977 which are capable of operating above 150 kVp shall be provided with a beam monitoring system which meets the following requirements:
(1) The beam monitoring system shall have a detector interlock to prevent incorrect positioning;
(2) The beam monitoring system shall have a display at the control panel from which the [absorbed] dose at a reference point in soft tissue [the treatment volume] can be calculated;
(3) The control panel display shall maintain the administered dose reading until intentionally reset to zero;
(4) If a system malfunctions or [In the event of] electrical power failure occurs the dose administered to a patient prior to the system's malfunction or power failure can be accurately determined;
(5) The beam monitoring system shall not allow irradiation until a preselected value of exposure has been made at the treatment control panel;
(6) The beam monitoring system shall be capable of independently terminating irradiation if [when] the preselected exposure has been reached; and
(7) The control panel display shall not have [only one (1) scale and no] scale multiplying factors and shall utilize a [. Control panel] design [shall be such] that displays increasing dose [is displayed] by increasing numbers.

Section 10. Timers. Therapeutic x-ray systems shall be provided with timers which meet the following requirements:
(1) The timer shall have a display at the control panel with a preset time selector and an elapsed time indicator;
(2) The timer shall be a cumulative timer which activates with the production of radiation and retains its reading after irradiation is interrupted or terminated. It shall be necessary to zero the elapsed time indicator [and the preset time selector] after irradiation is terminated and before irradiation can be reinstated.
(3) The timer shall terminate irradiation after [when] a preselected time has elapsed if a [any] dose monitoring system present has not previously [seriously] terminated irradiation.
(4) The timer shall permit accurate presetting and determination of exposure times as short as one (1) second and shall not permit an exposure if set at zero; and
(5) The timer shall not activate until the shutter is open if [when] the irradiation is controlled by a shutter mechanism.

Section 11. Control Panel. The control panel, in addition to other display requirements of this regulation, shall meet the following requirements:
(1) The control panel shall indicate the presence of electrical power, the possibility of tube activation, the production of x-rays, and the actual kilovoltage and current across the tube;
(2) A means shall be provided for terminating an exposure at once [any time];
(3) A locking device shall be provided which [will] prevents unauthorized use of the x-ray system; and
(4) A display shall be provided on systems registered after March 2, 1977 which indicates specific filter(s) in the useful beam.

Section 12. Control Panels Which Control More Than One (1) Tube. If [When] a control panel may energize more than one (1) x-ray tube then the following requirements shall be met:
(1) Only one (1) x-ray tube may be activated at [any] one (1) time;
(2) The control panel shall indicate which x-ray tube is energized; and
(3) Each x-ray tube shall indicate whether that tube is energized.

Section 13. Source-to-skin Distance. A means shall be provided to determine the source-to-skin distance to within one (1) centimeter.

Section 14. Shutter Control. Unless it is possible to bring the x-ray output to the prescribed exposure parameters within five (5) seconds, the entire useful beam shall be automatically attenuated by a shutter having a lead equivalency not less than that of the tube housing. [All] Systems using shutter control shall meet the following requirements:
(1) The shutter shall be electrically controlled by the operator from the control panel; and
(2) An indication of shutter position shall

appear at the control panel. The control panel shall indicate whether the shutter is open or closed.

Section 15. Facility Design and Shielding Requirements for X-ray Systems Capable of Operating Above Fifty (50) kVp. In addition to the shielding adequate to meet the requirements of 902 KAR 100:105, the following requirements shall also be met:

[(1) Treatment rooms to which access is possible through more than one (1) entrance, shall be provided with flashing warning lights in a readily observable position near the outside of all access doors, which will indicate when the useful beam is "on". Such warning lights shall be accompanied by an appropriate sign as specified in 902 KAR 100:020, Section 20;]

(1) [(2)] Provision shall be made for two (2) way aural communication with the patient from the control room; however, if [where] excessive noise levels make aural communication impractical other methods of communication shall be used;

(2) [(3)] Windows, mirror systems, or closed-circuit television viewing screens or an equivalent system shall be provided to permit continuous observation of the patient during irradiation and shall be so located that the operator may see the patient and the control panel from the same position. If [When] the primary viewing system is by electronic means (e.g., television) an alternate viewing system shall be available as a back-up if [in case of] electronic failure occurs;

(3) [(4)] The therapy room shall be so constructed that persons may [at all times] be able to escape from within; and

(4) [(5)] Facilities which contain an x-ray system which may be operated above 150 kVp shall meet the following requirements:

(a) [All] Protective barriers shall be fixed barriers, except for entrance doors or beam interceptors.

(b) The control panel shall be located outside the treatment room;

(c) [All] Doors of the treatment room shall be electrically connected to the control panel so [such] that x-ray production cannot occur unless the door is closed; [and]

(d) [Interlocked] Doors referred to in paragraphs (a) [(b)] and (c) of this subsection, shall be interlocked electrically [provided] so that they are closed before treatment can be initiated or continued. If the irradiation is interrupted by a door opening, it shall not be possible to restore the machine to operation without closing the door and reinitiating irradiation by manual action at the control panel; and [if the doors are opened while the therapy tube is activated, either the machine will shut off within two (2) seconds or the radiation at a distance of one (1) meter from the target shall be reduced to a rate of ten (10) milliroentgens per hour or less within two (2) seconds. After such shutoff or reduction in output, it shall be possible to restore the machine to full operation only by resetting the door and by reinitiating the exposure by manual action at the control panel.]

(e) If a door referred to in paragraph (d) of this subsection is opened while the x-ray tube is activated, the exposure at a distance of one (1) meter from the source shall be reduced to less than 100 milliroentgens per hour.

Section 16. Surveys and Calibrations. [All] New facilities and existing facilities not previously surveyed, shall have a radiation protection survey made by or under the direction of a qualified expert. [Such] A survey shall also be conducted after [any] changes in the facility which might cause a significant increase in a radiation hazard.

(1) The registrant shall obtain a written report of this survey from the qualified expert and a copy of this report shall be transmitted by the registrant to the cabinet within thirty (30) days of receipt of the report. The survey and report shall indicate instances where the installation, in the opinion of the qualified expert, is in noncompliance of applicable regulations.

(2) The calibration of an x-ray system shall be performed at intervals not to exceed one (1) year and after [any] changes or replacement of components which are likely to [could cause a] change [in] the radiation output. This [Such] calibration shall be performed by or under the direction of a qualified expert who is physically present at the facility during the calibration. Calibration of the radiation output shall be performed with a calibrated dosimetry system which is directly traceable to national standards and which shall have been calibrated within the preceding two (2) years. Records of calibrations shall be maintained by the registrant for five (5) years. The calibration shall include at least the following determinations:

(a) Verification that the system is operating in compliance with the design specifications;

(b) The exposure rate as a function of field size, technique factors, filter, and treatment distance used;

[(c) The effective energy (e.g., half-value layer) for every combination of kVp filter used for radiation therapy;]

(c) [(d)] The congruence between the radiation field and field indicated by the localizing device if [when] localizing devices are used for radiation therapy; and

(d) [(e)] The uniformity of the largest radiation field used [radiation field and its dependence upon the direction of the useful beam].

(3) The calibration determinations prescribed in subsection (2) of this section shall be performed in a manner that the dose at a reference point in soft tissue can be calculated [provided in sufficient detail such that the absorbed dose in rads to tissue adjacent to as well as in the useful beam may be calculated to] within plus or minus five (5) percent of the intended absorbed dose.

(4) A copy of the most recent x-ray system calibration shall be available at or in the area of the control panel.

(5) Therapeutic x-ray systems capable of operation at greater than 150 kVp shall also have spot checks performed which meet the following:

(a) The spot check procedures shall specify the frequency at which tests or measurements are to be performed. The spot check procedures shall specify that the spot check shall be performed during the calibration specified in subsection (2) of this section. The acceptable tolerance

for each parameter measured in the spot check compared to the value for that parameter determined in the calibration specified in subsection (2) of this section shall be stated [A spot check shall be conducted at least monthly or after fifty (50) operating hours and shall include carefully selected representative or indicative measurements which will demonstrate the consistency of relevant machine operating characteristics];

(b) The spot check methods shall be in writing and shall have been designed by a qualified expert. A copy of the procedures shall be submitted to the cabinet prior to its implementation [Spot checks shall include verification of continued congruency between the radiation field and the localizing device where optical field illuminator is used];

(c) If a qualified expert does not perform the spot check measurement, the results of the spot check measurements shall be reviewed by a qualified expert within fifteen (15) days [For machines in which beam quality may vary significantly, spot checks shall include beam quality checks];

(d) If [Whenever] a spot check indicates a significant change in the operating characteristics of a machine, the machine shall be recalibrated as required by subsection (2) of this section; [and]

(e) Records of spot check measurements shall be maintained for two (2) years after completion of the spot check measurements and necessary corrective actions;

(f) The spot check procedures shall specify the frequency at which tests of measurements are to be performed the spot check procedures shall specify that the spot check shall be performed during the calibration specified in subsection (2) of this section shall be stated;

(g) The cause for a parameter exceeding a tolerance set by the qualified expert shall be investigated and corrected before the system is used for patient irradiation; and

(h) If a spot check involves a radiation measurement, the measurement shall be obtained using a system satisfying the requirements of subsection (2) of this section or which has been intercompared with a system meeting those requirements within the previous year.

Section 17. Operating Procedures. [All] Therapeutic x-ray systems shall be operated so the following requirements are met:

(1) The facility shall be operated in compliance with any limitations indicated by the radiation protection survey which have been approved by the cabinet;

(2) The x-ray system shall not be used in the administration of radiation therapy unless the requirement of Section 16 of this administrative regulation has been met;

(3) Therapeutic x-ray systems shall not be left unattended unless the locking device required by Section 10(3) of this administrative regulation is set to prevent activation of the useful beam;

(4) If [When] a patient is required to [must] be held in position for radiation therapy, mechanical supporting or restraining devices shall be used [whenever feasible. If the patient must be held by an individual, that individual shall be adequately protected and shall be positioned so that no part of his body will be struck by the useful beam and so that his body is as far as possible from the edge of the useful beam. The exposure of any individual used for this purpose shall be monitored and a record of such monitoring shall be maintained. No person shall routinely be used for the purpose of holding patients during exposures]; [and]

(5) The tube housing assembly shall not be held by hand during operation unless the system is designed to require [such] holding and the potential difference of the system does not exceed fifty (50) kVp. In this instance [such cases] the holder shall wear protective gloves and apron of not less than five-tenths (0.5) mm lead equivalency at 100 kVp;

(6) No individual other than the patient shall be in the treatment room unless the individual is protected by a barrier sufficient to meet the requirements of 902 KAR 100:020. No individual other than the patient shall be in the treatment room during exposures from x-ray systems operating above 150 kVp; and

(7) The x-ray system shall not be used in the administration of radiation therapy unless the requirements of subsections (2) and (5)(d) of this section have been met.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services 2nd Floor Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe

(1) Type and number of entities affected: Approximately 100 facilities utilizing radiation therapy systems operating below one MeV will be affected.

(a) Direct and indirect costs or savings to those affected: No measurable direct or indirect costs in savings will result from these amendments.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will result from these amendments.

(2) Effects on the promulgating administrative body: No measureable direct or indirect costs or savings will result from these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Minor changes in the completion of inspection reports will result from these amendments.

(3) Assessment of anticipated effect on state and local revenues: These amendments will have no effect on state or local revenues.

(4) Assessment of alternative methods; reasons

why alternatives were rejected: No alternatives methods exist to maintain conformity with the U.S. Food and Drug Administration's suggested state regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any state, regulation or policy.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. This regulation is tiered based upon equipment design, operating characteristics and date of registration of the equipment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. While not federally mandated state radiation control programs conform to the suggested state regulations promulgated by the Conference of Radiation Control Program Directors and the U.S. Food and Drug Administration.

2. State compliance standards. The amendment to this regulation will maintain compliance standards equivalent to the suggested state regulations.

3. Minimum or uniform standards contained in the federal mandate. These minimum standards are designed to minimize radiation exposure from therapeutic x-ray systems which operate below one MeV.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment to this administrative regulation will be identical to the suggested state regulation requirement.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:137. Therapeutic systems above one (1) MeV.

RELATES TO: KRS 211.842 to 211.850, 211.990(4)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this regulation is to provide special requirements for the possession, use and operation of [all] therapeutic x-ray and electron systems which operate at energies of one (1) MeV and above.

Section 1. Applicability. This regulation shall apply [applies] to [all] therapeutic x-ray and electron systems which operate at energies of one (1) MeV and above and to [all] persons, equipment and materials used in connection with the possession, use or operation of these [such] systems.

Section 2. Leakage Radiation to the Patient Area. (1) Systems registered after March 2, 1977 shall meet the following requirements:

(a) For [all] operating conditions producing maximum leakages the absorbed dose in rads due to leakage radiation (including electrons, x-rays and neutrons) at a [any] point in a circular plane of radius two (2) meters centered on and perpendicular to the central axis of the beam at the isocenter or normal treatment distance and outside the maximum useful beam shall not exceed one-tenth (0.1) percent of the maximum absorbed dose in rads of the unattenuated useful beam measured at the point of intersection of the central axis of the beam and the plane surface. Measurements, excluding those for neutrons, shall be averaged over an area up to but not exceeding 100 square centimeters at the position specified. Measurements of the portion of the leakage radiation dose contributed by neutrons shall be averaged over an area up to but not exceeding 200 square centimeters; and

(b) The registrant shall determine or obtain from the manufacturer, for each system, the leakage radiation existing at the points specified in paragraph (a) of this subsection for specified operating conditions. Records of radiation leakage shall be maintained at the installation.

(2) Systems registered before March 2, 1977, shall meet the following requirements:

(a) For operating conditions producing maximum leakage radiation, the absorbed dose rate in rads due to leakage radiation (excluding neutrons) at a [any] point on the area specified in subsection (1)(a) of this section shall not exceed one-tenth (0.1) percent of the maximum absorbed dose in rads of the unattenuated useful beam dose rate at one (1) meter from the source, for [any of] its operating conditions. Measurements shall be averaged over an area up to but not exceeding 100 square centimeters; and

(b) The registrant shall determine or obtain from the manufacturer for each system the leakage radiation existing at the points specified in subsection (1)(a) of this section for the specified operating conditions. Records of radiation leakage shall be maintained at the installation.

(3) If [Where] neutron leakage may be a hazard the cabinet may, by specific order, impose upon a [any] user [such] additional requirements, as it deems appropriate or necessary to protect health and minimize danger to life or property. If [When] imposing [such] additional requirements, the cabinet shall [will] give due consideration to accepted standards of safe practice.

Section 3. Leakage Radiation Outside the Patient Area. The leakage radiation outside the patient area shall meet the following requirements:

(1) The absorbed dose in rads due to leakage radiation, except in the area defined in Section 2(1)(a) of this regulation, [when] measured at one (1) meter from the path of the charged particle, before the charged particle strikes the target or window, shall not exceed one-tenth

(0.1) percent for x-ray leakage, nor .05 percent for neutron leakage of the maximum absorbed dose in rads of the unattenuated useful beam measured at the point of intersection of the central axis of the beam and the circular plane specified in Section 2(a) of this regulation; and

(2) The registrant shall determine or obtain from the manufacturer the actual leakage radiation existing at the points specified in Section 2(1)(a) of this regulation for specific operating conditions. Measurements, excluding neutrons, shall be averaged over an area up to but not exceeding 100 square centimeters. Neutron measurements shall be averaged over an area up to but not exceeding 200 square centimeters.

Section 4. Beam Limiting Devices. Adjustable or interchangeable beam limiting devices shall be provided so [such] that the following requirements are met:

(1) Adjustable or interchangeable beam limiting devices shall transmit no more than two (2) percent of the useful beam at the normal treatment distance for the portion of the useful beam which is to be attenuated by the beam limiting device. Neutrons are not included in this requirement;

(2) If the beam limiting device on existing equipment does not meet the requirements of subsection (1) of this section the cabinet may accept auxiliary equipment or methods for accomplishing attenuation; and

(3) Dose equivalent measurements shall be averaged over an area up to but not exceeding 100 square centimeters at a distance of one (1) meter from the target. If [In case of] overlapping beam limiting devices are present, the leakage through each set shall be measured independently.

Section 5. Filters. Filters shall be provided so that the following requirements are met:

(1) If the absorbed dose rate information provided in Section 17 of this regulation relates exclusively to operation with a field flattening or beam scattering filter in place, then the filter shall be a permanent filter only removable by the use of tools; and

(2) In therapy systems which use a system of wedge filters or interchangeable field flattening filters or beam scattering filters the following requirements shall be met:

(a) Irradiation shall not be possible until a selection of filter has been made at the control panel;

(b) An interlock system shall be provided to prevent irradiation if the filter is not in the correct position; and

[(c) An indication of the thin end of the wedge filter with respect to the treatment field shall be provided when wedge filters are used; and]

(c) [(d)] A display shall be provided at the control panel showing the filter(s) (or zero filter) in use.

Section 6. Beam Quality. The beam quality for therapy systems shall meet the following requirements:

(1) The absorbed dose, from x-ray stray radiation in the useful electron beam, on the central axis of the beam at a depth ten (10) cm further than the practical range shall not exceed the following limits:

(a) Three (3) percent of the maximum absorbed dose for electron beam energies to fifteen (15) MeV;

(b) Five (5) percent of the maximum absorbed dose for electron beam energies in the range fifteen (15) to thirty-five (35) [one (1) MeV through fifteen (15)] MeV;

(c) [(b)] Ten (10) percent of the maximum absorbed dose for electron beam energies in the range thirty-five (35) [greater than fifteen (15)] MeV to fifty (50) [through thirty-five (35)] MeV; [and]

(d) [(c)] Twenty (20) percent of the maximum absorbed dose for electron beam energies [in the range greater than thirty-five (35) through] fifty (50) MeV or greater; and

(e) Linear interpolation shall be used for values not stated.

(2) The measurements required by subsection (1) of this section shall be made at electron beam maximum size not exceeding fifteen (15) by fifteen (15) cm in a phantom whose cross-sectional dimensions exceed the measurement radiation field by at least five (5) cm and whose depth is sufficient to perform the required measurement. The incident surface of the phantom shall be at the normal treatment distance and normal to the central axis of the beam.

(3) At the largest field size available, the absorbed dose from electron stray radiation in the useful x-ray beam, at the surface during x-ray irradiation on the central axis of the beam shall not exceed the following limits;

(a) Eighty (80) percent of the maximum absorbed dose for x-ray beam maximum energies in the range of one (1) to [through] two (2) MeV;

(b) Seventy (70) percent of the maximum absorbed dose for x-ray beam maximum energies in the range of two (2) to [through] five (5) MeV;

(c) Sixty (60) percent of the maximum absorbed dose for x-ray beam maximum energies in the range of five (5) to [through] fifteen (15) MeV;

(d) Fifty (50) percent of the maximum absorbed dose for x-ray beam maximum energies in the range of fifteen (15) to [through] thirty-five (35) MeV; [and]

(e) Forty (40) percent of the maximum absorbed dose for x-ray beam maximum energies in the range of thirty-five (35) through fifty (50) MeV; and

(f) Linear interpolation shall be used for values not stated.

(4) The measurements required by subsection (3) of this section shall be made using a phantom of size and placement which meet the requirements of subsection (2) of this section. An instrument which [will] allows extrapolation to the surface absorbed dose shall be used. [All] Beam modifying devices which are removed without the use of tools, except beam scattering or field flattening filters, shall be removed from the useful beam.

(5) The registrant shall determine, or obtain from the manufacturer, the maximum percentage absorbed dose in the useful beam due to neutrons, excluding stray neutron radiation for specified operating conditions.

Section 7. Beam Monitors. Systems registered after March 2, 1977 shall be provided with two (2) radiation detectors in the radiation head. The two (2) detectors shall be incorporated into two (2) dose monitoring systems [arranged either as a primary/primary combination or as a

primary/secondary combination]. Systems registered before March 2, 1977 shall be provided with at least one (1) radiation detector in the radiation head. This detector shall be incorporated into a primary dose monitoring system. [All] Beam monitoring systems shall meet the following requirements:

[(1) Each primary system shall have a detector which is a transmission detector and is a full beam detector and is place on the patient side of any fixed added filters other than wedge filters;]

(1) [(2)] The detectors shall be removable only with tools and [or] shall be interlocked to prevent incorrect positioning.

(2) [(3)] Each detector shall be capable of independently monitoring, interrupting, and terminating [and controlling] the useful beam;

(3) [(4)] Each detector shall form part of a dose monitoring system from whose readings in dose monitor units the absorbed dose at a reference point in the treatment volume can be calculated;

(4) [(5)] For systems registered after March 2, 1977 the design of the dose monitoring systems of subsection (4) of this section shall ensure that the malfunctioning of one (1) system shall not affect the correct functioning of the second system. In addition [the following requirements shall be met:]

[(a)] the failure of an [any] element which may be common to both systems shall terminate the useful beam; and

[(b) The failure of the power supply of either system shall terminate the useful beam.]

(5) [(6)] Each dose monitoring system shall have a legible display at the control panel. Each display shall also meet the following requirements:

(a) Maintain a reading until intentionally reset to zero;

(b) In the event of power failure, have the capability of retrieving the information displayed in at least one (1) system for twenty (20) minute period of time after [at the time of the] failure occurs;

(c) On systems registered after March 2, 1977 the display shall have only one (1) scale and no scale multiplying factors; and

(d) A design shall be utilized so [such] that increasing dose is displayed by increasing numbers and shall be so designed that in the event of an overdosage of radiation the absorbed dose may be accurately determined [under all normal conditions of use or foreseeable failures].

[(7) Systems registered after March 2, 1977 shall have an indicator on the control panel which will show when the dose on the primary monitoring system differs from the dose on the secondary monitoring system by more than ten (10) percent.]

Section 8. Beam Symmetry. The useful beam shall be symmetrical within the following requirements:

(1) For systems registered after March 2, 1977 and inherently capable of producing useful beams with a symmetry exceeding five (5) percent. The asymmetry of the radiation beam in two (2) orthogonal directions shall be monitored before the beam passes through the beam limiting device. Means shall be provided so that, if the difference in the dose rate between one (1) region and another region symmetrically displaced from the central axis of the beam exceeds five (5) percent of the central axis dose rate, indication of this condition is made at the control panel; and if this difference exceeds ten (10) percent, the irradiation is terminated [each system shall have the capability of ensuring or determining that the dose rates in each of the four (4) quadrants of the useful beam are within five (5) percent of each other. An indication of beam symmetry shall appear at the control panel and beam asymmetry in excess of five (5) percent shall automatically terminate the useful beam. These requirements can be met if the registrant can demonstrate to the satisfaction of the cabinet that adequate fail-safe protection against the beam asymmetry is incorporated into the inherent design of the accelerator]; and

(2) On systems registered before March 2, 1977 if [where] the cabinet has determined that beam symmetry is inadequate the use of an automatic beam asymmetry warning system shall be required.

Section 9. Selection and Display of Dose Monitor Units. Irradiation shall not be possible until a selection of a number of dose monitor units has been made at the control panel. In addition dose monitor units shall also meet the following requirements:

(1) After the useful beam terminates it shall be necessary to reset the preselected dose monitor units before treatment can be reinitiated;

(2) The preselected number of dose monitor units shall be displayed at the control panel until manually reset for the next irradiation; and

(3) For systems registered after March 2, 1977, it shall be necessary to manually reset the preselected dose monitor units before radiation can be initiated [the display shall have only one (1) scale and no scale multiplying factors].

Section 10. Termination of Irradiation by the Dose Monitoring System or Systems During Stationary Beam Therapy. Each of the required dose monitoring systems shall terminate irradiation when the preselected number of dose monitor units has been detected by the system [be capable of independently terminating irradiation]. Dose monitoring systems shall also meet the following requirements:

(1) Each primary system shall terminate irradiation when the preselected number of dose monitor units has been detected by the system.

(2) If the original design of the equipment included a second dose monitoring system, that system shall be capable of terminating irradiation when not more than fifteen (15) percent of forty (40) dose monitor units above the preselected number of dose monitor units set at the control panel has been detected by the second dose monitoring system [Provisions shall be made to test the correct operation of each system;]

[(2) Each primary system shall terminate irradiation when the preselected number of dose monitoring units has been reached, and each required secondary system shall be used as a back-up]; and

(3) For systems registered after March 2, 1977 the beam shall terminate automatically when the secondary system detects more than ten (10) percent or twenty-five (25) dose monitor units

above the preset dose monitor units and indicators on the central panel shall show which system has terminated the beam.

Section 11. Termination Switches. It shall be possible to terminate irradiation and equipment movement or to go from an interruption condition to termination conditions at once [any time] from the control panel.

Section 12. Interruption Switches. It shall be possible to interrupt irradiation and equipment movements at once [any time] from the control panel. Following an interruption if shall be possible to restart irradiation by operator action without [any] reselection of operating conditions. If a [any] change is made of a preselected value during interruption the system shall go to termination condition.

Section 13. Timers. A timer shall be provided, [such timer shall] have a display at the control panel, [have] a preset time selector and [have] an elapsed time indicator. The timer shall be a cumulative timer which switches on and off with the irradiation and retains its reading after irradiation is interrupted or terminated. If shall be necessary to zero the elapsed time indicator [and the preset time selector] after irradiation is terminated. To guard against failure of the dose monitoring systems, the timer shall terminate irradiation when a preselected time has elapsed.

Section 14. Selection of Radiation Type. In systems capable of both x-ray and electron therapy the following requirements shall be met:

(1) Irradiation shall not be possible until a selection of radiation type (x-ray or electrons) has been made at the control panel;

(2) An interlock system shall be provided to ensure that the system can emit only the radiation type which has been selected;

(3) An interlock system shall be provided to prevent irradiation if [any] selected operations carried out in the treatment room do not agree with the selected operations carried out at the control panel;

(4) An interlock system shall be provided to prevent irradiation with x-ray except to obtain a port film if [when] electron applicators are fitted and irradiation with electrons if accessories specific for x-ray therapy [when x-ray wedge filters] are fitted; and

(5) The radiation type shall be displayed at the control panel before and during irradiation.

Section 15. Selection of Energy. In systems capable of generating radiation beams of different energies the following requirements shall be met:

(1) Irradiation shall not be possible until a selection of energy has been made at the control panel;

[(2) An interlock system shall be provided to ensure that the system can emit only the energy of radiation which has been selected;]

(2) [(3)] An interlock system shall be provided to prevent irradiation if [any] selected operations carried out in the treatment room do not agree with the selected operations carried out at the control panel;

[(4) The energy selected shall be displayed at the control panel before and during irradiation; and]

(3) [(5)] The nominal energy value selected shall be displayed at the control panel before and during irradiation; and

(4) For equipment registered after the effective date of these administrative regulations, an interlock system shall be provided to terminate irradiation if the energy of the electrons striking the x-ray target or electron window deviates by more than twenty (20) percent or three (3) MeV, whichever is smaller, from the selected nominal energy.

Section 16. Selection of Stationary Beam Therapy or Moving Beam Therapy. In systems capable of both stationary and moving beam therapy the following requirements shall be met:

(1) Irradiation shall not be possible until a selection of stationary or moving beam therapy has been made at the control panel;

(2) An interlock system shall be provided to ensure that the system can operate only in the mode which has been selected;

(3) An interlock system shall be provided to prevent irradiation if [any] selected operations carried out in the treatment room do not agree with the selected operations carried out at the control panel;

[(4) An interlock system shall be provided to terminate irradiation if the movement stops during moving beam therapy;]

[(5) Moving beam therapy shall be so controlled that the required relationship between the number of dose monitor units and movement is obtained; and]

(4) [(6)] The mode of operation shall be displayed at the control panel;

(5) For equipment registered after the effective date of this administrative regulation, an interlock system shall be provided to terminate irradiation if movement of the gantry occurs during stationary beam therapy or movement of the gantry stops during moving beam therapy unless stoppage is a preplanned function.

(6) Moving beam therapy shall be controlled to obtain the selected relationships between incremental dose monitor units and incremental angle of movement. Additionally for units registered after the effective date of this administrative regulation:

(a) An interlock system, shall be provided to terminate irradiation if the number of dose monitor units delivered in ten (10) degrees of arc differs by more than twenty (20) percent from the selected value; and

(b) Where gantry angle terminates the irradiation in arc therapy, the dose monitor units shall differ by less than five (5) percent from the value calculated from the absorbed dose per unit angle relationship.

(7) Where the dose monitor system terminates the irradiation in arc therapy, the termination of irradiation shall be required by Section 10 of this regulation.

Section 17. Absorbed Dose Rate. In systems registered after March 2, 1977 a system shall be provided from whose readings the absorbed dose rate at a reference point in the treatment volume can be calculated. The radiation detectors specified in Section 7 of this administrative regulation may form part of this system. In addition the following requirements shall be met:

(1) The [quotient of the number of] dose

monitor units [by time] shall be displayed at the control panel; and

(2) If the system can deliver [under any conditions] an absorbed dose rate at the normal treatment distance more than twice the maximum value specified by the manufacturer for machine parameters utilized [anticipated dose rate from the manufacturers estimates], a device shall be provided which terminates irradiation if [when] the dose rate exceeds a value not more than twice the specified maximum. The value at which the irradiation is [will be] terminated shall be a record maintained by the registrant.

Section 18. Location of Virtual Source [Focal Spot] and Beam Orientation. The registrant shall determine or obtain from the manufacturer the location with reference to an accessible point on the radiation head the following points:

(1) The x-ray target or [and] the virtual source of x-rays; and

(2) The electron window or the virtual source of electrons if the system has electron beams capabilities. [and the scattering foil; and]

[(3) All possible orientations of the useful beam.]

Section 19. System Checking Facilities. Facilities shall be provided so that [all] radiation safety interlocks can be checked. If [When] preselection of [any of the] operating conditions requires action in the treatment room and at the control panel, selection at one (1) location shall not give a display at the other location until the requisite selected operations in both locations have been completed.

Section 20. Auxiliary Support of Patients. If [When] a patient is required to [must] be held in position for radiation therapy, mechanical supporting or restraining devices shall be used. No person other than the patient shall be in the treatment room during irradiation.

Section 21. Facility and Shielding Requirements. In addition to shielding adequate to meet the requirements of 902 KAR 100:105, the following requirements shall be met:

(1) Except for entrance doors and beam interceptors [all] the required barriers shall be fixed barriers;

(2) The control panel shall be located outside the treatment room;

(3) Windows, mirror systems, closed-circuit television viewing screens or other equivalent viewing systems shall be provided to permit continuous observation of the patient during irradiation and shall be so located that the operator may see the patient and the control panel from the same position. If [When] the viewing system is by electronic means (e.g., television) an alternate viewing system shall be provided for use in the event of failure of the primary system;

(4) Provision shall be made for two (2) way aural communication with the patient from the control station. However, if [where] excessive noise levels or treatment requirements make aural communication impractical, other methods of communications shall be used;

(5) The treatment room shall be so constructed that persons may [at all times] be able to escape from within;

(6) Treatment room entrances to which access is possible through more than one (1) entrance, shall be provided with [flashing] warning lights in a readily observable position near the outside of [all] access doors, which [will] indicate if [when] the useful beam is "on." These [Such] warning lights shall be accompanied by an appropriate sign as specified in 902 KAR 100:020, Section 12; and

(7) Interlocks shall be provided so [such] that [all] entrance doors shall be closed before treatment can be initiated or continued. If the radiation beam is interrupted by a [any] door opening, it shall be possible to restore the machine to operation only by closing the door and reinitiating exposure by manual action at the control panel.

Section 22. Protection Survey. [All] New facilities, and existing facilities not previously surveyed, shall have a radiation protection survey made by, or under the direction of a qualified expert. The [Such] survey shall also be conducted after a [any] change in the facility which might produce a radiation hazard.

(1) The registrant shall obtain a written report of the survey and a copy of the report shall be transmitted by the registrant to the cabinet within thirty (30) days of receipt of the report.

(2) The survey and report shall indicate [all] instances where the facility in the opinion of the qualified expert [person conducting the survey] is in violation of the applicable therapy radiation regulations and shall cite the sections violated.

Section 23. Calibrations. The output of each therapeutic x-ray system shall be calibrated by a qualified expert, before it is first used for medical purposed. Calibrations shall be repeated at least once every twelve (12) months and after [any] changes which might significantly increase radiation hazards. Calibration of the therapy beam shall be performed with a measurement instrument having a calibration factor for cobalt - sixty (60) gamma rays [the calibration of which is directly traceable to national standards of exposure or absorbed dose], and which shall have been calibrated within the preceding two (2) years and after servicing that may have affected its calibration. Records of calibrations shall be maintained by the registrant for five (5) years after completion of the full calibration. The records shall be in sufficient detail that the dose at a reference point in soft tissue may be calculated to within an uncertainty of five (5) percent. A copy of the latest calibration shall be available in the area of the control panel. The calibration shall include at least the following determinations:

(1) Verification that the system is operating in compliance with the design specifications concerning the light localizer, the side light and back-pointer alignment with the isocenter, if [when] applicable, variation in the axis of rotation for the table, gantry, and jaw system, and beam flatness and symmetry at the specific depths;

(2) The absorbed dose rate at various depths of water for the range of and field sizes used and for each effective energy that verifies the accuracy of the dosimetry of therapy procedures utilized with that therapy beam [and for each treatment distance used for radiation therapy];

[(3) The effective energy (e.g., half-value

layer when appropriate) for every combination of kVp and filter used for radiation therapy;]

[(4) The congruence between the radiation field and the field indicated by the localizing device when localizing devices are used for radiation therapy;]

(3) [(5)] In uniformity of the radiation field an its dependence upon the direction of the useful beam; [and]

[(6) The calibration determinations above shall be provided in sufficient detail such that the absorbed dose in rads to tissue adjacent to, as well as in the useful beam may be calculated to within plus or minus five (5) percent of the intended absorbed dose.]

(4) Verification that existing depth-dose data and isodose charts applicable to the specific machine continue to be valid or are updated to existing machine conditions; and

(5) Verification of transmission and electron buildup factors for accessories, i.e., wedges, shadow trays and compensators.

Section 24. Spot Checks. A spot check shall be made monthly and shall include carefully selected representative or indicative measurements which [will] demonstrate the consistency of relevant system operating characteristics, or lack of same. Spot checks shall meet the following requirements:

(1) The spot check methods shall be in writing, shall have been designed by a qualified expert and a copy of the procedure shall be submitted to the cabinet prior to its implementation;

(2) If a qualified expert does not perform the spot check measurements, the results of the spot check measurements shall be reviewed by the qualified experts within fifteen (15) days;

(3) The spot check procedures shall specify the frequency at which tests or measurements are to be performed and the acceptable tolerance for each parameter measured in the spot check when compared to the value for that parameter determined in the calibration;

(4) At intervals not to exceed one (1) week, spot checks shall be made of absorbed dose measurements at a minimum of two (2) depths in a phantom;

[(2) Spot checks shall include verification of continued congruency between the radiation field and the localizing device where an optical field illuminator is used;]

[(3) Spot checks which are erratic or inconsistent with calibration data shall be investigated promptly;]

[(4) For systems in which beam quality may vary significantly, spot checks shall include quality checks;]

(5) If [Whenever] a spot check indicates a significant change (as specified in the qualified experts spot check design) in the operating characteristics of a system, the system shall be recalibrated as required by Section 23 of this administrative regulation;

(6) If [Where] a system has a built in device which provides a self-check of [any] parameters during irradiation, the measurement shall not be utilized as a spot check measurement; [that parameter may be spot checked weekly instead of daily; and]

(7) The course for a parameter exceeding a tolerance set by the qualified expert shall be investigated and corrected before the system is used for patient irradiation; [A log for inspection by cabinet personnel shall be kept of all spot check measurements.]

(8) Records of spot check measurements shall be maintained by the registrant for a period of two (2) years after completion of the spot check measurements and necessary corrective actions; and

(9) If a spot check involves a radiation measurement, the measurement shall be obtained using a system meeting the requirements of Section 23 of this administrative regulation or which has been intercompared with a system meeting those requirements within the previous year.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services 2nd Floor Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe

(1) Type and number of entities affected: Approximately 20 facilities utilizing radiation therapy systems operating above one MeV will be affected.

(a) Direct and indirect costs or savings to those affected: No measurable direct or indirect costs or savings will result from these amendments.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will result from these amendments.

(2) Effects on the promulgating administrative body: No measureable direct or indirect costs or savings will result from these amendments.

(a) Direct and indirect costs or savings:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Minor changes in the completion of inspection reports will result from these amendments.

(3) Assessment of anticipated effect on state and local revenues: These amendments will have no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives methods exist to maintain conformity with the U.S. Food and Drug Administration's suggested state regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any state, regulation or policy.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. This regulation is tiered based upon equipment design, operating characteristics and date of registration of the equipment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. While not federally mandated state radiation control programs conform to the suggested state regulations promulgated by the Conference of Radiation Control Program Directors and the U.S. Food and Drug Administration.
2. State compliance standards. The amendment to this regulation will maintain compliance standards equivalent to the suggested state regulations.
3. Minimum or uniform standards contained in the federal mandate. These minimum standards are designed to minimize radiation exposure from therapeutic systems which operate above one MeV.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment to this administrative regulation will be identical to the suggested state regulation requirement.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:140. Veterinarians.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this regulation is to provide special requirements for the possession, use, and operation of radiographic x-ray systems for veterinary medicine purposes.

Section 1. Applicability. This administrative regulation shall apply [applies] to [all] radiographic x-ray systems for veterinary medicine and to [all] persons, equipment, and materials used in connection with the possession, use or operation of these [such] systems.

Section 2. Equipment. [All] Veterinary radiographic x-ray systems shall meet the following requirements:
(1) The protective tube housing assembly shall be of the diagnostic type;
(2) The primary beam shall be restricted by cones, shutters, diaphragms, or adjustable collimators. No [to an area no greater than the area of clinical interest and in no case shall the dimensions of the x-ray field exceed the dimensions of the image receptor except as follows:]
[(a) All] dimension of the x-ray field, measured in the plane of the image receptor, shall [not] exceed the corresponding dimension of the image receptor by more than two (2) [three (3)] percent of the source to image receptor distance (SID) measured if [when] the plane of the image receptor is perpendicular to the primary ray of the x-ray field. [; and]
[(b) The sum of the difference between any two (2) perpendicular dimensions of the x-ray field and the respective perpendicular dimensions of the image receptor intersecting at the center of the x-ray field shall not exceed four (4) percent of the source to image receptor distance.] This paragraph shall not be construed to require enlarging the x-ray field size if [when] the x-ray field size is less than the size of the image receptor.
(3) A means shall be provided to align the center of the x-ray field with the center of the image receptor to within two (2) percent of the source to image receptor distance;
(4) A device shall be provided to terminate the exposure after a preset time or exposure; and
(5) A dead man type of exposure switch shall be provided, together with an electrical cord of sufficient length, so that the operator can conveniently stand at least one and eight-tenths (1.8) meters from the tube housing assembly, the animal, and the useful beam during [all] x-ray exposures if [provided that] the exposure to the operator is within the limits provided by 902 KAR 100:020, Section 20.

Section 3. Structural Shielding. [All] Wall, ceiling, and floor areas shall be equivalent to or provided with applicable protective barriers as required by 902 KAR 100:105, Section 2(2)(i).

Section 4. Operating Procedures. In the operation of a veterinary radiographic x-ray system the following requirements shall be met:
(1) The operator shall stand well away from the useful beam and the animal during radiographic exposures. No individual other than the operator shall be in the x-ray room while exposures are being made unless an [such] individual's assistance is required; and
(2) If [When] an animal is [must be] held in position during radiography, mechanical supporting or restraining devices shall be available and used if [when] possible. If an animal is [must be] held by an individual, that individual shall be protected with appropriate shielding devices[, such as] (protective gloves and apron), and shall be so positioned that no part of his body shall be struck by the useful beam. In addition, the exposure of an [any] individual used for this purpose shall be monitored and no individual shall routinely be used to hold animals.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services second floor conference room, Cabinet for Human Resources Building,

Frankfort, Kentucky. However this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe
(1) Type and number of entities affected: Approximately 250 facilities utilizing x-ray systems for veterinary medicine will be affected.
(a) Direct and indirect costs or savings to those affected: No measurable direct or indirect costs or savings will result from these amendments.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will result from these amendments.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No measurable direct or indirect savings or costs will result from these amendments.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Minor changes in the completion of inspection reports will result from these amendments.
(3) Assessment of anticipated effect on state and local revenues: These amendments will have no effect on state or local revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist to maintain conformity with the U.S. Food and Drug Administration's suggested state regulations.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any statute, regulation or policy.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Veterinary x-ray systems are all of one class (nonhuman diagnostic) and thus are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. While not federally mandated, state radiation control programs conform to the suggested state regulations promulgated by the Conference of Radiation Control Program Directors and the U.S. Food and Drug Administration.
2. State compliance standards. The amendment to this regulation will maintain compliance standards equivalent to the suggested state regulations.
3. Minimum or uniform standards contained in the federal mandate. These minimum standards are designed to minimize radiation exposure to operators of veterinary x-ray systems.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment to this administrative regulation will be identical to the suggested state regulation requirement.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:145. Cabinet systems.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to regulate the possession or use of [any] sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. The purpose of this administrative regulation is to provide requirements for the possession, use or operation of cabinet x-ray systems.

Section 1. Applicability. This administrative regulation shall apply [applies] to [all] persons who possess, use or operate cabinet x-ray systems. This administrative regulation does not apply to microscopic analytical x-ray systems.

Section 2. For cabinet x-ray systems installed prior to April 10, 1975, the [such] systems shall:
(1) Have the radiation machine and [all] objects exposed thereto, within a permanent enclosure, within which no person is permitted to remain during the generation of x-radiation.
(2) Have adequate interlocks provided so that if [when any] doors or panels to the enclosure are opened, the radiation-producing machine is [will be] shut off automatically. After [such] shutoff, it shall be possible to restore the machine to full operation only from the control panel outside the room.
(3) If the enclosure is of [such] a size or is so arranged that the operator cannot readily determine whether the enclosure is unoccupied, there shall be provided:
(a) Audible or visible warning signals within the enclosure which are required to [must] be activated before irradiation can be started.
(b) Suitable means of exit, so that a [any] person who accidentally may be shut in can leave the enclosure without delay, or effective means within the enclosure for preventing or quickly interrupting the irradiation, and which cannot be reset from outside the enclosure.
(4) Except as provided in subsection (5) of this section, the exposure at [any] accessible regions two (2) inches from the outside surface of the enclosure cannot exceed five-tenths (0.5) milliroentgen in [any] one (1) hour.
(5) If the registrant has submitted operating and safety procedures, and the cabinet has approved the [such] procedures, which can show

that an individual cannot [will not] receive a radiation dose in excess of the limits specified in these administrative regulations, the radiation levels specified in subsection (4) of this section may be exceeded. However, cabinet x-ray systems under this subsection shall not exceed the limits specified below:

(a) The exposure at [any] accessible and occupied areas one (1) foot from the outside surface of the enclosure shall not exceed ten (10) milliroentgens in [any] one (1) hour.

(b) The exposure at [any] accessible and normally unoccupied areas one (1) foot from the outside surface of the enclosure shall not exceed 100 milliroentgens in [any] one (1) hour.

(6) Operating procedures.

(a) Before a new installation is placed in routine operation, a radiation protection survey shall be made. This shall also be done after [any] changes in an existing installation which might affect its radiation safety.

(b) A copy of each radiation protection survey shall be signed and dated by the surveyor, and kept on file by the individual in charge of the installation.

(c) The installation shall be operated in conformance with recommendations of the protection survey.

(d) The registrant shall designate a competent employee as the radiation safety officer.

Section 3. For cabinet x-ray systems installed on or after April 10, 1975, [such] systems shall:

(1) Have the radiation machine and [all] objects exposed thereto, within a permanent enclosure, within which no person is permitted to remain during the generation of x-radiation.

(2) Be so constructed that radiation emitted from the cabinet x-ray system shall not exceed an exposure of five-tenths (0.5) milliroentgen in one (1) hour at [any] points five (5) centimeters outside the external surface.

(3) Have a permanent floor. [Any] Support surfaces to which a cabinet x-ray system is permanently affixed may be deemed the floor of the system.

(4) Be so constructed that the insertion of [any] part of the human body through [any] ports or apertures shall not be possible.

(5) Be so constructed that each door of a cabinet x-ray system has a minimum of two (2) safety interlocks. One (1), but not both of the required interlocks, shall be configured in a manner [such] that door opening results in physical disconnection of the energy supply circuit to the high-voltage generator, and this [such] disconnection shall not be dependent upon [any] moving parts other than the door.

(6) Be so constructed that each access panel shall have at least one (1) safety interlock.

(7) Following interruption of x-ray generation by the functioning of a [any] safety interlock, use of a control provided in accordance with subsection (10)(b) of this section shall be necessary for resumption of x-ray generation.

(8) Be so constructed that failure of a [any] single component of the cabinet x-ray system shall not cause failure of more than one (1) required safety interlock.

(9) Be so constructed that a ground fault shall not result in the generation of x-rays.

(10) For [all] systems to which this section is applicable, there shall be provided:

(a) A key-actuated control to insure that x-ray generation is not possible with the key removed.

(b) A control or controls to initiate and terminate the generation of x-rays other than by functioning of a safety interlock of the main power control.

(c) Two (2) independent means which indicate if [when] and only if [when] x-rays are being generated, unless the x-ray generation period is less than one-half (1/2) second, then [in which case] the indicators shall be activated for one-half (1/2) second, and which are discernible from [any] points at which initiation of x-ray generation is possible. Failure of a single component of the cabinet x-ray system shall not cause failure of both indicators to perform their intended function. One (1), but not both, of the indicators required by this paragraph may be a milliammeter labeled to indicate x-ray tube current. [All] Other indicators shall be legibly labeled "X-RAY ON."

(d) Additional means other than milliammeters which indicate if [when] and only if [when] x-rays are being generated, unless the x-ray generation period is less than one-half (1/2) second then [in which case] the indicators shall be activated for one-half (1/2) second, to insure that at least one (1) indicator is visible from each door, access panel, and port, and is legibly labeled "X-RAY ON."

(11) For cabinet x-ray systems designed to admit humans, there shall also be provided:

(a) A control within the cabinet for preventing and terminating x-ray generation, which cannot be reset, overridden or bypassed from the outside of the cabinet.

(b) No means by which x-ray generation can be initiated from within the cabinet.

(c) Audible and visible warning signals within the cabinet which are activated for at least ten (10) seconds immediately prior to the first initiation of x-ray generation after closing [any] doors designed to admit humans. Failure of a [any] single component of the cabinet x-ray system shall not cause failure of both the audible and visible warning signals.

(d) A visible warning signal within the cabinet which remains actuated if [when] and only if [when] x-rays are being generated, unless the x-ray period is less than one-half (1/2) second then [in which case] the indicators shall be activated for one-half (1/2) second.

(e) Signs indicating the meaning of the warning signals specified in [provided pursuant to] subsection (11)(c) and (d) of this section and containing instructions for the use of the control specified in [provided pursuant to] subsection (11)(a) of this section. These signs shall be legible, accessible to view, and illuminated if [when] the main power control is in the "on" position.

(f) The designated operator(s) shall [must] have a copy of the manufacturer's operating procedures and maintenance manual for the equipment being used and shall [must] have been instructed in the proper techniques of equipment utilization.

(g) Tests for proper operation of interlock and door seal systems shall be conducted and recorded at intervals not to exceed one (1) month.

(12) Have permanently affixed or inscribed on the cabinet x-ray system at the location of [any] controls which can be used to initiate x-ray generation, a clearly legible and visible label bearing the statement: "CAUTION: X-RAYS

PRODUCED WHEN ENERGIZED."

(13) Have permanently affixed or inscribed on the cabinet x-ray system adjacent to each port a clearly legible and visible label bearing the statement: "CAUTION: DO NOT INSERT ANY PART OF THE BODY WHEN SYSTEM IS ENERGIZED - X-RAY HAZARD."

(14) Additional requirements for x-ray baggage inspection systems. X-ray systems designed primarily for the inspection of carryon baggage at airline, railroad, and bus terminals, and at similar facilities, shall be provided with means specified in [pursuant to] paragraphs (a) and (b) of this subsection, to insure operator presence at the control area in a position which permits surveillance of the ports and doors during generation of x-radiation.

(a) During an exposure or preset succession of exposures of one-half (1/2) second or greater duration, the means provided shall enable the operator to terminate the exposure or preset succession of exposures at once [any time].

(b) During an exposure or preset succession of exposures of less than one-half (1/2) second duration, the means provided may allow completion of the exposure in progress but shall enable the operator to prevent additional exposures.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: October 3, 1991

FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services 2nd Floor Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe

(1) Type and number of entities affected: These amendments will have no effect on the approximate 35 users of cabinet x-ray systems.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings that will result from these amendments.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will result from these amendments.

(2) Effects on the promulgating administrative body: No direct or indirect costs or savings will result from these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No paperwork or reporting will result from these amendments.

(3) Assessment of anticipated effect on state and local revenues: These amendments will have no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives methods exist.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any state, regulation or policy.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering of this regulation is based upon the design type of the cabinet x-ray and date of registration of the equipment.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. This regulation affects only a part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to county airport boards.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: These amendments to this regulation will not affect local government entities.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:150. Microscopic analytic x-ray.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by regulation for the possession or use of [any] sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. The purpose of this administrative regulation is to provide radiation safety requirements for microscopic analytical x-ray equipment and operation.

Section 1. Applicability. The requirements in this administrative regulation shall apply to the use of microscopic analytical x-ray machines. The provisions of this administrative regulation are in addition to, and not in substitution for, other applicable provisions for these administrative regulations.

Section 2. Equipment. (1) A label bearing essentially the words "CAUTION - RADIATION - THIS EQUIPMENT PRODUCES RADIATION WHEN ENERGIZED" shall be placed near a [any] switch which energizes a tube. [All] Labels shall use the conventional colors (magenta or purple on yellow background) and bear the conventional radiation symbol.

(2) A sign bearing the words "CAUTION - HIGH INTENSITY X-RAY BEAM" shall be placed in the area immediately adjacent to each tube housing. The sign shall be so located that it is clearly visible to a [any] person operating, aligning or adjusting the unit or handling or changing a sample.

(3) An [Any] apparatus utilized in beam alignment procedures shall be designed in [such] a way that excessive radiation shall [will] not strike the operator. Particular attention shall be given to viewing devices, in order to ascertain that lenses and other transparent components attenuate the beam to an acceptable level.

(4) Open beam configurations shall be provided with a readily discernible indication of:

(a) X-ray tube "on-off" status located near the radiation source housing, if the primary beam is controlled in this manner; [and/]or

(b) Shutter "open-closed" status located near each port on the radiation source housing, if the primary beam is controlled in this manner.

(c) Warning devices shall be labeled so their purpose is easily identified. On equipment installed after July, 1986, warning devices shall have fail-safe characteristics.

(5) A device which prevents entry or a [any] portion of an individual's body into the primary beam or causes the primary beam to be shut off, shall be provided on [all] open-beam configurations. A registrant may apply to the cabinet for an exemption from the requirement of a safety device. The [Such] application shall include:

(a) A description of the various safety devices that have been evaluated;

(b) The reason each evaluated device cannot be used; and

(c) A description of the alternative methods that are to [will] be employed to minimize the possibility of an accidental exposure, including procedures to assure that operators and others in the area are [will be] informed of the absence of safety devices.

(6) If a shutter mechanism is used to control the primary beam, a shutter status (open or closed) indication shall be provided in the area adjacent to the tube head so that the position of the shutter is readily discernible.

(7) If an interlock device turns off the x-ray beam, it shall not be possible to resume operation without resetting the beam "ON" switch at the control panel.

(8) The tube housing leakage radiation at a distance of five (5) centimeters from [any] accessible points on the surface of the tube housing shall not exceed two and five-tenths (2.5) mR per hour at each maximum specified tube rating. This measurement shall be made with a monitoring instrument appropriate for the energy range generated by the x-ray equipment, and shall be made with beam ports blocked off.

(9) Unused ports on radiation source housings shall be secured in the closed position in a manner which [will] prevents casual opening.

(10) On open-beam configurations installed after July 1, 1986, each port on the radiation source housing shall be equipped with a shutter that cannot be opened unless a collimator or a coupling has been connected to the port.

Section 3. Administrative Responsibilities. (1) An individual at each facility shall be designated to be responsible on behalf of the registrant for maintaining radiation safety. This individual, designated the radiation safety officer, shall be responsible for the following:

(a) Establishing and maintaining operation procedures so that the radiation exposure of each worker is kept as far below the maximum permissible dose as is practical;

(b) Instructing [all] personnel who work with or near radiation machines in safety practices;

(c) Maintaining a system of personnel monitoring;

(d) Arranging for establishment of radiation control areas, including placement of appropriate radiation signs and devices;

(e) Providing for radiation safety inspection of radiation machines on a routine basis;

(f) Reviewing modifications to x-ray apparatus, including x-ray tube housing, cameras, diffractometers, shielding, and safety interlocks;

(g) Investigating and reporting to proper authorities [any] cases of excessive exposure to personnel and taking remedial action; and

(h) Being familiar with [all] applicable regulations for control of ionizing radiation.

(2) No individual shall be permitted to act as an operator of a particular machine until an [such] individual has received training in radiation safety as it applies to that machine and is approved by the radiation safety officer. The registrant shall assure that operators shall be responsible for:

(a) Keeping radiation exposure to himself and to others as low as is practical;

(b) Being familiar with safety procedures as they apply to each machine;

(c) Wearing of personnel monitoring devices, if applicable; and

(d) Notifying the radiation safety officer of known or suspected excessive radiation exposures to himself or others.

Section 4. Operating Procedures. (1) Written emergency procedures pertaining to radiation safety shall be established for each x-ray producing apparatus by the radiation safety officer, and posted in a conspicuous location. These shall list the telephone number(s) of the radiation safety officer and shall include the following actions to be taken if [in case of] a known, or suspected, accident involving radiation exposure occurs:

(a) Notify radiation safety officer; and

(b) Arrange for medical examination. Important: Notify examining physician that exposure to low energy x-rays may have occurred.

(2) Normal operating procedures shall be written and available to [all] analytical x-ray equipment workers. No individual shall be permitted to operate analytical x-ray equipment in a [any] manner other than specified in the procedures unless the [such] individual has obtained written approval of the radiation safety officer.

(3) Only properly trained maintenance personnel shall be permitted to install, repair, or make other than routine modifications to the

x-ray generating apparatus and the tube housing apparatus complex.

(4) If [Whenever] possible, x-ray diffraction and spectrographic equipment shall be placed in a room separate from other work areas.

(5) If[, for any reason,] it is necessary to temporarily, intentionally alter safety devices (e.g., [such as] bypassing interlocks or removing shielding) this [, such] action shall be:

(a) Specified in writing and posted near the x-ray tube housing so that other persons [will] know the existing status of the machine; and

(b) Terminated as soon as possible.

(c) When a safety device or interlock has been bypassed, a readily discernible sign bearing the words "SAFETY DEVICE NOT WORKING," or words having a similar intent, shall be placed on the radiation source housing.

(6) Unused tube head ports shall be secured in the closed position and shall be checked prior to use if [when] the machine has been left unattended.

(7) Personnel film badges or other monitoring devices shall be worn on the finger or wrist, rather than on the body. Finger or wrist dosimetric devices shall be provided to and shall be used by:

(a) Analytical x-ray equipment workers using systems having an open-beam configuration and not equipped with a safety device; and

(b) Personnel maintaining analytical x-ray equipment if the maintenance procedures require the presence of a primary x-ray beam when a [any] local component in the analytical x-ray system is disassembled or removed.

(c) Reported dose values shall not be used for the purpose of determining compliance with 902 KAR 100:020 unless evaluated by a qualified expert.

(8) Analytical x-ray equipment shall not be left unattended while the tube is energized unless:

(a) An interlock device is provided to prevent accidental entry into the primary beam; and

(b) The stray radiation at [any] accessible points at a distance of ten (10) inches from the tube housing or its containment, as measured with a monitoring instrument appropriate for the energy range generated, is no greater than two (2) milliroentgen [mR] per hour.

(9) Safety devices shall be tested at intervals not to exceed one (1) month.

(10) Records of personnel monitoring results and safety devices shall be maintained for inspection by the cabinet.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services 2nd Floor Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe
(1) Type and number of entities affected: These amendments will have no effect on the approximate 20 users of electron microscopes.
(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings will result from these amendments.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will result from these amendments.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No direct or indirect savings or costs will result from these amendments.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No paperwork or reporting will result from these amendments.
(3) Assessment of anticipated effect on state and local revenues: These amendments will have no effect on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any state, regulation or policy.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. Tiering of this regulation is based upon the design characteristics of the microscopic analytic x-ray.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:155. Particle accelerator.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this administrative regulation is to provide radiation safety requirements for particle accelerator operations.

Section 1. Applicability. The requirements in this administrative regulation apply to the use of particle accelerators by persons registering the [such] machines under the provisions of

these administrative regulations. The requirements of this administrative regulation are in addition to, and not in substitution for, other applicable provisions of these administrative regulations.

Section 2. Equipment. (1) A label bearing essentially the words "CAUTION - RADIATION - THIS MACHINE PRODUCES RADIATION WHEN ENERGIZED" shall be placed near [any] switches which energize[s any] portions of the machine. [All] Labels shall use the conventional colors (magenta or purple on yellow background) and bear the conventional radiation symbol.

(2) [Any] Apparatus utilized in beam alignment procedures shall be designed in [such] a way that radiation greater than limits prescribed in 902 KAR 100:020 shall [will] not strike the operator.

(3) A [Any] switch or device which may cause the radiation machine to produce radiation if [when] actuated shall be located on a control panel or console, and shall cause a warning light immediately adjacent to the [such] switch or device to light; this light shall remain lit if [when], and only if [when], the associated control circuit is energized.

(4) [All] Locations designated as high radiation areas, and entrances to the [such] locations shall be equipped with easily observable flashing or rotating red or magenta warning lights that operate automatically if [when], and only if [when], radiation is being produced or may be produced.

(5) Each entrance into a target room or other high radiation area shall be provided with a safety interlock designed to terminate radiation production for the [all] possible modes of machine operation under conditions of barrier penetration.

(6) Only a device on the accelerator control console shall be used to turn the accelerator beam on and off. The safety interlock system shall not be used to turn off the accelerator beam, except in an emergency. If the interlock system does turn off the accelerator, it shall not be possible to resume operation without resetting the accelerator "ON" device at the control console.

(7) [All] Safety interlocks shall not be dependent upon the operation of a single circuit; i.e., they shall be of redundant or fail-safe design. Each safety interlock shall be on a circuit which shall allow it to operate independently of [all] other safety interlocks.

(8) A scram button or other emergency power cutoff switch shall be located and easily identifiable in [all] high radiation areas. The [Such a] cutoff switch shall include a manual reset, so that the accelerator cannot be restarted from the accelerator console without resetting the cutoff switch.

(9) Circuit diagrams of the accelerator and the associated interlock systems shall be kept current and maintained for inspection by the cabinet and shall be available to the operator.

(10) A lock shall be provided on the control panel or console.

(11) Instrumentation, readouts, and controls on the particle accelerator control console shall be clearly identified and easily discernible.

(12) [All] Safety interlocks shall be designed so that a [any] defect or component failure in the safety interlock system prevents operation of the accelerator.

Section 3. Administrative Responsibilities. (1) A person at each facility shall be appointed as the radiation safety officer, and shall be delegated responsibility for ensuring the following:

(a) Establishing and maintaining operational procedures so that the radiation dose received by a [any] person is as low as reasonably achievable and below the maximum permissible dose as is practical;

(b) Instructing [all] personnel who work with or near radiation producing machines, in radiation safety practices;

(c) Maintaining a system of personnel monitoring;

(d) Arranging for establishment of radiation control areas, including placement of appropriate radiation warning signs and devices;

(e) Providing for radiation safety inspection of radiation producing machines on a routine basis;

(f) Reviewing modifications to apparatus, shielding, and safety interlocks;

(g) Investigating and reporting to proper authorities [any case of] excessive exposure to personnel and taking remedial action;

(h) Being familiar with [all] applicable regulations for the control of ionizing radiation; [and]

(i) Terminating operations at the facility because of radiation safety considerations; and [.]

(j) Maintaining records of these [such] actions to document compliance with these administrative regulations.

(2) No individual shall be permitted to act as an operator of an accelerator until the [such] person has:

(a) Received training in radiation safety and has been approved by the radiation safety officer; and

(b) Demonstrated competence to use the accelerator, related equipment, and radiation survey instruments to [which will] be employed.

(3) The registrant shall ensure that each operator shall:

(a) Keep radiation exposure to himself and to others as low as practical;

(b) Be familiar with safety procedures as they apply to each machine;

(c) Wear personnel monitoring devices, if applicable; and

(d) Notify the radiation safety officer of conditions or situations which may have resulted in, or threatens to result in, unnecessary radiation exposure.

(4) The registrant shall establish a radiation safety committee to approve in advance, proposals for uses of particle accelerators, if [whenever] deemed necessary by the cabinet.

(5) A registrant authorized to use a particle accelerator in the healing arts shall:

(a) Appoint a medical committee of at least three (3) members to evaluate [all] proposals for research, diagnostic, and therapeutic use of a particle accelerator if [whenever] deemed necessary by the cabinet. Membership of the committee shall [should] include physicians expert in internal medicine, hematology, therapeutic radiology, and a person experienced in depth dose calculations and protection against radiation;

(b) The individuals designated as users have substantial training and experience in deep therapy technique, or in the use of particle accelerators to treat humans; and

(c) An [Any] individual designated as a user is a physician.

(6) The radiation safety committee or the radiation safety officer shall have the authority to terminate the operations at a particle accelerator facility if this [such] action is deemed necessary to minimize danger to public health and safety or property.

Section 4. Operating Procedures. (1) Written operating procedures pertaining to radiation safety shall be established for each accelerator facility.

(2) Written emergency procedures pertaining to radiation safety shall be established and posted in a conspicuous location. These shall list the telephone number(s) of the radiation safety officer and shall include the following actions to be taken if [in case of] a known, or suspected, accident involving radiation exposure occurs:

(a) Notifying radiation safety officer; and

(b) Arrange for medical examination.

(3) The registrant shall assure that operators and other appropriate personnel are familiar with and have been given a copy of the written operating and emergency procedures pertaining to radiation safety. Each operator shall demonstrate an understanding of these procedures and the applicable requirements of 902 KAR 100:020 and 902 KAR 100:165. These [Such] procedures shall be maintained at the accelerator control panel.

(4) Particle accelerators shall be secured if [when] not in operation to prevent unauthorized use.

(5) The registrants shall assure that personnel do not expose a [any] part of their body to the radiation beam.

(6) If[, for any reason,] it is necessary to intentionally alter safety devices, e.g., [such as] bypassing interlocks or removing shielding[, such] action shall be:

(a) Specified in writing and posted on the control console and at each entrance requiring a safety interlock as required by this administrative regulation so that other persons [will] know the existing status of the machine;

(b) Terminated as soon as possible; and

(c) Authorized by the radiation safety committee [and/]or radiation safety officer.

(7) Accelerators shall not be left unattended while energized.

(8) Safety devices shall be tested for proper operation at intervals not to exceed three (3) months.

(9) Records of personnel monitoring results and safety device tests shall be maintained for inspection by the cabinet.

(10) Appropriate, portable radiation monitoring equipment shall be available at the accelerator facility, properly maintained and calibrated, and sensitive to those radiations being monitored. The [Such] monitoring equipment shall be tested for proper operation and calibrated at intervals not to exceed one (1) year and after each servicing and repair.

(11) Radiation levels in [all] high radiation areas shall be continuously monitored. The monitoring devices shall be electrically independent of the accelerator control and safety interlock systems and capable of providing a readout at the control panel. [All] Area monitors shall be calibrated at intervals not to exceed one (1) year and after each servicing and repair.

(12) Personal radiation dosimeters that measure the expected radiations and are of sufficient range to be useful under normal and accident conditions shall be worn by [all] persons designated by the radiation safety officer.

(13) Before a new installation is placed in routine operation, a radiation protection survey shall be made by a qualified expert.

(14) A radiation protection survey shall be performed by a qualified expert if [when] changes have been made in shielding, operation, equipment, or occupancy of adjacent areas, and periodically to check for unknown changes and malfunctioning equipment.

(15) Records of [all] radiation protection surveys, inspections, and maintenance performed on the accelerator and related components shall be kept current and on file at each accelerator facility, and maintained for inspection by the cabinet.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services 2nd Floor Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe

(1) Type and number of entities affected: These amendments will have no effect on the approximate 10 users of particle accelerators.

(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings will result from these amendments.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will result from these amendments.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect savings or costs will result from these amendments.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No paperwork or reporting will result from these amendments.

(3) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state or local revenue.

(4) Assessment of alternative methods; reasons

why alternatives were rejected: No alternative methods exist.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any state, regulation or policy.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering was not applied to this regulation because linear accelerators are a unique class of powerful x-ray therapy equipment. The regulation emphasizes operating safety requirements and recordkeeping which are applicable to all accelerators.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:160. Plan review.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. The purpose of this regulation is to provide requirements for the review by the cabinet of radiation producing machine installation, construction and modification plans.

Section 1. Applicability. This administrative regulation shall apply [applies] to [all] persons who construct or modify radiation producing machine installations.

Section 2. Plan Review. Prior to construction or modification of an x-ray facility, the plans and specifications for [such] construction or modification shall be evaluated by a qualified expert. A report of his evaluation shall be submitted to the cabinet for review and approval. This evaluation report shall become a part of the registrant's permanent record with the cabinet. The plans shall show, as a minimum, the following:
(1) The normal location of the radiation-producing equipment's radiation port; the port's travel and traverse limits; general direction(s) of the radiation beam; locations of any windows and doors; the location of the operator's booth; and the location of the equipment's control console.
(2) Structural composition and thickness or lead equivalent of [all] walls, doors, partitions, floor, and ceiling of the room(s) concerned.
(3) The dimensions of the room(s) concerned.
(4) The type of occupancy of [all] adjacent areas inclusive of space above and below the room(s) concerned. If there is an exterior wall, the distance to the closest area(s) where it is likely that individuals may be present.
(5) The make and model of the radiation-producing equipment including the maximum energy output.
(6) The type of examination(s) or treatment(s) to [which will] be performed with the equipment (e.g., dental, orthodontal, chest, gastrointestinal, fluoroscopic, podiatry, fixed therapy, rotational therapy, or other).
(7) Information on the anticipated workload.
(8) The facility preregistration or registration number.

Section 3. Qualified Expert's Report. A copy of the qualified expert's report shall be submitted with the plans. This report shall show [all] basic assumptions (i.e., workload, occupancy and use factors, distance, etc.) used to determine the shielding requirements.

Section 4. Approval. The approval by the cabinet of these [such] plans shall not preclude the requirement of additional modifications if [should] a subsequent analysis of operating conditions indicate the possibility of an individual receiving a dose in excess of the limits prescribed in 902 KAR 100:020.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services second floor conference room, Cabinet for Human Resources Building, Frankfort, Kentucky. However this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe
(1) Type and number of entities affected: Approximately 1700 facilities which are required to submit radiation protection plans.
(a) Direct and indirect costs or savings to those affected: No measurable direct or indirect costs or savings will result from these amendments.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: This amendment will require one addition to existing reporting or paperwork requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No measurable direct or indirect savings or costs will result from these amendments.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Minor changes in the completion of radiation protection reviews will result from these amendments.
(3) Assessment of anticipated effect on state

and local revenues: This amendment will have no effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods failed to achieve the objective.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any statute, regulation or policy.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Identical standards must be maintained for each radiation facility in order to maintain radiation safety. However, the factors which determine the required protection (workload, exposure time, equipment capabilities) result in varying (tiered) amounts of shielding.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. This amendment could potentially affect parts of local government.

3. State the aspect or service of local government to which this administrative regulation relates. County run hospitals and local health departments are subject to this regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Local health departments or county hospital would be required to submit one additional bit of information as a component of an existing report.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:165. Notices, reports and instructions to employees.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. [The purpose of] This administrative regulation [is to] provides notices, instructions, and reports for the protection of workers who may be exposed to radiation in their employment.

Section 1. Applicability. The requirements of this administrative regulation shall apply to [all] persons working in an environment in which radioactive materials or radiation-producing machines are received, owned, possessed, transferred, or used. This administrative regulation establishes requirements for notices, instructions, and reports by licensees and registrants to individuals engaged in work under a license or registration and provides for options available to the [such] individuals in connection with the provisions of the Act and administrative regulations, orders, licenses and registration issued under these administrative regulations [thereunder] regarding radiological working conditions.

Section 2. Posting of Notices to Workers. (1) Each licensee or registrant shall post current copies of the following documents:

(a) The requirements of this administrative regulation and 902 KAR 100:020, relating to standards for protection against radiation;

(b) The license, certificate of registration, conditions or documents incorporated into the license by reference and amendments to the license [thereto];

(c) The operating procedures applicable to work under the license or registration; and

(d) A [Any] notice of violation involving radiological working conditions, proposed imposition of civil penalty, or order issued as authorized by [pursuant to] these administrative regulations, and [any] responses from the licensee or registrant.

(2) If posting of a document specified in subsection (1)(a), (b), or (c) of this section is not practicable, the licensee or registrant may post a notice which describes the document and states where it may be examined.

(3) Cabinet form KR-441 "Notice to Employees" shall be posted by each licensee or registrant wherever individuals work in or frequent a [any] portion of a restricted area.

(4) Documents, notices or forms posted as required by [pursuant to] this section shall appear in a sufficient number of places to permit individuals engaged in work under the license or registration to observe them on the way to or from a [any] particular work location to which the document applies, shall be conspicuous, and shall be replaced if defaced or altered.

(5) Cabinet documents posted as required by [pursuant to] subsection (1)(d) of this section shall be posted within two (2) working days after receipt of the documents from the cabinet; the licensee's or registrant's response[, if any,] shall be posted within two (2) working days after dispatch from the licensee or registrant. The [Such] documents shall remain posted for a minimum of five (5) working days or until action correcting the violation has been completed, whichever is later.

Section 3. Instructions to Workers. All individuals working in or frequenting a [any] portion of a restricted area shall:

(1) Be kept informed of the storage, transfer, or use of sources of radiation in the [such] portions of the restricted area;

(2) Shall be instructed in the health protection problems associated with exposure to radioactive material or radiation, in precautions or procedures to minimize exposure,

and in the purposes and functions of protective devices employed;

(3) Shall be instructed in, and instructed to observe, to the extent within the worker's control, the applicable requirements [provisions] of cabinet administrative regulations and licenses for the protection of personnel from exposures to radiation or radioactive material occurring in the [such] areas;

(4) Shall be instructed of their responsibility to report promptly to the licensee or registrant a [any] condition which may lead to or cause a violation of cabinet administrative regulations and licenses or unnecessary exposure to radiation or radioactive material;

(5) Shall be instructed in the appropriate response to warnings made in the event of an [any] unusual occurrence or malfunction that may involve exposure to radiation or radioactive material;

(6) Shall be advised as to the radiation exposure reports which workers may request as authorized by [pursuant to] Section 4 of this administrative regulation; and

(7) The extent of these instructions shall be commensurate with potential radiological health protection problems in the restricted area.

Section 4. Notifications and Reports to Individuals. (1) Radiation exposure data for an individual and the results of any measurements, analyses, and calculations of radioactive material deposited or retained in the body of an individual shall be reported to the individual as specified in this section. The information reported shall include data and results obtained as required by [pursuant to] cabinet administrative regulations, orders, or license conditions, as shown in records maintained by the licensee or registrant as required by [pursuant to] cabinet administrative regulations. Each notification and report shall:

(a) Be in writing;

(b) Include appropriate identifying data such as the name of the licensee or registrant and the name of the individual;

(c) The individual's exposure information; and

(d) Contain the following statement: "This report is furnished to you under the provisions of the Kentucky Cabinet for Human Resources' radiation administrative regulations. You should preserve this report for further reference."

(2) At the request of a [any] worker, each licensee or registrant shall advise the [such] worker annually of the worker's exposure to radiation or radioactive material as shown in records maintained by the licensee or registrant required by [pursuant to] these administrative regulations.

(3) At the request of a worker formerly engaged in work controlled by the licensee or the registrant, each licensee or registrant shall furnish to the worker a report of the worker's exposure to radiation or radioactive material. The [Such] report shall be furnished within thirty (30) days from the time request is made, or within thirty (30) days after the exposure of the individual has been determined by the licensee or registrant, whichever is later; shall cover, within the period of time specified in the request, each calendar quarter in which the worker's activities involved exposure to radiation from radioactive materials licensed by, or radiation machines registered with the cabinet; and shall include the dates and locations of work under the license or registration in which the worker participated during this period.

(4) If [When] a licensee or registrant is required to report to the cabinet an [any] exposure of an individual to radiation or radioactive material, the licensee or the registrant shall also provide the individual a report on the exposure data included in the report to the cabinet. The [therein. Such] reports shall be transmitted at a time not later than the transmittal to the cabinet.

(5) At the request of a worker who is terminating employment in a given calendar quarter with the licensee or registrant in work involving radiation dose, or of a worker who, while employed by another person, is terminating assignment to work involving radiation dose in the licensee's or registrant's facility in that calendar quarter, each licensee or registrant shall provide to each [such] worker, or to the worker's designee, at termination, a written report regarding the radiation dose received by that worker from operations of the licensee or registrant during that specifically identified calendar quarter or fraction thereof, or provide a written estimate of that dose if the finally determined personnel monitoring results are not available at that time. Estimated doses shall be clearly indicated as estimated doses [such].

Section 5. Presence of Representatives of Licensees or Registrants and Workers during Inspection. (1) Each licensee or registrant shall afford to the cabinet at all reasonable times opportunity to inspect materials, machines, activities, facilities, premises, and records required by [pursuant to] these administrative regulations.

(2) During an inspection, cabinet inspectors may consult privately with workers as specified in Section 6 of this administrative regulation. The licensee or registrant may accompany cabinet inspectors during other phases of an inspection.

(3) If, during the [at the time of] inspection, an individual has been authorized by the workers to represent them during cabinet inspections, the licensee or registrant shall notify the inspectors of the [such] authorization and shall give the workers' representative an opportunity to accompany the inspectors during the inspection of physical working conditions.

(4) Each workers' representative shall be routinely engaged in work under control of the licensee or registrant and shall have received instructions as specified in Section 3 of this administrative regulation.

(5) Different representatives of licensees or registrants and workers may accompany the inspectors during different phases of an inspection if there is no resulting interference with the conduct of an inspection. However, only one (1) workers' representative at a time may accompany the inspectors.

(6) With the approval of the licensee or registrant and the workers' representative an individual who is not routinely engaged in work under control of the licensee or registrant, for example, a consultant to the licensee or registrant or to the workers' representative, shall be afforded the opportunity to accompany cabinet inspectors during the inspection of

physical working conditions.

(7) In addition to [Notwithstanding] the other requirements [provisions] of this section, cabinet inspectors are authorized to refuse to permit accompaniment by an [any] individual who deliberately interferes with a fair and orderly inspection. With regard to an [any] area containing proprietary information, the workers' representative for that area shall be an individual previously authorized by the licensee or registrant to enter that area.

Section 6. Consultation with Workers during Inspection. (1) Cabinet inspectors may consult privately with workers concerning matters of occupational radiation protection and other matters related to applicable requirements [provisions] of cabinet administrative regulations and licenses to the extent the inspectors deem necessary for the conduct of an effective and thorough inspection.

(2) During the course of an inspection a [any] worker may bring privately to the attention of the inspectors, either orally or in writing, a [any] past or present condition which he has reason to believe may have contributed to or caused a [any] violation of the Act, these administrative regulations, or license condition, or an [any] unnecessary exposure of an individual to radiation from licensed radioactive material or a registered radiation machine under the licensee's or registrant's control. A written [Any such] notice [in writing] shall comply with the requirements of Section 7(1) of this administrative regulation.

(3) The requirements [provisions] of subsection (2) of this section shall not be interpreted as authorization to disregard instructions required by [pursuant to] Section 3 of this administrative regulation.

Section 7. Requests by Workers for Inspections. (1) A [Any] worker or representative of workers who believes that a violation of the Act, these administrative regulations or license conditions exists or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Cabinet for Human Resources, Radiation Control. The [Any such] notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or representative of the workers. A copy shall be provided to the licensee or registrant by the cabinet no later than at the time of inspection except that, upon the request of the worker giving the [such] notice, his name and the name of individuals referred to in the notice [therein] shall not appear in the [such] copy or on a [any] record published, released, or made available by the cabinet, except for good cause shown.

(2) If, upon receipt of the [such] notice, the Manager, Radiation Control, determines that the complaint meets the requirements set forth in subsection (1) of this section, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, he shall cause an inspection to be made as soon as practicable, to determine if the [such] alleged violation exists or has occurred. Inspections authorized by [pursuant to] this section need not be limited to matters referred to in the complaint.

(3) No licensee or registrant or contractor or subcontractor of a licensee or registrant shall discharge or in any manner discriminate against a [any] worker because the [such] worker has filed a [any] complaint or instituted or caused to be instituted a [any] proceeding under these administrative regulations or has testified or is about to testify in a [any such] proceeding or because of the exercise by the [such] worker on behalf of himself or others of an [any] option afforded by this administrative regulation.

Section 8. Inspections not Warranted; Informal Review. (1) If the Cabinet for Human Resources, Radiation Control determines, with respect to a complaint under Section 7 of this administrative regulation, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the cabinet shall notify the complainant in writing of the [such] determination. The complainant may obtain review of the [such] determination by submitting a written statement of position with the Commissioner, Department for Health Services, of the cabinet, who shall [will] provide the licensee or registrant with a copy of the [such] statement by certified mail, excluding, at the request of the complainant, the name of the complainant. The licensee or registrant may submit an opposing written statement of position with the commissioner, who shall [will] provide the complainant with a copy of the [such] statement by certified mail. Upon the request of the complainant, the commissioner may hold an informal hearing in which the complainant and the licensee or registrant may orally present their views. An informal hearing may also be held at the request of the licensee or registrant, but disclosure of the identity of the complainant shall [will] be made only following receipt of written authorization from the complainant. After considering all written or oral views presented, the commissioner shall affirm, modify, or reverse the determination of Radiation Control, and furnish the complainant and the licensee or registrant a written notification of the decision and the reason therefor.

(2) If Radiation Control determines that an inspection is not warranted because the requirements of Section 7(1) of this administrative regulation have not been met, the manager of the branch shall notify the complainant in writing of the [such] determination. The [Such] determination shall be without prejudice to the filing of a new complaint meeting the requirements of Section 7(1) of this administrative regulation.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services 2nd Floor Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources,

275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe
(1) Type and number of entities affected: 380 radioactive material licensees and 3000 x-ray registrants are affected by this regulation.
(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to radioactive material licensees or x-ray registrants.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this regulation.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the administrative agency.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this regulation.
(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation must be identical to that of the U.S. Nuclear Regulatory Commission and other states. No alternative is available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.
(a) Necessity of proposed regulation if in conflict: There is no conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. Tiering was applied because different types of licensees are regulated based on their handling of radioactive material.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended and 10 CFR.
2. State compliance standards. This administrative regulation provides notices, instructions and reports for the protection of workers who may be exposed to radiation in their employment.
3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are identical to those of the U.S. Nuclear Regulatory Commission.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:170. Proceedings.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of sources [any source] of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this administrative regulation is to provide for the conduct of proceedings before the cabinet involving the possession, use, and transfer of radioactive materials and radiation producing machines.

Section 1. Applicability. The provisions of this administrative regulation shall apply to [all] administrative proceedings involving the use, possession or transfer of radioactive materials or radiation producing machines within Kentucky.

Section 2. Administrative Examination of License Applications. Applications for the issuance of a license, amendment of a license at the request of the holder, transfer of a license and renewal of a license shall be reviewed by the cabinet. The applicant may be required to submit additional information and may be requested to confer informally regarding the application. The cabinet shall give to others [such] notice of the filing of applications as is required under the applicable provisions of these administrative regulations and [such] additional notices as it deems appropriate.

Section 3. Action on License Applications, Hearings. (1) The cabinet shall, upon request of the applicant or intervenor, and may upon its own initiative, direct the holding of a formal hearing prior to taking action on the application. If no prior formal hearing has been held and no notice of proposed action has been served as provided in subsection (2) of this section, the cabinet shall direct the holding of a formal hearing upon receipt of a request therefor from the applicant or intervenor within thirty (30) days after the issuance of a license or other approval or a notice of denial.
(2) In [such] cases [as] it deems appropriate, the cabinet may cause to be served upon the applicant a notice of proposed action upon his application and shall cause copies thereof to be serviced upon intervenors or others entitled to or requesting notification. The notice shall state the terms of the proposed action. If a formal hearing has not been held prior to the issuance of the notice, the cabinet shall direct the holding of a formal hearing upon the request of the applicant or an intervenor received within fifteen (15) days following the service of the notice.

Section 4. Effect of Timely License Renewal Applications. If at least thirty (30) days prior to the expiration of an existing license authorizing [any] activity of a continuing nature, a licensee files an application for a renewal or for a new license for the activity so authorized, the existing license shall [will] not be deemed to have expired until the application has been finally determined.

Section 5. Notice of Violation. (1) Prior to the institution of [any] proceedings for alleged violation of [any] provisions of these administrative regulations, the Act, or the conditions [and/]or terms of a license or registration, the licensee, registrant, or other person as appropriate shall be served with a written notice of violation, except as specified in subsection (2) of this section. The notice of violation shall state the alleged violation and shall [will] require that the licensee submit, within fifteen (15) days of the date of the receipt of the notice or other time as specified in the notice, a written explanation or statement in reply including:

(a) Corrective steps which have been taken by the licensee or registrant and the results achieved;

(b) Corrective steps which to [will] be taken;

(c) The date when [such] correction and compliance will be achieved; and

(d) An admission or denial of the violation and the reason(s) for the violation(s) if admitted and required in the notice.

(2) If [Where] in the opinion of the cabinet the public health, interest, or safety so requires, or the violation is willful, the notice provided in this section may be omitted.

Section 6. Failure to Respond to Notice of Informal Hearing. (1) In the event the person to whom the notice of violation has been issued fails to respond within the prescribed time, the Secretary for Human Resources, or his designee, may set the matter down for an informal hearing as described in Section 20 of this administrative regulation.

(2) Failure of the person to whom the notice was sent to appear at the informal hearing may result in:

(a) The registration or license of the person being modified, suspended or revoked;

(b) The recapture, quarantine or seizure of the radiation source;

(c) The inactivation of radiation producing machines; or

(d) Other appropriate action deemed necessary by the cabinet to protect public health and safety.

(3) Any person aggrieved by the action of the cabinet under this section may, within thirty (30) days after receipt of notice of the [such] action, request a formal hearing before the secretary or his designee.

Section 7. Notices and Orders. In a [any] case described in Section 5 of this regulation, the cabinet may issue the licensee, registrant, or other person as appropriate a notice to comply with the administrative rules and regulations of the cabinet or an [any] order issued by the cabinet. The terms of the [such] notice or order may be effective immediately or at a time specified in the notice or order. The notice or order shall apprise the licensee or registrant that he has the right to request a hearing within thirty (30) days by making a written request therefor to the cabinet. In the event a request for a hearing is received by the cabinet within the time specified, a notice of hearing shall be issued by the cabinet in accordance with Section 5 of this administrative regulation.

Section 8. Emergency Notices and Orders. If [Whenever] the cabinet finds that a condition exists requiring immediate action to protect the public health or welfare, the cabinet may issue a notice or an order reciting the existence of the [such] condition and requiring that [such] action be taken as is deemed necessary by the cabinet to protect the public health and welfare. The notice or order may be issued by the Manager, Radiation Control, on behalf of the cabinet. The [Such] notice or order shall be effective immediately. Persons [Any person] to whom [such] a notice or an order is directed shall comply therewith immediately, but [all] applicants for hearings to the cabinet shall be afforded a hearing. On the basis of a [such] hearing, the cabinet shall continue, revoke, or modify a [such] notice or order.

Section 9. Enforcement of Obedience to Orders. If [In case of] the failure on the part of a [any] person to comply with a [any] lawful order of the cabinet or with process or if [in case of] the refusal of a [any] witness to testify concerning a [any] matter on which he may be lawfully interrogated, the circuit court or a judge thereof having jurisdiction may, on application of the cabinet, compel obedience by proceedings as in contempt cases as provided by KRS 211.230.

Section 10. Recapture, Quarantine, or Seizure of Sources of Radiation. If a case of extreme importance to the health and safety of the public, [In cases found by the cabinet to be of extreme importance to the health and safety of the public,] the cabinet may, without prior notice of hearing, recapture, quarantine, or seize a [any] source [or sources] of radiation, if [provided that] as promptly as possible and not later than ten (10) days from the recapture, quarantine, or seizure, the cabinet shall serve upon the person from whom the [such] sources were recaptured, quarantined, or seized an appropriate order depriving that person of possession or use of the sources together with a notice which shall give that person the right to request a hearing, concerning the order depriving him of the use of the sources and the restoration of the sources to him.

Section 11. Filing Papers. Unless otherwise specified, papers required to be filed with the cabinet shall be filed with the Manager, Radiation Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621. Papers required to be filed with the cabinet shall be deemed filed upon actual receipt by the cabinet at the place specified accompanied by proof of service upon the parties required to be served as described [provided] in Section 14 of this regulation. Unless otherwise specified, the filing if [when] by mail or telegram shall upon actual receipt be deemed complete as of the date of deposit in the mail or with the telegraph company. Papers may be filed in person at the

cabinet's offices, 275 East Main Street, Frankfort, Kentucky 40621.

Section 12. Computation of Time. In computing a [any] period of time prescribed or allowed by an applicable rule or regulation, notice or order, the provisions of KRS 446.030 shall apply.

Section 13. Extension of Time. (1) Extensions of time for filing or performing an [any] act required or allowed to be done, and continuances of a [any] proceeding or hearing, may be granted in the discretion of the cabinet upon application and good cause shown by a [any] party, or upon the initiative of the cabinet or stipulation of [all] the parties.

(2) If [When] a hearing officer has been designated for hearing, the discretion in granting extensions of time and continuances in matters relating to the hearing shall rest with the hearing officer.

Section 14. Subpoenas, Service and Papers. Pursuant to the powers conferred by KRS 211.220, the cabinet may issue subpoenas, subpoenas of records and documents [duces tecum], and all necessary process in proceedings brought before or initiated by the cabinet and the [such] process shall extend to all parts of the Commonwealth. Service of process and proof of service may be made, as specified [provided] by KRS 211.220.

Section 15. Representation. (1) Except as specified [provided] in subsection (2) of this section, a [any] person appearing before the cabinet may do so in person or by a representative. A [Any] person transacting business with the cabinet in a representative capacity may be required to show his authority to act in that capacity.

(2) In a formal hearing, a person may appear in person or be represented by his attorney.

Section 16. Intervention. (1) A [Any] person whose interests may be affected by a proceeding may file a petition to intervene describing his interests, how it may be affected by cabinet action, and the position he is taking in the matter. Service of copies of the motion shall be made upon all parties to the proceeding. The licensee, applicant or registrant upon notice and motion, and other parties by leave, may contest the right of the petitioner to intervene.

(2) As soon as is practicable after filing of a motion for intervention and a hearing of argument, [if any,] the cabinet or a hearing officer shall [will] issue and serve an order either permitting or denying intervention. If the order is a denial of intervention, it shall contain a statement of the grounds. An order permitting intervention may be conditioned upon [such] terms as the cabinet or hearing officer may direct.

Section 17. Effect of Intervention of Denial Thereof. A person permitted to intervene becomes a party to the proceeding:

(1) If [Where] a notice of hearing has been issued or a hearing has begun, the admission thereafter of an intervenor shall not of itself enlarge or alter the issues without amendment as specified [provided] in subsection (3) of this section.

(2) An order denying intervention shall be without prejudice to a [any] proposed limited appearance by the petitioner as one who is not a party for the purposes specified [provided] in Section 20 of this administrative regulation.

(3) At a [any] time prior to the time fixed for hearing but not later than five (5) days prior, the party concerned may amend the same by filing an amendment and serving it upon the parties. At a [any] time thereafter, amendments may be permitted in the discretion of the hearing officer upon [such] terms as he shall prescribe.

Section 18. Consolidation. Upon motion and good cause shown or upon its own initiative the cabinet or hearing officer may consolidate two (2) or more proceedings.

Section 19. Authority to Administer Oaths. An [Any] oath or affirmation required by or pursuant to the provisions of these administrative regulations may be administered by a [any] person authorized to administer oaths by the laws of the Commonwealth of Kentucky.

Section 20. Informal Hearing Procedure. The procedure to be followed in informal hearings shall be [such] as [shall] best serve the purpose of the hearing. An informal hearing may consist of the submission of written data, views, or arguments with or without oral argument, or may partake of the nature of a conference or may assume some of the aspects of a formal hearing in which the subpoena of witnesses and the production of evidence may be permitted or directed.

Section 21. Formal Hearings. The parties to a formal hearing shall be the cabinet, the licensee, applicant or registrant as the case may be, and persons [any person] permitted to intervene.

Section 22. Limited Appearances by Persons not Parties. With the consent of the hearing officer, limited appearances may be entered without request for or grant of permission to intervene by persons who are not parties to a hearing. With the consent of the hearing officer, and on due notice to the parties, [such] persons may make oral or written statements of their position on the issues involved in the proceeding, but may not otherwise participate in the hearing.

Section 23. Designation of Hearing Officer. The hearings herein described [provided for] may be conducted by the cabinet or the secretary of the department may designate hearing officers who shall have the power and authority to conduct hearings in the name of the cabinet.

Section 24. Function of Hearing Officer. The function of the hearing officer is to schedule and conduct hearings on behalf and in the name of the cabinet on [all] matters referred for hearing by the cabinet. It is the duty of the hearing officer to [cause to be] prepare[d] and furnish[ed] to the cabinet for decision a complete written transcript of the record of the hearing which contains [all] evidence introduced at the hearing and [all] pleas, motions, objections and rulings of the hearing officer.

Section 25. Notice of Hearing. The cabinet shall give timely notice of [any] hearings to affected [all] parties and to other persons, [if any,] entitled to notice. This [Such] notice shall state the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing is to be held; the matters of fact and law asserted or to be considered and a request for an answer. The time and place for hearing shall [will] be fixed with due regard for the convenience and necessity of the parties or their representatives.

Section 26. Answer. (1) Within the time allowed by the notice of hearing for filing and serving an answer, the answer of a licensee, applicant or registrant shall fully advise the cabinet and [any] other parties of [as to] the nature of the defense or other position of the answering party, the issues he proposes to argue [controvert] and those he does not argue [controvert], and whether or not he proposes to appear and present evidence. If facts are alleged, the answer shall admit or deny specifically each allegation of fact; or if [where] knowledge is lacking, the answer may so state and the statement shall serve [operate] as a denial. Allegations of fact not denied shall be deemed to be admitted. Matters alleged as affirmative defenses or positions shall be separately stated and identified and, in the absence of a reply, shall be deemed to be argued [controverted]. The answer of an intervenor shall fully advise the cabinet and other parties of his position and whether [or not] he proposes to appear and present evidence.

(2) If a party does not oppose an [any] order or proposed action of the cabinet embodied in or accompanying the notice of hearing or does not wish to appear and give evidence at the hearing, the answer shall so state. In lieu of appearing, the party may, if he chooses, submit a statement of reasons why the proposed order or sanction shall [should] not be issued or shall [should] be different than proposed, and the cabinet shall [will] attribute [such] weight as it deems deserving to the written reasons.

Section 27. Reply. In appropriate cases the cabinet may file and serve a reply to the answer or, if the answer affects other parties to the proceeding, the cabinet or the hearing officer may permit these [such] parties to file and serve a reply.

Section 28. Default. Failure of a party to file and serve an answer within the time specified [provided] in the notice of hearing or as prescribed herein or to appear at a hearing, shall be deemed to authorize the cabinet in its discretion, as to the [such] party:

(1) To find the facts alleged to be true and to enter [such] findings or order as may be appropriate, without further notice or hearing; or

(2) To proceed to take proof, without further notice, on the allegations or issues set forth in the specifications of issues.

Section 29. Admissions. After an answer has been filed, a [any] party may file and serve upon the opposing side a written request for the admission of the genuineness and authenticity of [any] relevant documents described in or attached to the request or for the admission of the truth of [any] relevant matters of fact stated in the request. Each matter for which an admission is requested shall be deemed admitted unless within the time designated in the request, but not less than ten (10) days after service thereof or [such] further time as the hearing officer may allow upon motion and notice, the party to whom the request is directed serves upon the requesting party a sworn statement either denying the matters upon which the admission is requested or setting up the reasons why he cannot truthfully admit or deny the [such] matters.

Section 30. Prehearing Conferences. (1) In order to provide opportunity for the settlement of a proceeding or [any] of the issues therein, or for agreement upon procedural and other matters, there may be held at a [any] time prior to or during a hearing, upon due notice of the time and place given to affected [all] parties, [such] conferences of the parties as, in the discretion of the hearing officer, time, the nature of the proceeding, and the public interest may permit.

(2) Action taken at a prehearing conference may be recorded for appropriate use at the hearing in the form of a written stipulation among the parties reciting the matters upon which there has been an agreement. The stipulation shall be binding upon the parties thereto.

Section 31. Public Hearings. [All] Formal hearings shall be public except those [in cases] involving restricted data.

Section 32. Evidence in Formal Hearings. (1) Every party to the hearing shall have the right to present [such] oral or documentary evidence and rebuttal evidence and conduct [such] cross-examination as may be required for a full and true disclosure of the facts. The parties shall be encouraged to present evidence in written form.

(2) The hearing officer shall exclude all irrelevant, immaterial, or unduly repetitious evidence.

(3) Objections to the admission or exclusion of evidence shall state the grounds of objections. The transcript shall include the objections, the grounds and the rulings, but not the argument of the grounds unless ordered by the hearing officer.

(4) [Any] Offers of proof made in connection with an objection taken to the ruling of the hearing officer, excluding or rejecting offered [proffered] oral testimony, shall consist of a statement of the substance of the evidence which the party contends would be adduced by the [such] testimony. If the excluded material is documentary or written, a copy of the [such] material shall be marked for identification and shall constitute the offer of proof.

(5) An official record of a governmental agency or an entry in this [such] record, if [when] admissible, may be evidenced by an official publication thereof or by a copy attested as a true copy by the officer having legal custody of the record, or by his deputy, and accompanied by a certificate that the [such] officer has the custody.

Section 33. Briefs. Briefs may be filed within ten (10) days after the close of the hearing

except [provided, however,] that the hearing officer may upon written application grant an additional period of time not in excess of sixty (60) days within which briefs may be filed.

Section 34. Findings and Order. If [Whenever] a hearing is granted or ordered by the Secretary of the Cabinet for Human Resources, the Commissioner of the Department for Health Services shall, after reviewing the entire record of the hearing, make his findings and enter his order. The findings and order shall be in writing and shall contain a statement of findings and conclusions upon all material issues of fact and law and shall be signed by the Commissioner for Health Services of the cabinet. The originals [thereof] shall be filed as a part of the record of the case which shall be retained in the custody of the Commissioner for Health Services unless an appeal is taken therefrom and one (1) certified copy of the findings and order shall be served on all parties to the proceeding.

Section 35. Appeals From Decisions of the Commissioner. A [Any] person who is aggrieved by a [any] ruling, decision or action of the Commissioner for Health Services may appeal to the Secretary of the Cabinet for Human Resources within thirty (30) days after service of the [said] ruling, decision or action by filing with the secretary a written complaint setting out the ruling, decision or action complained of, the reasons that the [such] person is aggrieved and the relief sought by the [such] person as described [provided] in KRS 211.260 and 211.090. A copy of the [such] complaint shall also be served by the appealing party upon [any] other parties [party] in interest. No new evidence shall be introduced and the appeal shall be tried upon the record prepared by the cabinet or hearing officer. Additional briefs and oral arguments may be granted by the secretary. The secretary may affirm the findings and order of the Commissioner for Health Services, or may reverse, modify or remand the case for further proceedings. Copies of the secretary's order shall be served upon the parties in interest.

Section 36. Waiver of Procedures. The parties to a [any] hearing may agree to waive [any] one (1) or more of the procedural steps which would otherwise precede the reaching of a final decision by the cabinet.

Section 37. Public Records: Exceptions. Except as specified [provided] in this section [all] records shall be deemed public records and shall be open to inspection by the public. The following are not to be considered public records which are available for public inspection:

(1) Documents relating to personnel matters and medical and other personnel information, which, under general governmental personnel practices, are not normally made public.

(2) Intra-agency and interagency communications including memoranda reports, correspondence, and staff papers prepared [by members of the] cabinet personnel, or by [any] other government agency for use within the cabinet or within the executive branch of the government.

(3) Documents classified as restricted data under the Atomic Energy Act of 1954 or classified under Executive Order of the President of the United States as restricted data.

(4) Correspondence received in confidence by the cabinet relating to an alleged or possible violation of a [any] statute, rule, regulation, order, license or permit.

(5) [Any] Other documents involving matters of internal cabinet management.

(6) [Any] Other matters required by law to be kept confidential or not available to public inspection.

(7) Names of individuals who have received exposures to radiation.

(8) The cabinet may withhold [any] documents or parts thereof from public inspection if disclosure of its contents is not required in the public interest and would adversely affect the interest of a person concerned. This [Such] withholding from public inspection shall not, however, affect the right of persons properly and directly concerned to inspect the document. Persons requesting that documents or information therein be withheld from public disclosure shall make prompt application identifying the material and giving the reasons. If [Where] the applicant is responsible for the preparation of the document. he shall insofar as is possible segregate in separate paper the information for which the special treatment is requested. The cabinet may honor the request upon a finding that public inspection is not required in the public interest and would adversely affect the interest of the persons concerned. If the request is denied, the applicant shall [will] be notified thereof with a statement of the reasons.

Section 38. Hearings: Formal and Informal. (1) Formal hearings shall [will] be held [in cases of] adjudication of rights.

(2) Informal hearings shall [will] normally be held for the purpose of obtaining necessary or useful information, including but not limited to cases as described in Section 6 of this regulation.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services second floor conference room, Cabinet for Human Resources Building, Frankfort, Kentucky. However this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe

(1) Type and number of entities affected: Nearly 7,000 facilities and users of radioactive materials and radiation producing machines are subject to this regulation.

(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings will result from these amendments.

1. First year:
2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will result from these amendments.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No direct or indirect savings or costs will result from these amendments.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No reporting or paperwork will result from these amendments.
(3) Assessment of anticipated effect on state and local revenues: These amendments will have no effect on state or local revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any statute, regulation or policy.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The procedure addressed in this administrative regulation would be applied equally to all licensees and registrants who fail to comply with applicable regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?
Yes_X_ No___ (If yes, complete questions 2-4)
2. State what unit, part or division of local government this administrative regulation will affect. This regulation affects only a part of local government.
3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to county administered hospitals and local health departments.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation: These amendments to this regulation will not affect local government entities.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 105:010. Definitions.

RELATES TO: KRS 211.870, 211.890, 211.993
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates and renewal certificates; and to set [such] other standards as may be appropriate for the protection of health and safety. The purpose of this administrative regulation is to define terms that are applicable to [all] administrative regulations adopted by the cabinet relating to operators of sources of radiation.

Section 1. Definitions. As used in the cabinet's administrative regulations relating to the certification of operators of sources of radiation, the following terms shall have the meanings set forth below unless clearly indicated otherwise:
(1) "Certified" means the holding of a valid certificate as defined in these regulations.
(2) "Contrast study" means a study performed whereby contrast media is introduced into the human body to define a part(s) which is not normally visualized on a radiograph.
(3) "Cabinet" means the Cabinet for Human Resources.
(4) "Emergency condition" means a condition that exists whereby an employer has unsuccessfully made a bona fide attempt to employ a certified radiation operator and the cabinet is requested to issue a provisional certificate so as not to impair necessary radiation health services to the particular facility.
(5) "General certificate" means a written authorization issued by the cabinet authorizing an individual to perform [all] diagnostic radiographic procedures.
(6) "Individual" means a [any] human being.
(7) "Licensed practitioner" or "licensed practitioner of the healing arts" means an individual licensed to practice medicine, osteopathy, dentistry, chiropractic, podiatry or veterinary medicine in this state.
(8) "Limited certificate" means a written authorization issued by the cabinet authorizing an individual to perform radiographic procedures, other than those involving contrast media, in his specific field of practice or operation.
(9) "National organization" means a professional association, approved by the cabinet, that examines, registers, certifies or approves individuals or [and] education programs relating to operators of sources of radiation.
(10) "Operator" or "operator of sources of radiation" means an [any] individual, other than

a licensed practitioner of the healing arts, who uses or operates a source(s) of radiation.

(11) "Provisional certificate" means a written authorization issued by the cabinet temporarily allowing an individual to perform radiographic procedures, under the direct supervision of a licensed practitioner of the healing arts, if [where] a certified operator is not available.

(12) "Qualified person" means an individual who, through education and training, is qualified to teach radiation operators in one or more aspects of radiologic technology.

(13) "Radiation safety officer" means an individual in the field of radiation protection or a licensed practitioner of the healing arts who has the knowledge and responsibility to apply appropriate radiation practices.

(14) "Radiography" means the use of radiation producing equipment on human beings for diagnostic radiographic purposes under the supervision of a licensed practitioner of the healing arts or a certified operator.

(15) "Sources of radiation" means [any] devices or equipment emitting or capable of producing ionizing radiation, if [when the] associated high voltage is applied, for the purpose of performing human diagnostic radiographic examinations.

(16) "Sponsoring institution" means a hospital, educational or other facility or a division thereof offering or intending to offer a course of study for operators of sources of radiation.

(17) "Student" means an individual enrolled in a course of study for operators of sources of radiation.

(18) Supervision.

(a) "Direct personal supervision" means supervised by, and in the physical presence of, a licensed practitioner of the healing arts or a certified operator.

(b) "Direct supervision" means supervised by a licensed practitioner of the healing arts or certified operator who is always [at all times] available in the individual's place of employment or sponsoring institution.

(c) "General supervision" means supervised by a licensed practitioner of the healing arts or a certified operator who is available but not necessarily within the individual's place of employment or sponsoring institution.

(19) "Program director" means an individual designated by a sponsoring institution to assure that the training program for operators of sources of radiation is properly carried out.

(20) "Temporary certificate" means a written authorization issued by the cabinet authorizing an individual, who has completed an appropriate course of study, to perform radiographic procedures while awaiting examination.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: October 3, 1991

FILED WITH LRC: October 10, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services second floor conference room, Cabinet for Human Resources Building, Frankfort, Kentucky. However this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe

(1) Type and number of entities affected: 3000 radiation producing machine registrants.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with these amendments.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will result from these amendments.

(2) Effects on the promulgating administrative body: There are no effects on the promulgating body associated with the amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There are no effects on state and local revenue associated with this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives to this amendment exist.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or government policy which conflits, overlaps or duplicates this amendment.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The terms defined in this administrative regulation are used in regulations which are tiered.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___ (If yes, complete questions 2-4)

2. State whether this administrative regulation will affect the local government or only part or division of the local government. This amendment regulation affects local government where radiation operators are employed such as health departments and county hospitals.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to health services where radiographic procedures are provided.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation does not directly affect local government services.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 105:020. General requirements.

RELATES TO: KRS 211.870, 211.890, 211.993
STATUTORY AUTHORITY: KRS 194.050, 211.090, 1990 [1988] Acts, Chapter 514 [437], HB 799 [516] Part [IIA #42.d] I.G #56.d
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set [such] other standards as may be appropriate for the protection of health and safety. The purpose of this administrative regulation is to establish uniform general requirements for the certification of operators of sources of radiation.

Section 1. General Applicability. The Cabinet for Human Resources' administrative regulations relating to radiation operators require the certification of [all] operators of sources of radiation, other than licensed practitioners of the healing arts, for which a specific administrative regulation has been adopted requiring certification within a particular field of practice or operation. The regulation of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste are not covered by these administrative regulations. Nothing contained in these administrative regulations shall be deemed to require the certification of students enrolled in an approved course of instruction in relation to the healing arts or allied health sciences and employees of the federal government, while engaged in the performance, within this state, of their official duties.

Section 2. Application for Certification. (1) [All] Applications for certification as an operator of sources of radiation shall be filed with the Cabinet for Human Resources, Radiation Control, 275 East Main Street, Frankfort, Kentucky 40621. [All] Applications shall be submitted on forms provided by the cabinet.
(2) [All] Applicants for certification shall, as a condition precedent to certification, be in compliance with the applicable administrative regulations of the cabinet relating to their particular field of practice or operation.
(3) General and limited certificates shall expire on the last day of the month, two (2) years after the date of issuance.
(4) Temporary and provisional certificates shall expire on the last day of the month, one (1) year after the date of issuance and are not renewable.

Section 3. Examinations. (1) A general or limited certificate shall be issued upon [successful] passage of an appropriate examination, approved by the cabinet, in the field of practice or operation for which certification is sought. [All] Examinations shall be divided into appropriate sections and a minimum grade of seventy-five (75) percent is required for [the] passage [of each respective section. An individual who fails a particular section shall be required to retake that section; provided, however, individuals who fail two (2) or more sections shall be required to retake the entire examination]. An individual shall be allowed to retake the limited examination no more than three (3) times within a calendar quarter.
(2) The cabinet may accept, in lieu of an examination conducted by the cabinet, a valid certificate from a national organization acceptable to the cabinet, if [provided that] the holder is otherwise qualified for certification and has earned his certificate by passing an appropriate examination.
(3) The cabinet may accept, in lieu of an examination conducted by the cabinet, a valid certificate from another state or political subdivision acceptable to the cabinet, if [provided that] the holder is otherwise qualified for certification and has earned his certificate by passing an appropriate examination.
(4) Acceptance of an examination from a national organization shall be contingent upon an annual review of the examination together with an outline by subject and an item analysis of each examination section relative to individuals graduating from teaching institutions within this state. Acceptance of an examination from a state or political subdivision shall be contingent upon an annual review of the examination together with an outline by subject and an item analysis of each examination section. The cabinet shall hold the [such] examination information confidential and only make its contents available to authorized representatives of the cabinet.
(5) The cabinet may accept, in lieu of the examination requirements for a general certificate, an individual's current certificate from a national organization acceptable to the cabinet that was issued prior to the effective date of these regulations.

Section 4. Fee Schedule. The following fees shall be paid in connection with the certification of operators of sources of radiation other than licensed practitioners of the healing arts:
(1) Application for certification (nonrefundable) - $20.
(2) Issuance of a general or limited certificate - $30.
(3) Issuance of a temporary or provisional certificate - $20.
(4) Renewal of a general or limited certificate - $30.
(5) Duplicate certificate - $10.
(6) Limited examination - $25

Section 5. Continuing Education Requirements for Renewal. (1) The continuing education requirements of this section shall be a condition precedent to the renewal of a general or limited certificate.
(2) A general certificate holder shall, during each twenty-four (24) month period that he holds his certificate, obtain a minimum of eighteen

(18) clock hours of continuing education approved by the cabinet.

(3) A limited certificate holder shall, during each twenty-four (24) month period that he holds his certificate, obtain a minimum of twelve (12) clock hours of continuing education approved by the cabinet.

(4) Certificate holders attending or participating in continuing education related to their field of practice or operation shall send documented evidence of attendance or participation to the cabinet within a reasonable time frame, not to exceed forty-five (45) days. The [Such] evidence shall include the certificate holder's name, certificate number, subject title, date(s) attended, clock hours of instruction and the instructor's name and title.

(5) Operators of sources of radiation may receive up to six (6) clock hours credit, on an hour-for-hour basis, toward certificate renewal for continuing education lectures if they are the instructor.

(6) Continuing education clock hours may be accrued by attending seminars, lectures, or courses relating to the individual's field of practice or operation.

Section 6. General Requirements. (1) It shall be the responsibility of each employer to insure that [all of] his employees operating sources of radiation are certified as set forth in these administrative regulations.

(2) The cabinet may impose upon an [any] operator of sources of radiation or institutions teaching individuals to operate or use sources of radiation, [such] requirements that are in addition to those established in these administrative regulations as it deems appropriate or necessary to minimize danger to public health or safety.

(3) Only individuals holding a general certificate shall be employed as an operator of sources of radiation at facilities where contrast studies are performed.

(4) It shall be the responsibility of a certified operator to notify the cabinet within sixty (60) days regarding a [any] change of name or address.

(5) An individual certified as an operator of sources of radiation shall display or have available his certificate or a photocopy at his place of employment.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services second floor conference room, Cabinet for Human Resources Building, Frankfort, Kentucky. However this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe

(1) Type and number of entities affected: Approximately 3500 medical radiation operators in the Commonwealth are affected by this administrative regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: By utilizing the nationally recognized Limited Radiography examination offered by the American Registry of Radiologic Technologists (ARRT) the approximately 100 individuals taking this exam yearly would be charged $25.00 per exam. This fee is passed through to the ARRT for providing this service.

2. Continuing costs or savings: Cost should continue the same as the first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors increasing or decreasing cost are anticipated.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements by these administrative regulations.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The administrative agency will have a direct savings of approximately $1000 per year previously used for continual development, validation and administration of the Limited Radiography Examination.

2. Continuing costs or savings: Savings should continue the same as the first year.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs are anticipated.

(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this regulation.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other nationally recognized limited radiography examination exists, thus there are no alternative methods.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Although an additional fee will be charged, the purpose of this regulation is not to raise revenue, but to offer a rationally recognized limited radiography examination allowing the limited radiation operator in the Commonwealth reciprocity with other states.

TIERING: Was tiering applied? Yes. This regulation is tiered because different fees are charged for certificates based upon the different qualifications of the applicants. The qualifications dictate the length of time t he certificate is valid.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?
Yes X No___ (If yes, complete questions 2-4)

2. State whether this administrative

regulation will affect the local government or only part or division of the local government. This administrative regulation affects local governments where radiation operators are employed such as health departments and county hospitals.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to health services which include radiographic procedures.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation does not directly affect local government services.

CABINET FOR RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 105:030. Teaching institution's curricula.

RELATES TO: KRS 211.870, 211.890, 211.993
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set [such] other standards as may be appropriate for the protection of health and safety. The purpose of this administrative regulation is to establish uniform curricula standards for institutions teaching persons to operate sources of radiation.

Section 1. Applicability. This administrative regulation shall apply [applies] to curricula standards for institutions offering an institutional course of study for operators of sources of radiation.

Section 2. Curricula Standards. [All] Sponsoring institutions offering an institutional course of study for operators of sources of radiation shall:

(1) Make application on a form provided or approved by the cabinet;

(2) Supply [all] data requested for a complete evaluation of its administration, organization, faculty, physical facilities, student policies, and curriculum instructions. Provide a structured curriculum with clearly written course descriptions, lesson plans and objectives.

(3) Have as the medical director or advisor of a course of study:

(a) For obtaining general certification, a qualified radiologist certified by the American Board of Radiology or an individual possessing suitable equivalent qualifications.

(b) For obtaining limited certification, an individual as stipulated in paragraph (a) of this subsection, or a licensed practitioner of the healing arts in the appropriate field of practice, knowledgeable in radiation protection.

(4) Provide an adequate faculty which shall be qualified through academic preparation or experience to teach the subjects assigned;

(5) Have as the program director of a course of study:

(a) For obtaining general certification, a general certified operator who shall [must] have a minimum of four (4) years of education or teaching experience or a combination of education and teaching experience in the appropriate field of practice.

(b) For obtaining limited certification, a general certified operator who shall [must] have a minimum of three (3) years of education or teaching experience or a combination of education and teaching experience in the appropriate field of practice.

(6) Provide a ratio of not more than three (3) students to one (1) full-time certified operator engaged in clinical instruction;

(7) Provide a course of study in radiography at facilities approved by the cabinet;

(8) Provide appropriate facilities, sufficient volume, and a variety of diagnostic radiographic examinations to properly conduct the course of study;

(9) Prohibit students from applying radiation to human beings for diagnostic purposes until they have obtained practical experience using phantoms and have had their performance evaluated as satisfactory by the program director;

(10) Provide direct personal supervision by a licensed practitioner of the healing arts or a certified operator to students upon their initial application of radiation to human beings;

(11) Prohibit students from [being assigned night or weekend call or] being placed in a [any other] situation where they would be required to apply radiation to a human being while not under the direct supervision of a licensed practitioner of the healing arts or a certified operator.

(12) Students performing the functions of a certified radiation operator outside the academic setting, shall [must] have completed at least fifty (50) percent of their course of study and have had their didactic and clinical performance evaluated and recorded as satisfactory by the program director. Students shall [must] be under the direct supervision of a licensed practitioner of the healing arts or a certified radiation operator. It shall be the responsibility of the teaching institution to insure that the conditions under which students are performing the functions of a radiation operator are compatible with the educational institution's clinical affiliation standards.

(13) Prohibit [all] exposures to human beings from a source of radiation except for diagnostic purposes unless otherwise specified in the curriculum approved by the cabinet;

(14) Keep records of each student's attendance, grades, clinical experience and subjects completed;

(15) Designate a radiation safety officer; and

(16) Permit site inspections by representatives of the cabinet. The cabinet may accept, in lieu of a departmental site inspection, a site visit report from a recognized accrediting body.

Section 3. Advanced Placement. Upon departmental approval, advanced placement may be

made by examination in accordance with institutional policy based upon the same standards of achievement required for students completing the required clock hours of classroom and clinical experience. Examinations used in advance placement shall be reliable, validated [valid and standardized] and based on performance data of students who have completed the required subjects.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services, second floor Conference Room, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe
(1) Type and number of entities affected: 3500 medical radiation operators in the commonwealth are affected by this administrative regulation.
(a) Direct and indirect costs or savings to those affected:
1. First year: There are no direct or indirect costs or savings to radiation operators.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this regulation.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the administrative agency.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this regulation.
(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative exist for this regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this regulation.
(a) Necessity of proposed regulation if in conflict: There is no conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. This regulation is tiered because different academic faculty requirements are applied according to the difficulty of the course of study.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___ (If yes, complete questions 2-4)
2. State whether this administrative regulation will affect the local government or only part or division of the local government. This administrative regulation affects local governments where radiation operators are employed such as health departments and county hospitals.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to health services which include radiographic procedures.
4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation does not directly affect local government services.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 105:040. Medical, osteopathic or chiropractic supervision.

RELATES TO: KRS 211.870, 211.890, 211.993
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set [such] other standards as may be appropriate for the protection of health and safety. The purpose of this administrative regulation is to establish uniform standards for the certification of individuals who operate sources of radiation for human diagnostic radiographic purposes while under the supervision of a medical, osteopathic or chiropractic licensed practitioner of the healing arts.

Section 1. Applicability. This administrative regulation shall apply [applies] to individuals who operate sources of radiation for human diagnostic radiographic purposes while under the supervision of a medical, osteopathic or chiropractic licensed practitioner.

Section 2. General Certification Required to Perform Contrast Studies. Only individuals holding a general certificate shall operate sources of radiation at facilities where contrast studies are performed.

Section 3. Eligibility for a General Certificate. No person shall be eligible for a general certificate as an operator of a source

of radiation for human diagnostic radiographic purposes under the supervision of a medical, osteopathic or chiropractic licensed practitioner unless he has:

(1) Satisfactorily completed a four (4) year course of study in a secondary school or passed a standard equivalency test; and

(2) Satisfactorily completed a [twenty-four (24) months'] course of study in medical, osteopathic or chiropractic radiography approved by the cabinet and based upon two (2) years of full-time study. The course shall include [a minimum of 410 hours of] classroom work in [including] the following subjects: x-ray physics, radiographic exposures [techniques], darkroom chemistry and techniques, anatomy and physiology, radiation protection, patient positioning, film critique, [and] ethics, radiation biology and patient care. The course [; and] shall also include an adequate number of hours to demonstrate clinical competency. Clinical experience shall consist of instruction through demonstrations and supervised practice; and [but not less than 2,200 hours to be devoted to clinical experience consisting of demonstrations, discussions, seminars and supervised practice; and]

(3) Satisfactorily passed an examination conducted or approved by the cabinet.

Section 4. Eligibility for a Limited Certificate. No person shall be eligible for a limited certificate as an operator of a source of radiation for human diagnostic radiographic purposes under the supervision of a medical or osteopathic or chiropractic licensed practitioner unless he has:

(1) Satisfactorily completed a four (4) year course of study in a secondary school or passed a standard equivalency test; and

(2) Satisfactorily completed a limited course of study in medical, osteopathic, or chiropractic radiography approved by the cabinet through an institutional or independent study course.

(a) The approved institutional [institution] course of study shall include not less than 140 hours of classroom work including the following subjects: x-ray physics, radiographic exposures [techniques], darkroom chemistry and techniques, anatomy and physiology, radiation protection, patient positioning, film critique, [and] ethics, radiation biology and patient care. The course also [; and] shall include an adequate number of hours but not less than 260 to be devoted to clinical experience consisting of demonstrations, discussions, seminars and supervised practice; or

(b) The approved independent study course shall include but not be limited to the following subjects: x-ray physics, radiographic exposures [techniques], darkroom chemistry and techniques, anatomy and physiology, radiation protection, patient positioning, film critique, [and] ethics, radiation biology and patient care. Clinical experience can be obtained by performing a minimum of fifty (50) radiographic examinations in each of the following areas: chest, extremities and musculoskeletal. This [Such] experience shall be obtained at the individual's place of employment, an alternate facility or a combination of the two (2). The employer shall be responsible for providing or arranging for the required clinical experience and for providing the appropriate supervision of the student by a licensed practitioner of the healing arts or a certified operator. Clinical experience can begin only after the student has successfully completed the requirements for the study course units entitled Radiation Protection and Radiographic Exposures. Course requirements shall be completed one (1) year from date of enrollment; and

(3) Satisfactorily passed an examination conducted or approved by the cabinet.

Section 5. Temporary Certificate. The cabinet may, upon proper application and [upon] payment of the appropriate fee [application and certificate fee,] issue a temporary certificate to an applicant who has successfully completed an approved course of instruction in medical, osteopathic or chiropractic radiography and who meets [all] the other requirements of these regulations other than having taken the required examination.

Section 6. Provisional Certificate. The cabinet may, under emergency conditions only, issue a provisional certificate to an applicant who works under the direct supervision of a medical, osteopathic or chiropractic licensed practitioner provided:

(1) No certified operator is available;

(2) The licensed practitioner accepts full responsibility for the [such] applicant;

(3) The applicant has successfully completed a four (4) year course of study in a secondary school or passed a standard equivalency test;

(4) The applicant and the licensed practitioner file a joint statement detailing the training and experience of the applicant, if any, and give an assurance that a minimum of thirty (30) clock hours of training are [will be] forthcoming under the direct supervision of a licensed practitioner or other qualified person, as defined in 902 KAR 105:010, Section 1(12).

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services 2nd Floor Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe

(1) Type and number of entities affected: 3500 medical radiation operators in the Commonwealth are affected by this regulation.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to those affected.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: There is no additional reporting or paperwork

required by this regulation.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: An initial cost of approximately $100 for a computer program charge.
1. First year: An initial one time cost of approximately $100 for a computer program charge.
2. Continuing costs or savings: No continuing costs or savings are anticipated.
3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs are anticipated.
(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this administrative regulation.
(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist for this administrative regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this administrative regulation.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. This regulation is tiered because different courses of study are required for each type of certification.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___ (If yes, complete questions 2-4)
2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation affects local governments where radiation operators are employed such as health departments and county hospitals.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to health services which include radiographic procedures.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation: This administrative regulation does not directly affect local government services.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 105:060. Podiatrist supervision.

RELATES TO: KRS 211.870, 211.890, 211.993
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examination; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set [such] other standards as may be appropriate for the protection of health and safety. The purpose of this administrative regulation is to establish uniform standards for the certification of individuals who operate sources of radiation for human diagnostic radiographic purposes while under the supervision of a podiatrist.

Section 1. Applicability. This administrative regulation shall apply [applies] to individuals who operate sources of radiation for human diagnostic radiographic purposes while under the supervision of a podiatrist.

Section 2. Eligibility for a Limited Certificate. No person shall be eligible for a limited certificate as an operator of a source of radiation for human diagnostic radiographic purposes under the supervision of a podiatrist unless he has:
(1) Satisfactorily completed a four (4) year course of study in a secondary school or passed a standard equivalency test; and
(2) Satisfactorily completed a limited course of study in podiatry radiography approved by the cabinet through [either:] an institutional study course or an independent study course:
(a) The approved institutional course of study shall include not less than sixty-five (65) hours of classroom work including the following subjects: x-ray physics, radiographic techniques, darkroom chemistry and techniques; anatomy and physiology, radiation protection, patient positioning, film critique and ethics; and shall include an adequate number of hours but not less than ten (10) to be devoted to clinical experience consisting of demonstrations, discussions, seminars, and supervised practice; or
(b) The approved independent study course shall include but not be limited to the following subjects: x-ray physics, radiographic techniques, darkroom chemistry and techniques, anatomy and physiology, radiation protection, patient positioning, film critique and ethics. Clinical experience shall be obtained by performing a minimum of fifty (50) radiographic examinations of the foot and its related or governing structures. This [Such] experience shall be obtained at the individual's place of employment, an alternate facility or a combination of the two (2). The employer shall

be responsible for providing or arranging for the required clinical experience and providing appropriate supervision of the student by a licensed practitioner of the healing arts or a certified operator; and

(3) [Satisfactorily] Passed an examination conducted or approved by the cabinet.

Section 3. Temporary Certificate. The cabinet may, upon proper application and upon payment of the appropriate fees [application and certificate fee], issue a temporary certificate to an applicant who has successfully completed an approved course of instruction in podiatric radiography and who meets [all of] the other requirements of these administrative regulations other than having taken the required examination.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Departmenr for Employment Services, second floor Conference Room, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe

(1) Type and number of entities affected: 50 podiatric radiation operators in the Commonwealth are affected by this administrative regulation.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to radiation operators.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the administrative agency.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this administrative regulation.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist for this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. This regulation is tiered because different qualifications are required for each type of certification.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 105:070. Violations and enforcement.

RELATES TO: KRS 211.870, 211.890, 211.993
STATUTORY AUTHORITY: KRS 194.050, 211.090

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examination; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set [such] other standards as may be appropriate for the protection of health and safety. The purpose of this administrative regulation is to establish uniform enforcement procedures applicable to the cabinet's regulations relating to the certification of operators of sources of radiation.

Section 1. Applicability. This administrative regulation shall relate [relates] to the enforcement procedures of the cabinet pertaining to the certification of operators of sources of radiation.

Section 2. Denial. Revocation and Suspension of Certificates. The cabinet may deny, revoke or suspend the certificate of a [any] person who:

(1) Has engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public;

(2) Becomes a drug-dependent person or drug abuser as defined in KRS 222.011(8);

(3) Becomes an alcoholic person who suffers from alcoholism as defined in KRS 211.011(3);

(4) Develops a [such] physical or mental disability or other condition that continued practice or performance of this duties may be dangerous to patients or the public; or

(5) Fails to comply with any administrative regulation of the cabinet relating to the certification of operators of sources of radiation.

Section 3. Hearings. The cabinet shall furnish the certificate holder with written notice setting out the substance of each offense charged with sufficient detail to reasonably apprise a [such] person of the nature, time and place thereof. The certificate holder shall have the right to be present in person, [or] be

represented by counsel, [and] to present evidence and to be heard in opposition to the charges which may be instituted. The cabinet shall make a finding of fact and conclusion of law. The hearing may be conducted by a hearing officer appointed by the Secretary of the Cabinet for Human Resources.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services, second floor Conference Room, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe
(1) Type and number of entities affected: 3500 medical radiation operators in the Commonwealth are affected by this regulation.
(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to radiation operators.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this administrative regulation.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the administrative agency.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this administrative regulation.
(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives exist for this administrative regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this regulation.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. This regulation is tiered because different administrative penalties are assessed upon the severity of the violation.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___ (If yes, complete questions 2-4)
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation affects local government where radiation operators are employed such as health department and county hospitals.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to health services where radiographic procedures are provided.
4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation does not directly affect local government services.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:110. Refugee assistance.

RELATES TO: KRS 194.050, 8 CFR 207.1, 208.2, 209.1-.2, 212.5, 245.1-.6; 34 CFR 690.2(1)-(6), 668.2-.4; 45 CFR 400.40-.104, 400.140-.156
STATUTORY AUTHORITY: KRS 194.050, 8 CFR 207.1, 208.2, 209.1-.2, 212.5, 245.1-.6; 34 CFR 690.2(1)-(6), 668.2-.4; 45 CFR 400.40-.104, 400.140-.156
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized by KRS 194.050 to administer programs to qualify for the receipt of federal funds providing cash and medical assistance to eligible Kentucky residents. This regulation establishes eligibility criteria and types and amounts of assistance for refugees residing in Kentucky.

Section 1. Definitions. (1) "Refugee" is any person of any nationality who:
(a) Because of persecution or fear of persecution due to:
1. Race;
2. Religion;
3. Nationality;
4. Membership in a particular social group; or
5. Political opinion;
(b) Fled from their country or the country where the person habitually resides;
(c) Cannot return there because of fear of persecution due to:
1. Race;
2. Religion;
3. Nationality;
4. Membership in particular social group; or
5. Political opinion; and
(d) Has been granted status by the United States Department for Immigration and Naturalization Service (INS) as:
1. Refugee;
2. Asylee;
3. Parolee;
4. Voluntary departure;
5. Permanent resident alien;
6. Conditional entrant;
7. Amerasian immigrant; or

8. Cuban-Haitian entrant.

(2) "Refugee Resettlement Program (RRP)" is the program for refugees who shall:

(a) Have been United States residents for not more than eight (8) [twelve (12)] months beginning with the month a refugee entered the United States; and

(b) Meet one (1) of the following status criteria of the INS:

1. A person from any country who has parolee status as a refugee or asylee;

2. A person admitted from any country with conditional entrant status;

3. A person from any country admitted as a refugee;

4. A person from any country who has been granted asylum status;

5. A person admitted as an Amerasian immigrant; or

6. A person from any country who previously held one (1) of the above statuses whose status has been adjusted to permanent resident alien.

Section 2. Application. Each refugee household requesting assistance shall:

(1) Complete an application; and

(2) Provide information necessary to determine eligibility in accordance with the procedural requirements of the cabinet.

Section 3. Eligibility Criteria. The applicant shall meet the following conditions of eligibility for receipt of cash and medical assistance under the Refugee Resettlement Program:

(1) Alien or citizenship status. The applicant shall be:

(a) A refugee; or

(b) A child of a recipient of refugee assistance who is:

1. A United States citizen by birth within the United States; and

2. Eligible while the refugee parent remains eligible for refugee assistance.

(2) Exclusion from other assistance programs. The applicant shall be ineligible for:

(a) Aid to Families with Dependent Children (AFDC); and

(b) Medical Assistance Program.

(3) Residence. The applicant shall be a Kentucky resident as specified in 904 KAR 2:006, Technical requirements; AFDC.

(4) Income and resource limits. The applicant shall meet the financial eligibility standards of:

(a) Aid to Families with Dependent Children in 904 KAR 2:016, Standards for need and amount; AFDC; or

(b) The AFDC-related Medical Assistance Program in 904 KAR 1:004, Resource and income standard of medically needy if the application is for medical assistance only.

(5) Employability and social services. For receipt of cash assistance the applicant shall:

(a) Participate in any available and appropriate social service program providing job or language training in the area in which the refugee resides; and

(b) Register for employment with the state employment office, unless exempt under one (1) of the following criteria:

1. A child under age sixteen (16);

2. A child age sixteen (16) through seventeen (17), if enrolled as a full-time student at the high school level or the equivalent level of vocational or technical school;

3. An individual who has a medically determined temporary illness or injury with recovery anticipated within ninety (90) days;

4. An individual who has a medically determined physical or mental incapacity which is expected to exist longer than ninety (90) days;

5. An individual age sixty-five (65) or over;

6. An individual whose presence is required in the home to care for another member of the household who has been medically determined unable to care for himself and for whom alternate care arrangements are not feasible;

7. A mother or other caretaker relative of a child under age six (6);

8. A mother, if the father is required to register; and

9. A woman who is medically verified to be in the third trimester of pregnancy.

(6) Job search.

(a) For receipt of cash assistance, the applicant shall participate in job search unless exempt under the criteria specified in subsection (5)(b) of this section.

(b) Job search shall begin:

1. The sixth month after the refugee entered the United States; or

2. At the time the refugee is determined eligible for refugee cash assistance if the refugee has resided in the United States for at least six (6) months at the time of the determination.

(c) Job search shall continue for eight (8) consecutive weeks.

(d) A minimum of two (2) job contacts per week shall be completed and recorded for monitoring purposes.

(e) Job contacts may be made:

1. In person;

2. By mail; or

3. By telephone.

(f) If a nonexempt refugee fails to complete the job search requirements, sanctions specified in subsection (7)(b) of this section shall apply.

(7) Cooperation requirement.

(a) For receipt of cash assistance, the refugee shall not without good cause:

1. Refuse an appropriate offer of employment;

2. Terminate employment; or

3. Refuse to participate in an available and appropriate social service program.

(b) Any refugee not meeting this requirement shall be ineligible for a period of:

1. Three (3) months for the first occurrence; and

2. Six (6) months for subsequent occurrence.

(c) Good cause criteria is specified in 904 KAR 2:016, Section 4(4)(a).

(8) Student status. For receipt of cash assistance, the refugee shall not be:

(a) A full-time student;

(b) Carrying a full-time workload; and

(c) In an institution of higher education other than a correspondence school.

(9) Time limitation. The period of eligibility is limited to eight (8) [twelve (12)] months after entry into the United States.

(10) Newborns.

(a) A child born to a woman receiving medical assistance under the Refugee Assistance Program is eligible for medical assistance if:

1. The child has not reached his first birthday;

2. He resides in the household of the woman;

and
3. The woman remains eligible for medical assistance.
(b) In this situation, an application is deemed to have been made and the child found eligible for medical assistance as of the date of birth.

Section 4. Benefit Levels. (1) Cash assistance shall be the same as for AFDC in 904 KAR 2:016, standards for need and amount; AFDC, except that the thirty (30) dollars plus one-third (1/3) disregard of earned income does not apply.
(2) Extended medical benefits.
(a) A refugee cash assistance case discontinued due to new or increased earned income shall be eligible for medical assistance for up to four (4) months.
(b) The four (4) months shall begin with the first month of cash assistance ineligibility due to earned income.
(c) Months for which recoupment is appropriate, due to earned income, shall be considered as part of the four (4) month period.
(3) Medical benefits.
(a) Medical assistance benefits shall include all benefits available to Medicaid recipients.
(b) In addition, children eligible for medical assistance under the refugee assistance program are eligible for coverage of:
1. Hepatitis B immune globulin (HBIG); and
2. Hepatitis B virus (HBV) vaccine inoculations.
(c) Costs incurred for these inoculations will be covered by the Refugee Assistance Program.
(4) Payments.
(a) Payment of benefits depends upon the availability of federal funds.
(b) If federal funds are insufficient or are not provided to the state in a timely manner, payments may be:
1. Reduced;
2. Suspended; or
3. Terminated.

Section 5. Recoupment. Action shall be taken to recoup cash assistance overpayments in accordance with 904 KAR 2:016, Section 10, Recoupment.

Section 6. Time and Manner of Payment. Time and manner of payment shall be in accordance with 904 KAR 2:050, Time and manner of payments.

Section 7. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055, Hearings and appeals.

Section 8. Material Incorporated by Reference. (1) Forms necessary to participate in mandatory job search are incorporated effective October 1, 1990.
(2) This material is available to be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 18, 1991
FILED WITH LRC: September 23, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall
(1) Type and number of entities affected: We estimate that 25 percent of the monthly refugee cash and medical assistance caseload will be affected by the reduction in the period of eligibility. Thus, the average monthly caseload could be reduced by approximately 37 participants per month.
(a) Direct and indirect costs or savings to those affected:
1. First year: Unable to determine.
2. Continuing costs or savings: Unable to determine.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None. The Refugee Cash and Medical Assistance Program is, by law, 100 percent federally funded. Therefore, we do not anticipate any fiscal impact to the state agency.
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Federal statutes mandate that eligibility requirements for the Refugee Resettlement Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Action Transmittal Letter, September 11, 1991. The regulation at 45 CFR 400.202 provides that the extent of federal funding is "...subject to the availability of funds."
2. State compliance standards. This regulation describes the eligibility requirements for the Refugee Resettlement Program as prescribed by the Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement.
3. Minimum or uniform standards contained in the federal mandate. The Office of Refugee Resettlement correspondence requires the state agency to reduce the period of eligibility for refugee cash assistance and refugee medical assistance from 12 months to 8 months.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The provisions of this administrative regulation coincide with those mandated by the Office of Refugee Resettlement. The guidelines for these provisions are specific with respect to the application of these policy amendments.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These administrative regulations will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Family Services
(Proposed Amendment)

905 KAR 1:010. Application for permission to place or receive child.

RELATES TO: KRS 199.470(4), 199.471, 199.472, 199.473, 199.480, 199.520, 199.572, 615.030
STATUTORY AUTHORITY: KRS 194.050, 199.472
NECESSITY AND FUNCTION: This regulation is to provide [clear] procedures for the application for permission to place or receive a child, the disposition of a child preceding the granting or denying of permission to place or receive a child, [and] the investigation of the circumstances surrounding the natural parents of a child to be placed or received under the law of independent adoption and the determination of suitability of the proposed adoptive parents to receive the child. The function of this regulation is to set forth the procedure in independent adoptions from the point of application to place or receive a child to the point of the filing of the petition to adopt [granting or denying permission to place or receive a child]. The regulation includes provisions relating to obtaining health history from the biological parents and to determining [determine] the biological and legal parents' [natural mother and father's] feelings about possible future contact with the adopted person.

Section 1. The application for permission to place or receive a child, the DSS-187 herein incorporated by reference, shall be filed in duplicate, in writing with the Secretary of the Cabinet for Human Resources in care of the Commissioner of the Department for Social Services, by means of certified or registered mail. A certified or cashier's check payable to the Kentucky State Treasurer for a nonrefundable fee of $150 shall be filed with the written application for permission to place or receive a child. The DSS-187 may be obtained at the various local Department for Social Services offices or at the central office in Frankfort.

Section 2. The application for permission to place or receive a child shall be considered officially filed when received in [at] the office of the Commissioner of the Department for Social Services. The returned receipt of certified or registered mail shall be proof of the filing of the application. However, the application shall not be considered filed unless it contains the [all] required information and is received together with the $150 fee pursuant to KRS 199.473(5).

Section 3. Limitations to Filing. (1) Proposed adoptive parents may apply to receive one (1) child at a time, unless applying for the available members of a sibling group. In the case of twins who are available and suitable for adoption, an application shall not be accepted unless the proposed adoptive parents apply to receive both children.
(2) When an application for a child has been filed, subsequent applications for the same child shall not be accepted unless the previous application has been withdrawn by a written request to the cabinet by one (1) of the parties involved.
(3) An application shall not be accepted unless a previously placed child has been in the home for a minimum of one (1) year and the adoption legally finalized. An exception may be made when the child to be placed is a sibling of the previously placed child. [The return receipt of certified or registered mail shall be proof of the filing of application.]

Section 4. The application for permission to place or receive a child shall contain [the following]:
(1) Name[s] and address[es] of a person[s] wishing to receive a child;
(2) Names and addresses of the biological mother and father and legal father of the child to be placed or received. If the identity of the father is unknown, that [such] fact shall [should] be stated;
(3) The name and date of birth or expected date of birth of the child to be placed or received;
(4) Present address of the child to be placed or received;
(5) A statement of whether custody of the child has been awarded to an [any] agency or person other than the biological [birth] parents; and, if applicable a copy of the custody order; and
(6) Names and addresses of [any] attorneys, intermediaries or agents representing the respective parties involved in the proposed placement.

[Section 5. Forms for application for permission to place or receive a child may be obtained at the various local Department for Social Services offices or at the central office in Frankfort.]

Section 5. [6.] The application for permission to place or receive a child shall be signed by the person [or persons] wishing to receive a child, the person wishing to place the child, or by both parties involved.

Section 6. An application for permission to place or receive a child shall not be processed if prior to the receipt of the application, the child was committed to the Cabinet for Human Resources by order of the district or circuit court.

Section 7. An application for permission to place or receive a child may be made prior to the birth of the child.

Section 8. The child shall not be in the physical care, control or custody of the proposed adoptive family until the written approval of the Secretary of the Cabinet for Human Resources or his designee is received by the adoptive family. [The return receipt of the application for permission to place or receive a child shall be the implied permission of the Secretary of the Cabinet for Human Resources for the placement of the child in temporary care other than with the applicants.]

Section 9. The Cabinet for Human Resources may cooperate with the parents of the child [applicants] in finding suitable temporary placement for the child, pending the disposition of the application for permission to place or receive a child.

Section 10. During the time between the filing of the application for permission to place or receive a child and the decision of the Cabinet for Human Resources granting or denying the application, the responsibility for providing for the care of the child shall not [cannot] rest with the Cabinet for Human Resources unless a court has placed the [a] child with the cabinet, with the agreement of the cabinet, after the filing of the application. The [said] responsibility shall remain with the parents of the child [or their agent].

Section 11. The child shall not be physically placed in the care, control or custody [home] of the proposed receiving parents until final written permission to receive the child [do so] has been granted by the Secretary of the Cabinet for Human Resources or his designee; however, if the child is found in the physical care of the proposed adoptive family, it is the responsibility of the applicants to arrange for the child's placement in a neutral setting within forty-eight (48) hours. [has already been placed in the home, consideration shall be given to allowing the child to remain during the evaluation. The child shall not be placed prior to application for the purpose of avoiding the provisions of this regulation and KRS 199.470(4) and 199.473.]

Section 12. When an application for permission to place or receive a child has been filed with the Secretary of the Cabinet for Human Resources, the Commissioner of the Department for Social Services shall cause an investigation to be made of the proposed receiving home, [keeping in mind at all times,] the best interest of the child.

Section 13. Interviews. (1) When the biological parents or legal father reside in Kentucky, a representative of the Cabinet for Human Resources shall make a diligent [every] effort to interview the custodial biological parent [mother and/or father] of the child to be placed and the noncustodial, biological parent and legal father [or received] for the following purposes:

(a) To determine whether or not the biological mother and father are aware and accepting of the ethnic and religious background of the receiving parents;

(b) To determine whether or not they agree to the placement of the child with the proposed receiving parents;

(c) To obtain health history and sociological information on the child's family; and

(d) To determine the biological mother and father's feelings about possible future contact with the adopted person.

(2) The Cabinet for Human Resources may deny the application if the custodial parent refuses to be interviewed by the Cabinet for Human Resources representative or the appropriate out-of-state agency representative.

(3) [(2)] Efforts shall be made to have parents interviewed, for the purposes specified in Section 13.(1)(a) through (d) [listed above], or to have home evaluations completed through interstate procedures when parents or prospective adoptive families live out of state. The home evaluation for out-of-state prospective adoptive families and interviews with out-of-state birth parents shall be accepted if conducted by the out-of-state public agency or by a licensed private adoption agency in the respective state if the public agency is unable or unwilling to provide the service. [All parties shall cooperate fully in making the parents of the child to be placed or received available to a representative of the Cabinet for Human Resources or the out-of-state agency.]

(4) If after diligent efforts of the out-of-state public or private agency, the biological parents cannot be interviewed, or if the information and material cannot be obtained, the Secretary of the Cabinet for Human Resources or his designee shall not be precluded from approving the placement provided the other conditions of KRS 615.030, the Interstate Compact on the Placement of Children, have been met.

Section 14. The Cabinet for Human Resources may deny the application if the custodial parent is unwilling for the child to be placed for adoption with the proposed adoptive family.

Section 15. [14.] When the cabinet's investigation has been completed, the applicants shall be notified by registered or certified mail of the decision of the Secretary of the Cabinet for Human Resources or his designee, either granting or denying [said] permission for the placement or receiving of the child. If the permission is granted, the child may be placed in the home of the receiving parents forthwith,

if [provided all] other requirements, including the requirements of the Interstate Compact on the Placement of Children, if applicable, have been met. If the permission is denied, the receiving parents or the birth parents may, within ten (10) days after notice of denial [refusal], appeal the decision to the circuit court.

Section 16. [15.] When a child has been placed in a proposed receiving home with the permission of the Secretary of the Cabinet for Human Resources or his designee, the proposed receiving parents may file the petition for adoption in the circuit court in the county of their residence three (3) months after the date of the child's placement in their home with the secretary's or his designee's written approval in accordance with KRS 199.470(4) and 199.473.

Section 17. Material Incorporated by Reference. (1) The application to place or receive a child is being incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 30, 1991
FILED WITH LRC: October 4, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Rawlings

(1) Type and number of entities affected: The type and number of entities affected are those individuals that request an application to place or receive a child pursuant to KRS 199.473. During FY '91 the Department for Social Services received 387 applications to place or receive a child.

(a) Direct and indirect costs or savings to those affected: Direct and indirect costs to the affected entities are in the payment of the $150 nonrefundable fee with the written application to place or receive a child pursuant to KRS 199.473(5). During FY '91 the costs were $58,050 which were received with the 387 applications.

1. First year: Direct and indirect costs to the affected entities are in the payment of the $150 nonrefundable fee with the written application to place or receive a child pursuant to KRS 199.473(5). During FY '91 the costs were $58,050 which were received with the 387 applications.

2. Continuing costs or savings: Excluding the statutory fee, there will not be any continuing costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities.

(b) Reporting and paperwork requirements: Excluding the payment of the fee with the application there will not be any change in the affected entities reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: The effect on the promulgating agency is the receipt of the fee that will be used to offset the cost of subsidizing an adoptive parent for suitable care of a special needs child. The proposed regulations will improve the language of the regulation but does not effect the way in which the department administers the independent adoption process.

(a) Direct and indirect costs or savings: The savings for the promulgating agency are the receipt of the fees that will be used to offset the cost of subsidizing an adoptive parent for suitable care of a special needs child.

1. First year: The savings for the promulgating agency are the receipt of the fees that will be used to offset the cost of subsidizing an adoptive parent for suitable care of a special needs child.

2. Continuing costs or savings: Excluding the receipt of the fees, there will not be any continuing cost or savings for the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or effect competition for the Department for Social Services because the proposed regulations only clarify and correct terminology in the existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulation.

(6) Any additional information or comments: There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? No. This regulation was not tiered as it establishes statewide procedures for the application to place or receive a child and amends the existing regulation to comply with KRS Chapter 13A.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(Proposed Amendment)

905 KAR 1:150. "Baby Doe" regulation.

RELATES TO: KRS 600.020(1), 620.030-620.040, 620.180, 42 USC 5101, 45 CFR 1340.15 [199.011(6), 199.335]

STATUTORY AUTHORITY: KRS 194.050, 199.420, 620.180

NECESSITY AND FUNCTION: PL 97-35, "Block Grants for Social Services - Title XX," authorizes grants to states for social services and 42 USC 5101 [P.L. 98-457], Child Abuse Amendments of 1984, requires states to have in place procedures or programs, or both, for accepting reports and taking necessary remedial action to protect disabled infants with life-threatening conditions. KRS 194.050 authorizes the Cabinet for Human Resources to adopt [such rules and] regulations [as are] necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and [as are necessary] to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement required procedures.

Section 1. Services and Treatment for Disabled Infants. The Secretary of the Cabinet for Human Resources hereby adopts by reference 45 CFR Part 1340 dated April 15, 1985 as amended July 5, 1990, Child Abuse and Neglect Prevention and Treatment Program, which sets forth the criteria for the protection and care of disabled infants with life-threatening conditions. Reports of suspected medical neglect of disabled infants shall be made immediately to the Department for Social Services and may be made by use of the "Hotline" number which is 1-800-752-6200. 45 CFR Part 1340 may be reviewed during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: September 30, 1991

FILED WITH LRC: October 4, 1991 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Rawlings

(1) Type and number of entities affected: The type and number of entities affected are all disabled infants with life-threatening conditions born in the state of Kentucky. This regulation adopts a federal regulation that sets forth the criteria for the protection of these infants.

(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulation.

1. First year: There will not be any direct and indirect costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

2. Continuing costs or savings: There will not be any continuing costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities because the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: There will not be any cost or savings to the Department for Social Services as the proposed regulations only clarify and correct terminology in the current regulations. The proposed regulations will improve the language of the regulation but does not effect the way in which the department provides protection for these infants.

(a) Direct and indirect costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the proposed regulations only clarify and correct terminology in the current regulations.

1. First year: There will not be any direct or indirect cost or savings during the first year for the Department for Social Services as the proposed regulations only clarify and correct terminology in the current regulations.

2. Continuing costs or savings: There will not be any continuing cost or savings during the first year for the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or effect competition for the Department for Social Services as the proposed regulations only clarify and correct terminology in the current regulations.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(6) Any additional information or comments: There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? No. This regulation was not tiered as it applies to all disabled infants as it establishes procedures for accepting reports and taking necessary action to protect these infants with life-threatening conditions.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Family Services
(Proposed Amendment)

905 KAR 1:170. Child abuse self-help groups.

RELATES TO: KRS 213.141 [213.190]
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: KRS 213.141 [213.190] requires the Cabinet for Human Resources to use funds received from the [1984 increase in the] cost of birth certificates to contract with private and public nonprofit organizations for the operation of [nonprofit/]self-help groups for abusive parents. KRS 194.050 authorizes the cabinet to adopt [such rules and] regulations [as are] necessary to operate programs vested in the Cabinet for Human Resources.

Section 1. Definitions. (1) "Private or public nonprofit organizations [not for profit group]" means an [any] entity incorporated as a nonstock [/]nonprofit corporation under KRS Chapter 273 with articles of incorporation filed with the Secretary of State.

(2) "Self-help group" means a group of two (2) or more parents of children under the age of eighteen (18), under the sponsorship of a private or public nonprofit organizations [not for profit self-help corporation], who through group interaction voluntarily assist themselves in preventing or ceasing the [their] physical, sexual, or mental abuse of their children.

Section 2. Application. An organization [Any corporation] that meets the requirements of 905 KAR 1:170, Section 1 [of this regulation] may apply to the Department for Social Services for funds available from the one (1) dollar allocated to the department from the fee for certified copies [sale] of birth certificates. The application shall be in accordance with the Request for Proposal [(RFP)] provided by the department. The department may require proof of incorporation and purpose of the organization.

Section 3. Funding. Funds received by the Department for Social Services from the fee for certified copies [sale] of birth certificates shall be deposited in the Kentucky State Treasury in a Trust and Agency account to be used exclusively for carrying out the provisions of KRS 213.141 [213.190(2)]. [Any] Funds available at the close of a [any] fiscal year shall not lapse to the general fund, but shall be carried forward to the next fiscal year for use as governed [in accordance] with KRS 213.141 [213.190(2)].

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 21, 1991
FILED WITH LRC: October 4, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Rawlings
(1) Type and number of entities affected: Nine state funded self-help agencies will be affected by the proposed regulations. The regulations will affect all of the funded programs throughout the state. The regulations will not apply nor affect any self-help agency that does not receive state funds from the Department for Social Services.

(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the state funded self-help agencies as the proposed regulations only clarify and correct terminology in order to improve the already existing regulation.

1. First year: There will not be any direct and indirect costs or savings to the state funded self-help agencies as the proposed regulations only clarify and correct terminology in order to improve the already existing regulations.

2. Continuing costs or savings: There will not be any continuing costs or savings to the state funded self-help agencies as the proposed regulations only clarify and correct terminology in order to improve the already existing regulations.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decreases costs or effect competition for the state funded self-help agencies because the proposed regulations only clarify and correct terminology in order to improve the already existing regulations.

(b) Reporting and paperwork requirements:

There will not be any change in the state funded self-help agencies reporting and paperwork requirements because the agencies are currently regulated by the same kind of regulations. For example, the agencies are monitored each fiscal year by the Department for Social Services using the current regulations during their review process. If deficiencies are discovered during the review, the agency has to prepare and submit a plan of corrective action to the department. The proposed regulations will not change the monitoring process nor the plan of corrective action process. There will not be any increase because the proposed regulations only clarify and correct terminology in order to improve the already existing regulations.

(2) Effects on the promulgating administrative body: There will not be any cost or savings to the Department for Social Services as the proposed regulations only clarify and correct terminology in the current regulations. The proposed regulations will improve the language of the regulation but does not effect the way in which the department administers the state funded self-help agencies.

(a) Direct and indirect costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the proposed regulations only clarify and correct terminology in the already existing regulations.

1. First year: There will not be any direct or indirect cost or savings during the first year for the Department for Social Services as the proposed regulations only clarify and correct terminology in the already existing regulations.

2. Continuing costs or savings: There will not be any continuing cost or savings during the first year for the Department for Social Services as the proposed regulations only clarify and correct terminology in the already existing regulations.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or effect competition for the Department for Social Services because the proposed regulations only clarify and correct terminology in the already existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements because the agencies are currently regulated by the same kind of regulations. For example, the agencies are monitored each fiscal year by the Department for Social Services using the current regulations during their review process. If deficiencies are discovered during the review, the agency has to prepare and submit a plan of corrective action to the department. The proposed regulations will not change the monitoring process nor the plan of corrective action process. There will not be any increase because the proposed regulations only clarify and correct terminology in order to improve the already existing regulations.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues as the proposed regulations will not affect the state funded self-help agencies' funds.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because the proposed regulations only clarify and correct terminology in order to improve the already existing regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(6) Any additional information or comments: There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? No. This regulation establishes a statewide application process for the establishment of child self-help groups. The process is the same for all applicants under the RFP.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(Proposed Amendment)

905 KAR 1:210. Alternative to detention; court resource home.

RELATES TO: KRS 199.645

STATUTORY AUTHORITY: KRS 194.050, 199.645

NECESSITY AND FUNCTION: KRS 199.645 requires the cabinet to establish regulations and standards for nonsecure alternatives to detention for children in preadjudicative status. The function of this regulation is to set minimum standards for [all] court resource homes.

Section 1. [2.] Definitions. (1) [(6)] "Administering agency" means the state agency responsible for developing a system of alternatives to detention: court resource homes. The administering agency may enter into agreements with local agencies for program supervision and monitoring.

(2) [(4)] "Applicant" means the adult[(s)] who has made application to the agency to operate a court resource home in compliance with this administrative regulation [pursuant to the provisions contained herein].

(3) [(1)] "Children" means:

(a) Those persons under the age of eighteen (18) against whom a status [and/]or public offense petition is pending, and who are placed in a court resource home as an alternative to detention; or

(b) Those persons under the age of eighteen (18) against whom status or public offense petitions may or may not be pending, who require emergency shelter, and are placed in a court resource home by law enforcement personnel as an alternative to detention.

(4) [(5)] "Court" means the juvenile session of the district court including the court designated worker, with jurisdiction of children

placed in a court resource home.

(5) [(2)] "Court resource home" means a private, single-family residence which meets the specifications contained herein and is approved by the agency.

(6) [(3)] "House parents" means the adult persons living in the court resource home who meet the qualifications specified herein and are approved by the agency.

(7) "Local agency" means the agency that approves, administers and monitors on a local level the application of court resource home regulations. This local agency may [could] be:

(a) The court designated worker;

(b) Cabinet for Human Resources;

(c) A local unit of government[, other public or private agency]; or

(d) Other responsible person designated by the court who agrees to supervise children prior to the disposition of their case.

Section 2. [1.] Scope of Operations and Services. Court resource homes, operated and maintained as alternatives to detention, provide temporary custodial care and supervision on a twenty-four (24) hour basis for children against whom public [and/]or status offense petitions are pending, and whose cases are awaiting disposition by district courts. Court resource homes may also be utilized by the court or law enforcement personnel for those children requiring emergency shelter, regardless of whether or not status [and/]or public offense petitions are pending against them. Services may include emergency medical [and/]or psychological care as required.

Section 3. Qualifications of House Parents. (1) House parents shall be persons of reputable character who possess personal qualities of:

(a) Maturity;

(b) Stability;

(c) Flexibility;

(d) The ability to cope with stress; [and]

(e) The ability to give and receive affection relative to the children placed in their court resource home; and

(f) Being [. They shall be] willing and able to cooperate with the local agency and the court in providing proper care and supervision for children.

(2) Criminal records.

(a) Applicants and other adults residing in the household shall [must] authorize the release of criminal records to the local agency;

(b) Households shall not be approved by the local agency if [having] an adult family household member is currently:

1. In prison;

2. Charged with a crime; or

3. On parole or [/]probation, will not be approved by the local agency;

(c) Applicants with felony convictions as adults shall [will] not be approved by the local agency;

(d) Applicants with misdemeanor offenses shall [will] not be approved. The local agency may make exceptions to this requirement, provided written documentation is placed in the record as to extenuating circumstances which make the applicants' household appropriate for the care of children; and

(e) Applicants shall [will] not be approved if children in the home (other than the children as defined herein) have petitions pending against them in district court, [and/]or if they have a history of involvement with the district court due to dependency, status, or public offense petitions. Exceptions to this requirement may be made by the local agency, provided written documentation is placed in the record as to extenuating circumstances which make the applicants' household appropriate for children.

(3) Age requirements. House parent applicants shall [must] be at least twenty-one (21) years of age. In studying the applicants, the local agency shall consider their ages as it affects their physical energy, flexibility, and ability to care for children.

(4) Income and employment.

(a) Applicants shall have sufficient income for maintaining their own family, [so as] to preclude dependence upon income generated by children placed in their home. [Such income shall be sufficient to meet the family's needs and provide for its financial security.] Exceptions may be made by the local agency, provided documentation justifying the exception is included in the [appropriate] record;

(b) Applicants shall not [care for unrelated adults on a commercial basis, nor be licensed and accepting children for day care,] at the same time they are functioning as approved house parents:

1. Care for unrelated adults on a commercial basis; or

2. Be licensed and accepting children for day care; and

(c) At least one (1) house parent applicant shall not be employed outside the home. [However,] The local agency may make exceptions [to this requirement,] based on:

1. The ages and behavioral characteristics of the children to be placed; [in the home]

2. Hours worked by the applicants; and

3. The applicants' [their] ability to make suitable alternative plans for the care and supervision of the children to be placed [in the home].

(5) Marital status.

(a) The local agency may approve single house parents if their circumstances [are such as to] justify approval and [. The local agency shall include] written justification is documented in the record [for the approval of single house parents in appropriate records];

(b) Married applicants shall have been married for at least one (1) year prior to their initial application [to become house parents,] and their relationship shall have been continuous and stable. [during this period of time. However,] Exceptions [to this requirement] may be made [by the local agency] if circumstances permit, and written justification [for the exception] is included in the record [appropriate records];

(c) Single persons living together, but not married, shall not [cannot] be approved as house parents. [However,] Exceptions may be granted if [by the local agency, provided that] written justification [for the approval] is included in the record [appropriate records];

(d) Approved house parents shall [immediately] notify the local agency of a [any] change in marital status; and

(e) The local agency, upon receipt of a [any] notification [made] pursuant to paragraph (d) of this subsection, shall [immediately] conduct a review of the court resource home to determine if it shall continue [continues] to be approved for the care and supervision of children.

(6) Medical status.
(a) House parent applicants shall provide the local agency: [with]
1. The health history of each member of the household, including physical and mental health services received; and
2. Information regarding a [any] household member taking psychotropic medication; and
(b) Applicants shall provide the local agency with a statement from a [properly] licensed physician verifying that each member of the household is free of [any] communicable diseases, specific illnesses, [and/]or [any] disabilities which may interfere with the applicant family's capability to care for children. The physician shall have examined members of the applicants' household during the year [immediately] preceding the date of application [to become agency house parents].

Section 4. Application Process. (1) Applicants shall provide the local agency with three (3) personal references and one (1) credit reference. Personal references shall [must] attest to the applicants' character and ability to [properly] care for children.
(a) References shall include an immediate neighbor and a current or former employer, if possible; and
(b) Shall not include more than one (1) personal reference from a relative of the applicant [No more than one (1) personal reference shall be a relative of the applicants].
(2) The local agency may require applicants to [shall] report [to the local agency]:
(a) A [any] history of child care for unrelated children; [or]
(b) Association with child caring organizations; and
(c) Provide the names of individuals who may [can] serve as references regarding these associations[, if the local agency considers this information significant].
(3) The local agency shall conduct telephone or face-to-face interviews with references. If there is a [any] question as to the propriety of applicants, then face-to-face interviews shall be conducted [with references], if possible.
(4) Adult children of applicants shall be interviewed face-to-face by the local agency if they reside in the community. If they reside outside the community, they may be interviewed by telephone.

Section 5. Selection of House Parents. (1) The local agency shall be responsible for approving the applicants' home [as acceptable for children] based upon a study [made] of the home[. The study shall be] conducted by planned interviews and home visits [by a local agency worker].
(2) Applicants shall [must] provide information to the local agency in regard to a [any] history of reports of child abuse or [/] neglect made regarding family members, or [as well as] reports of spouse abuse.
(3) The home study shall include personal interviews with [all] members of the applicants' household.
[(4) To be approved by the local agency, house parent applicants shall meet all the requirements contained in Section 3, and elsewhere, of this regulation.]
(4) [(5)] Children shall not be placed by the local agency court, or law enforcement personnel in court resource homes which have not received the local agency's prior approval.

Section 6. Agency Contract with Approved House Parents. The local agency shall have a written agreement, signed by the approved house parents and by a designated agency representative, prior to placing a child into the court resource home. The agreement shall [clearly] delineate the respective responsibilities and expectations of the local agency and the house parents, and shall specify the rate at which the house parents are to be reimbursed by the local agency. [It should be understood that] This agency agreement shall [does] not preclude the court resource home from developing a contract or written agreement with a fiscal court for funding at an established rate by other sources for other children.

Section 7. Agency Evaluation and Supervision of Approved Court Resource Homes. (1) [All] Approved court resource homes shall be evaluated at least annually by the local agency. The local agency shall maintain the results of these evaluations in files for [maintained on] each approved court resource home. These files shall be available for periodic review by the administering agency.
(2) The local agency shall maintain continuing supervision of court resource homes and the children placed in them, and shall assure that children are receiving the care, supervision, and services they require.
(3) When [Once] applicants have been approved, a [any] subsequent change in their circumstances shall [will] require the local agency to review the court resource home to determine if it continues to be appropriate for children. [These changes include, but are not limited to, marital status, significant decrease in income, etc.]
(4) The local agency shall submit a summary of its findings in regard to the reviews and evaluations required by this section to courts utilizing the court resource homes as alternatives to detention. [Such] Reports to the courts shall include [any] information required to keep the court informed as to the status of the court resource homes.
(5) House parents shall cooperate with the local agency in the agency's ongoing monitoring and supervision of [their] court resource homes, and the children placed in them.
(6) Court resource homes may be closed at the discretion of the local agency. Reasons for closure may include, but are not limited to:
(a) Sexual abuse or exploitation;
(b) Physical or emotional injury or abuse;
(c) Consistent lack of affection, care, or supervision;
(d) Court resource home environment not conducive to acceptable standards of child care; and
(e) Consistent violation of agency court resource home policies.
(7) The local agency shall conduct a review of a court resource home if there is a [as soon as practicable in the event of any of the following]:
(a) Death or disability of a family member;
(b) Separation, divorce, or marriage of house parent[(s)];
(c) Substantial decrease in, or loss of, income; [and]
(d) Birth of a child; and

(e) Allegation[(s)] of abuse or [/] neglect of a child[(ren) of which the agency is aware].

(8) Courts utilizing the court resource homes as an alternative to detention shall be notified by the local agency [as soon as practicable] of the [their] closure or of [any] other circumstances which may affect the judges' use of the home.

Section 8. House Parent Reimbursement. The local agency shall devise policies and procedures which provide for timely payment of house parents by the local agency at the rate[(s)] specified in the written agreement required by Section 6 of this regulation, including special payments for children's clothing and personal toilet and [/] grooming articles.

Section 9. Physical Facilities. (1) The court resource homes shall not present [no] hazards to the safety of children. Physical standards shall be sufficient to assure the safety and well-being of [all] occupants.

(2) Court resource homes shall be accessible to schools, recreational facilities, medical facilities and [any] other resources required by children.

(3) Court resource homes shall be comparable in condition and style to other homes in the [immediate] area in which they are located.

(4) Court resource homes shall have [properly] functioning and maintained plumbing, including at least:

(a) One (1) flush toilet;

(b) One (1) wash basin with running water; and

(c) One (1) bath or shower with hot and cold running water, which affords privacy.

(5) Court resource homes shall have at least two (2) doors which provide unrestricted exits in case of fire emergency. Occupied bedrooms shall not be locked from the outside.

(6) House parents shall develop fire emergency procedures, approved by the local agency, including unrestricted [means of] egress [in the event of fire emergencies]. House parents shall brief [all] children on the emergency fire procedures and the identified means of egress.

(7) Court resource homes shall have sufficient living or family room space, comfortably furnished and accessible to [all] family members, including children placed in the home.

(8) The bedroom or sleeping areas of children placed in the court resource homes shall not be in an attic or basement, unless the attic or basement has been [properly] renovated, and the house parents or their natural children have a bedroom in these areas. The local agency may make exceptions to this requirement, with documentation in the record [appropriate records] as to the rationale for granting the exception[(s)].

(9) The court resource home shall have sufficient bedroom or sleeping space to allow children adequate living space. [No] More than four (4) children shall [may] share a bedroom[, and they shall be of the same gender]. Children sharing a bedroom shall be of the same gender.

(10) Each child placed in the court resource home shall have his[/her] individual place to sleep that is appropriate to his[/her] height and weight, including [all appropriate] bedding, which shall be maintained in a state of repair and cleanliness.

(11) House parents shall have a bedroom separate from those of children placed in their home, but not so far removed as to prevent adequate supervision of children.

Section 10. Sanitation and Hygiene. (1) Housekeeping and cleanliness standards of the court resource home shall be acceptable to the local agency.

(2) Physical standards of court resource homes shall be those which are [generally] accepted as necessary for occupants' health and safety, including:

(a) A continuous supply of clean safe drinking water;

(b) An adequate supply of hot water for bathing and dishwashing purposes; and

(c) A premises free of rodents, insects, and other vermin.

(3) House parents shall provide children placed in their homes with items necessary for personal hygiene and grooming.

(4) Court resource homes shall be well-ventilated and [adequately] heated, with provisions for [adequate] cooling in summer months, either with air conditioners, fans or other means of providing [proper] circulation of fresh air.

Section 11. Safety and Emergency Requirements. (1) The house parents shall have a [properly] maintained and functioning telephone, and shall post the following emergency telephone numbers in a visable location near the telephone: [in a clearly visible location near the telephone, emergency telephone numbers, including, but not limited to,]

(a) Fire and police departments;

(b) Ambulance and rescue services;

(c) Designated local agency staff; and

(d) Poison control centers[, etc].

(2) [All] Poisonous chemicals, [and] cleaning materials, and other dangerous materials, shall be [properly] stored out of reach of children.

(3) Firearms and ammunition shall be kept in separate locked locations accessible only to the house parents or other responsible adults in the household.

(4) First aid supplies shall be available and stored in a location [readily] accessible to occupants of the court resource home.

(5) The court resource home shall be free from fire hazards[, such as faulty electrical cords and appliances, unsafe fireplaces, stoves, and chimneys, and accumulations of clutter and refuse].

(6) Court resource homes shall have operating:

(a) Smoke alarms within ten (10) feet of each bedroom or sleeping area; and

(b) A Class ABC fire extinguisher in the cooking area.

(7) Combustible items shall be stored away from sources of heat.

(8) Mobile homes shall be [properly] anchored to assure their structural integrity in high winds.

(9) [All] Vehicles used to transport children shall be maintained and operated in a [proper] manner [and] in compliance with [all] applicable motor vehicle laws[, including insurance requirements]. [All] Drivers of [such] vehicles shall have a valid [and current] driver's license, including [proper] insurance coverage.

(10) House parents shall notify the local agency which shall notify the judge with jurisdiction of the child [as soon as

practicable] of:
(a) Illness;
(b) Accidents;
(c) Injury; or
(d) [any] Unusual circumstances affecting the health, safety, physical and emotional well-being of children placed in their home. [Upon receipt of this information, the local agency shall notify the judge with jurisdiction of the child(ren).]

Section 12. Food Service. (1) House parents shall provide children with [nutritious] meals adequate to meet their daily nutritional requirements.
(2) House parents shall provide for [any] special dietary needs of a child [children] placed in their homes.

Section 13. Training of House Parents. Ongoing preservice and in-service training programs for court resource homes shall be provided by the local agency, or if available, by the administering agency. [Such] Training shall be designed to teach house parents to [properly] care for and supervise children from diverse backgrounds and races, and with varying problems, on a short-term basis, and shall include training in first aid procedures and techniques. Records of [all] preservice and in-service training shall be maintained for each house parent.

Section 14. Medical and Health Services. (1) Upon admission of a child to a court resource home, the house parents shall: [immediately]
(a) Complete a health screening procedure as specified by the local agency; and
(b) [. The house parents will immediately] Notify the local agency or court of [any] serious health problems identified.
(2) Within one (1) week of placement [of a child into a court resource home,] the local agency shall cause the child to be [thoroughly] examined by a [properly] licensed physician, if indicated.
(3) House parents shall report to the local agency [all] encounters of children placed in their homes with medical providers and [any] corrective or follow-up medical or [/] dental care required.
(4) House parents shall give medications to children placed in their homes only with a physician's prescription or authorization and shall dispense only the exact amount of [any] medications prescribed or authorized.
(5) House parents shall keep [all] medications, [prescribed or "across-the-counter," securely] locked in a location accessible only to responsible adults in the household.

Section 15. Recordkeeping. (1) The local agency shall keep a written record of the findings of its court resource home study and the evidence upon which these findings are based.
(2) The local agency shall maintain records of [all] evaluations and reevaluations of its court resource homes, including nonroutine reviews of specific court resource homes.
(3) The local agency shall maintain records on each child placed in court resource homes. Copies of [all] correspondence relating to children placed in court resource homes shall also be maintained by the local agency.
(4) The date of discharge of children from court resource homes, and the name and address of the person[(s) and/]or organization to which the children are released shall be recorded and maintained by the local agency, or the house parents.
(5) The local agency shall maintain the confidentiality of [all] case records.
(6) House parents and members of their households shall treat personal information regarding children placed in their home and these children's natural families in a confidential manner.
(7) House parents shall maintain records, in accordance with local agency requirements, on the children placed in their home. The records shall include [any] information specified by the local agency.

Section 16. Admissions and [/] Intake Procedures. (1) Placement of a [any] child in a court resource home approved by the local agency shall require the prior approval of the local agency or a court of competent jurisdiction, except that court or law enforcement personnel may place children requiring emergency shelter into a court resource home without prior approval. When these [In the event of such] placements, the house parents shall notify the court or local agency of the placement [as soon as practicable, but] no later than the next working day, if the child was placed on a holiday or weekend.
(2) Approval of house parent applicants by the local agency shall not guarantee the placement of a [any] child in their court resource home.
(3) [At no time shall] The total number of children in a court resource home shall, including the house parents' own children, not exceed six (6).
(4) The actual number of children placed in a court resource home shall be determined by: [the]
(a) Stamina;
(b) Capacities; [and]
(c) Skills of the house parents;
(d) The home's physical accommodations; and
(e) The effect of a child's placement upon the stability of the court resource home.

Section 17. Programs and Services. (1) House parents, in collaboration with the local agency, shall arrange for the provision of [any] services [immediately] required by children placed in court resource homes[, including but not limited to, medical services, psychological services, social services, etc].
(2) House parents may assign chores to children placed in their home which are appropriate for their ages and abilities and which are commensurate with chores assigned to their own children.
(3) Children shall be [directly] supervised by a house parent or other responsible adult in the court resource home [at all times] unless the child is:
(a) At school;
(b) With local agency staff; or
(c) [otherwise] Under the direct supervision of some other responsible adult [approved by the local agency]. The local agency may grant exceptions to this requirement in regard to specific children. The reason[(s)] for the exception shall be in writing and shall be maintained in the child's record.
(4) The local agency and the house parents

shall cooperate in assuring the continuity of children's education to the extent practicable.

Section 18. Communication: Mail, Visitation, and Telephone. (1) Visitation between children placed in court resource homes and their families and appropriate others, and [as well as] telephone contacts, are permitted at recommended hours[, unless otherwise] ordered by a court.

(2) Written correspondence to or from children placed in court resource homes shall not be opened, read, or withheld from them, except on the basis of a court order.

(3) House parents shall cooperate [fully] with children's attorneys in arranging for interviews at reasonable times and in locations with a reasonable degree of privacy.

Section 19. Rights. (1) The rights and best interests of children shall be paramount, with due regard for the interests of the community.

(2) An [No] applicant for house parent status or a [and no] child needing a court resource home as an alternative to detention shall not be denied approval or placement [solely or primarily] on the basis of age, race, sex, marital status, religion, or national origin, except as provided herein.

(3) The local agency shall assure that the rights of children placed in court resource homes, their natural parents, and house parents are protected.

(4) Natural parents have the following rights:

(a) To maintain meaningful contact with their children through visitation, phone calls, and letters[, except as provided in this regulation];

(b) To provide and consent to medical care for their children;

(c) To file formal complaints with the agency; and

(d) To receive protection of confidentiality in their personal affairs.

(5) Children have the following rights:

(a) Adequate food, clothing, and shelter; and

(b) To be free from physical, sexual, and emotional injury, exploitation and abuse.

(6) Personal belongings.

(a) House parents shall allow children to bring and acquire appropriate personal belongings and shall send [all] personal belongings with children when they depart the court resource home[, as appropriate]; and

(b) House parents shall not accept [any] part of a child's earned or unearned income without prior written agreement of the local agency and the child placed in their home.

(7) Religious and ethnic heritage.

(a) House parents shall respect children's religious beliefs and shall not coerce them to participate in [any] religious activities; and

(b) House parents shall demonstrate respect for children's natural families and their ethnic heritage.

Section 20. Rules and Discipline. (1) House parents shall establish well-defined and consistently enforced rules, which set [clear] expectations and limits to the behavior of children.

(2) Discipline and guidance of children shall emphasize praise and encouragement for proper behaviors, as opposed to punishment for undesirable behaviors.

(3) House parents shall not subject the children placed in their home to:

(a) Verbal abuse;

(b) Derogatory remarks about themselves or their natural families; or [nor to]

(c) Threats of removal from the court resource home.

(4) Children shall not be isolated from others for undue periods of time and shall not be placed in locked areas in the court resource home. House parents may place them apart from other family members for brief "cooling off" periods, but shall remain near to facilitate [proper] supervision.

(5) House parents shall not administer the following forms of discipline:

(a) Cruel, severe, bizarre, or humiliating actions;

(b) Denial of food, clothing, or shelter;

(c) Denial of visits, telephone usage, or written contacts with members of the natural family and appropriate others[, except as provided herein]; and

(d) Assignment of exercise or work as punishment.

(6) House parents shall not punish children placed in their home for bedwetting.

(7) House parents shall not permit children to discipline other children.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 9, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services 2nd Floor Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Rawlings

(1) Type and number of entities affected: The type and number of entities affected are those applicants for approval as court resource homes as the regulation set minimum standards for all court resource homes.

(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

1. First year: There will not be any direct and indirect costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

2. Continuing costs or savings: There will not be any continuing costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities because the proposed regulations only clarify and correct terminology

in order to improve the existing regulations.
(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.
(2) Effects on the promulgating administrative body: There will not be any cost or savings to the Department for Social Services as the proposed regulations only clarify and correct terminology in the current regulations. The proposed regulations will improve the language of the regulation but does not effect the way in which the court resource homes are approved.
(a) Direct and indirect costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.
1. First year: There will not be any direct or indirect cost or savings during the first year for the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.
2. Continuing costs or savings: There will not be any continuing cost or savings for the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.
3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or effect competition for the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.
(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because the proposed regulations only clarify and correct terminology in order to improve the existing regulations.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.
(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.
(6) Any additional information or comments: There are no additional information or comments of which we are aware.
TIERING: Was tiering applied? No. This regulation was not tiered as it amends an existing regulation to comply with KRS Chapter 13A.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(Proposed Amendment)

905 KAR 3:030. Matching requirements.

RELATES TO: KRS 199.420, 205.204, 209.030
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Omnibus Budget Reconciliation Act of 1981 substantially reduced the amount of federal funds the Commonwealth receives through the Title XX "Social Services Block Grant" and the "Community Services Block Grant" established under the [said] Reconciliation Act of 1981. Matching requirements are being established to encourage and assure local support and sharing in service provision; and to reduce, to the extent possible, the full impact of federal reductions in funds.

Section 1. Definitions. [As used in this regulation, the following terms shall have the meanings as set forth below:]
(1) "Certified expenditures" means [any] cash expenditure incurred by the local provider of services through the Social Services or Community Services block grant funds when [such] expenditures are determined to be allowable, reasonable, and necessary under applicable laws and procedures of the Commonwealth and federal laws and regulations for the block grants. [Such] Certified expenditures may be incurred by the provider of service whether public or private nonprofit, or may be certified on behalf of the provider by a third party which may also be a public or private nonprofit organization.
(2) "In-kind contributions" means property or services which directly benefit the service purchased; which are contributed by the provider or a nonfederal third party without expenditure by the local provider; and would have been an allowable, reasonable and necessary cost in accordance with applicable laws and procedures of the Commonwealth and federal laws and regulations for the block grants if purchased by the provider.
(3) "Local matching funds" means [any] cash received from a local organization or individual, local taxes, state funds received by local agencies, or federal general revenue sharing funds received for use by local governments. [No] Other federal funds shall be allowed as matching and [no] other funds identified in this regulation for match shall satisfy this requirement if used to match other state or federal funds.

Section 2. [All] Contractors who provide social services funded by Title XX - Social Services Block Grant, PL 97-35, shall be required to provide matching on a seventy-five (75) percent to [/] twenty-five (25) percent ratio. Local match may be cash, certified expenditures, or in-kind contributions. If [In cases where] it is advantageous to the state to provide the local match [in order] to obtain a needed service, the state may provide the local match on behalf of the local agency. The local match shall consist of one (1) dollar for every three (3) dollars in federal funds expended for in-kind in the same ratio.

Section 3. Community Services Block Grant. Contractors utilizing Community Services Block

Grant funds, P.L. 97-35, shall meet the same requirements set forth in Section 2 of this regulation, except that the matching ratio shall be eighty (80) percent federal and twenty (20) percent local matching funds, and in-kind contributions may be used for [all] CSBG contracts.

Section 4. (1) Certified expenditures for local match shall require documentation sufficient to determine that the requirements of this regulation are met by the provider [and/]or a third party when certified by a third party. Third party entities shall enter a contractual agreement with the provider as to the type of expenses and methods of documentation to be used for [all] the certified expenditures. The contractual agreement shall include at least a requirement to make records available for audit by the provider, Cabinet for Human Resources, [and/]or entities authorized by the Cabinet for Human Resources [to audit said records]. The provider may be subject to disallowances and reimbursement to the Commonwealth if [such] expenditures are not documented by the provider or the third party.

(2) In-kind contributions for local match shall require documentation sufficient to determine that the requirements of this regulation are met by the provider [and/]or third party. Values placed on in-kind contributions shall be based on 45 CFR Part 74, Subpart G, Cost Sharing or Matching, as printed June 9, 1981 and as subsequently amended, except as otherwise authorized in this regulation.

(3) State fund cash match may be interaccounted to the Cabinet for Human Resources' Department for Social Services for disbursement with the federal funds matched. Interaccounted funds shall require documentation sufficient to determine that the requirements of this regulation are met.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 9, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Joyce Young
(1) Type and number of entities affected: The type and number of entities affected are contractors under the Social Services Block Grant and the Community Service Block Grant.
(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.
1. First year: There will not be any direct and indirect costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.
2. Continuing costs or savings: There will not be any continuing costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities because the proposed regulations only clarify and correct terminology in order to improve the existing regulations.
(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.
(2) Effects on the promulgating administrative body: There will not be any cost or savings to the Department for Social Services as the proposed regulations only clarify and correct terminology in the current regulations. The proposed regulations will improve the language of the regulation but does not effect the way in which the department administers the block grants.
(a) Direct and indirect costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.
1. First year: There will not be any direct or indirect cost or savings during the first year for the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.
2. Continuing costs or savings: There will not be any continuing cost or savings for the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.
3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or effect competition for the Department for Social Services because the proposed regulations only clarify and correct terminology in the existing regulations.
(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because the proposed regulations only clarify and correct terminology in order to improve the existing regulations.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.
(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation

with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(6) Any additional information or comments: There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? No. This regulation was not tiered as it affects all contractors under both block grants regarding the established matching requirements.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(Proposed Amendment)

905 KAR 7:060. Children's residential facilities capacities.

RELATES TO: KRS 605.080-605.110, 605.150 [Chapter 208]

STATUTORY AUTHORITY: KRS 194.050, 605.150

NECESSITY AND FUNCTION: PL 97-35 Subtitle C "Block Grants for Social Services - Title XX" authorizes grants to states for social services including staff development and training. KRS 605.100 [208.400] mandates that the Cabinet for Human Resources manage and develop facilities necessary to provide an adequate and modern program of care, treatment and rehabilitation of children. The function of this regulation is to establish desired capacities for the residential facilities operated by the Department for Social Services for children.

Section 1. The Department for Social Services' Division of Children's Residential Services shall, in so far as possible, have as a goal facility capacities as follows:

(1) Central Kentucky Treatment Center, 47;
(2) Green River Boys' Camp, 44 [40];
(3) Woodsbend Boys' Camp, 40;
(4) Owensboro Treatment Center, 33;
(5) Morehead Treatment Center, 32 [45];
(6) Rice-Audubon, 42;
(7) Lincoln Village Treatment Center, 32; [36; and]
(8) Lake Cumberland Boys' Camp, 44; [37.]
(9) Johnson-Breckinridge, 32;
(10) Mayfield Treatment Center, 30;
(11) Cardinal Treatment Center, 30;
(12) Northern Kentucky Treatment Center, 40.

[This increase in capacity is a temporary measure to assist with waiting lists.]

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: September 21, 1991

FILED WITH LRC: October 4, 1991 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul Gibson

(1) Type and number of entities affected: The type and number of entities affected are the children that may be placed in the 12 residential treatment facilities operated by the Department for Social Services.

(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to update the existing regulation.

1. First year: There will not be any direct and indirect costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

2. Continuing costs or savings: There will not be any continuing costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decreases costs or effect competition for the affected entities because the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: There will not be any cost or savings to the Department for Social Services as the proposed regulations only clarify and correct terminology in the current regulations. The proposed regulations will improve the language of the regulation and update the number of residential treatment facilities.

(a) Direct and indirect costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.

1. First year: There will not be any direct or indirect cost or savings during the first year for the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.

2. Continuing costs or savings: There will not be any continuing cost or savings for the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or effect competition for the Department for Social Services because the proposed regulations only clarify and correct terminology in the existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because the proposed regulations only clarify and correct

terminology in order to improve the existing regulations.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.
(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.
(6) Any additional information or comments: There are no additional information or comments of which we are aware.
TIERING: Was tiering applied? No. This regulation was not tiered as it only amends the existing regulation to comply with KRS Chapter 13A.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(Proposed Amendment)

905 KAR 7:100. Resident liaison responsibilities.

RELATES TO: KRS Chapter 202A, 605.080-605.110, 605.150 [208.410]
STATUTORY AUTHORITY: KRS 194.050, 202A.191, 605.150
NECESSITY AND FUNCTION: KRS 194.050 requires the Cabinet for Human Resources to adopt regulations necessary to operate the programs vested in the cabinet. KRS 202A.191 requires the secretary to adopt [rules and] regulations for the proper administration and enforcement of this chapter. KRS 605.100 [208.410] requires the cabinet to arrange for a program of care, treatment and rehabilitation of the children committed to it. The purpose of this regulation is to establish a resident liaison program in each of the residential facilities operated by the Department for Social Services.

Section 1. Program and Purpose. (1) The Department for Social Services shall develop and implement a liaison program for the Division of Children's Residential Services.
(2) The purpose of this program shall be:
(a) To provide youth in residential services' programs with a contact person outside the facility staff with whom they may discuss their problems and concerns.
(b) To advise clients of their rights, duties, and responsibilities, including their right to file a formal service or [/] civil rights complaint [and/or to sign out of a psychiatric facility].
(c) To conduct evidentiary hearings as requested in compliance with the service or [/] civil rights complaint procedures and[/or] to call for an independent medical review per KRS Chapter 202A.
(d) To work with facility staff in an effort to resolve problems and concerns of both staff and residents prior to a formal complaint.
(e) To identify both long and short-term goals that affect the client population.
(f) To advise central office of problems and concerns that have been identified.
(g) To assist residents in filing a formal service or [/] civil rights complaint [and/or offer assistance to residents of a psychiatric facility of his right to refuse treatment].

Section 2. Recording. The liaison shall note in the client record [all] problems and concerns discussed and the resolution thereof.

Section 3. Access. The liaison shall not be denied access to clients or the record of clients with whom they are working.

Section 4. Confidentiality. The liaison shall protect the confidentiality of the records and identity of the clients in accordance with the policies of the department and the Kentucky Revised Statutes.

Section 5. Reporting. The liaison shall keep the program director and central office informed of his activities.

Section 6. Procedures. (1) The name, address, and telephone number of the liaison and a brief statement about the child's right to contact the liaison shall be included in the orientation package given the residents upon admission.
(2) A certain day of each month [(i.e., the third Friday)] shall be scheduled for the liaison to be at the facility stating [giving] the place and hour that clients may talk with him.
(3) The liaison shall be provided with a list of new admissions since his last monthly visit so he may introduce himself in a casual setting to the resident and let him know he is interested [in him] and available. [(This should be a casual meeting on campus – not a scheduled appointment in some room.)]
(4) The liaison shall document a summary progress note of his contacts in the child's record.
(5) Formal complaints shall be forwarded to a juvenile services specialist assigned to the treatment program. The specialist [(JSS) who has not been involved with the client. The JSS] shall follow manual procedures for resolving [on] complaints.
(6) The liaison shall periodically talk informally with staff on an individual basis to get their feelings about the program and suggestions for improvement.
(7) The liaison shall submit a monthly report to central office to include:
(a) The number of residents talked with;
(b) Major problems;
(c) Staff concerns;
(d) Recommendations for improvement; and
(e) Other needs of the facility. [, etc.]
(8) The liaison shall keep the program director informed of his activities.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 26, 1991
FILED WITH LRC: October 4, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at

9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul Gibson

(1) Type and number of entities affected: The type and number of entities affected are the 47 residential facilities and the children to be served by the residential liaison program established in each facility.

(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulation.

1. First year: There will not be any direct and indirect costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

2. Continuing costs or savings: There will not be any continuing costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities because the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: There will not be any cost or savings to the Department for Social Services as the proposed regulations only clarify and correct terminology in the current regulations. The proposed regulations will improve the language of the regulation but does not effect the way in which the department administers the residential liaison program.

(a) Direct and indirect costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.

1. First year: There will not be any direct or indirect cost or savings during the first year for the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.

2. Continuing costs or savings: There will not be any continuing cost or savings during the first year for the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or effect competition for the Department for Social Services because the proposed regulations only clarify and correct terminology in the existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(6) Any additional information or comments: There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? No. This regulation was not tiered as it only amends an existing regulation to comply with KRS Chapter 13A.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

906 KAR 1:010. Policies and procedures pertaining to audits.

RELATES TO: KRS 194.030(12) [(10)]
STATUTORY AUTHORITY: KRS 194.050(1)
NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed by KRS 194.050(1) to establish regulations relating to operations of programs within the cabinet. KRS 194.030(12)[(10)] provides that the Office of the Inspector General shall be responsible for the conduct of audits. The function of this regulation is to adopt applicable policies and procedures for audits and examinations of programs within the Cabinet for Human Resources, its grantees and contractors.

Section 1. Standards for Audit of Governmental Organizations, Programs, Activities, and Functions. The 1981 revision of the U.S. General Accounting Office (GAO) "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" is hereby adopted by reference

Section 2. Accounting Standards. The June 1, 1989 [1983] edition of the "Accounting Standards" published by the Financial Accounting Standards Board, High Ridge Park, P.O. Box 3821,

Stamford, Connecticut 06905-0821 is hereby adopted by reference.

Section 3. Federal Regulations. The following federal regulations are hereby adopted by reference: 7 CFR 246; 7 CFR 3016; 10 CFR 440; 10 CFR 600; 28 CFR 66; 29 CFR 97; 34 CFR 80; 42 CFR 2; 45 CFR 74; 45 CFR 92; 45 CFR 96; FNS Instruction 808-1 "Financial Management-Special Supplemental Food Program for Women, Infants, and Children" issued by the U.S. Department of Agriculture; "Guidelines for Audits of Federal Awards to Nonprofit Organizations" issued by the U.S. Department of Health and Human Services; "Audit Guide for Department of Energy Grants" issued by the U.S. Department of Energy.

Section 4. U.S. Office of Management and Budget Circulars. The following U.S. Office of Management and Budget Circulars are hereby adopted by reference: A-21; A-87; A-102 (Common Rule); A-110; A-122; A-128; A-133; "Compliance Supplement for Audits of State and Local Governments" issued by the U.S. Office of Management and Budget.

Section 5. Department for Medicaid Services Manuals. The following Department for Medicaid Services manuals are hereby adopted by reference: "Cabinet for Human Resources, Title XIX and DMH/MRS Funding Community Mental Health-Mental Retardation Reimbursement Manual"; "Department for Medicaid Services, Community Mental Health-Mental Retardation Reimbursement Manual"; "Community Mental Health Services Manual, Kentucky Medical Assistance Program, Community Mental Health Benefits Policies and Procedures"; "Alternative Intermediate Service/Mental Retardation Services Manual, Kentucky Medical Assistance Program, Alternative Intermediate Services/Mental Retardation Policies and Procedures"; "Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual"; "Kentucky Medical Assistance Program Nursing Facility Payment Reimbursement Manual"; "Kentucky Medical Assistance Program Primary Care Reimbursement Manual"; "Cabinet for Human Resources, Title XIX Home Health Reimbursement Manual"; "Kentucky Medical Assistance Program Adult Day Health Care Waiver Project Reimbursement Manual"; "Cabinet for Human Resources Title XIX Inpatient Hospital Reimbursement Manual"; "Home and Community Based Waiver Services Manual"; "Intermediate Care Facility Services Manual"; "Kentucky Medical Assistance Program Nursing Facility Services Manual"; "Home Health Services Manual"; "Skilled Nursing Facilities Services Manual"; "Primary Care Services Manual"; "Hospital Services Manual"; "Mental Hospital Services Manual"; "Adult Day Health Care Services Manual".

Section 6. Department for Mental Health and Mental Retardation Services Manual. The following Department for Mental Health and Mental Retardation Services manual is hereby adopted by reference: "Kentucky Department for Mental Health and Mental Retardation Services, Program Policies and Billing Instructions Manual".

Section 7. Department for Health Services Manuals. The following Department for Health Services manuals are hereby adopted by reference: "Local Health Policy Manual"; "Financial Management Manual"; "State Plan, Supplemental Food Program for Women, Infants and Children (WIC) FY: 1990-91"; "WIC Manual".

Section 8. Department for Employment Services Manuals. The following Department for Employment Services manuals are hereby adopted by reference: "Commonwealth of Kentucky, Department for Employment Services, Weatherization Operations Manual, 1988 Revised Edition", "1990-91 Weatherization Program - Audit Requirements".

Section 9. Department for Social Services Manuals. The following Department for Social Services manuals are hereby adopted by reference: "Children's Residential Services Manual"; "Cabinet for Human Resources, Department for Social Services, Community Services Block Grant Audit Guide", "1990-91 CSBG Program - Audit Requirements".

Section 10. Kentucky Association for Community Action Agencies Manual. The following Kentucky Association for Community Action Agencies manual is hereby adopted by reference: "Low Income Home Energy Assistance Program, Crisis Component, 1991".

Section 11. Cabinet for Human Resources Policy. The following Cabinet for Human Resources policy is hereby adopted by reference: "Provision for Limitation on Indirect Administrative Cost in Contracts".

Section 12. Terms and Conditions of Cabinet for Human Resources Contracts. Audits will be conducted in accordance with the terms and conditions contained in contracts executed by the Cabinet for Human Resources.

Section 13. Effective Date. The manuals cited in Sections 5 through 11 of this regulation are updated through October 1, 1991.

[Section 3. Federal Regulations, Circulars, and Principles of Reimbursement Manual for Governmental Programs. The "Federal Regulations, Circulars, and Principles of Reimbursement Manual for Governmental Programs, Office of the Inspector General," (two (2) volumes) dated May 14, 1984 is hereby adopted by reference. This manual includes: Federal Regulations, Title 45 Part 74 and 96; Federal Regulations, Title 42 Part 447; Federal Regulations, Title 7 Part 246; Federal Management Circular (FMC) 74-4 and 74-7; Federal Office of Management and Budget (OMB) Circular A-21, A-87, A-102, A-110, and A-122; Federal Health Insurance Manual (HIM) 16; Health, Education and Welfare (HEW) - Cost Principles OASC 1, 3, 5 and 10; Title XIX, Title XX and Department for Health Services Funding Manual for Community Mental Health-Mental Retardation (FY 1983).]

Section 14. [4.] Location of Manuals Referenced in this Regulation. A copy of each regulation, circular, and manual referenced in this regulation is on file in the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621 and is open to public inspection.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 4, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tommy Richie
(1) Type and number of entities affected: Adult day care - 10; home and community based waiver - 81; home health agencies - 116; mental hospitals - 15; primary care centers - 18; IC/SN/MR/SW/IMD/dual bed/hospital based SN facilities - 253; comprehensive care centers - 14; community action agencies - 24; university - 1; children's residential facilities - 12; other nonprofit agencies - 34.
(a) Direct and indirect costs or savings to those affected: Updates applicable policies and procedures for audits and examinations of programs within the Cabinet for Human Resources, its grantees and contractors, conducted by the Division of Audits. Has no monetary effect.
1. First year: No monetary effect.
2. Continuing costs or savings: Has no monetary effect.
3. Additional factors increasing or decreasing costs (note any effects upon competition): No monetary effect.
(b) Reporting and paperwork requirements: Updates applicable policies and procedures for audits and examinations of programs within the Cabinet for Human Resources, its grantees and contractors, conducted by the Division of Audits. No additional reporting or paperwork required.
(2) Effects on the promulgating administrative body: No effect as this updates applicable policies and procedures for audits and examinations of programs within the Cabinet for Human Resources, its grantees and contractors, conducted by the Division of Audits.
(a) Direct and indirect costs or savings: No monetary effect.
1. First year: No monetary effect.
2. Continuing costs or savings: No monetary effect.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: This regulation poses no additional paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: There would be no effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Does not apply to this regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation does not conflict, overlap or duplicate any statute, regulation or policy.
(a) Necessity of proposed regulation if in conflict: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments: No
TIERING: Was tiering applied? No. This amendment has no monetary effect.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

906 KAR 1:030. Hearings concerning employment agencies.

RELATES TO: KRS Chapter 340
STATUTORY AUTHORITY: KRS 194.120, 340.070
NECESSITY AND FUNCTION: The Secretary of the Cabinet for Human Resources is authorized by statute to promulgate regulations for administration of KRS Chapter 340 concerning the regulation of employment agencies. It is necessary to provide a framework for resolution of appeals of negative licensure actions.

Section 1. Definitions. [(1) "Cabinet" means the Cabinet for Human Resources.]
(1) [(2)] "Negative licensure action" means an action by the cabinet to revoke, modify, suspend or deny relicensure of an employment agency.
[(3) "Employment agency" means the person or organization defined in KRS 340.010(3).]
(2) [(4)] "Hearing officer" means the person designated by the Secretary of Human Resources to conduct a hearing and make a recommendation to the cabinet on any appeal of negative licensure action.

Section 2. (1) Any employment agency may appeal negative licensure action taken by the cabinet by notifying the cabinet [for Human Resources] within twenty (20) days of the issuance of notice of negative licensure action. Upon receipt of notice of appeal, the Secretary of the cabinet [for Human Resources] shall designate a hearing officer.
(2) Notice of hearing shall be mailed to the employment agency not less than ten (10) days prior to the commencement of the hearing. The notice of hearing shall contain the reasons for negative licensure action. The notice of hearing shall be mailed by certified mail, return receipt requested to the employment agency.
(3) The employment agency and the cabinet may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions of witnesses who, in his opinion, for good cause shown cannot be present at the hearing. A hearing officer shall reside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.
(4) All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript.
(5) The hearing officer may place reasonable

time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

(6) The hearing officer shall make a written recommendation to the cabinet including findings of fact and conclusions of law. With the recommendation, the hearing officer shall forward to the cabinet the record consisting of all documents, exhibits and recorded testimony introduced in the hearing.

(7) The hearing officer's finding shall be the final determination of the Cabinet [shall issue a final determination of licensure status within ten (10) days of the receipt of the recommendation of the hearing officer].

(8) No hearing officer shall participate in any hearing involving an employment agency with which he has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, staff, fiduciary, contractual, creditor or consultative relationship.

(9) The hearing officer's finding shall include the following notice: if the claimant feels that his rights have been violated, he may consult an attorney to ascertain whether further action is possible.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: September 26, 1991

FILED WITH LRC: October 10, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander/Ralph Von Derau/David Crane

(1) Type and number of entities affected: 105

(a) Direct and indirect costs or savings to those affected: There should be no additional cost to those affected.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: The costs should be minimal.

(a) Direct and indirect costs or savings: $500 for printing new regulation.

1. First year: $500 for printing costs.
2. Continuing costs or savings: No continuing costs should be associated with this amendment since printing costs are a normal agency expense.
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This change is necessary in order to bring this regulation into compliance with KRS Chapter 13A drafting requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation is concerned with the hearing rights of Employment Agencies after the cabinet has made a negative finding with regards to their compliance with licensure standards and as such must apply to all agencies equally.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

906 KAR 1:090. Postaudit appeal procedures of programs and vendors of services with whom the Cabinet for Human Resources has contracted.

RELATES TO: KRS 194.025(2), (3), 194.030(12) [(10)], 194.040, 194.050(1)

STATUTORY AUTHORITY: KRS 194.050(1)

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized by KRS 194.025(3) to enter into such contracts and agreements as may be necessary to carry out the general intent and purposes of the cabinet. The Office of the Inspector General is directed by KRS 194.030(12) [(10)] to conduct audits and investigations of programs and vendors of services with whom the cabinet has contracted. It is the function of this regulation to provide for a postaudit process and an audit appeal process for programs and vendors of services with whom the cabinet contracts.

Section 1. Postaudit Process. Except as otherwise provided in Section 3 of this regulation, the following procedures are established in the Cabinet for Human Resources:

(1) An exit conference shall be scheduled by the auditor upon the completion of an audit. Representatives at this meeting shall include at a minimum: an auditor who participated in the audit and an authorized representative of the audited entity who may have an attorney and/or accountant present.

(2) Following the exit conference, except as noted in subsection (3) of this section, the Division of Audits or the private audit firm will provide a draft copy of the preliminary

findings to the audited entity and the program department or office representative.

(3) Following the exit conference for audits of the programs identified in Section 3(1) through (9) of this regulation, the Division of Audits will issue a final audit report to the Department for Medicaid Services only.

(4) [(3)] The audited entity shall have thirty (30) days from the date of receipt of the draft report to request a formal exit conference or to submit a written response to the Division of Audits or private audit firm. The written response shall identify all issues in dispute and shall include supporting documentation or reference to such documentation.

(5) [(4)] Upon receipt of the audited entity's response, a copy thereof shall be submitted by the Division of Audits (or the private audit firm) to the appropriate program department or office for review, comment and resolution of such issues as may be possible. The audited entity, Division of Audits (or the private audit firm) and the program department or office shall communicate or meet as necessary to clarify the issues, review documentation and resolve such issues as may be possible. Upon completion of the resolution process the Division of Audits (or the private audit firm) shall issue a final audit report.

(6) [(5)] The Division of Audits or the private audit firm shall submit the final audit report to the audited entity, the program department or office[, and the Office of Policy and Budget]. In situations where the private audit firm performed the audit, such firm shall also send a copy of the final report to the Division of Audits.

Section 2. Audit Appeal Process. (1) Upon issuance of the final audit report by the Division of Audits or the private audit firm, the audited entity desiring an appeal shall have thirty (30) days from date of issuance to submit a written statement of appeal and request for hearing to the Office of the Secretary of the Cabinet for Human Resources. The statement of appeal by the audited entity shall set forth the specific issues which remain in dispute and the basis upon which the audited entity relies to support its position.

(2) Upon receipt of the statement of appeal and request for hearing, an attorney from the Office of the General Counsel, who will serve as chairperson of the audit appeal panel, shall schedule a hearing which shall be held within 120 days of receipt of the statement of appeal and request for hearing unless waived by the audited entity. Notice of the hearing shall be sent to the audited entity by certified mail at least fifteen (15) days prior to the hearing date. In addition to the chairperson, the audit appeal panel shall be composed of two (2) representatives within the Cabinet for Human Resources appointed by the secretary. The chairperson shall be a nonvoting member except in case of a tie vote. The panel members shall not have participated in the administration of the program involved in the audit or in the performance of the audit in dispute.

(3) The chairperson shall conduct the proceedings in an orderly fashion consistent with the rules of conduct of an administrative hearing and due process of law.

(4) The decision of the panel shall be issued within sixty (60) days after the hearing except that if briefs are submitted by the parties the decision will be issued within thirty (30) days after their submission. The decision shall reflect the basis upon which it is given.

(5) Written notice of the final decision will be sent to the secretary, the audited entity, the program department or office, [the Director of the Division of Fiscal Services,] the Director of the Division of Audits, [the Executive Director of the Office of Policy and Budget,] and, if appropriate, the private audit firm. The decision of the panel shall constitute the final decision of the cabinet.

(6) Subsequent to the appeal or acceptance of the audit findings by the audited entity, without appeal, the appropriate department commissioner or office director will take action to effect formal closure of the audit.

Section 3. Audits Conducted for the Purpose of Determining Allowable Costs and Reimbursement for Certain Services. Audits conducted for the purpose of determining allowable costs and reimbursement relative to the following services shall follow the appeal procedures established in each respective program's reimbursement manual on file with the Department for Medicaid Services except that such audits conducted for fiscal periods ended prior to July 1, 1982 for the purpose of determining allowable cost for the Title XIX program shall follow the appeal process set forth in Section 2 of this regulation for appellate resolution:

(1) Adult day care;
(2) Dual licensed;
(3) Home health agencies;
(4) Home and community based waiver;
(5) Certified nursing facility;
(6) Mental (psychiatric) hospitals;
(7) Primary care;
(8) Swing bed;
(9) IMD (institute for mental disease); and
(10) Community mental health centers.

[(1) Skilled nursing facility services;]
[(2) Intermediate care facility services;]
[(3) Primary care center services;]
[(4) Hospitals; and]
[(5) Audits conducted for the purpose of determining allowable costs and reimbursement relative to the community mental health-mental retardation boards shall follow the audit procedures established in each respective program's reimbursement manual on file with the Department for Social Insurance, Division of Management and Development, except that such audits conducted for fiscal periods ended prior to July 1, 1982, for the purpose of determining allowable costs for the Title XX program shall follow the appeal process set forth in Section 2 of this regulation for appellate resolution.]

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 26, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human

Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander, Ralph Von Derau, David Crane

(1) Type and number of entities affected: 85

(a) Direct and indirect costs or savings to those affected: There should be no additional cost to those affected.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: The costs should be minimal.

(a) Direct and indirect costs or savings: $500 for printing new regulation.

1. First year: $500 for printing costs.

2. Continuing costs or savings: No continuing costs should be associated with this amendment since printing costs are a normal agency expense.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This change is necessary in order to bring this regulation into compliance with KRS Chapter 13A drafting requirements, and to bring this regulation under the authority of the Inspector General.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This is a regulation which is concerned with the conduct of audits and as such must apply to all entities subject to these reviews.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:002. Definitions.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a, b, d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth definitions for words and[/or] phrases used by the cabinet in regulations pertaining to the provision of medical assistance.

Section 1. Definitions. Definitions of terms or phrases utilized in regulations relating to the Medical Assistance Program are as follows:

(1) "Actual acquisition cost" means the amount paid by a provider for medical supplies minus any amounts refunded to, or deducted by, the provider on account of early or timely payment, purchasing in volume, or [such] other normal business practices, and which reduce the actual amount of capital investment required of the provider.

(2) "Charge" means the amount of payment or reimbursement required by the provider for the medical procedure or service.

(a) "Prevailing charges" means those charges which fall within the range of charges most frequently and most widely used in a medical area for particular medical procedures or services.

(b) "Reasonable charge" means a charge for a health care service rendered that is consistent with efficiency, economy and quality of the care provided.

(c) "Usual and customary charge" means the uniform amount which the medical provider charges in the majority of cases for a specific medical procedure or service.

[(3) "CFR (Code of Federal Regulations)," federal regulations which transfer to regulatory form the specific requirements of federal law.]

(3) [(4)] "Comparable services" means generally speaking, medical services provided to the general public which are equivalent in nature, scope and delivery method to similar medical services provided to Medicaid [medical assistance] program recipients.

(4) [(5)] "Deductible" means amounts payable by the recipient which fall within an aged beneficiary's deductible liability imposed by Medicare [Title XVIII, Part B, Health Insurance for the Aged].

(5) [(6)] "Coinsurance" means amounts payable by the recipient under the provisions of Medicare [Title XVIII, Part B], for covered medical services rendered under the Medicare Program, and becoming due after satisfaction of the deductible liability.

(6) [(7)] "Eligible individual" means a person who has applied for medical assistance and has been found to meet all applicable conditions for eligibility pertaining to Kentucky's Medicaid [Medical Assistance] Program.

(7) [(8)] "Excess income" means that portion of the income of the individual or family group which exceeds amounts allowable to the individual or family group as disregarded income or income protected for basic maintenance, and which results in a determination of ineligibility.

(8) [(a)] "Excess resources" means that portion of the liquid assets or other resources of the individual or family group in excess of the amounts which may be retained for the individual or family group's security and personal use, not exempted from consideration or otherwise accounted for by special specified circumstances, and which result in a determination of ineligibility.

[(b) "Spend-down," the process by which excess income is utilized for recognized medical expenses, and which, when excess income is depleted, results in a determination of eligibility if all other eligibility factors are met.]

(9) "Flat fee schedule" means a specified rate

or grouping of rates at which reimbursement is made for a covered service or services, taking into account such factors as cost of providing the service, the necessity to ensure an adequate supply of providers for utilization by recipients, and Medicaid's [the department's] ability to pay.

(10) "Flat fee based on cost of service" means a specified rate or grouping of rates at which reimbursement is made for a covered service or services, which is based more closely on the actual cost of providing the service or services with less weighting for other factors.

(11) "Follow-up visits" means visits to the provider subsequent to the initial visit, made for the purpose of securing added treatment for the medical problem, or for evaluation and adjustment of treatment.

(12) "Income protected" means income of the individual or family group which the department recognizes as being needed for the basic maintenance of the individual or family group, and which the individual or family group retains for personal use.

(13) [(11)] "Initial visit" means the first or more extensive visit made to a provider for the purpose of securing a covered medical service or services, and which may include the taking of medical history, diagnosis, and initial treatment.

(14) "Inpatient services" means those services rendered for any acute or chronic condition, including maternal and mental health care, which cannot be rendered on an outpatient basis.

(15) "Interim rates" means the initial rates for reimbursement, based on the projected reasonable cost of providing the service and applying of accepted cost apportionment principles, most nearly approximating actual allowable costs, determined on a facility by facility basis; and usually, followed by reimbursement adjustments after provision of the service to account for differences between projected costs and actual costs.

[(12) "Follow-up visits," visits to the provider subsequent to the initial visit, made for the purpose of securing added treatment for the medical problem, or for evaluation and adjustment of treatment.]

[(13) "Income protected," income of the individual or family group which the department recognizes as being needed for the basic maintenance of the individual or family group, and which the individual or family group retains for personal use.]

[(14) "Interim rates," the initial rates for reimbursement, based on the projected reasonable cost of providing the service and applying of accepted cost apportionment principles, most nearly approximating actual allowable costs, determined on a facility by facility basis; and usually, followed by reimbursement adjustments after provision of the service to account for differences between projected costs and actual costs.]

[(15) "ICF (Intermediate Care Facility)," a facility licensed by the state to provide health care which is more than room and board but less than skilled nursing facility care.]

[(16) "Inpatient services," those services rendered for any acute or chronic condition, including maternal and mental health care, which cannot be rendered on an outpatient basis.]

(16) [(17)] "Lock-in" means [is] the system whereby a recipient found to be overutilizing physician [and/] or pharmacy services is assigned (i.e., restricted) to one (1) physician and one (1) pharmacy for those services except on referral or in the event of emergency.

(17) [(18)] "Lock-in provider" means [is] a physician or pharmacy which agrees to be the assigned provider of physician or pharmacy services for a recipient placed in lock-in status.

(18) [(19)] "Medicaid" means the state program of medical assistance as administered by the cabinet in compliance with 42 USC 1396 [Title XIX of the Social Security Act], and which is designed to provide for the medical care needs of Kentucky's medically indigent citizenry.

(19) [(20)] "Medicare" means the federal program under 42 USC 1395 [Title XVIII of the Social Security Act] providing medical benefits to persons receiving Social Security retirement payments or who have received Social Security benefits based on disability for a period of twenty-four (24) consecutive months.

(a) Part A, Hospital Insurance Benefits, provides hospital care, nursing home care and home health visits, subject to deductibles and coinsurance.

(b) Part B, Supplementary Medical Insurance, provides additional medical benefits to those persons eligible for Part A or any person sixty-five (65) years of age, but only if enrolled in the program and paying the monthly premium.

(20) [(21)] "Medical assistance drug list (MADL)" means a listing of drugs, covered under the medical assistance program, which includes the drug code, description, dosage strength, covered unit form, maximum dosage covered, and per unit price. The official title of the list is "Kentucky Medical Assistance Program Outpatient Drug List."

(21) [(22)] "Medical service area" means a designated geographical area within which medical services provision is compared for purposes of planning, reimbursement, etc.

(22) [(23)] "Outpatient services" means services provided, in other than inpatient circumstances, for any condition detrimental to the individual recipient's physical or mental health.

(23) [(24)] "Overutilization" means the use of program benefits in excess of that actually required for the treatment of the recipient's medical problem.

(24) [(25)] "Participating" means a provider of medical services taking part in the medical assistance program by agreeing to comply with program regulations and provide services to eligible recipients.

(25) "Prior authorization; preauthorization" means the approval which must be given by the Department for Medicaid Services, or other specified authority, to a specified provider for specified services for a specified recipient in order for this service to be covered under Medicaid.

(26) "Profile" means an outline of the outstanding characteristics of a vendor practice in rendering health care services and recipient usage in receiving health care services.

(27) [(26)] "Provider" means a person, organization, or institution certified to provide health or medical care services authorized under the Medicaid [medical assistance] program.

[(27) "Prior authorization; preauthorization,"

the approval which must be given by the Division of Medical Assistance, or other specified authority, to a specified provider for specified services for a specified recipient in order for such service to be covered under Medicaid.]

[(28) "Profile," an outline of the outstanding characteristics of a vendor practice in rendering health care services and recipient usage in receiving health care services.]

(28) "Spend-down" means the process by which excess income is utilized for recognized medical expenses, and which, when excess income is depleted, results in a determination of eligibility if all other eligibility factors are met.

(29) "Utilization review" means the process of monitoring and controlling, to the extent possible, the quantity and quality of health care services delivered under the Medicaid [medical assistance] program.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 2, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street – 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Recipients and providers of the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:007. Documentation of medical assistance services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 431.107, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth provisions relating to the requirement for documentation of medical assistance services provided by providers participating in the medical assistance program to eligible medical assistance recipients.

Section 1. Requirement for Documentation. All providers participating in the Kentucky Medicaid [Medical Assistance] Program shall [(KMAP) must] maintain documentation of services provided eligible medical assistance recipients when the [such] services are billed to Medicaid [the KMAP]. Documentation shall [must] be retained for not less than five (5) years from the date of service. Copies of claims submitted to Medicaid shall [the KMAP must] be retained for not less than two (2) years following the date of submittal. Documentation of services provided shall be made available to the Medicaid Program upon request.

Section 2. Adequacy of Documentation. Pursuant to federal regulations, Medicaid [the KMAP] pays only for services which are medically indicated. Minimal required documentation consists of the following items.
(1) The patient's medical record (or other provider file, as appropriate) shall [must] show that the service billed for was actually performed.
(2) The record should show that the service provided was medically indicated. Medical necessity should be apparent from the diagnosis indicated [and/] or laboratory tests performed.
(3) For hospital (inpatient and outpatient), pharmacy, home health agency, and nursing home [(skilled nursing, intermediate care, and intermediate care for the mentally retarded)] services, appropriate provider orders shall

[must] be in the record to substantiate the necessity of and order for the service.

Section 3. Refunds Based on Lack of Documentation. When a provider fails to maintain adequate documentation that a billed service was actually performed and that medical necessity existed (or to provide the documentation to the Medicaid Program when required), Medicaid [the KMAP] shall be entitled to a refund from the provider of any reimbursement made for the [such] service by Medicaid Program [the KMAP].

Section 4. Fraud Related to Documentation. If [When] it appears to the cabinet that a participating provider has deliberately acted in [such] a manner as to contravene the requirements relating to documentation of medical assistance services contained in this regulation, the cabinet may refer the matter to the Medicaid Fraud Control Unit of the Attorney General's Office for resolution.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 2, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street – 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All providers participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:032. Dual licensed pediatric facility services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR Part 442, 456, 42 USC 1396a, b, c, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the provisions relating to [skilled nursing services and intermediate care] nursing services provided in a dual licensed pediatric facility for which payment shall be made by the Medicaid [Medical Assistance] Program in behalf of both the categorically needy and medically needy.

Section 1. Definition. A dual licensed pediatric facility is any facility providing both high intensity and low intensity [skilled] nursing facility services [and intermediate care facility services] to children under age twenty-one (21) only in the same beds [at least a portion of which are dually licensed, i.e., are licensed so that both skilled and intermediate care may be provided in the same bed].

Section 2. Participation Requirements. Each facility desiring to participate as a dual licensed pediatric facility shall [must] meet the following requirements:
(1) An application for participation shall be made to the cabinet using the procedures specified by the Commissioner, Department for Social Insurance, Cabinet for Human Resources. A vendor number shall be assigned to the facility by the cabinet when participation status is achieved.
(2) Any dual licensed pediatric facility whose admission policies are such as to permit admission of patients who are eligible for Medicare [Title XVIII] benefits shall be required to have thirty-five (35) percent of its Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) beds, all beds, participate in the Medicare

[Title XVIII] health care program before the conditions of participation for Medicare [Title XIX] shall be deemed met. Any [such] facility refusing to participate in the Medicaid [Title XVIII health care] program shall not be certified to participate in the Medicaid [Title XIX] program and shall not receive reimbursement through the Medicaid [Title XIX] program.

Section 3. Provision of Service. Payment for services shall be limited to those services provided to eligible individuals meeting the criteria for provision of [skilled] nursing facility services as [or] determined in accordance with 907 KAR 1:022 [or intermediate care services as determined in accordance with 907 KAR 1:024].

Section 4. Utilization Review. The facility shall have in place a program of utilization review which meets the requirements specified in 42 CFR Part 456 [450.19]. Determination of [skilled] nursing care patient status made by the utilization review committee (and which are available to the cabinet) shall be given due consideration by the cabinet in its determinations of patient status.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 2, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Duel licensed pediatric facility services providers.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. A minor conforming policy change is also being made.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:033. Payments for dual licensed pediatric facility services.

RELATES TO: KRS 205.520, 42 CFR 447.250, 42 USC 1396a, b, d
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the method for determining amounts payable by the cabinet for dual licensed pediatric facility services.

Section 1. Dual Licensed Pediatric Facilities. [In accordance with federal law and/or regulations,] The cabinet shall make payment to participating providers on the following basis:
(1) Method of reimbursement. A dual licensed pediatric facility shall be reimbursed on the basis of rates which are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations and quality and safety standards. The [Such] payment shall be prospective in nature with no year end adjustment for routine costs of care. The [skilled] nursing facility services payment [and intermediate care] principles as specified in 907 KAR 1:025 [1:036] shall apply except for [to the extent] variations specified in this regulation [are provided for herein]. The cost of ancillaries shall [are to] be excluded from the cost when computing the payment rate and shall [will] be reimbursed separately (in accordance with [skilled] nursing facility services payment [and intermediate care] principles) with a retroactive settlement.
(2) Composite rate. The facility(ies) shall be paid at a composite rate for a nursing facility

[an ICF-SNF] day of care. The following procedures shall be [are] followed in establishing the composite rate:

(a) The allowable cost for nursing facility [SNF-ICF] days of care shall be [are] determined based on prior year actual costs (or, in the case of a new facility, projected costs which are determined by the cabinet to be reasonable).

(b) The department shall [state will] set a uniform rate year (July 1 - June 30) for facilities in this class in the same manner as for nursing facilities [SNFs and ICFs], with allowable costs trended to the beginning of the rate year. The trended allowable costs shall [will] then be indexed for the rate year; however, there shall [will] be no administratively established upper limit. Fixed or capital costs shall be [are] neither trended nor indexed. Since projected costs for new facilities reflect the best estimate of actual costs, these shall [are] also be neither trended nor indexed.

(c) Allowable costs shall be [are] then compared with the number of projected (for new facilities) bed days or the number of bed days based on the prior year's actual utilization to arrive at a per diem composite rate.

(d) An occupancy factor of ninety (90) percent shall be applied. In the case of new facilities the occupancy factor shall be waived during the first full fiscal year of participation in the program.

(e) The [SNF] cost incentive and investment factor (CIIF) schedule shall [will] be applied to prospective current year per diem cost in determination of a final prospective rate for each facility. The CIIF schedule shall [will] be transmitted to appropriate providers.

(f) The component (cost center) limitations specified in 907 KAR 1:025 shall [1:036 are] not be applicable.

Section 2. Rate Review and Adjustment. For a new facility, the composite rate shall [will] be reconsidered to determine if an adjustment is necessary after two (2) full calendar quarters of actual experience in the program as specified in the [skilled] nursing facility payment [and intermediate care] principles.

Section 3. Eligibility for Reimbursement. A facility shall be eligible for reimbursement from the department [cabinet] only when considered to be a participating vendor, and reimbursement shall be made only for covered services rendered Medicaid [Title XIX] eligible recipients meeting patient status as determined in accordance with applicable regulations.

[Section 4. Implementation of Uniform Rate Year. The first uniform rate year shall be July 1, 1981 through June 30, 1982. Payments based on the uniform rate year methodology shall begin effective April 1, 1982.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: Duel licensed pediatric facility services providers.

(a) Direct and indirect costs or savings to those affected: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:035. Payments for screening services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.40(b), 447 Subpart B, 42 USC 1396a, b, d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS

205.520 empowers the cabinet by 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 regulation sets forth the method for determining amounts payable by the cabinet for screening services.

Section 1. Physicians and primary care centers shall [will] be reimbursed for screening services in accordance with the payment provisions set forth by regulations 907 KAR 1:010 and 907 KAR 1:055 for those service providers.

Section 2. Reimbursement of Screening Clinics. The cabinet shall reimburse participating screening clinics or agencies on the basis of a preestablished fee which shall be related to the cost of service. The amounts payable shall be in accordance with the following:

(1) For a complete screening which includes all items or procedures appropriate to age and health history of the child, the fee shall be twenty (20) dollars per individual screened;

(2) For a partial screening, with some items or procedures appropriate to age and health history of the child not completed, but at no fault of the screening clinic or agency, the fee shall be twelve (12) dollars per individual screened when preauthorized by the cabinet; and

(3) For completion of a partial screening with some items or procedures appropriate to age and health history of the child provided as a follow-up to a partial screening (whether the partial screening is provided by a physician, primary care center, or screening clinic or agency), the fee shall be eight (8) dollars per individual screened.

(4) In no instance may the fee paid in accordance with subsection (1) to (3) of this section exceed the usual and customary fee of the provider for the service.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 2, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Screening services providers participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:037. Hospital furnished [skilled] nursing [and intermediate care] facility services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.140, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the provisions relating to [skilled] nursing facility services [and intermediate care facility services] furnished by a licensed hospital for which payment shall be made by the Medicaid [Medical Assistance] Program in behalf of both the categorically needy and the medically needy.

Section 1. Definition. "Hospital furnished [skilled] nursing facility services [and intermediate care facility services]" means nursing facility [such] services provided in a licensed hospital bed by a facility which has entered into an agreement with the secretary,

Department of Health and Human Services, pursuant to Section 1883 of the Social Security Act, or nursing facility [such] services [when] provided in a hospital bed which is licensed (in accordance with KRS Chapter 216B) for provision of acute care and is appropriately certified for provision of [skilled] nursing facility [and/or intermediate care] services if the [so long as such] beds qualify for participation in the Medicaid Program in accordance with usual Medicaid requirements for participation.

Section 2. Participation Requirements. The hospital must be licensed and certified to participate in the Medicaid [Medical Assistance] Program, and any beds to be used for hospital furnished [skilled] nursing [facility services and intermediate care] facility services must be appropriately certified with certificate of need approval for Section 1883 beds. The requirements for Medicare participation shall be the same as those Medicare participation requirements specified in 907 KAR 1:022.

Section 3. Provision of Service. Payment for services shall be limited to those services provided to eligible individuals meeting the criteria for provision of [skilled] nursing facility services as determined in accordance with 907 KAR 1:022 [or intermediate care services as determined in accordance with 907 KAR 1:024].

Section 4. Utilization Review. The facility shall have in place a program of utilization review which meets the requirements specified in 42 CFR 456, subparts C, E, and F, for hospitals, skilled nursing facilities, and intermediate care facilities. The facility shall be responsible for cooperating with the cabinet [and/] or its designated agents in the establishment of patient status and performance of utilization review and[/ or] control.

[Section 5. The amendments to this regulation shall be effective with regard to services provided on or after July 1, 1987.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 2, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Hospitals furnishing nursing facility services participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:038. Hearing and vision services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.140, 441.30, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the provisions relating to the hearing services and vision care services for which payment shall be made by the Medicaid [Medical Assistance] Program in behalf of both categorically needy and medically needy.

Section 1. Hearing Services. (1) Audiological benefits. Coverage shall be limited to the following services provided to children under age twenty-one (21) by certified audiologists:
(a) Complete hearing evaluation;
(b) Hearing aid evaluation;

(c) A maximum of three (3) follow-up visits within the six (6) month period immediately following fitting of a hearing aid, the [such] visits to be related to the proper fit and adjustment of that hearing aid;
(d) One (1) follow-up visit six (6) months following fitting of a hearing aid, to assure patient's successful use of the aid.
(2) Hearing aid benefits. [Effective June 1, 1981,] Coverage shall be provided to children under age twenty-one (21) on a preauthorized basis for any monaural hearing aid model recommended by a certified audiologist if the [so long as that] model is available through a participating hearing aid dealer. Binaural hearing aids shall [are] not be covered.

Section 2. Vision Care Services. Coverage for all age groups shall be limited to prescription services, services to frames and lenses, and diagnostic services provided by ophthalmologists and optometrists, to the extent the optometrist is licensed to perform the services and to the extent the services are covered in the ophthalmologist portion of the physician's program. Eyeglasses shall be [are] provided [only] to children under age twenty-one (21), only, on a preauthorized basis. Coverage for eyeglasses shall be [is] limited to two (2) pairs of eyeglasses per year per person. This limitation includes the initial eyeglasses and one (1) replacement per year or two (2) replacements per year. Coverage for initial and extensive visits shall be limited to one (1) visit per patient per provider per twelve (12) month period.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 2, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Hearing and vision providers participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:048. Family planning services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 441.20, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the provisions relating to the provision of family planning services for which payment shall be made by the Medicaid [Medical Assistance] Program in behalf of both the categorically needy and the medically needy.

Section 1. Services Available. Services shall be provided through routine physician visits or through family planning clinics and shall include counseling services, medical services and supplies.

Section 2. Limitations. Family planning services shall be made available to all persons of child bearing age, including minors who can be considered to be sexually active, who desire the [such] services and supplies but there shall be freedom from coercion and freedom of choice of method.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 2, 1991

FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street – 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Family planning services providers participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:049. Payments for family planning services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 447 Subpart B, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the method for determining amounts payable by the cabinet for family planning services.

Section 1. Family Planning Clinics. The cabinet shall reimburse family planning clinics or agencies for covered services on the basis of a flat fee schedule.

Section 2. Amount of Payment. Reimbursement in accordance with the flat fee schedule shall be at the following rates:
(1) For services provided by a physician: initial clinic visit, fifty (50) dollars; annual clinic visit, sixty (60) dollars; follow-up visit with pelvic examination, twenty-five (25) dollars; and follow-up visit without pelvic examination, twenty (20) dollars.
(2) For services provided by an advanced registered nurse practitioner with appropriate training as specified by the cabinet: initial clinic visit, thirty-seven (37) dollars and seventy-five (75) cents; annual clinic visit, forty-five (45) dollars; follow-up visit with pelvic examination, eighteen (18) dollars and seventy-five (75) cents; and follow-up visit without pelvic examination, fifteen (15) dollars.
(3) The fee for the counseling visit shall be thirteen (13) dollars; for a counseling visit with three (3) months contraceptive supply the fee shall be seventeen (17) dollars; for a counseling visit with six (6) months contraceptive supply the fee shall be twenty (20) dollars; for a supply only visit, the fee shall be the actual acquisition cost of contraceptive supplies dispensed. The supply only visit fee shall [may] not be paid as an addition to a fee for another type of visit, since the fee for other types of visits includes an amount for contraceptives.

[Section 3. The amendments to this regulation shall be effective with regard to payments for family planning services provided on or after October 1, 1986.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 2, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing

by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Family planning services providers participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:074. Claims processing.

RELATES TO: KRS 205.520, 205.560[, 205.991]
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 447.45, 42 USC 1396a, b, c

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of medical assistance [under Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 requires that the scope of medical care for which the cabinet undertakes to pay shall be designated and limited by regulation promulgated by the cabinet. [KRS 205.991 provides for penalties for medical assistance offenses by providers.] This regulation sets forth provisions relating to claims processing for services provided eligible Medicaid [medical assistance] recipients, and responsibilities of providers with respect to submittal of claims.

Section 1. Definitions. (1) "Claim" means:
(a) For physician, podiatry, dental, vision care, hearing aid dealers, home health, primary care clinics, mental health center clinics, pharmacy, hospital outpatient, and independent laboratory services, a line item of service;
(b) For [tuberculosis and] mental hospital services, all services for one (1) recipient within a bill; and
(c) For all other services, a bill for services.
(2) "Timely" means within the time limits specified in 42 CFR 447.45.

Section 2. General. The cabinet shall comply with the claims payment requirements specified in 42 CFR 447.45.

Section 3. Claims Submittal. (1) The Department for Medicaid Services [Division of Medical Assistance of the Department for Social Insurance] shall be responsible for developing, and providing in written form to participating providers, procedures for submittal of claims. The [Such] procedures shall be designed [so as] to ensure that all the requirements with respect to timeliness set forth in 42 CFR 447.45 shall be [are] met. Providers shall be held responsible for complying with claims submittal (billing) procedures specified by the department [Division of Medical Assistance].
(2) Providers are required to submit claims for services rendered eligible Medicaid [medical assistance] recipients within twelve (12) months of the date of provision of services.
(3) The Department for Medicaid Services [Division of Medical Assistance] may specify that documentation of services rendered, proof of medical necessity, preauthorization documents or other similar aids to claims processing (if necessary) shall [are to] be submitted with the claim, or that the [such] documentation (if necessary) may be provided by follow-up transmittal or on request; providers shall be responsible for submitting any required proof of necessity, preauthorization or other documentation relating to the claim.
(4) The Department for Medicaid Services [Division of Medical Assistance] shall be responsible for notifying providers promptly when additional clarification, proof of necessity or other documentation relating to a claim is necessary for processing of the claim.
(5) The Department for Medicaid Services [Division of Medical Assistance] may use claims processing systems whereby the provider submits a claim by means of a signed document, or other claims processing systems whereby the provider submits the claim by telephone, magnetic tape,

or other similar mechanism. If [When] the claim is submitted by telephone, magnetic tape, or other similar mechanism, the following requirements shall apply:

(a) The provider shall be liable for the accuracy of all [such] claims submitted on his behalf by himself or his employees;

(b) The provider shall be responsible for reviewing the statement of payment or remittance statement, and acceptance of payment of the [such] claims shall be considered to be the provider's certification that paid claims shown on the listing are true and correct;

(c) The provider shall himself endorse the payment check rather than delegating the [such] task to one (1) of his employees; and

(d) Any provider using the electronic [such] systems to make false claims, statements or documents, or to conceal material facts, shall be subject to any [such] penalties [as are] otherwise provided for by federal or state law.

Section 4. Claims Payment. (1) Claims shall be paid within the time limits specified in 42 CFR 447.45(d)(2), (3) and (4).

(2) If [When] a provider fails to submit a claim within twelve (12) months of the date of service or provide necessary documentation so that the claim can be processed and paid within twelve (12) months of receipt of the claim [by the Division of Medical Assistance], payment shall not be made for the claim (except as provided for in 42 CFR 447.45).

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 7, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: Providers participating in the Medicaid Program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:075. Hearings and appeals for mentally retarded.

RELATES TO: KRS 205.175, 205.231, 205.237, 210.270

STATUTORY AUTHORITY: KRS 194.025, 194.050, 205.231, 205.237, 42 CFR 431 Subpart E, 42 USC 1396

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility [under 42 CFR 431.220, KRS 205.231 and 210.270] to provide for a system of hearings to be available to Medicaid [Title XIX] recipients. [KRS 210.270 specifies conditions for reclassification and/or transfer, and hearings related to issues of reclassification and/or transfer, of mentally retarded patients lodged in state institutions.] This regulation is promulgated to satisfy the hearing requirement of KRS 205.231 and 210.270 relative to Medicaid [Title XIX] eligible mentally retarded individuals lodged in state institutions who are proposed by the cabinet to be reclassified and[/or] transferred. In accordance with KRS 205.237, the cabinet is also setting the maximum fees that may be charged the recipient for representation by attorneys with regard to the [such] hearings or further resultant appeals.

Section 1. Definitions. (1) "Authorized representative" means a parent, guardian or committee of the recipient; or an attorney acting at the request of the parent, guardian or committee of the recipient; or an attorney acting on behalf of the recipient; or a representative of the facility caring for the recipient who is acting on behalf of the recipient.

(2) [(1)] "Recipient" [as used in this regulation,] means a mentally retarded individual, lodged in a state institution, who

is eligible for Medicaid [Title XIX] benefits and is having the cost of his care paid for using funds from the Medicaid [Title XIX] program.

(3) [(2)] The phrase "at the time of any action affecting his claim," means at the time that the cabinet proposes to reclassify the level of care of a recipient (as defined in subsection (2) [(1)] of this section) [and/]or to transfer such recipient from the state institution in which he is lodged.

[(3) "Authorized representative," means a parent, guardian or committee of the recipient; or an attorney acting at the request of the parent, guardian or committee of the recipient; or an attorney acting on behalf of the recipient; or a representative of the facility caring for the recipient who is acting on behalf of the recipient.]

[(4) The masculine "he," "his," "him," includes the feminine.]

Section 2. Informing the Recipient of His Rights. Each recipient and his parent, guardian or committee shall be informed in writing at the time of any action affecting his claim of his right to a hearing, the method by which he may obtain a hearing and that he may be represented by an authorized representative, such as legal counsel, relative, friend or other spokesman, or he may represent himself. All federal notice requirements [contained in 42 CFR 431.210] shall be met.

Section 3. Request for a Hearing. Any recipient, or an authorized representative acting on his behalf, may request a hearing by filing with either the local office or central office of the Department for Social Insurance a written or oral statement clearly indicating a desire for a hearing. If the request for a hearing is made orally, the oral request shall [must] be reduced to writing within ten (10) days by the person requesting the hearing, with the written request provided to the same office of the Department for Social Insurance which accepted the oral request.

Section 4. Time Limitation for Request. The time limitation for a hearing request is shown in KRS 210.270. [A written or oral request for a hearing must be received by the appeal panel within thirty (30) days of the date of receipt of the advance notice of adverse action.]

Section 5. Continuation of Benefits. When the request for a hearing of a decision to reclassify or transfer any mentally retarded patient is received within the thirty (30) day period, provided for by KRS 210.270, Medicaid [Title XIX] reimbursement shall [will] continue, and the recipient shall [will] not be transferred, until the conclusion of the hearing.

Section 6. Acknowledgment of Hearing Requests by the Appeal Panel. The acknowledgment letter shall contain information regarding the hearing process, including the right to case record review prior to the hearing and the right to representation. Subsequent notification shall include the time and place where the hearing will be held.

Section 7. Withdrawal or Dismissal of Request. The recipient, or his authorized representative, may withdraw his request for a hearing at any time prior to release of the appeal panel's decision, provided, however, he (or his authorized representative) is granted the opportunity to discuss withdrawal with his legal counsel or representative, if any, prior to finalizing the action. A hearing request shall be dismissed if the recipient fails without prior notification to report for the hearing, except that no hearing request shall be dismissed without extending to the recipient, or his authorized representative, the opportunity to establish that the [such] failure was for good cause.

Section 8. Recipient's Rights Prior to a Hearing. All recipients and their parents, guardians or committees shall be informed of their right to legal counsel or other representation, of the right to case record review relating to the issue and of the right to submit additional information in support of the claim. When the hearing involves medical issues, a medical assessment by other than the person or persons involved in the original decision shall be obtained at cabinet [department] expense if the appeal panel considers it necessary. The medical assessment may be requested by the recipient or his authorized representative, or by an appeal panel member, and shall be considered necessary by the appeal panel if in the opinion of a majority of the members of the appeal panel the available medical information is insufficient for the appeal panel's purposes of determining whether the recipient should be reclassified [and/]or transferred. If a medical assessment at cabinet [department] expense is requested by the recipient and denied by the appeal panel the reason for denial shall be set forth in writing.

Section 9. Corrective Action. If after a review of the case record, but prior to scheduling a hearing, the chairman of the appeal panel determines that action taken or proposed to be taken, is incorrect, he shall authorize corrective action in the form of continuing assistance [and/]or eligibility. The hearing request shall then be dismissed, subject to reinstatement at the request of the recipient or his authorized representative if that individual feels the corrective action does not fully resolve the issues prompting the hearing request. The [Such] request for reinstatement must be made within twenty (20) days of the notice of the corrective action.

Section 10. Conduct of a Hearing. Hearings and appeals relating to decisions to reclassify or transfer mentally retarded persons in state institutions shall be in accordance with the requirements contained in 42 CFR 431 Subpart E, dated November 1, 1991, herein incorporated by reference, and KRS 210.270. A copy of the incorporated material shall be available for review during regular working hours in the commissioner's office, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601 from 8 a.m. through 4:30 p.m. Eastern Time, Monday through Friday. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost. [.200 through 42 CFR 431.250 and KRS 210.270.]

(1) All hearing officers of the Hearing

Branch, Division of Administrative Review, Department for Social Insurance are designated as the representatives of the Secretary, Cabinet for Human Resources, to the appeal panel established in KRS 210.270.

(2) The hearing officers shall serve as the chairman of each appeal panel established in KRS 210.270, and as chairman will conduct the proceedings of the appeal panel and make any and all rulings on procedural matters at, before, or after the hearing.

(3) The chairman of the appeal panel is, pursuant to the authority of KRS 194.025, delegated the authority to administer oaths and affirmations, examine witnesses and parties who appear at the hearing, and issue subpoenas to compel the attendance of any witness or the production of books, papers, correspondence, memoranda and other records which he feels are necessary and relevant for determining the proper level of care of the patient [and/]or whether the patient should be transferred.

(4) The chairman of the appeal panel may, at his discretion, direct or grant a continuance of a hearing in order to secure necessary evidence.

(5) All members of the appeal panel shall be [are] required to maintain the confidentiality of the hearings, records, reports and all other documents and safeguard all information relating to the patients and their parents, guardians and committees in accordance with KRS 194.060 and 205.175.

(6) The chairman of the appeal panel shall be responsible for maintaining the official records of a patient's case before the appeal panel, receiving a notice of appeal, acknowledging the appeal, taking and recording the vote of the appeal panel and notifying the parent, guardian or committee of the decision.

(7) Following the hearing the chairman of the appeal panel shall [will] take the vote of the appeal panel and assign to himself or any other member of the appeal panel the task of writing the decision.

(8) The decision of the appeal panel shall be in writing, include a finding of facts, identify laws and regulations which support the decision, be sent to the appealing party within ninety (90) days from the date of the request for the hearing, and advise the parent, guardian or committee of the right to appeal the decision in the manner prescribed by KRS 210.270.

(9) The recipient, his representative and any other party to the hearing may present [such] evidence [as shall be] pertinent to the issue on which the adverse action was, or is proposed to be, taken, and advance any arguments without undue interference.

(10) The chairman and other members of the appeal panel shall, if necessary to secure full information on the issue, examine each party who appears and his witnesses. The appeal panel may take any additional evidence which it deems necessary; but if additional evidence is taken, all interested parties shall be afforded the opportunity of examining or rebutting such additional evidence.

(11) The parties to the hearing, with the consent of the appeal panel, may stipulate the facts involved, in writing. The hearing may be decided on the basis of [such] stipulation or the appeal panel may schedule a hearing and take [such] additional evidence as is deemed necessary.

(12) All hearings shall be conducted informally and in [such] a manner designed [as] to determine the substantial rights of the parties. The parties and their witnesses shall testify under oath or affirmation. All facts relevant to the issue appealed shall be considered and passed upon.

Section 11. Hearings on other Issues. Hearings on issues other than patient reclassification, or transfer, of mentally retarded persons in Medicaid [Title XIX] reimbursement status in state institutions shall be conducted in accordance with the provisions of 904 KAR 2:055.

Section 12. Limitation of Fees. (1) The cabinet, and its officers and employees, either in their official or personal capacity, shall [are] not be liable for payment of any attorney's fee. In accordance with KRS 205.237, the fee an attorney may charge an individual may not exceed the following:

(a) Seventy-five (75) dollars for preparation and appearance at the hearing before an appeal panel.

(b) $175 for preparation and presentation, including pleadings and appearance in courts, of appeals to the Circuit Court;

(c) $300 for preparatory work and briefs and all other matters incident to appeals to the Court of Appeals.

(d) $300 for preparatory work and briefs and all other matters incident to appeals to the Supreme Court.

(2) The fee agreed to by the representative and his client within the above maximums shall be deemed to have the approval of the cabinet.

(3) Enforcement of payment of the [such] fee shall be a matter entirely between the [such] counsel or agent and the recipient. The [Such] fee shall not be deducted, either in whole or in part, from benefit checks which may be due and payable to the recipient.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 7, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Medicaid eligible institutionalized mentally retarded individuals whose care is the responsibility of the state.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:084. Payment for medical assistance services furnished out of state.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 447 Subpart B, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the conditions under which the Medicaid [Medical Assistance] Program shall [will] pay for covered medical services furnished eligible recipients who are out of state.

Section 1. General. [The state will furnish (pay for) covered] Medicaid services provided to an eligible Medicaid recipient who is a resident of Kentucky while that resident is in another state shall be reimbursed in accordance with [only to the extent provided for in] Section 2 of this regulation.

Section 2. Criteria for Coverage while Out of State. (1) Payment shall be [is] made if covered medical services are needed because of a medical emergency.
(2) Payment shall be [is] made if medical services are needed because the recipient's health would be endangered if he were required to travel to Kentucky for the medical service. With regard to long-term care patients, it shall be the policy of the cabinet to pay for the medical services only until the [such] time when [as] the patient's medical condition has stabilized so [as to permit] the patient may safely ['s safe] return to Kentucky; it is expected that the [such] period of coverage [time] shall be sixty (60) days or less; continuation of payment shall be contingent upon presentation of medical evidence acceptable to the cabinet which justifies an additional stay in a facility outside the state.
(3) Payment shall be [is] made when the state determines, on the basis of medical advice, that the needed medical services, or necessary supplementary resources, are more readily available in the other state; provided, however, that this provision shall not be construed or interpreted in [such] a manner which [as to] circumvents or negates the provisions and intent of this regulation.
(4) Payment shall be [is] made when it is general practice for recipients in a particular locality to use medical resources in another state.

Section 3. Exception. For individuals in long-term care out of state prior to the effective date of this regulation, and for whom the cabinet is at that time paying for the cost of care, the cabinet may continue to pay for the cost of care if [for so long as] the cabinet deems the [such] payments to be appropriate. Children in subsidized adoption or foster care status shall be exempt from the restrictions shown in this regulation.

Section 4. Cooperation with other States. The cabinet shall facilitate the furnishing of medical services to individuals who are present in Kentucky and are eligible for Medicaid under another state's Medicaid plan.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 7, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written

notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Out-of-state providers participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:100. Nurse-midwife services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.165, 441.21, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the provisions relating to nurse-midwife services for which payment shall be made by the Medicaid [Medical Assistance] Program in behalf of both the categorically needy and the medically needy.

Section 1. Nurse-midwives' Services. Covered services shall include those furnished by nurse-midwives to eligible recipients through direct nurse-midwife-patient contact. The [Such] services shall [must] be within the scope of practice of nurse-midwives as provided for by state law of the state in which the nurse-wife practices, and any participating nurse-midwife shall [must] meet all applicable requirements of state laws and[/or] conditions for practice including any requirements for certification and[/or] licensure.

Section 2. Participation Requirements. Any nurse-midwife desiring to provide nurse-midwife services shall [must] enter into a participation agreement with the cabinet, and services shall [must] be provided and billed for in accordance with the terms and conditions of the provider participation agreement.

[Section 3. Implementation. Nurse-midwife services shall be covered effective July 16, 1982, provided, however, that this provision shall not be construed in such a manner as to negate the requirement that covered services may be provided only by a nurse-midwife with a valid provider agreement in effect.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 7, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All nurse-midwives participating in the Medicaid Services.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:110. Recoupment of overpayments.

RELATES TO: KRS 205.520[, 205.560]
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 433 Subpart F, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [under Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 requires that the scope of medical care for which the cabinet undertakes to pay shall be designated and limited by regulation promulgated by the cabinet.] This regulation sets forth provisions relating to recoupment of overpayments made to providers of medical services under the Medicaid [Medical Assistance] Program.

Section 1. Scope. This regulation applies to all providers of medical assistance services where payments are made from Medicaid [Medical Assistance] Program funds.

Section 2. Recoupment of Overpayments. When it is determined that a provider has been overpaid, a letter shall [will] be mailed to the provider requesting payment in full within thirty (30) days. If a provider demonstrates to the program within the thirty (30) day time limit that full payment would create an undue hardship, a payment plan not to exceed six (6) months from the notification date shall [will] be established. If the full payment or payment plan request is not received within thirty (30) days of notification, the amount due shall [will] be deducted from current payments until the full amount is recouped. Once the payment plan has been established and a payment is not received by the agreed to date, the amount shall [will] be deducted from current payments.

Section 3. Exceptional Hardship Circumstances. When it is determined that a recoupment of an overpayment in accordance with Section 2 of this regulation would result in an exceptional hardship for the provider and have the direct or indirect effect of reducing the availability of services to program recipients (e.g., by resulting in the bankruptcy and subsequent dissolution of the provider entity), the program may provide for a reasonable extension of the time period for recoupment. The time period for recoupment shall [will] not exceed twelve (12) months from the date the overpayment is established, and shall [must] be accomplished within twenty-one (21) months from the end of the provider's cost reporting period or the receipt by the program of the billing invoice, request for payment or similar document for providers not reimbursed on the basis of cost reports.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 7, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All providers participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons

why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:120. Health insuring organization and prepaid health plan services.

RELATES TO: KRS 205.520, 205.560
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 431 Subpart L, 42 USC 1396a, b, d [, Chapter 398 of the 1982 Kentucky Acts]
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 and 205.560 empower the cabinet, by regulation, to designate and limit the scope of medical care which will be provided through the Medicaid [Medical Assistance] Program to Kentucky's indigent citizenry. [The 1982 Kentucky Acts, Chapter 398, Part I, Section 52a2 require the cabinet to implement a Medicaid cost containment plan.] This regulation sets forth the coverage provisions which apply with regard to eligible recipients receiving medical assistance services pursuant to contracts between the cabinet and health insuring organizations (HIO's) or prepaid health plans (PHP's).

Section 1. Participation Requirements. Each health insuring organization (HIO) or prepaid health plan (PHP) desiring to participate shall [must] meet the following requirements:
(1) An application for participation shall be made to the cabinet using the procedures specified by the Commissioner, Department for Medicaid Services [Social Insurance, Cabinet for Human Resources]. A vendor number shall be assigned to the HIO or PHP by the department when participation status is achieved by award of a contract; the [such] contract shall be pursuant to, and designed to be in compliance with, applicable federal regulations [contained at 42 CFR 431 Subpart L]. The terms "health insuring organization" and "prepaid health plan" shall have the same meanings shown in 42 CFR 431 Subpart L;
(2) The HIO or PHP shall [must] submit a comprehensive plan and proposed contract for providing services to all or a described class of recipients of Medicaid [medical assistance] of a defined geographic area of the Commonwealth, through contracts with appropriately licensed providers of health services;
(3) The cabinet shall review the plan and proposed contract, and if in the cabinet's opinion services are offered at a lower cost than prevailing Medicaid [medical assistance] vendor costs for the designated geographic area without any reduction of services or decrease in availability of services to recipients, the cabinet may submit to the federal Department of Health and Human Services a request for appropriate waivers, if any are needed, to obtain authorization for implementation of the proposed plan;
(4) Upon approval of the necessary waivers, if any, the cabinet may award a vendor contract to the HIO or PHP, or any qualifying intervening organization which has offered the same services at lower cost;
(5) The HIO or PHP shall enroll all eligible recipients identified to it, arrange for the provision of the Medicaid [medical assistance] services specified in the contract, and directly reimburse participating providers and[/or]subcontractors for services provided in accordance with the terms and conditions specified in the contract;
(6) The cabinet and the HIO or PHP shall be [are] responsible for acting in accordance with the terms of the contract. If the contract is terminated, the cabinet shall provide covered Medicaid [medical assistance] services, and make reimbursement for those services, in the usual manner provided for by regulation; and
(7) The HIO or PHP shall [must] arrange for the provision of covered services to enrollees which are of the same quality as those services provided to other patients of those health care providers participating in the program. Participating health care providers shall [must] meet reasonable standards which at a minimum are equal to the Kentucky Medicaid [Medical Assistance] Program standards. Health care providers shall [will] be subject to removal from the program in accordance with the physician contract.

Section 2. Covered Services. The following named services shall be provided by the HIO or PHP to eligible recipients identified by the cabinet and enrolled by the HIO or PHP in its service delivery system, and shall not be provided to those recipients by the cabinet in its usual program of Medicaid [Medical Assistance] in the geographic area covered by the HIO or PHP. If the service is not obtained in the manner prescribed in this regulation, no payment shall be made pursuant to this regulation to the extent the service is obtained in the covered area or contiguous counties in Kentucky and adjoining states, and the service shall be considered uncovered in these [such] circumstances. If services are received in other counties, the Medicaid program shall cover the [such] services in the usual manner (with appropriate adjustments in payments to the HIO or PHP).
(1) Hospital inpatient services shall be provided to the same extent the [such] services are available to the general Medicaid [medical assistance] recipient, except that up to an additional seven (7) days per admission may be provided at the HIO's or PHP's expense; hospital inpatient services shall be prior authorized by the HIO or PHP.
(2) Hospital outpatient services shall be provided to the same extent the [such] services are available to the general Medicaid [medical assistance] recipient. Hospital outpatient

services shall be prior authorized; however, bona fide emergency services, if appropriate, need not be prior authorized.

(3) Primary physician services, defined as the medical services of a general practitioner, family practitioner, general internist, pediatrician, and physician clinic (limited to the four (4) preceding physician classifications), shall be provided to the same extent the [such] services are available to the general Medicaid [medical assistance] recipient. Obstetrical services meeting criteria specified by the cabinet may be considered primary physician services.

(4) Other physician services (nonprimary physician services) shall be provided to the same extent the [such] services are available to the general Medicaid [medical assistance] recipient; other physician services shall be prior authorized by the HIO or PHP.

(5) Home health services shall be provided to the same extent the [such] services are available to the general Medicaid [medical assistance] recipient; home health services shall be prior authorized by the HIO or PHP.

(6) Other [Title XIX (]Medicaid[)] covered services may be provided by agreement between the cabinet and the HIO or PHP.

(7) Other related services not covered by [Title XIX (]Medicaid[)] may be provided by the HIO or PHP at the HIO or PHP's cost; no responsibility for provision of the [such] services shall accrue to the cabinet.

Section 3. Determination of Eligibility and Assignment of Primary Health Provider. (1) Medicaid [Medical assistance] eligibility shall be determined in accordance with appropriate Kentucky Administrative Regulations.

(2) Recipients shall be offered their choice of HIO or PHP primary health provider from a list provided by the HIO or PHP to the state. The recipient shall then be enrolled as the responsibility of the provider selected. Those recipients who do not make a choice shall [will] be assigned to a provider from the HIO or PHP provided list on a geographic basis to the extent reasonable. No provider shall [may] be assigned less than 300 recipients (or, for clinics, 400 recipients) nor more than 1,800 recipients, and the cabinet reserves the right to assign or reassign recipients [so as] to ensure the upper limit is not exceeded. Within this context, "provider" means participating physician, physician clinic, primary care center, ambulatory care center, and access unit, with the upper limit applicable on an individual physician basis for each physician who is associated with the provider. The 1,800 enrollees per physician maximum may [can] be exceeded if the physician may [can] demonstrate that quality care will be delivered to all enrollees. The minimum of 300 enrollees per physician can be waived by HIO or PHP if it is determined by the HIO or PHP that it is in the best interest of the HIO or PHP program.

Section 4. Appeals. Each applicant or recipient covered under this regulation shall retain all rights of appeal to the cabinet specified in 904 KAR 2:055, Hearings and appeals.

Section 5. Limitations. This regulation shall not be applicable with regard to any eligible resident of the area who is not within the covered class specified. This regulation shall not be applicable with regard to any covered Medicaid [medical assistance] service not specified in Section 2 of this regulation for any eligible recipient, even if within the class.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 7, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All health insuring organization and prepaid health plan service providers participating in the Medicaid Program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS

Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:130. Payments for health insuring organizations and prepaid health plan services.

RELATES TO: KRS 205.520, 205.560
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 447 Subparts B & D, 42 USC 1396a, b, d [Chapter 398 of the 1982 Kentucky Acts]
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 and KRS 205.560 empower the cabinet, by regulation, to designate and limit the scope of medical care which will be provided through the Medicaid [Medical Assistance] Program to Kentucky's indigent citizenry. [The 1982 Kentucky Acts, Chapter 398, Part I, Section 52(a)2 require the cabinet to implement a Medicaid cost containment plan.] This regulation sets forth the method for determining amounts payable by the cabinet for covered Medicaid [medical assistance] services provided by health insuring organizations (HIO's) and prepaid health plans (PHP's) pursuant to contract between the HIO or PHP and the cabinet.

Section 1. Coverage. The Cabinet for Human Resources shall reimburse a participating health insuring organization (HIO) or prepaid health plan (PHP) for services rendered to eligible Medicaid [medical assistance] recipients who are identified to the HIO or PHP by the cabinet and enrolled by the HIO or PHP in its health coverage program. Reimbursement shall be only for those services the HIO or PHP may by regulation provide, and as set forth by contract between the cabinet and the HIO or PHP. No reimbursement shall be made for services rendered to ineligible individuals, or for eligible individuals not properly and appropriately enrolled in the HIO or PHP program of health care. All HIO or PHP subcontracts except those with physicians shall [will] require prior approval by the state. All subcontracts shall [must] provide that the Commonwealth of Kentucky shall not be liable to the subcontractor for its performance under the subcontract.

Section 2. Payment Amounts. (1) The HIO or PHP shall [will] be reimbursed on a capitated basis; capitation may vary by category of assistance, sex and age. The capitation amount(s) shall be based on statistics showing normal utilization and cost for the affected category(ies).
(2) Payments made on the capitation basis shall not exceed the cost of providing the same services (covered by the contract between the HIO or PHP and the cabinet) to a comparable Medicaid [medical assistance] population on a fee-for-service basis.
(3) The additional seven (7) days of hospital inpatient coverage, and other uncovered services which may be provided, shall [are] not [to] be considered reimbursable services under the Medicaid [Medical Assistance] Program, and the cost of the [such] services shall not be included when computing the capitation fee.

Section 3. Reports and Data. The HIO or PHP, and all subsidiary providers or subcontractors, shall be required to retain and make available to the cabinet and to the Department of Health and Human Services all records pertaining to service delivery and amounts paid under the contract, and the HIO or PHP shall provide any and all information which the cabinet needs for the administration of the contract. The [Such] information shall [is expected to] include utilization data, data relating to payment rates, summaries of complaints, summaries of amounts of third party recoveries, marketing and enrollment material and performance records, and similar or related data which may be necessary to determine the efficiency and effectiveness of this method of health care.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 7, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All health insuring organizations and prepaid health plan services providers participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state

and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:140. Alternative home and community based services for the mentally retarded (AIS/MR).

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 441 Subpart G, 42 USC 1396a, b, d, n
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the coverage provisions applicable to home and community based services provided to the mentally retarded as an alternative to intermediate care facility services for the mentally retarded.

Section 1. General Coverage Provisions. The home and community based services described in this regulation shall [may] be provided only to those individuals eligible for Medicaid [medical assistance] who meet intermediate care for the mentally retarded patient status criteria as set forth in 907 KAR 1:022 [1:024]. These services [described herein] are designed to prevent or reduce institutionalization at the intermediate care level and shall [may] therefore be provided only to individuals in community residence living situations (which may include personal care facilities). These services are termed alternative intermediate services for the mentally retarded [/mental retardation] (AIS/MR)[, and are henceforth referred to as AIS/MR services].

Section 2. Provider Participation. Any qualified provider may provide AIS/MR services, upon application to the cabinet for a provider participation agreement accompanied by data sufficient in the opinion of the cabinet to show that the provider is qualified under applicable law to provide the services and has the capability to do so. Community mental health and [/] mental retardation centers, which are required by law and Kentucky administrative regulations to provide services to the mentally retarded, shall if [need only to be] licensed by the cabinet [to] be considered qualified to enter into the appropriate AIS/MR provider participation agreement. Participating providers shall be required to provide, or arrange for the provision of, all services described in this regulation[, and to operate the AIS/MR program as described herein].

Section 3. The Cluster Concept. The cluster concept shall be used in the provision of AIS/MR services. Each cluster shall consist of one (1) core residence and several alternative residences that are administratively attached to the core, in which specified residential services as shown in Section 4 of this regulation are provided. The cluster shall [will] also include those eligible individuals living in their own homes who are being provided specified covered services under the direction of core personnel. Within the cluster, the core residence personnel shall [will] perform five (5) major functions: client evaluation, program administration, program support, emergency back-up, and respite care.

Section 4. Covered Services. The following services shall be [are] covered as AIS/MR services:
(1) Cluster residential services, including the core residence and alternative living units, providing residential (home) training, homemaker and [/] home health aide support, personal care, and respite care. Room and board shall be [are] excluded.
(a) "Residential (home) training" which are [means] services designed to facilitate the acquisition of communication, sensory-motor, independent living, and social skills.
(b) As part of the residential service residential staff may provide homemaker and [/] home health aide support, including the provision of minor home physical adaptation, laundry services, meal planning and preparation, shopping and light housekeeping.
(c) "Personal care" which are [means] services to assist and train in ambulation, grooming, feeding, etc.
(d) "Respite care" which is [means] short-term care (more than one (1) hour, less than thirty (30) days) provided to AIS/MR residential clients for the temporary relief of residential alternative living unit staff. Respite care for the residential client shall [may] not exceed forty (40) total days per year, except that extended respite exceeding this limit may be provided when preauthorized in writing by the cabinet's AIS/MR project manager (or his[/her] designee) based on a crisis situation.
(2) Case management and [/] client evaluation, including case coordination, client evaluation, and plan of care preparation and implementation, provided by core staff to all cluster service recipients.
(3) In-home support, including in-home training, homemaker and [/] home health aide services, and personal care services provided to persons living in nonspecialized residential settings (family homes, apartments, etc.) other than alternative living units (which are under more direct supervision by core personnel).
(a) "In-home training" which are [means] services designed to facilitate the acquisition of language and communication, sensory-motor, social and self-help skills.
(b) "Homemaker and [/] home health aide

support" which are [means] services to clients in their family homes including the provision of minor physical adaptations, laundry services, meal planning and preparation, shopping and house cleaning.

(3) "Personal care" which are [means] services to assist and train in ambulation, grooming, feeding, etc.

(4) Habilitation services, including behavior management, psychological services, medical services, occupational therapy, physical therapy, speech therapy, expressive therapies and leisure time services. Services shall be [are] available to both adults and children if [when] not required to be provided by the local schools and if [when] directed at the resolution of problems not associated with mental illness.

(5) [Effective June 1, 1987,] Day habilitation services shall [may] be provided for a minimum of four (4) hours per day, five (5) days per week, twelve (12) months per year, in nonresidential noninpatient settings. Services shall [must] be age appropriate. Adult means an individual not less than eighteen (18) years of age. For children, day habilitation services shall [will] be covered only during the summer months when school is not in session.

(6) Respite services, meaning short-term care (more than one (1) hour, less than thirty (30) days) provided to nonresidential AIS/MR clients in or out of their home residential environments for the temporary relief of the individual or the family. Respite care may be provided in a variety of settings. Respite service to the nonresidential client shall [may] not exceed thirty (30) consecutive days and sixty (60) total days per year, except that extended respite exceeding these limits may be provided when preauthorized in writing by the cabinet's AIS/MR project manager (or his[/her] designee) based on a crisis situation.

Section 5. Patient Status Determinations. The cabinet shall make patient status determinations using the criteria specified in 907 KAR 1:022 [1:024].

Section 6. Authorization for Services; Hearing Rights. The cabinet shall authorize AIS/MR services to insure that patient status is met, that AIS/MR services are adequate for the needs of the client, and that AIS/MR services are financially feasible (i.e., do not cost significantly more than would institutional services). A client found unsuitable due to failure to meet any of the specified reasons shall [may] be denied AIS/MR services. An individual, if eligible for AIS/MR services, shall [will] be given the choice of AIS/MR services or traditional intermediate care facility services for the mentally retarded. Any denial of service may be appealed in the manner provided for by 907 KAR 1:075 [and/]or 904 KAR 2:055, as appropriate.

Section 7. Subcontracting. A participating provider may subcontract for services. A subcontracted [Such] service shall [must] be provided in accordance with the provider participation agreement, this regulation, [and the terms and conditions contained herein,] and the [subcontractor must meet] applicable requirements of law and regulations governing the performance of the service. If [When] subcontracting is used, the participating provider shall be [remains] responsible for the provision of the service.

Section 8. Auditing and Reporting. All participating providers, including subcontract providers, shall be required to maintain fiscal and service records and to provide [such] reports [as may be] determined necessary by the cabinet for the effective functioning and administration of the program. Providers, including subcontract providers, shall be required to make available upon request all service and financial records to representatives of the Cabinet for Human Resources; the federal Department of Health and Human Services, Comptroller General and Health Care Financing Administration; and the General Accounting Office, and[/or] their designees, for auditing and[/or] monitoring purposes.

[Section 9. Effective Date. The amendments to this regulation shall be effective with regard to services provided on or after June 1, 1987.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 7, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Providers of home and community based services.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:160. Home and community based services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.180, 42 USC 1396a, b, d, n
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the coverage provisions applicable to home and community based services provided to eligible recipients as an alternative to [skilled] nursing [and intermediate care] facility services.

Section 1. General Coverage Provisions. The home and community based (HCB) services shall [described in this regulation may] be provided only to those individuals eligible for Medicaid [medical assistance] who meet patient status criteria for [skilled] nursing facility care (as set forth in 907 KAR 1:022) [or intermediate care facility care (as set forth in 907 KAR 1:024)]. The HCB services [described herein] are designed to prevent or reduce institutionalization at the nursing facility [skilled nursing and intermediate] care level. HCB services shall [s, and may therefore] be provided only to individuals in community residence living situations who would be admitted to a nursing facility if HCB services were not available. Individuals requiring only minor home adaptations or minor home adaptations and case management shall not be considered HCB services eligible. These services are provided pursuant to a waiver granted by the United States Department of Health and Human Services[, and are available only to recipients who reside in an area where coverage has been phased in with statewide coverage being available by July 1, 1987, as specified in the waiver request]. Excluded from coverage shall be [are] those individuals for whom the cost of HCB services would reasonably be expected (on an overall basis) to exceed the cost of the appropriate level of institutional services, and inpatients of hospitals, [skilled] nursing facilities[, intermediate care facilities,] and intermediate care facilities for the mentally retarded. HCB services shall [may] be provided only to those individuals for whom the HCB services are an appropriate alternative to institutionalization, who meet appropriate patient status, and who choose the HCB services option. The home and community based services agency (provider) shall be responsible for securing appropriate physician recommendations and orders relating to care, and for performing the required comprehensive assessment and care planning. The designated Peer Review Organization shall make the level of care determination as the agent or representative of the cabinet. HCB services shall [must] be prior authorized by the cabinet. [Notwithstanding the preceding,] The assessment shall not [may] be completed and billed for any [appropriate] medicaid recipient who does not receive other waiver services.

Section 2. Provider Participation. Participating HCB providers shall [must] meet all applicable certification and licensure requirements for providing in-home and community based services under the Kentucky Medicaid [Medical Assistance] Program, and shall be required to comply with the provider participation agreement providing for services in accordance with the terms and conditions specified in this regulation.

Section 3. Covered Services. The following services shall be [are] covered HCB services:
(1) Assessment. The assessment includes the collection of data necessary to determine the appropriateness of HCB service for the client, and case planning (a patient care plan to include services required, duration and frequency, and estimated cost). For each assessment or reassessment, the attending physician shall certify that if HCB services were not available, he would order nursing facility services and the individual would be admitted in the immediate future.
(2) Case management. This is the process of locating, coordinating and monitoring a group of services with responsibility resting with a designated person. A case manager shall be a registered nurse, licensed practical nurse, or a social worker with a degree in social work, sociology or related field. Each recipient shall have at least one (1) case management contact per month (thirty (30) to thirty-one (31) days) to assess the service delivery. The contact may be by telephone or face-to-face. However, a face-to-face contact with the recipient shall be made at least every other month. The face-to-face contact with the adult day health care recipient may be made while the recipient is at the adult day health care center.
(3) Homemaker services. Homemaker services are [This is the provision of] services relating to general household activities, such as meal preparation and routine household care, and shall [may] be provided by a trained homemaker when the client is functionally unable to perform these tasks and the individual regularly responsible for these activities is temporarily absent or functionally unable to manage the home and care and arrangements cannot be made with relatives or friends for the performance of the service. [Homemaker services may additionally be

provided on an intermittent basis when necessary to supplement those services usually and customarily provided by the informal caregiver.]

(4) Personal care services. Personal care services are medically oriented services relating [and related] to the patient's physical requirements that are prescribed by a physician in accordance with the recipient's plan of treatment and provided by an individual who is qualified, supervised by a registered nurse and not a member of the client's family. Personal care services [, and] may include bathing, assistance with clothing, assisting with medications customarily self-administered, assistance with ambulation, etc.

(5) Respite care services. Respite care services are [This is the provision of] homemaker or [/]home health aid level services provided on a temporary basis due to the absence or need for relief of the informal caregiver. Respite care shall [must] be in accordance with the orders of a physician and the plan of care, provided at a level that safely meets the medical needs of the patient by an individual with appropriate training and qualifications, and [may be] provided only when an appropriate alternative informal caregiver is not available to provide the necessary services. The total value of respite care services [are] covered shall not exceed [in an amount up to] $2,000 in any calendar year, and shall [but] not [to] exceed $1,000 per [in any] six (6) month period (January 1 through June 30 or July 1 through December 31) within that calendar year.

(6) Minor home adaptations. This is the addition to or modification of the patient's home environment when the patient's condition necessitates a modification of the existing home situation, and may include such items as rails, ramps, grab bars, etc., including labor and necessary supplies. Prior approval is required. Major home repairs shall [are] not be covered.

(7) Adult day health care services. Adult day health care services are [This is the provision of] adult day health care services provided in an appropriate licensed facility. Basic services include: one (1) meal per day (including special diets); snacks, as appropriate; registered nurse and other supervision; regularly scheduled daily activities; routine services required to meet daily personal and health care needs; incidental supplies necessary to provide adult day health care services; and equipment essential to the provision of adult day health care services. Ancillary services shall include: physical, speech and occupational therapy evaluations as indicated for the purpose of developing a plan of treatment which may be carried out by center staff; and necessary ongoing supervision and follow-up of the maintenance program by the therapist. Transportation shall [is] not be covered under the service element, but is a separately reimbursable service pursuant to 907 KAR 1:060.

(8) Respiratory therapy services. The service shall be [is] available only for ventilator dependent recipients who are receiving home health agency services and shall [must] be in accordance with the physician's written plan of treatment.

Section 4. Prior Authorization for Services; Hearing Rights. The cabinet shall prior authorize HCB services to ensure that patient status is met, that HCB services are adequate for the needs of the client, and that HCB services would not reasonably be expected to exceed the cost of institutional care (on an overall basis). A client found unsuitable for failure to meet the specified criteria shall [may] be denied HCB services. An individual, if eligible for HCB services, shall [will] be given the option of HCB services or traditional [skilled] nursing [or intermediate care] facility services. Any denial of service may be appealed pursuant to 904 KAR 2:055.

Section 5. Contracting and Subcontracting. All HCB services, whether provided directly by the participating provider or through contract or subcontract, shall [must] be in accordance with the terms and conditions specified herein, and the contractor or subcontractor shall [must] meet applicable requirements of law and regulations governing the performance of the service.

Section 6. Auditing and Reporting. All participating providers, contractors and subcontractors shall be required to maintain fiscal and service records and to provide the [such] reports [as may be] determined necessary by the cabinet for the effective functioning and administration of the program. The [Such] providers, contractors and subcontractors shall be required to make available upon request all service and financial records (including records of ownership, home office costs, etc.) to the Cabinet for Human Resources, the United States Department of Health and Human Services, and the Comptroller General, and[/or] their representatives or designees, for auditing and[/or] monitoring purposes.

[Section 7. Implementation. The phasein schedule for implementation of HCB services is as follows: effective January 1, 1987, the Bluegrass, Buffalo Trace, Gateway, Kentucky River and Cumberland Valley Area Development Districts (ADDs); effective March 1, 1987, the Barren River, Lincoln Trail, Lake Cumberland and Northern Kentucky ADDs; effective July 1, 1987, all other Kentucky ADDs.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 7, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed

administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All home and community based services providers participating in the Medicaid program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements and to make technical conforming amendments.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:180. Alternative birth center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.170, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the coverage provisions for services provided by alternative birth centers for which payment shall be made by the Medicaid [Medical Assistance] Program in behalf of both the categorically needy and the medically needy.

Section 1. General Provisions. Services shall be covered only when provided to an eligible Medicaid [Title XIX] recipient by a participating alternative birth center which is appropriately licensed and operating in accordance with 904 KAR 20:150.

Section 2. Covered Services. The following services may be provided by alternative birth centers:
(1) Prenatal visits, to include one (1) initial visit and follow-up visits as appropriate.
(2) Standby services, with the medical professional (obstetrician or nurse midwife) physically present throughout the course of the labor.
(3) Delivery, which includes the actual delivery, necessary supplies and material, and the postdelivery examination.
(4) Postnatal visits, not to exceed two (2) and which shall [must] be accomplished within six (6) weeks of the delivery.
(5) Laboratory services as specified by the Cabinet for Human Resources.

Section 3. Records, Reporting and Monitoring. The facility shall maintain complete records of services rendered, and [shall] provide to the cabinet the [such] records and reports [as] the cabinet [may] requires for the effective implementation and administration of the service. Facility records shall be available to the Cabinet for Human Resources, the United States Department of Health and Human Services, and the Comptroller General, and[/or] their representatives or designees for auditing or monitoring purposes.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 7, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: None; no alternative birth center services providers are currently participating in the Medicaid program.
(a) Direct and indirect costs or savings to those affected: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:190. Payments for alternative birth center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 447.325, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the method for determining amounts payable by the cabinet for alternative birth center services.

Section 1. General Requirements. The cabinet shall reimburse participating licensed alternative birth centers for covered services rendered eligible Medicaid [Title XIX] recipients when the [such] services are provided in accordance with the provisions of 904 KAR 20:150, Alternative birth centers.

Section 2. Payments. (1) Prenatal visits, standby services and postnatal visits billed by a birthing center shall [will] be paid at the lower of the billed charge or seventy-five (75) percent of the 75th percentile for the general practicing physician for the same services when services are provided by the medical professional (i.e., physician or nurse-midwife who is an appropriately licensed and certified advanced registered nurse practitioner). Laboratory services shall [may] be paid at the lower of the billed charges or the 75th percentile for the general practicing physician or the obstetrician whichever is lower.
(2) The delivery fee payable to the center shall be the facility's usual and customary rate not to exceed $365 per delivery. This fee is inclusive of all costs associated with the delivery, including the professional fee for the delivery, necessary supplies and materials, and the post delivery examination.
(3) Program payment shall [is to] be considered payment in full for all services, supplies, and devices provided during the visit billed, and no additional amounts may be requested from the recipient, the medicaid program, or any other source. This shall not, however, preclude the collection of appropriate amounts from liable third party sources which shall serve to reduce the liability of the cabinet.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 7, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: None; no alternative birth center services providers are presently participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state

and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:200. Nurse anesthetists' services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the provisions relating to nurse anesthetists' services for which payment shall be made by the Medicaid [Medical Assistance] Program in behalf of both the categorically needy and the medically needy.

Section 1. Coverage. Participating nurse anesthetists may provide anesthesia services to eligible Medicaid [Title XIX] recipients when the [such] services are within the scope of practice of the nurse anesthetist and are covered anesthesia services in the Medicaid [Medical Assistance] Program.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 7, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All nurse anesthetists participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:220. Terms and conditions of provider participation; provider appeals.

RELATES TO: KRS 205.510 to 205.990
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 431.107, 42 USC 1396a, b, d [205.520]
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical assistance. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the provisions relating to provider participation and provider appeals. [Through KRS 205.520, the Secretary for Human Resources may establish regulations to comply with requirements imposed or opportunities presented by federal law to take advantage of funds available for medical assistance. Through an amendment to 42 U.S.C. 1395c and 1395j, Section 2175 of the Omnibus Budget Reconciliation Act of

1981 allows each state to restrict provider participation in its Medical Assistance Program if it is determined the provider committed fraud or abused the program. To allow the state the ability to respond for good cause against a provider through an administrative action short of adjudication of criminal liability and thereby assuring the continued integrity of the Medical Assistance Program, this regulation is enacted. This provision reiterates the authority of the cabinet to determine the terms and conditions of vendor participation in the Kentucky Medical Assistance Program, and sets forth the procedure by which an aggrieved provider may appeal the termination, suspension, denial or nonrenewal of his or her provider agreement.]

Section 1. Statement of Policy and Definition. [The Cabinet for Human Resources may determine the terms and conditions for participation of vendors in the Kentucky Medical Assistance Program.] The cabinet may suspend, terminate, deny or not renew a vendor's provider agreement for good cause. For purposes of this regulation, "good cause" is defined as:

(1) Misrepresenting to concealing facts in order to receive or to enable others to receive benefits;

(2) Furnishing or ordering services under Medicaid that are substantially in excess of the recipient's needs or that fail to meet professionally recognized health care standards;

(3) Misrepresenting factors concerning a facility's qualifications as a provider;

(4) Failure to comply with the terms and conditions for vendor participation in the program and to effectively render service to recipients;

(5) Submitting false or questionable charges to the cabinet [agency].

Section 2. Suspension based on Felony Conviction. (1) When a provider, which is not a facility or institution, participating in the Kentucky Medicaid [Medical Assistance] Program [(KMAP)] is convicted of a felony involving fraudulent practice relating to Medicaid [the KMAP], the [such] provider is to be suspended from participation in the program [KMAP] for a minimum of two (2) years. At the end of the suspension period, the provider may initiate enrollment procedures with Medicaid [the KMAP].

(2) When a provider, which is a facility or institution, participating in Medicaid [the KMAP] has an owner or employee who is convicted of a felony involving fraudulent practice relating to Medicaid [the KMAP], the [such] owner or employee is to be precluded from participation in the program [KMAP] for a minimum of two (2) years. In the case of an owner, this means that he shall [/she must] divest himself [or herself] of the ownership interest; in the case of an employee, this means the employee relationship shall [must] end. If appropriate action ending the owner or employee relationship is not taken within sixty (60) days after conviction of the felony involving fraudulent practice relating to Medicaid [the KMAP], the facility or institution is to be suspended from participation in the program [KMAP] for a minimum of two (2) years except that the suspension may be for a lesser period of time if the relationship with the convicted owner or employee is severed. If a facility or institution is suspended, the [such] provider may initiate enrollment procedures with Medicaid [the KMAP] at the end of the suspension period (a minimum of two (2) years, or less if the relationship with the convicted individual is severed prior to the expiration of that period of time); if [when] a convicted individual who is an owner or employee severs his[/her] relationship with the institution or facility, the individual may not singly or as an owner or employee of a facility or institution participate in Medicaid [the KMAP] for a minimum period of two (2) years. An individual precluded from participation in Medicaid [the KMAP] as a convicted owner or employee shall [may] not establish an owner[/] or employee relationship with any other Medicaid [KMAP] participating facility or institution during the period of suspension. If he[/she] does so, the facility or institution shall [is to] be advised of the individual's exclusion from participation and afforded a reasonable opportunity (i.e., a period of sixty (60) days) to sever the relationship; if the relationship is not severed, the facility or institution shall [will] be precluded from [KMAP] participation in accordance with the criteria previously stated [herein].

(3) A facility or institution may request that Medicaid [the KMAP] waive (or otherwise hold in abeyance) the suspension based on the necessity for services by the convicted individual; the suspension may be waived (or otherwise held in abeyance) by Medicaid [the KMAP] if it appears that failure to do so would result in Medicaid recipients in the community having inadequate access to services of the type provided by the facility or institution.

Section 3. Upon notice of a decision to suspend, terminate, deny or not renew a provider agreement by the cabinet, any individual provider who is aggrieved by the action [thereby] may file an appeal. The following procedure shall [will] govern the appeal of any [such] individual provider who has received a [said] notice from the cabinet of termination, suspension, denial or nonrenewal of his [or her] provider agreement or of his [or her] suspension from the [Kentucky Medical Assistance] program, except in the case of an adverse action taken under [Title XVIII ()Medicare[])], binding upon the Medicaid [Medical Assistance] program. Adverse action taken against an individual provider under Medicare shall [must] be appealed to the Medicare agency using procedures established by the federal Medicare agency [through the mechanism set forth in 42 CFR, Part 405 Subpart O].

Section 4. Notification. [The Kentucky Medical Assistance Program shall notify] A provider shall be notified in writing at least fifteen (15) days prior to the effective date of any decision to terminate, suspend, deny or not renew a provider agreement. The notice shall [will] state:

(1) The reasons for the decision;

(2) The effective date;

(3) The extent of its applicability to participation in the Medicaid [Medical Assistance] program;

(4) The earliest date on which the cabinet shall [will] accept a request for reinstatement;

(5) The requirements and procedures for

reinstatement; and
(6) The appeal rights available to the excluded party.

Section 5. Evidentiary Hearing. Any provider aggrieved by a decision by the cabinet to suspend, terminate, deny or not renew a provider agreement pursuant to Section 1 of this regulation may, upon written request made within five (5) days from receipt of the written consideration decision, request an evidentiary hearing. The [Such] hearing shall be held within thirty (30) days of receipt of the written request, and a decision shall be rendered within thirty (30) days from the date all evidence and testimony is submitted. Technical rules of evidence shall not apply. The hearing shall be held before an impartial decision-maker appointed by the Secretary for Human Resources. When an evidentiary hearing his held under this section, a provider shall be entitled to the following:
(1) Timely written notice as to the basis of the adverse decision and disclosure of the evidence upon which the decision was based;
(2) An opportunity to appear in person and introduce evidence to refute the basis of the adverse decision;
(3) A provider may be represented by counsel;
(4) A provider shall have an opportunity to be heard in person, to call witnesses, and to introduce documentary and other demonstrative evidence;
(5) A provider shall have an opportunity to cross-examine witnesses;
(6) The decision of the impartial hearing officer shall be in writing and shall set forth the reasons for the decision and the evidence upon which the determination is based.

Section 6. The decision of the hearing officer shall be the final decision of the Cabinet for Human Resources.

Section 7. The rights upon appeal by [skilled] nursing facilities [(SNF's), intermediate care facilities (ICF's),] and intermediate care facilities for the mentally retarded (ICF/MR's) shall be governed by the provisions of 42 CFR 431.154 (informal reconsideration), and thereafter, 42 CFR 431.153 (evidentiary hearing).

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 7, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All providers participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:260. Coordination of benefits between the Medicaid [Medical Assistance] program and the Crime Victims Compensation Board.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance (hereinafter called "Medicaid") [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the methods and principles that will be used to determine the extent of Medicaid liability in situations involving Medicaid eligible individuals who are applicants for, or recipients of, award or grants from the Crime

Victims Compensation Board (hereinafter called "the board").

Section 1. General Principles. (1) The [Medical Assistance ("]Medicaid["")] Program is the payor of last resort and complies with the requirement shown in 907 KAR 1:005, Nonduplication of payments. Any provisions contained in this regulation [herein] are subordinate to the provisions of 907 KAR 1:005 and shall not be construed in [such] a manner which [as to] contravenes the policies contained in 907 KAR 1:005 [therein].

(2) The cabinet recognizes that the Crime Victims Compensation Board ("the board") has discretion in the making of awards or grants, and that until an award or grant is made by the board, third-party liability pursuant to 907 KAR 1:005 cannot be presumed to exist.

(3) In the event the board makes a grant or award to a Medicaid eligible individual for Medicaid covered services, the amount payable by the Medicaid program shall be reduced by the amount of the assumed third-party obligation; if the board makes no grant or award for Medicaid covered services, Medicaid program payments for covered services shall be made in accordance with usual program policy.

Section 2. Procedures to Ensure Nonduplication of Payments. The following methodology shall [will] be used by the Medicaid program to ensure that duplication of claims between Medicaid and the board is reduced to the greatest extent possible.

(1) When the board notifies the cabinet of a claim(s) which has been filed, the cabinet shall determine if the crime victim(s) is covered under the Medicaid program and advise the board appropriately.

(2) When the board notifies the cabinet of all itemized medical charges for which a Medicaid eligible victim is seeking compensation, the cabinet shall [will] advise the board as to whether the medical service is covered under the Medicaid program.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 7, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Medicaid eligible recipients who are applicants for, or recipients of, awards or grants from the Crime Victims Compensation Board.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:270. Podiatry services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.60, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with requirements of Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the coverage provisions relating to podiatry services for which payment shall be made by the Medicaid [Medical Assistance] Program on behalf of both the categorically needy and the medically needy.

Section 1. Coverage. The [Medical Assistance (]Medicaid[)] program shall [will] cover medical and[/or] surgical services provided to eligible Medicaid recipients by licensed, participating podiatrists when the [such] services fall within the scope of the practice of podiatry except as

otherwise provided for herein. The scope of coverage generally parallels the coverage available under the Medicare program with the addition of wart removal.

Section 2. Exclusions From Coverage; Exceptions. The following areas of care shall [are] not be covered except as specified:

(1) Treatment of flatfoot. Services directed toward the care or correction of flatfoot shall [such a service are] not be covered.

(2) Treatment of subluxations of the foot. Surgical or nonsurgical treatments undertaken for the sole purpose of correcting a subluxated structure as an isolated entity within the foot shall [are] not be covered; this exclusion of coverage does not apply to reasonable and necessary diagnosis and treatment of symptomatic conditions such as osteoarthritis, bursitis (including bunion), tendonitis, etc., that result from or are associated with partial displacement of foot structures, or to surgical correction that is an integral part of the treatment of a foot injury or that is undertaken to improve the function of the foot or to alleviate an induced or associated symptomatic condition.

(3) Orthopedic shoes and other supportive devices for the feet are not covered under this program element [any circumstances].

(4) Routine foot care. Services characterized as routine foot care shall [are] generally not be covered; this includes such services as the cutting or removal of corns or calluses, the trimming of nails, and other hygienic and preventive maintenance care in the realm of self-care such as cleaning and soaking the feet, the use of skin creams to maintain skin tone of both ambulatory and bedfast patients, and any services performed in the absence of localized illness, injury or symptoms involving the foot. Notwithstanding the preceding, payment may be made for routine foot care such as cutting or removing corns, calluses or nails if [when] the patient has a systematic disease of sufficient severity that unskilled performance of these [such] procedures would be hazardous; the patient's condition must [have been the] result from [of] severe circulatory embarrassment or [because of] areas of desensitization in the legs or feet. Although not intended as a comprehensive list, the following metabolic, neurological, and peripheral vascular diseases (with synonyms in parentheses) most commonly represent the underlying systematic conditions contemplated and which would justify coverage; where the patient's condition is one (1) of those designated by an asterisk (*), routine procedures shall be [are] reimbursable only if the patient is under the active care of a doctor of medicine or osteopathy for the [such a] condition and this doctor's name shall [must] appear on the claim form:

(a) *Diabetes mellitus;

(b) Arteriosclerosis obliterans (A.S.O., arteriosclerosis of the extremities, occlusive peripheral arteriosclerosis);

(c) Buerger's disease (thromboangitis obliterans);

(d) Chronic thrombophlebitis;

(e) Peripheral neuropathies involving the feet:

1. *Associated with malnutrition and vitamin deficiency, such as: malnutrition (general, pellagra); alcoholism; malabsorption (celiac disease, tropical sprue); and pernicious anemia;

2. *Associated with carcinoma;

3. *Associated with diabetes mellitus;

4. *Associated with drugs and toxins;

5. *Associated with multiple sclerosis;

6. *Associated with uremia (chronic renal disease);

7. Associated with traumatic injury;

8. Associated with leprosy or neurosyphilis; and

9. Associated with hereditary disorders, such as: hereditary sensory radicular; neuropathy, angiokeratoma corposis; and diffusum (Fabry's), amyloid neuropathy.

(5) Services ordinarily considered routine shall [are] also be covered if they are performed as a necessary and integral part of otherwise covered services, such as the diagnosis and treatment of diabetic ulcers, wounds, and infections. Diagnostic and treatment services for foot infections shall [are] also be covered as they are considered outside the scope of "routine."

Section 3. Provisions Relating to Special Diagnostic Services. Plethysmography is a recognized tool for the preoperative podiatric evaluation of the diabetic patient or one who has intermittent claudication or other signs or symptoms indicative of peripheral vascular disease which would have a bearing on the patient's candidacy for foot surgery. The method of plethysmography determines program coverage.

(1) Covered methods include:

(a) Segmental, including regional, differential, recording oscillometer, and pulse volume recorder;

(b) Electrical impedance; and

(c) Ultrasonic measure of blood flow (Doppler).

(2) Noncovered methods include:

(a) Inductance;

(b) Capacitance;

(c) Strain gauge;

(d) Photoelectric; and

(e) Mechanical oscillometry.

(3) Venous occlusive pneumoplethysmography shall [would] be appropriate only in the setting of a hospital vascular laboratory.

[Section 4. Date of Implementation. Coverage of podiatry services will be effective for services performed on or after November 1, 1984.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 7, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed

administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All podiatrists participating in the Medicare and Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:300. Withholding the federal share of payments to recover Medicare or Medicaid overpayments.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 405.375(a), 447.30, 447.31, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the conditions under which the cabinet shall [will] withhold the federal share of Medicaid [medical assistance] payments as a recoupment of Medicare overpayments, or request withholding of Medicare payments by the United States Health Care Financing Administration, Department of Health and Human Services as recoupment of Medicaid overpayments.

Section 1. Withholding the Federal Share of Payments to Medicaid Providers to Recover Medicare Overpayments. (1) The cabinet shall withhold the federal share of Medicaid payments otherwise due a Medicaid provider when ordered to do so by the United States Health Care Financing Administration (HCFA), Department of Health and Human Services, as recovery of Medicare overpayments. The [Such] withholding shall be accomplished in accordance with the terms and conditions specified in federal regulations at 42 CFR 447.30 which are hereby incorporated by reference as implemented [effective] on June 10, 1985.
(2) The right of the cabinet to withhold the federal share of payments otherwise due a Medicaid provider(s) for the purpose of recovery of Medicare overpayments shall be superior to the right of the provider(s) to receive reimbursement for Medicaid services provided eligible Medicaid recipients as otherwise provided for by state regulation.
(3) The "federal share" of Medicaid payments is that portion of the payment funded with federal funds. The federal share is generally that amount known as the "federal medical assistance percentage," but the actual percentage may vary for specified services.

Section 2. Withholding Medicare Payments to Recover Medicaid Overpayments. (1) The cabinet may request HCFA to withhold Medicare payments to a provider in order to recover Medicaid overpayments to the provider. The [Such] requests for withholding shall be accomplished in accordance with the terms and conditions specified in federal regulations at 42 CFR 447.31 which are hereby incorporated by reference as implemented [effective] on June 10, 1985.
(2) Amounts withheld by HCFA and returned to the cabinet by HCFA (as provided for in 42 CFR 405.375(g)) which are ultimately determined (by the cabinet) to be in excess of overpayments shall [will] be returned (paid) to the provider as required in 42 CFR 447.31(f).

Section 3. Incorporated by reference federal regulations 42 CFR 447.30 and 447.31 may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the office of the commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office. [Summary of Incorporated Material.]
[(1) 42 CFR 447.30 which provides for withholding the federal share of payments to Medicaid providers to recover Medicare overpayments contains the following elements:]
[(a) Basis and purpose;]
[(b) An explanation as to when withholding occurs;]
[(c) An explanation as to which providers are affected;]
[(d) Provisions for the order to the state Medicaid agency to withhold;]
[(e) Provisions for notice to the state Medicaid agency and the provider; provision for appeal by the state Medicaid agency; provision for reporting by the state Medicaid agency;]
[(f) A statement as to the amount to be withheld;]

[(g) Effective date of withholding;]
[(h) Duration of withholding;]
[(i) Procedures for termination of withholding;]
[(j) Procedures for restoring excess withholding; and]
[(k) A provision that the provider is not entitled to recover from the state Medicaid agency the amount of payment withheld by the agency in accordance with a HCFA order issued pursuant to 42 CFR 447.30(d).]
[(2) 42 CFR 447.31 which provides for withholding Medicare payments to recover Medicaid overpayments contains the following elements:]
[(a) Basis and purpose;]
[(b) Provisions for notice to providers;]
[(c) An explanation of the documentation that must be submitted to HCFA with the request for withholding;]
[(d) Provisions for notification to HCFA to terminate withholding;]
[(e) Provision for accounting for returned overpayments; and]
[(f) A requirement for procedures for restoring excess withholding to the provider from which the excess was withheld.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 7, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All providers participating jointly in the Medicare and Medicaid programs.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:320. Kentucky patient access and care system KenPAC.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a, b, d, n
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the terms and conditions under which the cabinet shall [will] provide medical assistance pursuant to a waiver granted by the Secretary, United States Department of Health and Human Services[, in accordance with Section 1915(b)(1) of the Social Security Act,] providing for a physician primary care case management system [which is hereinafter referred to as the Kentucky Patient Access and Care (KenPAC) System].

Section 1. General. The cabinet shall implement, within the Medicaid [Medical Assistance] Program, a physician primary care case management system to be known as the Kentucky Patient Access and Care System ([hereinafter referred to as] KenPAC). KenPAC shall be implemented and administered in accordance with the terms of the waiver granted by the Secretary, United States Department of Health and Human Services under the authority granted by 42 USC 1396n [Section 1915(b)(1) of the Social Security Act].

Section 2. Recipient Participation. All recipients of Aid to Families with Dependent Children (AFDC) and AFDC related medical assistance only shall [will] be required to participate in KenPAC unless excluded as shown in Section 3 of this regulation.

Section 3. Recipient Exclusions from KenPAC. Excluded from KenPAC shall [will] be individuals who are aged, blind, or disabled (i.e., individuals whose eligibility for Medicaid [medical assistance] is based on age, blindness, or disability); those who are in mental hospitals, [skilled] nursing facilities, [intermediate care facilities,] and personal care homes; individuals in foster care or subsidized adoption status; all spend-down cases; and refugees. Individuals eligible to participate but who reside in a county which does not have an adequate number of primary physicians or clinics participating in KenPAC shall [will] not be required to participate in KenPAC until adequate physician [and/]or clinic resources are available in the county, although the cabinet may, at its option, choose to permit voluntary participation by recipients in these [such] counties.

Section 4. Physician Participation. Primary care physicians permitted to participate in KenPAC shall be general practitioners, family practitioners, pediatricians, internists, obstetricians, gynecologists, and doctors of osteopathy. Clinics may participate if the [such] clinic has at least one (1) full-time equivalent physician who is a primary care physician as shown above; rural health clinics may participate, but are not required to have a full-time equivalent primary care physician. Specialty physicians may participate under extraordinary circumstances when the cabinet determines the [such] participation would be in the best interests of both the recipient and the KenPAC system.

Section 5. KenPAC Provider Agreements. All participating primary care providers shall be required to sign a KenPAC participation agreement in addition to the standard Medicaid [medical assistance] provider agreement and shall [will] be bound by its [the] terms and conditions [shown in the KenPAC provider agreement].

Section 6. Quotas. Each primary care provider shall be required to specify the number of recipients the provider is [will be] willing to serve as primary care case manager. Unless circumstances exist which require the cabinet to authorize a higher quota for a provider to ensure adequate coverage in an area, the upper limit shall be 1,500 recipients per full-time physician. Primary centers and rural health clinics may, in addition, have a quota of up to 300 recipients for each participating advanced registered nurse practitioner (ARNP).

Section 7. Primary Care Case Management Fees. Each physician or clinic shall receive a management fee of three (3) dollars per month per recipient for the first 1,000 assigned recipients per full-time equivalent physician; no management fee for the next 500 assigned recipients per full-time equivalent physician; and three (3) dollars per month per recipient for all recipients assigned which are over 1,500 per full-time equivalent physician as specially authorized by the cabinet. If a primary care center or rural health center has advanced registered nurse practitioners (ARNP) on staff for whom an additional quota is allowed, the clinic shall [may] be paid a management fee of three (3) dollars per month per recipient attributed to each ARNP (not to exceed 300 recipients per full-time ARNP), with the balance of the management fee computed in the manner previously specified.

Section 8. Covered Services Under KenPAC. The following services shall be managed by the primary physician or [/]clinic: physician services, pharmacy services when the prescription is issued by the primary physician or clinic, hospital inpatient and outpatient services, home health agency services, laboratory services, ambulatory surgical center services, primary care center services, rural health center (clinic) services, durable medical equipment, physician's component of preventive services, advanced registered nurse practitioner services, and nurse anesthetist services. [For KenPAC purposes,] The physician services element shall [does] not include services provided by ophthalmologists or psychiatrists [board certified] or [board eligible psychiatrists; and it does not include] obstetrical services [provided by obstetricians or gynecologists]. All other services available under the Medicaid program shall [may] be secured in the usual manner. Access to emergency services shall [will] not be restricted by KenPAC even though the [such] medical service may customarily be within KenPAC. Urgent care (i.e., when medical necessity dictates early treatment [and/]or hospitalization) may be provided without preauthorization from the primary physician or clinic if the primary physician or clinic cannot be reached. For both emergency and urgent care, authorization shall [must] be obtained from either the primary physician or clinic or the Medicaid Program prior to billing Medicaid for the emergency or urgent care service.

Section 9. Recipient Assignment. Each KenPAC recipient shall [will] be afforded the opportunity to select his[/her] KenPAC provider from among participating KenPAC providers in his[/her] county of residence or any adjacent county. If a voluntary selection is not made, a primary care provider shall [will] be assigned by the Medicaid Program.

Section 10. Phasein of KenPAC. As adequate physician participation permits, KenPAC will be phased in to additional counties. [by assigning] Recipients in these counties shall be assigned to the program at the scheduled semiannual or annual reinvestigation if [so far as] possible[, with the assigned phasein scheduled to end by July 1, 1986. New approvals will be assigned within sixty (60) days of the approval. Individuals who cannot be assigned during their scheduled semiannual or annual reinvestigation month or at the time of approval may be scheduled in an alternate month during the phasein period].

Section 11. Hearing and Appeal Rights. Any individual [applicant for or recipient of medical assistance] required to participate in KenPAC shall be entitled to the same hearing and[/or] appeal rights as are available to any other applicant for or recipient of Medicaid [medical assistance].

Section 12. Utilization Control. A primary care physician or [/]clinic[s] identified by the

cabinet as having an abusive or inappropriate utilization pattern, not consistent with the objectives of KenPAC, shall [may] be removed from KenPAC and[/or] denied further participation rights in KenPAC. Any provider so excluded may seek review of the decision in accordance with the KenPAC provider agreement.

Section 13. Relation to other Regulations. The requirements specified herein shall supersede any other regulations issued by the cabinet which are inconsistent with this regulation.

[Section 14. Implementation. KenPAC shall begin on February 1, 1986, and shall remain in effect for the term of the KenPAC waiver, including extensions thereto, unless terminated at an earlier date by action of the cabinet.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 7, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All providers and recipients participating in KenPAC.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements and to make technical conforming amendments.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:020. Licensing procedures (NATE).

RELATES TO: KRS 222.210 to 222.310, HB 799 of the 1990 GA, Part 1, G, 56, g, lines 13-17
STATUTORY AUTHORITY: KRS 194.050, 222.230
NECESSITY AND FUNCTION: KRS 194.050 and 222.230 empowers the cabinet to promulgate rules and regulations establishing standards for the licensing and approval of facilities offering alcoholism rehabilitation programs. The purpose of this regulation is to establish standards for determining what types of facilities must have a nonmedical alcohol treatment and education center license to operate and the procedures for obtaining and maintaining such a license.

Section 1. Licensing and Approval Procedures. Applications for licensing, or waivers requesting exemptions from licensure standard(s) shall be obtained from and submitted to the Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40601.
(1) It is unlawful to operate or maintain a nonmedical alcohol treatment and education (NATE) center without first obtaining a license from the cabinet unless exempted in KRS 222.230 or the applicant is one (1) of the following: [Application for licensure shall be filed by all agencies operating a nonmedical alcohol treatment and education center in the Commonwealth with the following exceptions:]
(a) Group meetings organized among alcoholics, recovering alcoholics or alcohol abusers, families and others, (i.e., Alcoholics Anonymous and Alanon) held on a nonresidential basis and without professional staff intervention, for the purpose of discussing problems related to use of alcohol where no fee is involved.
[(b) Transportation Cabinet, Alcohol Driver Education, pursuant to: KRS Chapter 189A and 601 KAR 13:050.]
[(c) Programs conducted in a facility established and maintained by a licensed hospital; nursing homes; and department, agency or institution of the federal government or the Commonwealth.]
(b) [(d)] All chemical dependency treatment services and facilities licensed under 902 KAR 20:160.
(2) Applications for a license shall be in the form required by the cabinet and shall include a comprehensive outline of the proposed program. [The Cabinet for Human Resources, Office of Inspector General, Division of Licensing and

Regulation shall conduct all licensure surveys to determine whether an agency's nonmedical alcohol treatment and education center is in compliance with the applicable licensure standards.]

(3) The cabinet shall have the right to enter into the premises of any nonmedical alcohol treatment and education (NATE) center issued a license, at any reasonable time in order to determine the state of compliance with KRS 222.230. The right of entry and inspection shall extend to any premises which the cabinet has reason to believe are being operated as a nonmedical alcohol treatment and education (NATE) center without a license. No such entry or inspection of any premises shall be made without the permission of the owner or person in charge, unless a warrant is first obtained from the circuit court authorizing this action. Any application for a nonmedical alcohol treatment and education (NATE) center license shall constitute permission for and complete acquiescence in any entry or inspection of the premises for which the license is sought. This is done to facilitate verification of the information submitted. These inspections shall also be done in accordance with KRS 222.230.

(4) [(3)] The cabinet shall notify the applicant agency for a nonmedical alcohol treatment and education (NATE) center license of any pending licensure action taken, and shall provide written reports citing observed deficiencies as they relate to the standards. A copy of this report shall be forwarded to the applicant agency. Upon receipt of this report the applicant agency must submit an acceptable plan of correction for cited deficiencies to the cabinet within ten (10) days. Any hearing procedures initiated in response to licensure proceedings shall be in accordance with KRS 222.230(6). Failure to comply with the requirements of this paragraph shall result in the assessment of penalties as required in KRS 222.990.

(5) [(4)] Licensure is not transferable. Both the license holder and the new operator shall be responsible to notify the cabinet when the agency possessing the nonmedical alcohol treatment and education (NATE) center license changes ownership or control or undergoes a major change in its capacity or in the categories [category(ies)] of programs offered, with disclosure of all factors involved in the change. If it is the decision of the cabinet that a reapplication is in order the applicant shall apply within twenty (20) days of notification by the cabinet. Failure to comply with these provisions shall result in loss of license.

(6) A nonmedical alcohol treatment and education (NATE) center that misrepresents the nature of the treatment provided to clients at the facility shall have its license revoked.

(7) [(5)] The cabinet shall be notified in writing prior to the merger of a the agency possessing a nonmedical alcohol treatment and education (NATE) center license with another agency and an immediate request for licensure be filed with the cabinet. The merged agency's nonmedical alcohol program(s) shall be surveyed within one (1) year of such notification. For the purposes of licensure, a merged agency shall be a legal entity with a single governing body, a single administration, a single staff, and, where applicable, a single set of bylaws, rules and regulations.

(8) [(6)] The cabinet shall publish on an annual basis a list of licensed nonmedical alcohol treatment and education (NATE) centers identifying types of programs and their locations and shall make it available to the public upon request.

[(7) Licenses granted to agencies deemed responsible and suitable to carry out nonmedical alcohol treatment and education center programs shall meet applicable standards and requirements for a period not exceeding one (1) year and renewable for a like period, and subject to revocation for cause.]

(9) The cabinet shall issue licenses for nomedical alcohol treatment and education (NATE) centers in accordance with KRS 222.230.

(10) [(8)](a) A nonmedical alcohol treatment and education (NATE) center license shall be issued by the cabinet [for Human Resources, Office of Inspector General, Division of Licensing and Regulation] to an agency for each facility operated by the agency that meets the required standards for operating a detoxification, residential treatment, residential transitional treatment, outpatient, [day/night] intensive outpatient treatment or education program. In the event that an agency operates an education program at multiple facilities only a single nonmedical alcohol treatment and education (NATE) center license shall be issued to the applicant agency for the education program.

(b) A nonmedical alcohol treatment and education (NATE) center license shall identify the location of the facility being licensed, the year of issuance of the license, and whether a detoxification, residential treatment, residential transitional treatment, outpatient or [day/night] intensive outpatient treatment program is being licensed. The agency shall receive a certificate of licensure indicating its approved status.

(c) A nonmedical alcohol treatment and education (NATE) center license issued for an education program shall identify the location of the facility or facilities being licensed and the year of issuance of the license. The agency that operates the facility or facilities being licensed shall receive a certificate of licensure indicating its approved status.

(d) An agency may be provided additional certificates of licensure for its nonmedical alcohol program(s) upon payment of the cost of reproduction. The certificate and all copies shall remain the property of the cabinet and shall be returned to the cabinet if the agency is issued a new certificate of licensure reflecting a change in name or programs for which it is licensed, or if the license is revoked for any cause.

(e) The cabinet [for Human Resources, Office of Inspector General, Division of Licensing and Regulation] shall be notified in writing when there is a change in location for every facility operated by an agency licensed as a nonmedical alcohol treatment and education (NATE) center.

[(9) Hearing procedures involving licenses shall be conducted in accordance with KRS 222.230(6).]

(11) [(10)] Applications for a permit to operate a nonmedical alcohol treatment and education (NATE) center shall be accompanied by a fee of $155 and shall excepting conditional permits, be renewable every two (2) years

[annually] upon expiration and reapplication when accompanied by a renewal fee of eighty (80) dollars. All licensure fees are to be forwarded to the Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(12) [(11)] Exception. An agency possessing a nonmedical alcohol treatment and education (NATE) center license shall be exempt from paying licensure fees set forth in, subsection (10) of this section, when the specific nonmedical alcohol program such as detoxification, residential treatment, residential transitional treatment, outpatient, [day/night] intensive outpatient treatment and education has already paid licensure fees as a drug abuse treatment and education (DATE) center program in compliance with 908 KAR 1:160.

(13) Information received by persons employed by a nonmedical alcohol treatment and education (NATE) center or received by the cabinet through files, reports, and inspection shall be confidential and shall not be disclosed publicly in such a manner as to identify individuals or facilities except in proceedings involving the question of issuing a license or pursuant to a judicial order.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd
(1) Type and number of entities affected: There are 166 nonmedical alcohol treatment and education centers that would be affected.
(a) Direct and indirect costs or savings to those affected: There are eight programs that are only licensed as nonmedical alcohol treatment and education centers. According to KRS 222.230 those programs can only have their license renewed every two years rather than the one year as originally stated in the regulations. There will be both monetary savings and a reduction in paperwork There will be no other direct or indirect costs or savings because the other amendments involve: adding references to a statute; discussion of consequences for not meeting certain standards; deleting references to programs that no longer exist; and altering language to clarify the text.
1. First year: There are 8 programs that will only have to pay licensure fees every two years resulting in a total savings of $640 every other year.
2. Continuing costs or savings: Every other year there is a total cost savings of $640.
3. Additional factors increasing or decreasing costs (note any effects upon competition): These 8 programs will spend less staff time every other year participating in a licensure survey.
(b) Reporting and paperwork requirements: These 8 programs will only have to file licensure renewal papers and fees every two years.
(2) Effects on the promulgating administrative body: The Cabinet for Human Resources, Division of Licensing and Regulation will have 8 less surveys to complete every other year.
(a) Direct and indirect costs or savings: Savings to the Division of Licensure and Regulation will be minimal because this division has to have staff capacity to do these surveys every other year.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: The Division of Licensing and Regulation will handle 8 less applications for licensure renewal every other year.
(3) Assessment of anticipated effect on state and local revenues: There will be $640 less of state revenues every other year.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternatives were considered because the law requires that licensure renewal occur every other year.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The statute that outlines licensure procedures for the drug abuse treatment and education centers (KRS 210.620) requires an annual site visit.
(a) Necessity of proposed regulation if in conflict: This particular standard is required by law.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Because of the conflicts in the statutes there can be no harmonizing of the standards.
(6) Any additional information or comments: The Division of Substance Abuse has proposed changes to both Chapter 222 and KRS 210.610-670 in the last two legislative sessions to address this problem. However, this proposed legislation has not been passed into law. This legislation is being submitted again for consideration in the 1992 legislative session.
TIERING: Was tiering applied? No. Tiering was not applied because the amendments were only updating the regulations to comply with the requirements of KRS Chapter 13A.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:030. Organization and administration (NATE).

RELATES TO: KRS 222.210 to 222.310
STATUTORY AUTHORITY: KRS 194.050, 222.230
NECESSITY AND FUNCTION: KRS 194.050 and 222.230 empowers the cabinet to promulgate rules and regulations establishing standards for the licensing and approval of facilities offering alcoholism rehabilitation programs. The purpose of this regulation is to establish licensure

standards to assure that agencies offering nonmedical alcohol treatment and education center programs have a governing authority, organizational structure, and minimum policies and procedures for administering such programs.

Section 1. Organization and Administration. (1) Every agency shall be organized so that overall fiscal and program responsibility shall be clearly established and this responsibility shall be vested in specifically designated individuals with authority to carry out such administrative duties. The source of this authority shall be documented.

(2) The governing authority shall provide written documentation of its source of authority through charter, constitution, and bylaws, and[,] where required, its state license.

(3) The governing authority shall exercise general direction and establish policies concerning the operation of the program. There shall be documentation of the methods and procedures used by the governing authority to exercise general direction and establish policies concerning the operation of the program. This documentation shall include the means by which the governing authority provides for the election or appointment of its officers and the appointment of committees necessary to affect the discharge of its responsibilities. The governing authority shall document the adoption of a schedule of meetings, attendance requirements, and minutes of all meetings.

(4) There shall be documentation verifying that the policies of the governing authority shall be reviewed and updated at least every two (2) years and that the policies shall be distributed to all staff.

(5) The governing authority shall document the delegation of authority and responsibility to an executive officer for the management of the agency.

(6) The governing authority or the chief officer shall provide a policy manual which describes the regulations, principles and guidelines that determine the agency's operation. There shall be documentation verifying that this policy manual shall be reviewed and updated at least every two (2) years and shall be available to all staff.

(7) Exception. When the applicant for a nonmedical alcohol treatment and education (NATE) center license is a community mental health center, compliance with 908 KAR 2:030 and 902 KAR 20:091 shall suffice for meeting organization and administration standards set forth in subsections (1) through (6) of this section.

(8) Orientation and training for governing board members shall be provided annually on alcohol treatment and education and documented in the minutes of the governing board meeting(s).

(9) Where alcohol abuse education and treatment programs are provided in the context of a general mental health agency, it shall be documented that within the governing board there are members whose primary interest is the treatment and education of alcohol abusers.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd
(1) Type and number of entities affected: There are a total of 166 licensed nonmedical alcohol treatment and education centers which would be affected.
(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings because the amendments only correct punctuation and add an acronym.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: Same as above.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: No effect is anticipated because the amendments only correct punctuation and add an acronym.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the amendments only correct punctuation and add an acronym.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The amendments only correct punctuation and add an acronym.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:040. Personnel policies (NATE).

RELATES TO: KRS 222.210 to 222.310
STATUTORY AUTHORITY: KRS 194.050, 222.230
NECESSITY AND FUNCTION: KRS 194.050 and 222.230 empowers the cabinet to promulgate rules and regulations establishing standards for the licensing and approval of facilities offering alcoholism rehabilitation programs. The purpose of this regulation is to establish licensure standards to assure that agencies offering nonmedical alcohol treatment and education

center programs have minimum policies and procedures governing personnel policies.

Section 1. Personnel. (1) Policies shall be developed assuring that no employee or prospective employee shall be discriminated against solely on the basis of race, color, creed, sex, age, national origin, or prior history of substance abuse.

(2) There shall be written job descriptions for all positions setting forth the qualifications, reporting supervisor, positions supervised and duties.

(3) The written personnel policies and practices shall describe methods and procedures for the supervision of all personnel, including volunteers.

(4) The written personnel policies and practices shall include a mechanism consistent with due process for suspension and dismissal of an employee for cause.

(5) There shall be documentation of an employee's qualification for his[/her] position in the individual personnel file.

(6) The agency shall have documentation that all personnel meet applicable local, state or federal requirements for credentialing, licensing, [and/]or registration in an employee's [his/her] profession.

(7) Exception. When the applicant for a nonmedical alcohol treatment and education (NATE) center license is a community mental health center, compliance with 908 KAR 2:020 [2:030] and 902 KAR 20:091 shall suffice for meeting personnel standards set forth in subsections (1) to (6) of this section.

(8) The program shall have a written policy and procedure for employees who have behavioral problems which interfere with acceptable job performance. The policy and procedure shall meet the following criteria:

(a) The policy and procedure shall specify the sequence of steps to be taken when unresolved performance problems arise.

(b) The policy and procedure shall identify the resources and time frames to be used in assisting an employee to deal with a [personnel/]behavioral problem which interferes with job performance.

(c) There shall be documentation that these policies are distributed to all staff.

(9) There shall be policies and procedures governing an employee's access to his[/her] personnel file.

(10) Each employee shall receive an annual performance evaluation which shall be documented in his[/her] personnel file.

(11) All training attended by the employee shall be documented in the employee's personnel file.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd
(1) Type and number of entities affected: There are a total of 166 licensed alcohol treatment and education centers which would be affected.
(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings because the amendments merely add an acronym, delete terminology that is prohibited as defined in KRS 13A.222(4), followed by the addition of appropriate terminology.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: Same as above.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: No effect is anticipated because the amendments merely add an ancronym and delete terminology that is prohibited as defined in KRS 13A.222(4), followed by the addition of appropriate terminology.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the amendments merely add an acronym and delete terminology that is prohibited as defined in KRS 13A.222(4), followed by the addition of appropriate terminology.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The amendments merely add an acronym and delete terminology that is prohibited as defined in KRS 13A.222(4) followed by the addition of appropriate terminology.

CABINET FOR HUMAN RESOURCES
Department for Mental Health
and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:050. Quality assurance (NATE).

RELATES TO: KRS 222.210 to 222.310
STATUTORY AUTHORITY: KRS 194.050, 222.230
NECESSITY AND FUNCTION: KRS 194.050 and 222.230 empowers the cabinet to promulgate rules and regulations establishing standards for the licensing and approval of facilities offering alcoholism rehabilitation programs. The purpose of this regulation is to establish licensure standards to assure that agencies offering

nonmedical alcohol treatment and education center programs have minimum policies and procedures for reviewing quality of client care, and assuring staff competency.

Section 1. Quality Assurance. Every program shall have written policies and procedures for assuring the quality of services delivered. These policies and procedures shall address methods for reviewing appropriateness of client care and staff competency. Included in these policies and procedures shall be the following:

(1) There shall be written policies and procedures for periodic review of each staff person's [service staff's] caseload. These policies and procedures must at a minimum address the following:

(a) The quality of services shall be evaluated by members of the staff directly responsible for providing services.

(b) These procedures shall at a minimum have the capability to assess the appropriateness and clinical necessity of admissions as well as the accuracy, completeness and appropriateness of the treatment plan and outcome.

(c) The client care review shall occur at regularly scheduled intervals.

(d) A written record of such review shall be generated identifying inappropriate patterns of service and the recommended action for correcting the problem(s). Such a report shall be submitted to an individual with overall responsibility within the agency for the program's treatment services.

(e) Follow-up studies related to the corrective actions taken shall be completed within a reasonable period of time and the findings documented.

(2) There shall be staff development policies which assure that alcohol abuse counseling staff are provided ongoing training and clinical supervision opportunities necessary to support an employee's [his/her] ability to carry out his[/her] expected job duties.

(3) Each nonmedical alcohol treatment and education center treatment program shall have a designated clinical services supervisor who meets one (1) of the following sets of qualifications. Such qualifications will be documented in the personnel file of the clinical services supervisor.

(a) A person with a masters degree or greater in psychiatry, psychology, social work, nursing with a specialty in psychiatric[/mental health] nursing or other mental health program plus eighty (80) clock hours of training in chemical dependency treatment within a maximum of four (4) years prior to his[/her] employment. If the clinical services supervisor does not have the eighty (80) clock hours or any portion thereof, prior to his[/her] employment, he[/she] shall obtain the eighty (80) clock hours within two (2) years from the date of his[/her] employment. The clinical services supervisor shall maintain on an annual basis twenty (20) clock hours of continuing education in chemical dependency treatment.

(b) A clinical services supervisor [person] with less than a masters degree in psychology, social work, nursing with specialty in psychiatric[/mental health] nursing, or other mental health counseling program shall be [either] a certified chemical dependency counselor [or have registered as a trainee with the intent to obtain the credential by May of 1991]. Documentation of this credential shall be [registration as a trainee is] in the form of a certificate from the Kentucky Chemical Dependency Counselors' Professional Certification Board, Inc. [organization recognized by the Cabinet for Human Resources as the official certification body for chemical dependency counselors in Kentucky.]

(4) All staff who have primary responsibility for developing and implementing treatment plans for alcohol abuse clients in residential treatment programs, outpatient treatment and [day/night] intensive outpatient treatment programs shall meet one (1) of the following sets of qualifications. Such qualifications shall be documented in individual staff member's personnel files.

(a) A person with a masters degree or greater in psychiatry, psychology, social work, nursing with a specialty in psychiatric[/mental health] nursing or other mental health program plus eighty (80) clock hours of training in chemical dependency treatment within a maximum of four (4) years prior to [his/her] employment. If the employee does not have the eighty (80) clock hours or any portion thereof, prior to [his/her] employment, [he/she] shall obtain the eighty (80) clock hours within two (2) years from the date of [his/her] employment. The employee shall maintain on an annual basis twenty (20) clock hours of continuing education in chemical dependency treatment.

(b) A person with less than a masters degree in psychology, social work, nursing with specialty in psychiatric[/mental health] nursing, or other mental health counseling program shall be either a certified chemical dependency counselor or have registered as a trainee his[/her] intent to obtain the credential. Documentation of registration as a trainee shall be in the form of a certificate from the Kentucky Chemical Dependency Counselors' Professional Certification Board, Inc. [organization recognized by the Cabinet for Human Resources as the official certification body for chemical dependency counselors in Kentucky] plus documentation of training and supervision updated annually.

(5) Exception. When the applicant is applying for a nonmedical alcohol treatment and education center license for an education program, compliance with 908 KAR 1:140 shall suffice for meeting all of the standards set forth within this quality assurance section.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: There are a total of 66 licensed alcohol treatment and education centers that will be affected.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings because the amendments merely: remove redundancy in language; delete language that's not clear and replace with language that is; delete terminology that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology; and deletes the category of a Certified Chemical Dependency Counselor "trainee" as an acceptable credential for a clinical services supervisor. This last deletion is occurring because all "trainees" must be a certified chemical dependency counselor by May of 1991 which has expired.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Same as above.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There are no anticipated effects because the amendments merely: remove redundancy in language; delete language that's not clear and replace with language that is; delete terminology that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology; and deletes the category of a Certified Chemical Dependency Counselor "trainee" as an acceptable credential for a clinical services supervisor. This last deletion is occurring because all "trainees" must be a certified chemical dependency counselor by may of 1991 which has expired.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no anticipated effects because the amendments merely: remove redundancy in language; delete language that's not clear and replace with language that is; delete terminology that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology; and deletes the category of a Certified Chemical Dependency Counselor "trainee" as an acceptable credential for a clinical services supervisor. This last deletion is occurring because all "trainees" must be a certified chemical dependency counselor by may of 1991 which has expired.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not applied because the amendments merely: remove redundancy in language; delete language that's not clear and replace with language that is; delete terminology that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology; and deletes the category of a Certified Chemical Dependency Counselor "trainee" as an acceptable credential for a clinical services supervisor. This last deletion is occurring because all "trainees" must be a certified chemical dependency counselor by may of 1991 which has expired.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:060. Client's rights (NATE).

RELATES TO: KRS 222.210 to 222.310

STATUTORY AUTHORITY: KRS 194.050, 222.230

NECESSITY AND FUNCTION: KRS 194.050 and 222.230 empowers the cabinet to promulgate rules and regulations establishing standards for the licensing and approval of facilities offering alcoholism rehabilitation programs. The purpose of this regulation is to establish licensure standards to assure that agencies offering nonmedical alcohol treatment and education center programs have minimum policies and procedures which protect an alcohol client's basic rights while enrolled in the program(s).

Section 1. Client's Rights. There shall be written policies and procedures designed to assure the human rights of all clients and to protect an individual's [his/her] right to receive confidential treatment. These written policies and procedures shall include but not be limited to the following standards:

(1) No client shall be unlawfully discriminated against in determining eligibility for treatment services.

(2) During a program's intake procedures, a client[s] shall be given written documentation of his[/her] legal and human rights. These rights shall include but not be limited to the following:

(a) To give informed consent to treatment except as otherwise provided for juveniles in accordance with KRS 222.440;

(b) To have input into the client's [his/her] treatment plan and be informed of its content;

(c) To receive individualized treatment;

(d) To submit grievances, recommendations and opinions regarding the client's [his/her] treatment;

(e) To give informed written consent regarding participation in human subject research;

(f) In nonfederally assisted programs, client confidentiality shall be assured in accordance with KRS 222.270. Federally assisted programs as defined in 42 CFR Part 2, shall assure client confidentially in accordance with 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records" [To receive confidential treatment in compliance with federal regulations 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records" and all pertinent state laws and regulations];

(3)(a) Adults admitted to treatment shall sign an informed consent to treatment;

(b) When a juvenile is admitted to treatment, the juvenile shall sign an informed consent to treatment or the parent or guardian of such juvenile in accordance with KRS 222.440.

(4) Twenty-four (24) hour residential programs shall have written documentation of a client's right to exercise civil duties (e.g., vote) in addition to those set forth in subsection (2) of this section.

(5) The document outlining a client's rights shall be signed by each client indicating that he has [they have] reviewed and understood his[/her] rights. This signed document shall be placed in each client's [medical] record.

(6) When the exercising of a client right(s) is contraindicated by the client's condition, there shall be documentation in the client's medical record of the reasons for the restriction(s) imposed and of an explanation to the client.

(7) There shall be written policies and procedures regarding client access to his[/her medical] record.

(8) The program shall comply with KRS 222.270 regarding client communication rights. [There shall be written policies and procedures regarding clients receiving or refusing visitors, phone calls or written communications while residing in the program. The client shall be informed of these policies and procedures in writing at the time of admission to the program.]

(9) There shall be written policies and procedures for reviewing and responding to grievances, recommendations and opinions regarding a client's treatment and specifically includes mechanisms for review and disposition of allegations of neglect and abuse of clients. The policies and procedures shall include but not be limited to the following standards:

(a) Such communications and their disposition shall be documented in writing and placed in an incident file;

(b) Such communications will be responded to in a timely manner and conveyed to an appropriate decision making level within the organization which has authority to take corrective action if indicated;

(c) Such policies and procedures shall be posted for client review.

(10) The program shall comply with KRS 620.030 regarding the reporting of cases of abuse or neglect of minors as communicated by clients. For federally assisted programs the initial reporting of cases of neglect and abuse for minors shall also be in compliance with Public Law 99-401. Requests for information beyond the initial report shall also be in compliance with federal regulations 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

(11) The program shall comply with KRS 209.030 regarding the reporting of cases of abuse and neglect of adults as communicated by clients. For federally assisted programs the reporting of such cases shall also be in compliance with 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

(12) Exception. When the applicant is applying for a nonmedical alcohol treatment and education center license for an education program, compliance with 908 KAR 1:140 shall suffice for meeting all of the standards set forth in within this client's rights section.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: There are a total of 66 licensed alcohol treatment and education centers that could be affected.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings because the amendments only: delete language that is prohibited by KRS 13A.222(4) followed by the addition of appropriate technology; remove language that is restating a statute and replace with the appropriate statutory reference; and clarify which confidentiality laws and regulations apply to nonfederally assisted programs versus federally assisted programs.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Same as above.

(a) Direct and indirect costs or savings:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There are no effects anticipated because the amendments only: delete language that is prohibited by KRS 13A.222(4) followed by the addition of appropriate technology; remove language that is restating a statute and replace with the appropriate statutory reference; and clarify which confidentiality laws and regulations apply to nonfederally assisted programs versus federally assisted programs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because the amendments only: delete language that is prohibited by KRS 13A.222(4) followed by the addition of appropriate technology; remove language that is restating a statute and replace with the appropriate statutory reference; and clarify which confidentiality laws and regulations apply to nonfederally assisted programs versus federally assisted programs.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The

amendments only delete language that is prohibited by KRS 13A.222(4) followed by the addition of appropriate technology; remove language that is restating a statute and replace with the appropriate statutory reference; and clarify which confidentiality laws and regulations apply to nonfederally assisted programs versus federally assisted programs.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:080. General program operations (NATE).

RELATES TO: KRS 222.210 to 222.310
STATUTORY AUTHORITY: KRS 194.050, 222.230
NECESSITY AND FUNCTION: KRS 194.050 and 222.230 empowers the cabinet to promulgate rules and regulations establishing standards for the licensing and approval of facilities offering alcoholism rehabilitation programs. The purpose of this regulation is to establish licensure standards to assure that any agency offering the following nonmedical alcohol treatment and education center programs: detoxification, residential treatment, residential transitional, outpatient and day/night intensive outpatient treatment have minimum policies and procedures governing clinical practices.

Section 1. General Program Operation. Each nonmedical alcohol treatment program component addressed in 908 KAR 1:090 to 908 KAR 1:130 shall meet the following standards:

(1) Each licensed program shall have a written program description including philosophy, mission, objectives, lines of authority and staffing patterns.

(2) Each licensed program shall document that they have an evaluation system which measures the degree to which they meet current program goals and objectives.

(3) Admission, readmission, transfer, discharge and referral policies and procedures shall be established in writing. Such policies and procedures shall include the categories of individuals accepted and not accepted by the program.

(4) Programs shall have documented prearranged medical agreements for the provision of emergency medical care.

(5) Written procedures shall be established and implemented to ensure continuity of referrals between intake points and other service elements whether within or outside of the agency.

(6) Clients shall receive an orientation to the services they are to receive which includes information on the philosophy, purpose, clients' rights, the rules governing client's conduct and types of infractions that can result in disciplinary action or discharge, and information on all costs and fees for service and responsibility for payment of those fees.

(7) Treatment programs shall have a uniform client records system to document and monitor client care:

(a) A [case] record shall be maintained for each individual receiving services.

(b) Client records shall be retained a minimum of five (5) years after clients are terminated.

(c) Each treatment program shall have a written protocol describing records accessibility, security, storage, uniformity, authorized use and disposal.

(d) A client record shall contain, at a minimum, documentation of intake information, signed statement of client rights, psychosocial assessment, treatment plan, progress in treatment, review and [/] revision of treatment plan, aftercare plan and discharge summary. In addition, programs shall document confidentiality agreements, referrals, medical services, and [staffing/]case consultation, as necessary.

(8) Any twenty-four (24) hour alcohol abuse treatment program and [day/night] intensive outpatient program shall implement specific policies and procedures on the use of medications by its clients while participating in the program. The policies and procedures shall include the following:

(a) A policy on self-administration of over-the-counter medications by clients.

(b) That all drugs and medication shall be locked in a secure location not accessible to clients.

(c) A policy on the self-administration of medication(s) which requires a licensed physician's prescription. This policy shall address prescribed medications brought with the client upon admission to the program as well as those medications prescribed while a client is in the program. At a minimum this policy shall require that all prescriptions the client enters with are verified with a physician to assure there are no contraindications with the treatment plan.

(d) That medications shall be made available to clients only at the time they are to be taken.

(e) An entry shall be made into the client's medical record documenting the self-administration of medication and shall indicate:

1. The name appearing on the container of the medication being self-administered;

2. The date and time of self-administration;

3. Dosage or amount of medication self-administered;

4. Name of staff monitoring self-administration of medication by client.

(9) The program shall establish and implement controls over client labor within the program. These controls shall meet the following criteria:

(a) The work shall be part of the client's treatment plan.

(b) The work shall be performed voluntarily with full-written consent from the client.

(c) If the client is filling the function of a paid position within the program there shall be a written job description that includes length of time per day on the job, and the wages received. Such wages shall be commensurate with the economic value of the work.

[(d) The work shall be in accordance with local, state and federal laws and regulations.]

(10) Any twenty-four (24) hour alcohol abuse treatment program shall have a written plan describing the organization and delivery of dietetic services to include:

(a) Compliance with the Kentucky Retail Food [Service] Code, 902 KAR 45:005[; current state and local laws; and regulations applicable to the particular facility].

(b) Provisions for meeting needs of clients with special dietary requirements. Special

dietetic treatment shall be documented in the client record.

(c) There shall be provisions for snacks.

(11) Exception. When the applicant is applying for a nonmedical alcohol treatment and education center detoxification or residential transitional program license(s), compliance with 908 KAR 1:090, Section 1(3) and 908 KAR 1:110, Section 1(2), shall suffice for meeting the general program operation standard set forth in subsection (7)(d) of this section.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: There are 66 alcohol treatment and education centers that will be affected.

(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings because the amendments only: correct grammar; remove words for consistency in language; remove terminology that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology; remove a very general reference to other laws and regulations that govern "work" of an employed person; and corrects the title of a regulation that covers food handling.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Same as above.

(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There are no effects anticipated because the amendments merely: correct grammar; remove words for consistency in language; remove terminology that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology; remove a very general reference to other laws and regulations that govern "work" of an employed person; and corrects the title of a regulation that covers food handling.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were explored because the amendments merely: correct grammar; remove words for consistency in language; remove terminology that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology; remove a very general reference to other laws and regulations that govern "work" of an employed person; and corrects the title of a regulation that covers food handling.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. No tiering was applied because the amendments merely: correct grammar; remove words for consistency in language; remove terminology that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology; remove a very general reference to other laws and regulations that govern "work" of an employed person; and corrects the title of a regulation that covers food handling.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:090. Detoxification (NATE).

RELATES TO: KRS 222.210 to 222.310
STATUTORY AUTHORITY: KRS 194.050, 222.230
NECESSITY AND FUNCTION: KRS 194.050 and 222.230 empowers the cabinet to promulgate rules and regulations establishing standards for the licensing and approval of facilities offering alcoholism rehabilitation programs. The purpose of this regulation is to establish licensure standards to assure that an agency offering a nonmedical alcohol treatment and education center detoxification program has minimum policies and procedures governing its program operation.

Section 1. Detoxification. In addition to the applicable requirements of general program operation standards, 908 KAR 1:080, the following specific standards shall be met if a detoxification program is offered:

(1) At the point of admission [Each client admitted] to the social setting detoxification treatment program, each client shall be assessed [within twenty-four (24) hours of admission] to determine whether there is a life-threatening emergency, distinguished between intoxification and withdrawal, estimate the severity of whichever is present, and determine [insofar as possible], whether there are any other major problems (e.g., medical, psychiatric[, etc.]) that need immediate attention.

(2) If [When] required, medical services shall be provided through referral or on-call arrangement with qualified medical organizations or physicians.

(3) A client record shall be kept on each client receiving detoxification services. Each record shall contain at a minimum the following pieces of information. Any reasons for the absence of such information shall be documented in the clinical record.

(a) Intake information completed within

thirty-six (36) [seventy-two (72)] hours of admission and shall contain the presenting problem; alcohol or [/] drug use and problem history; history of previous treatment; and history of medical problems that at a minimum includes [including] delirium tremens, seizures, heart disease, and liver disease. An explanation shall be documented in the record if the client is unable to complete the intake process within the thirty-six (36) hour time frame.

(b) Signed statement of clients rights.

(c) An individualized detoxification services plan prepared and maintained on a current basis for each client. A treatment protocol may be used in lieu of an individualized service plan. Individual case exceptions to the treatment protocol shall be documented in the clinical record.

(d) A discharge summary that identifies referral arrangements for the client after he[/she] leaves the program.

(4) The pulse and blood pressure of each client shall be monitored and recorded at least three (3) times daily for at least the first seventy-two (72) hours after admission.

(5) Educational and counseling activities shall be conducted on a daily basis by an alcoholism counselor to motivate clients to continue in treatment beyond the detoxification services. Clients shall be involved in these activities as soon as warranted by the [his/her] recovery process.

(6) Detoxification programs shall refer clients to an appropriate treatment resource upon completion of the detoxification process.

(7) The program shall be responsible for the referral of clients for services not provided by the agency. Such services may include housing, food, vocational rehabilitation, treatment or legal services.

(8) The total number of staff members shall include no less than five (5) staff and one (1) unit manager, at least two (2) of whom shall be on duty during hours of peak admission. To permit program flexibility, no specific staff to [/] client ratio shall be required, however, the program shall provide assurance that staff is sufficient and appropriate to meet the needs of clients in the program.

(9) The program shall be staffed twenty-four (24) hours a day, seven (7) days a week.

(10) Detoxification program staff shall receive the following training [Training required].

(a) [Each staff member shall have] Training in alcoholic emergency procedures and shall receive a minimum of twelve (12) hours of first aid training techniques, including a cardiopulmonary resuscitation, prior to working alone on the unit.

(b) Training in taking vital signs (blood pressure, pulse, respiration and temperature).

(c) Training in the recognition of alcoholism, assessment of the degree of intoxication and the physical and mental complications of these conditions.

(d) Training in the knowledge of local community referral sources.

(e) Within one (1) year of employment every staff member shall have received thirty (30) clock hours of training in alcohol or drug abuse.

(f) All training attended by the employee shall be documented in the employee's personnel file.

(11) Exception. Medical [alcohol emergency] detoxification services [(MEADS)], pursuant to 902 KAR 20:111 shall be exempt from meeting alcohol detoxification standards set forth in this section.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: There are 10 alcohol treatment and education centers that will be affected.

(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings because the amendments only: remove redundancy in language; alter language to add clarity to the text; remove language that is prohibited by KRS 13A.222(4) and replace it with appropriate terminology and alter the time frames for: assessing problems that may necessitate the potential client being referred to a more appropriate service and gathering client history information in order to determine the treatment needed.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Same as above.

(a) Direct and indirect costs or savings:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No effect is anticipated because the amendments only: remove redundancy in language; alter language to add clarity to the text; remove language that is prohibited by KRS 13A.222(4) and replace it with appropriate terminology and alter the time frames for: assessing problems that may necessitate the potential client being referred to a more appropriate service and gathering client history information in order to determine the treatment needed.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the amendments only: remove redundancy in language; alter language to add clarity to the text; remove language that is prohibited by KRS 13A.222(4) and replace it with appropriate terminology and alter the time frames for: assessing problems that may necessitate the potential client being referred to a more appropriate service and

gathering client history information in order to determine the treatment needed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The amendments only: remove redundancy in language; alter language to add clarity to the text; remove language that is prohibited by KRS 13A.222(4) and replace it with appropriate terminology and alter the time frames for: assessing problems that may necessitate the potential client being referred to a more appropriate service and gathering client history information in order to determine the treatment needed.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and
Mental Retardation Services
(Proposed Amendment)

908 KAR 1:100. Residential treatment (NATE).

RELATES TO: KRS 222.210 to 222.310

STATUTORY AUTHORITY: KRS 194.050, 222.230

NECESSITY AND FUNCTION: KRS 194.050 and 222.230 empowers the cabinet to promulgate rules and regulations establishing standards for the licensing and approval of facilities offering alcoholism rehabilitation programs. The purpose of this regulation is to establish licensure standards to assure that an agency operating a nonmedical alcohol treatment and education center residential treatment program has minimum minimum policies and procedures governing its program operation.

Section 1. Residential Treatment. In addition to the applicable requirements of the general program operation standards 908 KAR 1:080, the following [specific] standards shall be met if a residential treatment program is offered.

(1) Each program shall make available to its clients the following services: intake, psychosocial assessment, health status questionnaire, treatment planning, individual and group counseling, family counseling, educational services, spiritual counseling, recreational and leisure time activities, aftercare planning, referral to other community agencies, introduction to Alcoholics Anonymous, Al-Anon, [Narcotics Anonymous] and other voluntary self-help groups.

(2) There shall be documentation in the client record of the following:

(a) A treatment plan completed within five (5) calendar days of admission.

(b) By the sixth calendar day following admission each client shall be assigned a specific staff person who shall [will] have primary responsibility for implementing the client's treatment plan.

(c) Staff shall conduct case conferences to review client progress every two (2) weeks and the findings shall be documented in the client record.

(d) An aftercare plan shall be developed with the client's participation to plan for post discharge activities.

(3) If [When] required, medical services shall be provided through referral or on-call arrangement with qualified medical organizations or physicians.

(4) Programs shall make available or arrange for the provision of at least forty (40) hours of documented, structured activities per client each week, including weekends. These structured activities shall be a combination of formal education, group and individual counseling, group discussions, self-help meetings and recreation activities. Of this forty (40) hours, ten (10) hours shall be used solely for the provision of treatment and counseling services.

(5) There shall be written procedures describing a family treatment component.

(6) There shall be written policies and procedures governing the use of alcohol and other drugs by clients in the residential program.

(7) Films, audio cassettes and literature shall be available to the client.

(8) The program shall provide an area in which clients can meet with outside community service providers and self-help groups (e.g. Alcoholics Anonymous [AA], Al-Anon[, etc.]) who assist in fulfilling the goals and objectives of a client's [his/her] treatment plan.

(9) If the program serves only adolescent clients the following additional standards shall be met:

(a) Documentation of attempts to obtain the active participation of the adolescent's family or family surrogate in the treatment process.

(b) The program shall assure that the client receives educational services to meet the schooling needs of the client while residing in the residential program.

(c) Provision of treatment, literature, lectures, etc., which shall be age appropriate.

(d) The program shall provide recreational activities which shall be planned to develop constructive leisure time activity skills and shall be documented in each client's treatment plan.

(e) Development of an aftercare plan which shall reflect consideration of aftercare issues unique to adolescents.

(10) The program shall have a full-time staff of at least ten (10) persons including the unit manager per forty (40) clients. This staffing pattern may be reduced by one (1) staff for every reduction per ten (10) residents. Where multiple residential programs such as detoxification and residential treatment are provided in the same facility, the total number of beds and staff across both programs may be used to calculate the required staffing pattern.

(11) An interim manager with similar qualifications to the resident manager shall assume responsibility in the manager's absence.

(12) The program shall be staffed twenty-four (24) hours a day, seven (7) days a week.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: October 10, 1991

FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However,

this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd
(1) Type and number of entities affected: There are a total of 13 alcohol treatment and education centers that will be affected.
(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings because the amendments only: remove redundancy in language; alter language to add clarity to the text and remove language that is prohibited by KRS 13A.222(4) and replace with appropriate terminology.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: Same as above.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: No effect is anticipated because the amendments only: remove redundancy in language; alter language to add clarity to the text and remove language that is prohibited by KRS 13A.222(4) and replace with appropriate terminology.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the amendments only: remove redundancy in language; alter language to add clarity to the text and remove language that is prohibited by KRS 13A.222(4) and replace with appropriate terminology.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering was not applied because the amendments only: remove redundancy in language; alter language to add clarity to the text and remove language that is prohibited by KRS 13A.222(4) and replace with appropriate terminology.

CABINET FOR HUMAN RESOURCES
Department for Mental Health
and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:110. Residential transitional treatment (NATE).

RELATES TO: KRS 222.210 to 222.310
STATUTORY AUTHORITY: KRS 194.050, 222.230

NECESSITY AND FUNCTION: KRS 194.050 and 222.230 empowers the cabinet to promulgate rules and regulations establishing standards for the licensing and approval of facilities offering alcoholism rehabilitation programs. The purpose of this regulation is to establish licensure standards to assure that an agency operating a nonmedical alcohol treatment and education center residential transitional treatment program has minimum policies and procedures governing its program operation.

Section 1. Residential Transitional Treatment. In addition to the applicable requirements of the general program operation standards 908 KAR 1:080, the following [specific] standards shall be met if a residential transitional program is offered.
(1) The provision of individual and group counseling either directly or through cooperative arrangements <u>with other agencies or individuals</u>.
(2) The program shall maintain an individual clinical record for each client which contains:
(a) Intake information;
(b) A signed statement of client rights.
(c) A treatment plan which shall be completed within seven (7) days of admission and shall be reviewed by the house manager and the client at least monthly.
(d) A weekly summary of progress.
(e) An updated treatment plan, as appropriate.
(f) A discharge plan and date of discharge.
(3) The program shall document that all clients are either gainfully employed, actively pursuing employment, or participating in vocational <u>education or</u> [educational /] rehabilitation activities.
(4) There shall be written policies and procedures governing the use of alcohol and other drugs by clients.
(5) Provision shall be made for the utilization of community resources to provide the following support services as needed when they cannot be provided by the transitional service:
(a) Psychiatric supervision and consultation.
(b) Emergency medical and dental care.
(c) Social services to include interagency coordination, family services, referral for financial assistance, etc.
(d) Rehabilitation services <u>that may</u> [to] include vocational guidance, counseling, job placement and coordination of vocational program information and activities.
(e) Dietary supervision and consultation.
(f) Recreation which shall include a program of creative activities for residents and the availability of recreational materials.
(6) Prior to the time of discharge clients shall receive assistance, if necessary, in establishing alternative living arrangements and scheduling outpatient counseling or other treatment activities. The final arrangements shall be noted in the discharge summary.
(7) Provision shall be made for an area where clients can meet with outside community service providers and self-help groups (e.g. AA, Al-Anon[, etc.]), who assists <u>the client</u> in fulfilling the goals and objectives of his[/her] treatment plan.
(8) Residential transitional programs shall include at least the following permanent staff:
(a) Unit manager who shall be responsible for the day-to-day management of the program, for

implementation of program policies and procedures, including [include] planning, coordination, and supervision of residents' [residence] affairs.

(b) A relief person who can assume management responsibilities in the absence of the regular manager. This shall include vacation periods, sick leave, and normal off-duty hours.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: There are a total of 14 alcohol treatment and education centers that will be affected.

(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings because the amendments only: remove redundancy in language; alter the language to add clarity to the text and remove language that is prohibited by KRS 13A.222(4) and replace with appropriate terminology.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Same as above.

(a) Direct and indirect costs or savings:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No effect is anticipated because the amendments only: remove redundancy in language; alter the language to add clarity to the text and remove language that is prohibited by KRS 13A.222(4) and replace with appropriate terminology.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the amendments only: remove redundancy in language; alter the language to add clarity to the text and remove language that is prohibited by KRS 13A.222(4) and replace with appropriate terminology.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. No tiering was applied because the amendments only: remove redundancy in language; alter the language to add clarity to the text and remove language that is prohibited by KRS 13A.222(4) and replace with appropriate terminology.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:120. Outpatient treatment (NATE).

RELATES TO: KRS 222.210 to 222.310
STATUTORY AUTHORITY KRS 194.050, 222.230

NECESSITY AND FUNCTION: KRS 194.050 and 222.230 empowers the cabinet to promulgate rules and regulations establishing standards for the licensing and approval of facilities offering alcoholism rehabilitation programs. The purpose of this regulation is to establish licensure standards to assure that an agency offering a nonmedical alcohol treatment and education center outpatient treatment program has minimum policies and procedures governing its operation.

Section 1. Outpatient Treatment. In addition to the applicable requirements of the general program operation standards 908 KAR 1:080, the following [specific] standards shall be met if an outpatient treatment program if offered.

(1) The requirements for a program shall include[, but not be limited to] client assessment procedures, crisis intervention, individual and group therapy, family counseling, alcohol information, referral to other community resources, and aftercare [follow-up].

(2) There shall be a written, individualized treatment plan completed before the fourth client visit.

(3) By the fourth visit each client shall be assigned to a specific staff person who will have primary responsibility for implementing the client's treatment plan.

(4) At a minimum staff shall conduct case conferences to review client progress every six (6) months and shall update the treatment plan if needed. The findings shall be documented in the client record.

(5) Exception. Community mental health center outpatient services licensed under 902 KAR 20:091 shall be [are] exempt from being licensed as a nonmedical alcohol treatment and education center (NATE) outpatient program.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd
(1) Type and number of entities affected: There are 19 alcohol treatment and education centers that will be affected.
(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings because the amendments only: remove redundancy in language; clarify the text and remove language that is prohibited in accordance with KRS 13A.222(4) and replace with appropriate terminology.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: Same as above.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: No effects are anticipated because the amendments only: remove redundancy in language; clarify the text and remove language that is prohibited in accordance with KRS 13A.222(4) and replace with appropriate terminology.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because the amendments only: remove redundancy in language; clarify the text and remove language that is prohibited in accordance with KRS 13A.222(4) and replace with appropriate terminology.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The amendments only: remove redundancy in language; clarify the text and remove language that is prohibited in accordance with KRS 13A.222(4) and replace with appropriate terminology.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:130. Day/night intensive outpatient treatment (NATE).

RELATES TO: KRS 222.210 to 222.310
STATUTORY AUTHORITY: KRS 194.050, 222.230
NECESSITY AND FUNCTION: KRS 194.050 and 222.230 empowers the cabinet to promulgate rules and regulations establishing standards for the licensing and approval of facilities offering alcoholism rehabilitation programs. The purpose of this regulation is to establish licensure standards to assure that an agency offering a nonmedical alcohol treatment and education center day/night intensive outpatient treatment program has minimum policies and procedures governing its operation.

Section 1. [Day/Night] Intensive Outpatient Treatment. In addition to the applicable requirements of the general program operation standards 908 KAR 1:080, the following [specific] standards shall be met if an [a day/night] intensive outpatient treatment program is offered.
(1) The minimum requirements of a program shall include[, but not be limited to] client assessment procedures, crisis intervention, individual and group therapy, family counseling, alcohol information, referral to other community resources, and aftercare [follow-up].
(2) There shall be a written procedures describing the therapeutic, rehabilitative activities and the schedule of these activities.
(3) There shall be written procedures describing a family treatment component.
(4) There shall be a written individualized treatment plan completed before the sixth client visit.
(5) By the sixth visit each client shall be assigned to a specific staff person who shall [will] have primary responsibility for implementing the client's treatment plan.
(6) Staff shall conduct case conferences to review client progress every two (2) weeks. The findings shall be documented in the case record.
(7) Educational services shall be provided for clients which give information about alcohol abuse and its effects, family involvement in the illness, coping and interpersonal relationship skills.
(8) Outpatient treatment programs serving adolescents shall meet [day/night] intensive outpatient treatment standards set forth in subsections (1) through (7) of this section in addition to the following:
(a) Documentation of attempts to obtain the active participation of the adolescent's family or family surrogate in the treatment process.
(b) Provision of treatment, literature, lectures, etc., which shall be age appropriate.
(c) The program shall provide recreational activities which shall be planned to develop constructive leisure time activity skills and shall be documented in each client's treatment plan.
(d) Development of an aftercare plan which shall reflect consideration of aftercare issues unique to adolescents.
(9) [Day/night] Intensive outpatient treatment programs utilizing host families. With the addition of [specific] standards set forth in the paragraphs below, all rules applying to [day/night] intensive outpatient treatment programs under subsections (1) through (8) of this section shall apply to [day/night] intensive outpatient treatment programs utilizing host families:
(a) A host family shall already have been the recipient of the program's education and [/or] treatment services prior to serving as a host family.
(b) [Day/night] Intensive outpatient treatment programs utilizing host families shall establish standards for such homes. Such standards shall be approved by the cabinet and include at a minimum the following:
1. All homes shall be inspected initially and at least annually thereafter by the sponsoring program to assure that the physical condition

and facilities within the home provide a sanitary and safe environment for the client. All homes shall be reinspected if there is a lapse in time when the home was not being used as a host family.

2. The host family shall provide on-site supervision to ensure care and maintenance of the health, safety and welfare of the client.

3. Provide timely and nutritious meals.

4. The maintenance of regular communication with the sponsoring program. [and] The program shall be notified immediately in the event of an emergency or incident.

5. In the case of an emergency the host family may use physical restraint or seclusion on a client only if absolutely necessary to protect the client from injuring himself or others, but shall not use physical restraint or seclusion as punishment for the convenience of the host family, or as a substitute for activities. When such an incident occurs the sponsoring program shall be notified as soon as possible. The incident shall be documented in the client's record describing the reasons that physical restraint or seclusion was used, the clinical interventions utilized and the final resolution to the situation. All incidences of the alleged use of physical restraint or seclusion by the host family shall be fully investigated by program staff.

6. The sponsoring program shall be informed as soon as possible if the client leaves the host family without permission of the host parents or sponsoring program staff.

(c) The program shall provide all host families a phone number where in the event of an emergency, staff can be reached on a twenty-four (24) hour basis.

(d) A written agreement between the [day/night] intensive outpatient treatment program and the host family, signed by both parties, shall be executed, stating the responsibilities and liabilities of each party, including the requirements set forth in paragraph (b) of this subsection. The name, address and phone number of the host family shall be included in the agreement.

(e) The sponsoring program shall make available upon request, to designees of the cabinet [for Human Resources], records for each host family home utilized. These records shall contain at a minimum:

1. An agreement between the program director and the head of the host family, signed by both.

2. A copy of the host family home standards established by the sponsoring program.

3. Copies of the completed inspection reports signed by the sponsoring program inspector and the head of the host family.

(10) Exception. Community mental health center [day/night] intensive outpatient treatment services licensed under 902 KAR 20:091 shall be [are] exempt from being licensed as a nonmedical alcohol treatment and education (NATE) center.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: There are 12 alcohol treatment and education centers that will be affected.

(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings because the amendments only: remove redundancy in language; clarify the text and remove terminology that is prohibited by KRS 13A.222(4) and replace it with appropriate terminology.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Same as above.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No effects are anticipated because the amendments merely: remove redundancy in language; clarify the text and remove terminology that is prohibited by KRS 13A.222(4) and replace it with appropriate terminology.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were examined because the amendments merely: remove redundancy in language; clarify the text and remove terminology that is prohibited by KRS 13A.222(4) and replace it with appropriate terminology.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. No tiering was applied because the amendments merely: remove redundancy in language; clarify the text and remove terminology that is prohibited by KRS 13A.222(4) and replace it with appropriate terminology.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:140. Education (NATE).

RELATES TO: KRS 222.210 to 222.310
STATUTORY AUTHORITY: KRS 194.050, 222.230
NECESSITY AND FUNCTION: KRS 194.050 and 222.230 empowers the cabinet to promulgate rules and regulations establishing standards for the

licensing and approval of facilities offering alcoholism rehabilitation programs. The purpose of this regulation is to establish licensure standards to assure that an agency offering a nonmedical alcohol treatment and education center education program has minimum policies and procedures governing its program operation.

Section 1. Education. (1) For each alcohol abuse education program rendered there shall be documentation of the learning goals and objectives to assure that the program content is relevant to the needs of the target population.

(2) There shall be written policies and procedures for determining an individual or agency's suitability for participation in an education program.

(3) There shall be a mechanism for evaluating changes in a [the] participant's knowledge and attitudes as a result of an alcohol abuse education program.

(4) Fee collection policy and procedures shall be written and posted.

(5) In nonfederally assisted programs, client confidentiality shall be assured in accordance with KRS 222.270. Federally assisted programs as defined in 42 CFR Part 2, shall assure client confidentiality in accordance with 42 CFR part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records". [Participants shall be informed of his/her rights to confidentiality in compliance with federal regulations 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."]

(6) There shall be an ongoing training and supervision plan for education program staff that supports the attainment of the goals and objectives of the education programs.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: There are 100 alcohol treatment and education centers that will be affected.

(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings because the amendments only clarifies which confidentiality laws and regulations apply to nonfederally assisted programs versus federally assisted programs.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Same as above.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There are no effects anticipated because the amendments only clarifies which confidentiality laws and regulations apply to nonfederally assisted programs versus federally assisted programs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because the amendments only clarifies which confidentiality laws and regulations apply to nonfederally assisted programs versus federally assisted programs.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. No tiering was applied because the amendments only clarifies which confidentiality laws and regulations apply to nonfederally assisted programs versus federally assisted programs.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:150. Definitions for drug abuse treatment and education (DATE) centers.

RELATES TO: KRS 210.610 to 210.680, 210.990(3)
STATUTORY AUTHORITY: KRS 194.050, 210.620
NECESSITY AND FUNCTION: KRS 194.050 and 210.620 empowers the cabinet to establish guidelines and provide for the systematic evaluation of the effectiveness of drug abuse treatment and education (DATE) centers. The purpose of this regulation is to define terms that are used in regulations adopted by the cabinet regarding facility standards for the operation of drug abuse treatment and education (DATE) center.

Section 1. Definitions. [As pertaining to the cabinet's regulations regarding drug abuse treatment and education (DATE) centers unless the content otherwise requires:]

(1) "Agency" means a legal entity that operates a drug abuse treatment and education (DATE) center.

(2) "Cabinet" is defined in KRS 210.610 [means the Cabinet for Human Resources].

(3) "Certified chemical dependency counselor" means an individual who meets the standards and requirements of the Kentucky Chemical Dependency Counselors' Professional Certification Board, Inc.

(4) [(3)] "Client" means any individual on whom a record has been opened by a [that receives treatment services rendered in a drug abuse treatment and education (DATE) center such as] residential rehabilitation center or

nonresidential day care center. [Such an individual shall have a medical record that documents the nature of the services they are receiving.]

(5) [(4)] "Communication center or rap house" is defined in KRS 210.610 [means a primary prevention program oriented toward youth with the goal of prevention of drug dependency. Such a center may make referrals to appropriate treatment facilities].

(6) [(5)] "DATE center" is defined in KRS 210.610 [means a drug abuse treatment and education center and includes the following: residential rehabilitation center, nonresidential day care center, educational information center and communication center or rap house].

[(6) "Day/night intensive outpatient treatment program" means a facility that provides a structured program of services in an outpatient setting. Services shall be planned to be comprehensive in nature and intensive in the amount of time where client contact is prescribed. The day/night intensive outpatient treatment program shall offer therapeutic, educational and rehabilitative activities to individuals and their families experiencing problems involving drug abuse and dependency. The purpose of a day/night intensive outpatient treatment program shall be to provide a variety of diagnostic and treatment services according to a prescribed plan in an outpatient setting to drug abusers and their families, whose physical and emotional status allows them to function in their natural environment.]

(7) "Detoxification program" means a residential facility providing short-term, supervised, nonmedical withdrawal from drug induced intoxication, and [. The purpose of such a detoxification program shall be to provide a supportive setting to help persons recover from acute withdrawal from drugs, wherein the motivation level of drug dependent persons can be raised to promote continued involvement in the recovery process. A detoxification program serves detoxification needs of persons without known serious physical or immediate psychiatric complications requiring medical attention. A detoxification program provides an opportunity to conduct] an assessment of the client's need for further care resulting in a referral(s) to appropriate community resources. This program shall serve the detoxification needs of persons without known serious physical or immediate psychiatric complications requiring medical attention. Room and board are provided twenty-four (24) hours a day seven (7) days a week. [for continued help with problems, for treatment, and for greater utilization of supportive community health agencies.]

(8) "Drug" means any substance, not including alcohol, that when ingested into the human body has a psychoactive effect on the central nervous system.

(9) "Drug abuse" means a dysfunctional use of drugs characterized by one (1) or more of the following patterns of use:

(a) Continued use despite knowledge of having a persistent or recurrent social, legal, occupational, psychological, or physical problem that is caused or exacerbated by the use of drugs;

(b) Recurrent use in situations which are physically hazardous (e.g., driving while intoxicated);

(c) Some symptoms of the disturbance have persisted for at least one (1) month, or have occurred repeatedly over a longer period of time.

(10) "Drug dependent" is defined in KRS 210.610.

[(9) "Education program" means a structured learning process directed at increasing awareness, imparting knowledge, and changing attitudes and behaviors which involves a didactic exchange of information to individuals or groups regarding drug use and abuse. The purpose of an education program shall be to develop or increase competence of individuals, their families, service providers and others to make healthy decisions and help themselves or others in relation to drug abuse problems.]

(11) [(10)] "Educational information center" is defined in KRS 210.610 [means an information center facility which offers education and information programs to drug dependent persons, their families, and to the general community, but which engages in no direct treatment. Such a center may make referrals to appropriate treatment facilities].

(12) [(11)] "Host family" means a family unit other than an individual's natural family that is utilized by an intensive outpatient treatment [a licensed drug abuse treatment and education (DATE) center] program to temporarily house an individual who is receiving [nonmedical drug treatment] services from this [in his/her] program.

(13) "Intensive outpatient treatment program" means a facility that provides a structured program of treatment services in an outpatient setting. Services shall be planned so that they are comprehensive in nature and intensive in the amount of client contact time.

(14) [(12)] "Nonresidential day care center" is defined in KRS 210.610 [means a facility offering therapeutic outpatient programs operated by trained professionals and paraprofessionals for treatment of drug dependent persons who are able to live in their own homes in the community].

(15) [(13)] "Outpatient treatment program" means a facility providing nonresidential drug abuse or dependency treatment services on both a scheduled and nonscheduled basis. [Outpatient treatment offers therapeutic services for the treatment and rehabilitation of individuals with problems involving drug abuse. The purpose of outpatient treatment shall be to provide a variety of diagnostic and primary drug abuse treatment services. These services shall be provided in an outpatient setting according to a prescribed plan for persons abusing drugs and their families, whose physical and emotional status allows them to function in their natural environment.]

(16) [(14)] "Primary prevention program" means a set of planned strategies directed to the general population and specifically identified groups for whom measures can be taken to avoid the onset of drug abuse related problems and to enhance individuals [his/her] level of health. The purpose of a primary prevention program is to provide individuals with the information and skills necessary to make healthy decisions regarding the use [/nonuse] of drugs as well as to influence environmental factors such as social policies and norms which will support healthy lifestyles.

(17) [(15)] "Resident" means a client [person] in a twenty-four (24) hour treatment facility.

(18) [(16)] "Residential rehabilitation center" is defined in KRS 210.610 [means a live-in facility operating twenty-four (24) hours a day, seven (7) days a week, staffed by professional and paraprofessional persons offering therapeutic programs for drug dependent persons. A residential rehabilitation center may include one (1) or more of the following types of twenty-four (24) hour programs: detoxification, residential and residential transitional period].

(19) [(17)] "Residential transitional program" means a facility providing long-term residential accommodations in a therapeutic group setting for persons recovering from drug abuse [and] dependency. Programs of this nature shall be designed as a transition for persons recovering from drug abuse and dependency who are attempting social and vocational adjustments prior to returning to family or independent living within the community. Room and board are provided twenty-four (14) hours a day, seven (7) days a week.

(20) [(18)] "Residential treatment program" means a facility that provides a twenty-four (24) hour, seven (7) days a week structured environment for individuals recovering from [with] drug abuse or dependency problems. The program shall provide [provides the structure necessary for the drug abuser to acquire the tools needed to function independently when returned to his/her natural environment and to maintain an abstinent lifestyle. The purpose of such a residential treatment program shall be to facilitate the rehabilitation of the drug abuser by placing him/her in] an organized therapeutic environment in which the client shall [he may] receive diagnostic services, counseling, and peer support. Such programs shall also offer support services to a resident's family members in order to educate about [treat] the problems of codependency. [A residential treatment program enables drug abusers and their family members to change feelings, attitudes, and behavior in the direction of more effective and rewarding patterns of living.]

(21) "Treatment" means services and programs for the care and rehabilitation of persons who are intoxicated with drugs, drug abusers and drug addicted.

(22) "Treatment plan" means a document in the record that: identifies the clinical needs of the client based on the psychosocial assessment; contains specific treatment objectives that address the client's needs, that are written in measurable terms with expected achievement dates; documents the specific criteria to be met for termination of treatment; includes treatment modalities, frequency, staff assigned and referrals to other community resources.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: There are a total of 227 licensed drug abuse treatment and education centers.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings because the amendments: remove restatements of a statute and replace with a reference to the statute; defines additional terminology used throughout 908 KAR 1:160 to 260; simplifies definitions; removes redundancy in language; assures consistency in language; and deletes terminology that is prohibited as defined in KRS 13A.222(4) followed by the addition of appropriate terminology.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Same as above.

(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No effect anticipated because the amendments: remove restatements of a statute and replace with a reference to the statute; defines additional terminolgy used throughout 908 KAR 1:160 to 260; simplies definitions; removes redundancy in language; assures consistency in language; and deletes terminology that is prohibited as defined in KRS 13A.222(4) followed by the addition of appropriate terminology.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives methods were considered because the amendments; remove restatements of a statute and replace with a reference to the statute; defines additional terminolgy used throughout 908 KAR 1:160 to 260; simplies definitions; removes redundancy in language; assures consistency in language; and deletes terminology that is prohibited as defined in KRS 13A.222(4) followed by the addition of appropriate terminology.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The amendments only: remove restatements of a statute and replace with a reference to the statute; defines additional terminolgy used throughout 908 KAR 1:160 to 260; simplies definitions; removes redundancy in language; assures consistency in language; and deletes terminology that is prohibited as defined in KRS 13A.222(4) followed by the addition of appropriate terminology.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and
Mental Retardation Services
(Proposed Amendment)

908 KAR 1:160. Licensing procedures (DATE).

RELATES TO: KRS 210.610 to 210.680, 210.990(3), HB 799 of the 1990 GA, Part 1, G, 56, g, lines 13-17

STATUTORY AUTHORITY: KRS 194.050, 210.620

NECESSITY AND FUNCTION: KRS 194.050 and 210.620 empowers the cabinet to establish guidelines and provide for the systematic evaluation of the effectiveness of drug abuse treatment and education (DATE) centers. The purpose of this regulation is to establish standards for determining what types of facilities must have a drug abuse treatment and education (DATE) center license to operate and the procedures for obtaining and maintaining such a license.

Section 1. Licensing and Approval Procedures. Applications for licensing, or waivers requesting exemptions from licensure standard(s) shall be obtained from and submitted to the Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40601.

(1) Application for licensure shall be filed in accordance with KRS 210.630 [by all agencies operating a drug abuse treatment and education (DATE) center in the Commonwealth] with the following exceptions:

(a) Group meetings organized among drug abusers, recovering addicts [or drug abusers], families and others, (e. g., Narcotics Anonymous & Naranon) held on a nonresidential basis and without professional staff intervention, for the purpose of discussing problems related to use of drugs where no fee is involved.

[(b) Transportation Cabinet, Alcohol Driver Education, pursuant to: KRS Chapter 189A and 601 KAR 13:050.]

[(c) Programs conducted in a facility established and maintained by a licensed hospital; nursing homes; and department, agency or institution of the federal government or the Commonwealth.]

(b) [(d)] All chemical dependency treatment services and facilities licensed under 902 KAR 20:160.

(c) All hospitals licensed under 902 KAR 20:016 and 902 KAR 20:240.

(2) A Drug abuse education and treatment (DATE) center license shall be issued automatically in accordance with KRS 210.680 [The Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation shall conduct all licensure surveys to determine whether an agency's drug abuse treatment and education (DATE) center is in compliance with the applicable licensure standards].

(3) Any person who operates a drug abuse treatment and education (DATE) center without a proper license shall be penalized in accordance with KRS 210.990(3).

(4) Procedures for conducting licensure surveys shall be in accordance with KRS 210.660.

(5) [(3)] The cabinet shall notify the applicant agency for a drug abuse treatment and education (DATE) center license of any pending licensure action taken, and shall provide written reports citing observed deficiencies as they relate to the standards. A copy of this report shall be forwarded to the applicant agency. Upon receipt of this report the applicant agency must submit an acceptable plan of correction for cited deficiencies to the cabinet within ten (10) days.

(6) Procedures for denying or revoking a drug abuse treatment and education (DATE) center license shall be in accordance with KRS 210.640.

(7) Procedures for reinstatement of a license shall be in accordance with KRS 610.650.

(8) [(4)] Licensure is not transferable. Both the license holder and the new operator shall be responsible to notify the cabinet when the agency possessing the drug abuse treatment and education (DATE) center license changes ownership or control or undergoes a major change in its capacity or in the categories of programs offered, with disclosure of all factors involved in the change. If it is the decision of the cabinet that a reapplication is in order the applicant shall apply within twenty (20) days of notification by the cabinet. Failure to comply with these provisions shall result in loss of license.

(9) [(5)] The cabinet shall be notified in writing prior to the merger of the agency possessing a drug abuse treatment and education (DATE) center license with another agency and an immediate request for licensure be filed with the cabinet. The merged agency's drug abuse treatment and education (DATE) center shall be surveyed within one (1) year of such notification. For the purposes of licensure, a merged agency shall be a legal entity with a single governing body, a single administration, a single staff, and, where applicable, a single set of bylaws, rules and regulations.

(10) [(6)] The cabinet shall publish on an annual basis a list of licensed drug abuse treatment and education (DATE) centers identifying types of programs and their locations and shall make it available to the public upon request.

[(7) Licenses granted to agencies deemed responsible and suitable to carry out drug abuse treatment and education (DATE) center programs shall meet applicable standards and requirements for a period not exceeding one (1) year and renewable for a like period, and subject to revocation for cause.]

(11) [(8)](a) A drug abuse treatment and education (DATE) center license shall be issued by the Cabinet [for Human Resources, Office of Inspector General, Division of Licensing and Regulation] to an agency for each facility operated by the agency that meets the required standards for operating a residential rehabilitation center, nonresidential day care center, educational information center and communication center. In the event that an agency operates an educational information center or communication center at multiple facilities only a single educational information center or communication center license shall be issued to the applicant agency.

(b) A residential rehabilitation center license shall identify the location of the facility, the year of issuance of the license and what type of residential program is being licensed such as: detoxification, residential treatment or residential transitional treatment. The agency that operates the facility being licensed shall receive a certificate of

licensure indicating its approved status.

(c) A nonresidential day care center license shall identify the location of the facility, the year of issuance of the license and what type of nonresidential program is being licensed such as: outpatient treatment or [day/night] intensive outpatient treatment. The agency that operates the facility being licensed shall receive a certificate of licensure indicating its approved status.

(d) An educational information center or communication center license shall identify the location of the facility or facilities providing that type of program and the year of issuance of the license. The agency that operates the facility or facilities being licensed shall receive a certificate of licensure indicating its approved status.

(e) An agency may be provided additional certificates of licensure for its drug abuse treatment and education (DATE) center programs upon payment of the cost of reproduction. The certificate and all copies shall remain the property of the cabinet and shall be returned to the cabinet if the agency is issued a new certificate of licensure reflecting a change in name or programs for which it is licensed, or if the license is revoked for any cause.

(f) The Cabinet [for Human Resources, Office of Inspector General, Division of Licensing and Regulation] shall be notified in writing when there is a change in location for every facility operated by an agency licensed as a drug abuse treatment and education (DATE) center.

[(9) Hearing procedures involving licenses shall be conducted in accordance with KRS 222.230(6).]

(12) [(10) Licensure fees per drug abuse treatment and education (DATE) center shall be paid in accordance with KRS 210.620, Section 4. This statute requires that] Applications for a permit to operate a drug abuse treatment and education (DATE) center shall be accompanied by a fee of $155 and shall, excepting conditional permits, be renewable upon expiration and reapplication when accompanied by a renewal fee of eighty (80) dollars. All licensure fees are to be forwarded to the Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(13) Information related to licensing a drug abuse treatment and education (DATE) center shall be confidential in accordance with KRS 210.670.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: There are 227 licensed drug abuse treatment and education centers that will be affected.

(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings because the amendments only involve: removing restatements of statutes and replacing with only reference to a statute; adding references to DATE center statutes that govern licensing procedures; and the addition of clarifying language to some standards.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Same as above.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No effects are anticipated because the amendments only involve: removing restatements of statutes and replacing with only reference to a statute; adding references to DATE center statutes that govern licensing procedures; and the addition of clarifying language to some standards.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives methods were considered because the amendments only involve: removing restatements of statutes and replacing with only reference to a statute; adding references to DATE center statutes that govern licensing procedures; and the addition of clarifying language to some standards.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The amendments only involve: removing restatements of statutes and replacing with only reference to a statute; the addition of clarifying language to some standards and including references to DATE center statutes that govern licensing procedures.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:170. Organization and administration (DATE).

RELATES TO: KRS 210.610 to 210.680, 210.990(3)
STATUTORY AUTHORITY: KRS 194.050, 210.620
NECESSITY AND FUNCTION: KRS 194.050 and 210.620 empowers the cabinet to establish guidelines and provide for the systematic evaluation of the effectiveness of drug abuse

treatment and education (DATE) centers. The purpose of this regulation is to establish licensure standards to assure that agencies offering drug abuse treatment and education (DATE) center programs have a governing authority, organizational structure, and minimum policies and procedures for administering such a program.

Section 1. Organization and Administration. (1) Every agency shall be organized so that overall fiscal and program responsibility shall be clearly established and this responsibility shall be vested in specifically designated individuals with authority to carry out such administrative duties. The source of this authority shall be documented.

(2) The governing authority shall provide written documentation of its source of authority through charter, constitution and bylaws, and[,] where required, its state license.

(3) The governing authority shall exercise general direction and establish policies concerning the operation of the program. There shall be documentation of the methods and procedures used by the governing authority to exercise general direction and establish policies concerning the operation of the program. This documentation shall include the means by which the governing authority provides for the election or appointment of its officers and the appointment of committees necessary to affect the discharge of its responsibilities. The governing authority shall document the adoption of a schedule of meetings, attendance requirements, and minutes of all meetings.

(4) There shall be documentation verifying that the policies of the governing authority shall be reviewed and updated at least every two (2) years and that the policies shall be distributed to all staff.

(5) The governing authority shall document the delegation of authority and responsibility to an executive officer for the management of the agency.

(6) The governing authority or the chief officer shall provide a policy manual which describes the regulations, principles and guidelines that determine the agency's operation. There shall be documentation verifying that this policy manual shall be reviewed and updated at least every two (2) years and shall be available to all staff.

(7) Exception. When the applicant for a drug abuse treatment and education (DATE) center license is a community mental health center, compliance with 908 KAR 2:030 and 902 KAR 20:091 shall suffice for meeting organization and administration standards set forth in subsections (1) through (6) of this section.

(8) Orientation and training for governing board members shall be provided annually on drug abuse treatment, education and primary prevention and documented in the minutes of the governing board meeting(s).

(9) Where drug abuse treatment and education and primary prevention programs are provided in the context of a general mental health agency, it shall be documented that within the governing board there are members whose primary interest is the treatment and education of drug abusers and the primary prevention of drug abuse.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd
(1) Type and number of entities affected: There are 227 drug abuse treatment and education centers that would be affected.
(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings because the amendment only corrects punctuation.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: Same as above.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: No effects are anticipated because the amendment only corrects punctuation.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because the amendment only corrects punctuation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. This amendment only corrects punctuation.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:180. Alternative birth center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.170, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the coverage provisions for services provided by alternative birth centers for which payment shall be made by the Medicaid [Medical Assistance] Program in behalf of both the categorically needy and the medically needy.

Section 1. General Provisions. Services shall be covered only when provided to an eligible Medicaid [Title XIX] recipient by a participating alternative birth center which is appropriately licensed and operating in accordance with 904 KAR 20:150.

Section 2. Covered Services. The following services may be provided by alternative birth centers:
(1) Prenatal visits, to include one (1) initial visit and follow-up visits as appropriate.
(2) Standby services, with the medical professional (obstetrician or nurse midwife) physically present throughout the course of the labor.
(3) Delivery, which includes the actual delivery, necessary supplies and material, and the postdelivery examination.
(4) Postnatal visits, not to exceed two (2) and which shall [must] be accomplished within six (6) weeks of the delivery.
(5) Laboratory services as specified by the Cabinet for Human Resources.

Section 3. Records, Reporting and Monitoring. The facility shall maintain complete records of services rendered, and [shall] provide to the cabinet the [such] records and reports [as] the cabinet [may] requires for the effective implementation and administration of the service. Facility records shall be available to the Cabinet for Human Resources, the United States Department of Health and Human Services, and the Comptroller General, and[/or] their representatives or designees for auditing or monitoring purposes.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 7, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: None; no alternative birth center services providers are currently participating in the Medicaid program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation is being amended to comply with KRS Chapter 13A drafting requirements. No policy or procedural changes are involved.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:190. Quality assurance (DATE).

RELATES TO: KRS 210.610 to 210.680, 210.990(3)
STATUTORY AUTHORITY: KRS 194.050, 210.620
NECESSITY AND FUNCTION: KRS 194.050 and 210.620 empowers the cabinet to establish guidelines and provide for the systematic evaluation of the effectiveness of drug abuse treatment and education (DATE) centers. The purpose of this regulation is to establish licensure standards to assure that agencies offering drug abuse treatment and education (DATE) center programs have minimum policies and procedures for reviewing quality of client care, and assuring staff competency.

Section 1. Quality Assurance. Every program shall have written policies and procedures for assuring the quality of services delivered. These policies and procedures shall address methods for reviewing appropriateness of client care and staff competency. Included in these policies and procedures shall be the following:
(1) There shall be written policies and procedures for periodic review of each staff

person's [service staff's] caseload. These policies and procedures must at a minimum address the following:

(a) The quality of services shall be evaluated by members of the staff directly responsible for providing services.

(b) These procedures shall at a minimum have the capability to assess the appropriateness and clinical necessity of admissions as well as the accuracy, completeness and appropriateness of the treatment plan and outcome.

(c) The client care review shall occur at regularly scheduled intervals.

(d) A written record of such reviews shall be generated identifying inappropriate patterns of service and the recommended action for correcting the problem(s). Such a report shall be submitted to an individual with overall responsibility within the agency for the program's treatment services.

(e) Follow-up studies related to the corrective actions taken shall be completed within a reasonable period of time and the findings documented.

(2) There shall be staff development policies which assure that drug abuse counseling staff are provided ongoing training and clinical supervision opportunities necessary to support an employee's [his/her] ability to carry out his[/her] expected job duties.

(3) Each drug abuse treatment and education (DATE) center treatment program shall have a designated clinical services supervisor who meets one (1) of the following sets of qualifications. Such qualifications will be documented in the personnel file of the clinical services supervisor.

(a) A person with a masters degree or greater in psychiatry, psychology, social work, nursing with a specialty in psychiatric[/mental health] nursing or other mental health program plus eighty (80) clock hours of training in chemical dependency treatment within a maximum of four (4) years prior to his[/her] employment. If the clinical services supervisor does not have the eighty (80) clock hours or any portion thereof, prior to his[/her] employment, he[/she] shall obtain the eighty (80) clock hours within two (2) years from the date of his[/her] employment. The clinical services supervisor shall maintain on an annual basis twenty (20) clock hours of continuing education in chemical dependency treatment.

(b) A person with less than a masters degree in psychology, social work, nursing with specialty in psychiatric[/mental health] nursing or other mental health counseling program shall be [either] a certified chemical dependency counselor [or have registered as a trainee with the intent to obtain the credential by May of 1991]. Documentation of this credential shall be [registration as a trainee is] in the form of a certificate from the Kentucky Chemical Dependency Counselors' Professional Certification Board, Inc. [organization recognized by the Cabinet for Human Resources as the official certification body for chemical dependency counselors in Kentucky.]

(4) All staff who have primary responsibility for developing and implementing treatment plans for drug abuse clients in residential treatment programs, licensed under residential rehabilitation, and all programs licensed under nonresidential day care center shall meet one (1) of the following sets of qualifications. Such qualifications shall be documented in individual staff member's personnel files.

(a) A person with a masters degree or greater in psychiatry, psychology, social work, nursing with a specialty in psychiatric[/mental health] nursing or other mental health program plus eighty (80) clock hours of training in chemical dependency treatment within a maximum of four (4) years prior to his[/her] employment. If the employee does not have the eighty (80) clock hours or any portion thereof, prior to his[/her] employment, he[/she] shall obtain the eighty (80) clock hours within two (2) years from the date of his[/her] employment. The employee shall maintain on an annual basis twenty (20) clock hours of continuing education in chemical dependency treatment.

(b) A person with less than a masters degree in psychology, social work, nursing with specialty in psychiatric[/mental health] nursing or other mental health counseling program shall be either a certified chemical dependency counselor or have registered as a trainee his[/her] intent to obtain the credential. Documentation of registration as a trainee shall be in the form of a certificate from the Kentucky Chemical Dependency Counselors' Professional Certification Board, Inc. [organization recognized by the Cabinet for Human Resources as the official certification body for chemical dependency counselors in Kentucky] plus documentation of training and supervision updated annually.

(5) Exception. When the applicant is applying for a drug abuse treatment and education (DATE) center license for an educational information center or communication center or rap house, compliance with 908 KAR 1:250 and 908 KAR 1:260 respectively shall suffice for meeting all of the standards set forth within this quality assurance section.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: There are a total of 61 drug abuse treatment and education centers that would be affected.

(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings because the amendments merely: remove redundancy in language, delete language that's not clear and replace with language that is; delete terminology that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology and deletes the category of a certified chemical dependency counselor "trainee" as an acceptable credential for

clinical services supervisor. This last deletion is occurring because all "trainees" who are clinical services supervisors must be a certified chemical dependency counselor by May of 1991 which has expired.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: Same as above.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: No effect is anticipated because the amendments merely: remove redundancy in language, delete language that's not clear and replace with language that is; delete terminology that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology and deletes the category of a certified chemical dependency counselor "trainee" as an acceptable credential for clinical services supervisor. This last deletion is occurring because all "trainees" who are clinical services supervisors must be a certified chemical dependency counselor by May of 1991 which has expired.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the amendments merely: remove redundancy in language, delete language that's not clear and replace with language that is; delete terminology that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology and deletes the category of a certified chemical dependency counselor "trainee" as an acceptable credential for clinical services supervisor. This last deletion is occurring because all "trainees" who are clinical services supervisors must be a certified chemical dependency counselor by May of 1991 which has expired.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The amendments merely: remove redundancy in language, delete language that's not clear and replace with language that is; delete terminology that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology and deletes the category of a certified chemical dependency counselor "trainee" as an acceptable credential for clinical services supervisor. This last deletion is occurring because all "trainees" who are clinical services supervisors must be a certified chemical dependency counselor by May of 1991 which has expired.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:200. Client's rights (DATE).

RELATES TO: KRS 210.610 to 210.680, 210.990(3)
STATUTORY AUTHORITY: KRS 194.050, 210.620
NECESSITY AND FUNCTION: KRS 194.050 and 210.620 empowers the cabinet to establish guidelines and provide for the systematic evaluation of the effectiveness of drug abuse treatment and education (DATE) centers. The purpose of this regulation is to establish licensure standards to assure that agencies offering drug abuse treatment and education (DATE) center programs have minimum policies and procedures which protect an drug client's basic rights while enrolled in the program(s).

Section 1. Client's Rights. There shall be written policies and procedures designed to assure the human rights of all clients and to protect an individual's [his/her] right to receive confidential treatment. These written policies and procedures shall include but not be limited to the following standards:
(1) No client shall be unlawfully discriminated against in determining eligibility for treatment services.
(2) During a program's intake procedures, a client[s] shall be given written documentation of his[/her] legal and human rights. These rights shall include but not be limited to the following:
(a) To give informed consent to treatment except as otherwise provided for juveniles in accordance with KRS 222.440;
(b) To have input into the client's [his/her] treatment plan and be informed of its content;
(c) To receive individualized treatment;
(d) To submit grievances, recommendations and opinions regarding the client's [his/her] treatment;
(e) To give informed written consent regarding participation in human subject research;
(f) In nonfederally assisted programs, client confidentiality shall be assured in accordance with KRS 222.420 and 210.670. Federally assisted programs, as defined in 42 CFR Part 2, shall assure client confidentiality in accordance with 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records" [To receive confidential treatment in compliance with federal regulations 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records" and all pertinent state laws and regulations];
(3)(a) Adults admitted to treatment shall sign an informed consent to treatment;
(b) When a juvenile is admitted to treatment, the juvenile shall sign an informed consent to treatment or the parent or guardian of such juvenile in accordance with KRS 222.440.
(4) Twenty-four (24) hour residential programs shall have written documentation of a client's right to exercise civil duties (e.g., vote) in addition to those set forth in subsection (2) of this section.
(5) The document outlining a client's rights shall be signed by each client indicating that he has [they have] reviewed and understood his[/her] rights. This signed document shall be placed in each client's [medical] record.

(6) When the exercising of a client right(s) is contraindicated by the client's condition, there shall be documentation in the client's [medical] record of the reasons for the restriction(s) imposed and of an explanation to the client.

(7) There shall be written policies and procedures regarding client access to his[/her medical] record.

(8) There shall be written policies and procedures regarding clients receiving or refusing visitors, phone calls or written communications while residing in the program. The client shall be informed of these policies and procedures in writing at the time of admission to the program.

(9) There shall be written policies and procedures for reviewing and responding to grievances, recommendations and opinions regarding a client's treatment and specifically includes mechanisms for review and disposition of allegations of neglect and abuse of clients. The policies and procedures shall include but not be limited to the following standards:

(a) Such communications and their disposition shall be documented in writing and placed in an incident file;

(b) Such communications will be responded to in a timely manner and conveyed to an appropriate decision making level within the organization which has authority to take corrective action if indicated;

(c) Such policies and procedures shall be posted for client review.

(10) The program shall comply with KRS 620.030 regarding the reporting of cases of abuse or neglect of minors as communicated by clients. For federally assisted programs the initial reporting of cases of neglect and abuse for minors shall also be in compliance with Public Law 99-401. Requests for information beyond the initial report shall also be in compliance with federal regulations 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

(11) The program shall comply with KRS 209.030 regarding the reporting of cases of abuse and neglect of adults as communicated by clients. For federally assisted programs the reporting of such cases shall also be in compliance with 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

(12) Exception. When the applicant is applying for a drug abuse treatment and education (DATE) center license for an educational information center or communication center or rap house, compliance with 908 KAR 1:250 and 908 KAR 1:260 respectively shall suffice for meeting all of the standards set forth within this client's rights section.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: There are a total of 61 drug abuse treatment and education centers that would be affected.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings because the amendments only: delete language that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology; remove language that is restating a statute and replace with the appropriate statutory reference; and clarify which confidentiality laws and regulations apply to nonfederally assisted programs versus federally assisted programs.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Same as above.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There are no effects anticipated because the amendments only: delete language that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology; remove language that is restating a statute and replace with the appropriate statutory reference; and clarify which confidentiality laws and regulations apply to nonfederally assisted programs versus federally assisted programs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because the amendments only: delete language that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology; remove language that is restating a statute and replace with the appropriate statutory reference; and clarify which confidentiality laws and regulations apply to nonfederally assisted programs versus federally assisted programs.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The amendments only: delete language that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology; remove language that is restating a statute and replace with the appropriate statutory reference; and clarify which confidentiality laws and regulations apply to nonfederally assisted programs versus federally assisted programs.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and
Mental Retardation Services
(Proposed Amendment)

908 KAR 1:220. General program operations (DATE).

RELATES TO: KRS 210.610 to 210.680, 210.990(3)
STATUTORY AUTHORITY: KRS 194.050, 210.620
NECESSITY AND FUNCTION: KRS 194.050 and 210.620 empowers the cabinet to establish guidelines and provide for the systematic evaluation of the effectiveness of drug abuse treatment and education (DATE) centers. The purpose of this regulation is to establish licensure standards to assure that any agency offering programs within a residential rehabilitation center or nonresidential day care center have minimum policies and procedures governing clinical practices.

Section 1. General Program Operation. Each residential rehabilitation center and nonresidential day care center program component addressed in 908 KAR 1:230 to 908 KAR 1:240 shall meet the following standards:

(1) Each licensed program shall have a written program description including philosophy, mission, objectives, lines of authority and staffing patterns.

(2) Each licensed program shall document that they have an evaluation system which measures the degree to which they meet current program goals and objectives.

(3) Admission, readmission, transfer, discharge and referral policies and procedures shall be established in writing. Such policies and procedures shall include the categories of individuals accepted and not accepted by the program.

(4) Programs shall have documented prearranged medical agreements for the provision of emergency medical care.

(5) Written procedures shall be established and implemented to ensure continuity of referrals between intake points and other service elements whether within or outside of the agency.

(6) Clients shall receive an orientation to the services they are to receive which includes information on the philosophy, purpose, clients' rights, the rules governing clients' conduct and types of infractions that can result in disciplinary action or discharge, and information on all costs and fees for service and responsibility for payment of those fees.

(7) Treatment programs shall have a uniform client records system to document and monitor client care:

(a) A [case] record shall be maintained for each individual receiving services.

(b) Client records shall be retained a minimum of five (5) years after clients are terminated.

(c) Each treatment program shall have a written protocol describing records accessibility, security, storage, uniformity, authorized use and disposal.

(d) A client record shall contain, at a minimum, documentation of intake information, signed statement of client rights, psychosocial assessment, treatment plan, progress in treatment, review and [/] revision of treatment plan, aftercare plan and discharge summary. In addition, programs shall document confidentiality agreements, referrals, medical services, and [staffing/]case consultation, as necessary.

(8) Any twenty-four (24) hour drug abuse treatment and education (DATE) center treatment program and [day/night] intensive outpatient program shall implement specific policies and procedures on the use of medications by its clients while participating in the program. The policies and procedures shall include the following:

(a) A policy on self-administration of over-the-counter medications by clients.

(b) That all drugs and medications shall be locked in a secure location not accessible to clients.

(c) A policy on the self-administration of medication(s) which requires a licensed physician's prescription. This policy shall address prescribed medications brought with the client upon admission as well as those medications prescribed while a client is in the program. At a minimum this policy shall require that all prescriptions the client enters the program with are verified with a physician to assure there are no contraindications with the treatment plan.

(d) That medications shall be made available to clients only at the time they are to be taken.

(e) An entry shall be made into the client's medical record documenting the self-administration of medication and shall indicate:

1. The name appearing on the container of the medication being self-administered;

2. The date and time of self-administration;

3. Dosage or amount of medication self-administered;

4. Name of staff monitoring self-administration of medication by client.

(9) The program shall establish and implement controls over client labor within the program. These controls shall meet the following criteria:

(a) The work shall be part of the client's treatment plan.

(b) The work shall be performed voluntarily with full, written consent from the client.

(c) If the client is functioning in a paid position within the program there shall be a written job description that includes length of time per day on the job, and the wages received. Such wages shall be commensurate with the economic value of the work.

[(d) The work shall be in accordance with local, state and federal laws and regulations.]

(10) Any twenty-four (24) hour drug abuse treatment and education (DATE) center treatment program shall have a written plan describing the organization and delivery of dietetic services to include:

(a) Compliance with the Kentucky Retail Food [Service] Code, 902 KAR 45:005[; current state and local laws; and regulations applicable to the particular facility].

(b) Provisions for meeting needs of clients with special dietary requirements. Special dietetic treatment shall be documented in the client record.

(c) There shall be provisions for snacks.

(11) Exception. When the applicant is applying for a residential rehabilitation center license for a detoxification or residential transitional program, compliance with 908 KAR 1:230, Sections 1(3) and 3(2) shall suffice for meeting the

general program operation standard set forth in subsection (7)(d) of this section.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd
(1) Type and number of entities affected: There are 61 drug abuse treatment and education centers that will be affected.
(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings because the amendments merely: correct grammar; remove words for consistence in language; remove terminology that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology; remove a very general reference to other laws and regulations that govern "work" of an employed person; and corrects the title of a regulation that covers food handling.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: Same as above.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: There are no effects anticipated because the amendments merely: correct grammar; remove words for consistency in language; remove terminology that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology; remove a very general reference to other laws and regulations that govern "work" of an employed person; and corrects the title of a regulation that covers food handling.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were explored because the amendments merely: correct grammar; remove words for consistency in language; remove terminology that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology; remove a very general reference to other laws and regulations that govern "work" of an employed person; and corrects the title of a regulation that covers food handling.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The amendments merely: correct grammar; remove words for consistency in language; remove terminology that is prohibited by KRS 13A.222(4) followed by the addition of appropriate terminology; remove a very general reference to other laws and regulations that govern "work" of an employed person; and corrects the title of a regulation that covers food handling.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:230. Residential rehabilitation centers (DATE).

RELATES TO: KRS 210.610 to 210.680, 210.990(3)
STATUTORY AUTHORITY: KRS 194.050, 210.620
NECESSITY AND FUNCTION: KRS 194.050 and 210.620 empowers the cabinet to establish guidelines and provide for the systematic evaluation of the effectiveness of drug abuse treatment and education (DATE) centers. The purpose of this regulation is to establish licensure standards to assure that an agency operating a residential rehabilitation center has minimum policies and procedures governing the program operations of one (1) or more of the following twenty-four (24) hour programs: detoxification, residential and residential transitional.

Section 1. Detoxification. In addition to the applicable requirements of general program operation standards, 908 KAR 1:220, the following [specific] standards shall be met if a detoxification program is offered:
(1) At the point of admission [Each client admitted] to the social setting detoxification treatment program each client shall be assessed [within twenty-four (24) hours of admission] to determine whether there is a life-threatening emergency, distinguished between intoxification and withdrawal, estimate the severity of whichever is present, and determine [insofar as possible,] whether there are any other major problems (e.g., medical, psychiatric[, etc.]) that need immediate attention.
(2) If [When] required, medical services shall be provided through referral or on-call arrangement with qualified medical organizations or physicians.
(3) A client record shall be kept on each client receiving detoxification services. Each record shall contain at a minimum the following pieces of information. Any reasons for the absence of such information shall be documented in the clinical record.
(a) Intake information completed within thirty-six (36) [seventy-two (72)] hours of admission and shall contain the presenting problem; alcohol or [/] drug use and problem history; history of previous treatment; and history of medical problems that at a minimum includes [including] delirium tremens, seizures, heart disease, and liver disease. An explanation

shall be documented in the record if the client is unable to complete the intake process within the thirty-six (36) hour time frame.

(b) Signed statement of client rights.

(c) An individualized detoxification services plan prepared and maintained on a current basis for each client. A treatment protocol may be used in lieu of an individualized service plan. Individual case exceptions to the treatment protocol shall be documented in the clinical record.

(d) A discharge summary that identifies referral arrangements for the client after he[/she] leaves the program.

(4) The pulse and blood pressure of each client shall be monitored and recorded at least three (3) times daily for at least the first seventy-two (72) hours after admission.

(5) Educational and counseling activities shall be conducted on a daily basis by a drug counselor to motivate clients to continue in treatment beyond the detoxification services. Clients shall be involved in these activities as soon as warranted by the [his/her] recovery process.

(6) Detoxification programs shall refer clients to an appropriate treatment resource upon completion of the detoxification process.

(7) The program shall be responsible for the referral of clients for services not provided by the agency. Such services may include housing, food, vocational rehabilitation, treatment or legal services.

(8) The total number of staff members shall include no less than five (5) staff and one (1) unit manager, at least two (2) of whom shall be on duty during hours of peak admission. To permit program flexibility, no specific staff to [/] client ratio shall be required, however, the program shall provide assurance that staff is sufficient and appropriate to meet the needs of clients in the program.

(9) The program shall be staffed twenty-four (24) hours a day, seven (7) days a week.

(10) Detoxification program staff shall receive the following training [required]:

(a) Each staff member shall have training in drug emergency procedures and shall receive a minimum of twelve (12) hours of first aid training techniques, including cardiopulmonary resuscitation, prior to working alone on the unit.

(b) Training in taking vital signs (blood pressure, pulse, respiration and temperature).

(c) Training in the recognition of drug dependency [abuse], assessment of the degree of intoxication and the physical and mental complications of these conditions.

(d) Training in the knowledge of local community referral sources.

(e) Within one (1) year of employment every staff member shall have received thirty (30) clock hours of training in alcohol or drug abuse.

(f) All training attended by the employee shall be documented in the employee's personnel file.

(11) Exception: medical detoxification services pursuant to 902 KAR 20:111 shall be exempt from meeting drug detoxification standards as set forth in this section.

Section 2. Residential Treatment. In addition to the applicable requirements of the general program operation standards, 908 KAR 1:220, the following [specific] standards shall be met if a residential treatment program is offered:

(1) Each program shall make available to its clients the following services: intake, psychosocial assessment, health status questionnaire, treatment planning, individual and group counseling, family counseling, educational services, spiritual counseling, recreational and leisure time activities, aftercare planning, referral to other community agencies, introduction to Narcotics Anonymous, Naranon [Alcoholics Anonymous, Al-Anon] and other voluntary self-help groups.

(2) There shall be documentation in the client record of the following:

(a) A treatment plan completed within five (5) calendar days of admission.

(b) By the sixth calendar day following admission each client shall be assigned a specific staff person who shall [will] have primary responsibility for implementing the client's treatment plan.

(c) Staff shall conduct case conferences to review client progress every two (2) weeks and the findings shall be documented in the client record.

(d) An aftercare plan shall be developed with the client's participation to plan for post discharge activities.

(3) If [When] required, medical services shall be provided through referral or on-call arrangement with qualified medical organizations or physicians.

(4) Programs shall make available or arrange for provision of at least forty (40) hours of documented, structured activities per client each week, including weekends. These structured activities shall be a combination of formal education, group and individual counseling, group discussions, self-help meetings and recreation activities. Of this forty (40) hours, ten (10) hours shall be used solely for the provision of treatment and counseling services.

(5) There shall be written procedures describing a family treatment component.

(6) There shall be written policies and procedures governing the use of alcohol and other drugs by clients in the residential program.

(7) Films, audio cassettes and literature shall be available to the client.

(8) The program shall provide an area in which clients can meet with outside community service providers and self-help groups (e.g., Narcotics Anonymous, Naranon [AA, etc.]) who assist in fulfilling the goals and objectives of a client's [his/her] treatment plan.

(9) If the program serves only adolescent clients the following additional standards shall be met:

(a) Documentation of attempts to obtain the active participation of the adolescent's family or family surrogate in the treatment process.

(b) The program shall assure that the client receives educational services to meet the schooling needs of the client while residing in the residential program.

(c) Provision of treatment, literature, lectures, etc., which shall be age appropriate.

(d) The program shall provide recreational activities which shall be planned to develop constructive leisure time activity skills and shall be documented in each client's treatment plan.

(e) Development of an aftercare plan which shall reflect consideration of aftercare issues

unique to adolescents.

(10) The program shall have a full-time staff of at least ten (10) persons including the unit manager per forty (40) clients. This staffing pattern may be reduced by one (1) staff for every reduction per ten (10) residents. Where multiple residential programs such as detoxification and residential treatment are provided in the same facility, the total number of beds and staff across both programs may be used to calculate the required staffing pattern.

(11) An interim manager with similar qualifications to the resident manager shall assume responsibility in the manager's absence.

(12) The program shall be staffed twenty-four (24) hours a day, seven (7) days a week.

Section 3. Residential Transitional Treatment. In addition to the applicable requirements of the general program operation standards, 908 KAR 1:220, the following [specific] standards shall be met if a residential transitional program is offered:

(1) The provision of individual and group counseling either directly or through cooperative arrangements with other agencies or individuals.

(2) The program shall maintain an individual clinical record for each client which contains:

(a) Intake information.

(b) A signed statement of client rights.

(c) A treatment plan which shall be completed within seven (7) days of admission and shall be reviewed by the house manager and the client at least monthly.

(d) A weekly summary of progress.

(e) An updated treatment plan, as appropriate.

(f) A discharge plan and date of discharge.

(3) The program shall document that all clients are either gainfully employed, actively pursuing employment, or participating in vocational education or [educational/] rehabilitation activities.

(4) There shall be written policies and procedures governing the use of alcohol and other drugs by clients.

(5) Provision shall be made for the utilization of community resources to provide the following support services as needed when they cannot be provided by the transitional service:

(a) Psychiatric supervision and consultation.

(b) Emergency medical and dental care.

(c) Social services to include interagency coordination, family services, referral for financial assistance, etc.

(d) Rehabilitation services that may [to] include vocational guidance, counseling, job placement and coordination of vocational program information and activities.

(e) Dietary supervision and consultation.

(f) Recreation which shall include a program of creative activities and the availability of recreational materials.

(6) Prior to the time of discharge clients shall receive assistance, if necessary, in establishing alternative living arrangements and scheduling outpatient counseling or other treatment activities. The final arrangements shall be noted in the discharge summary.

(7) Provision shall be made for an area where clients can meet with outside community service providers and self-help groups (e.g., Narcotics Anonymous, Naranon [AA, etc.]), who assists the client [assist] in fulfilling the goals and objectives of his[/her] treatment plan.

(8) Residential transitional programs shall include at least the following permanent staff:

(a) Unit manager who shall be responsible for the day-to-day management of the program, for implementation of program policies and procedures, including planning, coordination, and supervision of resident's [residence] affairs.

(b) A relief person who can assume management responsibilities in the absence of the regular manager. This shall include vacation periods, sick leave, and normal off-duty hours.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: October 10, 1991

FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: There are 312drug abuse treatment and education centers that would be affected.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings because the amendments only: remove redundancy in language; alter language to add clarity to the text; remove language that is prohibited by KRS 13A.222(4) and replace with appropriate terminology and alter the time frames in the detoxification program for: assessing problems that may necessitate the potential client being referred to a more appropriate service and gathering client history information in order to determine the treatment needed.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Same as above.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There are no effects anticipated because the amendments only: remove redundancy in language; alter language to add clarity to the text; remove language that is prohibited by KRS 13A.222(4) and replace with appropriate terminology and alter the time frames in the detoxification program for: assessing problems that may necessitate the potential client being referred to a more appropriate service and gathering client history information in order to determine the treatment

needed.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because the amendments only: remove redundancy in language; alter language to add clarity to the text; remove language that is prohibited by KRS 13A.222(4) and replace with appropriate terminology and alter the time frames in the detoxification program for: assessing problems that may necessitate the potential client being referred to a more appropriate service and gathering client history information in order to determine the treatment needed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The amendments only: remove redundancy in language; alter language to add clarity to the text; remove language that is prohibited by KRS 13A.222(4) and replace with appropriate terminology and alter the time frames in the detoxification program for: assessing problems that may necessitate the potential client being referred to a more appropriate service and gathering client history information in order to determine the treatment needed.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:240. Nonresidential day care centers (DATE).

RELATES TO: KRS 210.610 to 210.680, 210.990(3)

STATUTORY AUTHORITY: KRS 194.050, 210.620

NECESSITY AND FUNCTION: KRS 194.050 and 210.620 empowers the cabinet to establish guidelines and provide for the systematic evaluation of the effectiveness of drug abuse treatment and education (DATE) centers. the purpose of this regulation is to establish licensure standards to assure that an agency offering a nonresidential day care center has minimum policies and procedures governing the operations of outpatient programs.

Section 1. Outpatient Treatment. In addition to the applicable requirements of the general program operation standards, 908 KAR 1:220, the following [specific] standards shall be met if an outpatient treatment program is offered:

(1) The minimum requirements for a program shall include[, but not be limited to] client assessment procedures, crisis intervention, individual and group therapy, family counseling, drug information, referral to other community resources, and aftercare [follow-up].

(2) There shall be a written, individualized treatment plan completed before the fourth client visit.

(3) By the fourth visit each client shall be assigned to a specific staff person who shall [will] have primary responsibility for implementing the client's treatment plan.

(4) At a minimum staff shall conduct case conferences to review client progress every six (6) months and shall update the treatment plan if needed. The findings shall be documented in the client record.

(5) If [When such] a program includes the provision of methadone, the program shall [must] also comply with [federal regulation] 21 CFR 291.505.

(6) Exception. Community mental health center outpatient services licensed under 902 KAR 20:091 shall be [are] exempt from being licensed as a drug abuse treatment and education (DATE) center program.

Section 2. [Day/night] Intensive Outpatient Treatment Program. In addition to the applicable requirements of the general program operation standards, 908 KAR 1:220, the following [specific] standards shall be met if an [a day/night] intensive outpatient treatment program is offered:

(1) The minimum requirements of a program shall include[, but not be limited to] client assessment procedures, crisis intervention, individual and group therapy, family counseling, drug information, referral to other community sources, and aftercare [follow-up].

(2) There shall be a written procedures describing the therapeutic, rehabilitative activities and the schedule of these activities.

(3) There shall be written procedures describing a family treatment component.

(4) There shall be a written individualized treatment plan completed before the sixth client visit.

(5) By the sixth visit each client shall be assigned to a specific staff person who shall [will] have primary responsibility for implementing the client's treatment plan.

(6) Staff shall conduct case conferences to review client progress every two (2) weeks. The findings shall be documented in the case record.

(7) Educational services shall be provided for clients which give information about drug abuse and its effects, family involvement in the illness, coping and interpersonal relationship skills.

(8) Outpatient treatment programs serving adolescents shall meet [day-night] intensive outpatient treatment standards set forth in subsections (1) to (7) of this section in addition to the following:

(a) Documentation of attempts to obtain the active participation of the adolescent's family or family surrogate in the treatment process.

(b) Provision of treatment, literature, lectures, etc., which shall be age appropriate.

(c) The program shall provide recreational activities which shall be planned to develop constructive leisure time activity skills and shall be documented in each client's treatment plan.

(d) Development of an aftercare plan which shall reflect consideration of aftercare issues unique to adolescents.

(9) [Day/night] Intensive outpatient treatment programs utilizing host families. With the addition of [specific] standards set forth in this section, all rules applying to [day/night] intensive outpatient treatment programs under subsections (1) to (8) of this section shall apply to [day/night] intensive outpatient treatment programs utilizing host families:

(a) A host family shall already have been the

recipient of the program's education and[/or] treatment services prior to serving as a host family.

(b) [Day/night] Intensive outpatient treatment programs utilizing host families shall establish standards for such homes. Such standards shall be approved by the cabinet and include at a minimum the following:

1. All homes shall be inspected initially and at least annually thereafter by the sponsoring program to assure that the physical condition and facilities within the home provide a sanitary and safe environment for the client. All homes shall be reinspected if there is a lapse in time when the home was not being used as a host family.

2. The host family shall provide on-site supervision to ensure care and maintenance of the health, safety and welfare of the client.

3. Provide timely and nutritious meals.

4. The maintenance of regular communication with the sponsoring program. [and] The program shall be notified immediately in the event of an emergency or incident.

5. In the case of an emergency the host family may use physical restraint or seclusion on a client only if absolutely necessary to protect the client from injuring himself or others, but shall not use physical restraint or seclusion as punishment for the convenience of the host family, or as a substitute for activities. When such an incident occurs the sponsoring program shall be notified as soon as possible. The incident shall be documented in the client's record describing the reasons that physical restraint or seclusion was used, the clinical interventions utilized and the final resolution to the situation. All incidences of the alleged use of physical restraint or seclusion by the host family shall be fully investigated by program staff.

6. The sponsoring program shall be informed as soon as possible if the client leaves the host family without permission of the host parents or sponsoring program staff.

(c) The program shall provide all host families a phone number where in the event of an emergency, staff can be reached on a twenty-four (24) hour basis.

(d) A written agreement between the [day/night] intensive outpatient treatment program and the host family, signed by both parties, shall be executed, stating the responsibilities and liabilities of each party, including the requirements set forth in paragraph (b) of this subsection. The name, address and phone number of the host family shall be included in the agreement.

(e) The sponsoring program shall make available upon request, to designees of the cabinet [for Human Resources], records for each host family home utilized. These records shall contain at a minimum:

1. An agreement between the program director and the head of the host family, signed by both.

2. A copy of the host family home standards established by the sponsoring program.

3. Copies of the completed inspection reports signed by the sponsoring program inspector and the head of the host family.

(10) Exception. Community mental health center, [day/night] intensive outpatient treatment programs licensed under 902 KAR 20:091 shall be [are] exempt from being licensed as a drug abuse treatment and education (DATE) center.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: October 10, 1991

FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: There are 32 drug abuse treatment and education centers that will be affected.

(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings because the amendments merely: remove redundancy in language; clarify the text and remove terminology that is prohibited by KRS 13A.222(4) and replace it with appropriate language.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Same as above.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No effects are anticipated because the amendments merely: remove redundancy in language; clarify the text and remove terminology that is prohibited by KRS 13A.222(4) and replace it with appropriate language.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were examined because the amendments merely: remove redundancy in language; clarify the text and remove terminology that is prohibited by KRS 13A.222(4) and replace it with appropriate language.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The amendments merely: remove redundancy in language; clarify the text and remove terminology that is prohibited by KRS 13A.222(4) and replace it with appropriate language.

CABINET FOR HUMAN RESOURCES
Department for Mental Health
and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:250. Educational information centers (DATE).

RELATES TO: KRS 210.610 to 210.680, 210.990(3)
STATUTORY AUTHORITY: KRS 194.050, 210.620
NECESSITY AND FUNCTION: KRS 194.050 and 210.620 empowers the cabinet to establish guidelines and provide for the systematic evaluation of the effectiveness of drug abuse treatment and education (DATE) centers. The purpose of this regulation is to establish licensure standards to assure that an agency offering an educational information center has minimum policies and procedures governing the operations of an education program.

Section 1. Educational Information Center Standards. (1) For each drug abuse education program rendered there shall be documentation of the learning goals and objectives to assure that the program content is relevant to the needs of the target population.

(2) There shall be written policies and procedures for determining an individual or agency's suitability for participation in an education program.

(3) There shall be a mechanism for evaluating changes in a [the] participants knowledge and attitudes as a result of a drug abuse education program.

(4) Fee collection policy and procedures shall be written and posted.

(5) In nonfederally assisted programs, client confidentiality shall be assured in accordance with KRS 222.420 and 210.670. Federally assisted programs, as defined in 42 CFR Part 2, shall assure client confidentiality in accordance with 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records" [Participants shall be informed of his/her rights to confidentiality in compliance with federal regulations 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."]

(6) There shall be a written ongoing training and supervision plan for drug abuse education staff that supports the attainment of the goals and objectives of the education programs.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd
(1) Type and number of entities affected: There are a total of 109 drug abuse treatment and education centers that will be affected.
(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings because the amendment only: clarifies which confidentiality laws and regulations apply to nonfederally assisted programs versus federally assisted programs.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: Same as above.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: No effects are anticipated because the amendment only: clarifies which confidentiality laws and regulations apply to nonfederally assisted programs versus federally assisted programs.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the amendment only: clarifies which confidentiality laws and regulations apply to nonfederally assisted programs versus federally assisted programs.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The amendment only: clarifies which confidentiality laws and regulations apply to nonfederally assisted programs versus federally assisted programs.

CABINET FOR HUMAN RESOURCES
Department for Mental Health
and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:260. Communication centers (DATE).

RELATES TO: KRS 210.610 to 210.680, 210.990(3)
STATUTORY AUTHORITY: KRS 194.050, 210.620
NECESSITY AND FUNCTION: KRS 194.050 and 210.620 empowers the cabinet to establish guidelines and provide for the systematic evaluation of the effectiveness of drug abuse treatment and education (DATE) centers. The purpose of this regulation is to establish licensure standards to assure that an agency offering communication center services has minimum policies and procedures governing the operations of a primary prevention program.

Section 1. Primary Prevention. (1) There shall be [is] an identifiable administrative unit responsible for the provision of prevention services which meet the following criteria:
(a) Lines of authority for personnel utilized in these services shall be [are] clearly defined.
(b) A staff member shall be [has been] clearly

designated as responsible for the prevention program.

(2) The prevention program shall have [has] written policies and procedures governing the activities and services to include: mechanism for assessing community needs; the program planning procedure; involvement of other community groups and agencies, including procedures for responding to requests and coordinating efforts with other community groups and agencies.

(3) There shall be written policies and procedures for determining an individual or agency's suitability for participation in a primary prevention program.

(4) The prevention program shall have [has] a written program plan which addresses at a minimum community needs assessment, program philosophy and mission, goals and objectives, identified target populations and program methodology.

(5) The prevention program shall have [has] a written plan for working with relevant community groups, agencies, and volunteers to assist them in developing and implementing prevention programs to allow for internalization and continuity of prevention efforts within the community.

(6) The prevention program shall have [has] written procedures for evaluating the overall effectiveness of its services.

(7) The prevention program shall maintain standardized records for evaluation purposes.

(8) There shall be a written ongoing training and supervision plan for drug abuse primary prevention staff that supports the attainment of the goals and objectives of the primary prevention programs.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: October 10, 1991

FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: There are 55 drug abuse treatment and education centers that will be affected.

(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings because the amendments are simply removing language prohibited by KRS 13A.222(4) and replacing it with appropriate terminology.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Same as above.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There are no effects anticipated because the amendments are simply removing language prohibited by KRS 13A.222(4) and replacing it with appropriate terminology.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the amendments are simply removing language prohibited by KRS 13A.222(4) and replacing it with appropriate terminology.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The amendments are simply removing language prohibited by KRS 13A.222(4) and replacing it with appropriate terminology.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 3:010. Patient's rights.

RELATES TO: KRS Chapters 202A, 202B

STATUTORY AUTHORITY: KRS 194.050, 202A.191, 202A.196, 202B.060

NECESSITY AND FUNCTION: KRS Chapters 202A and 202B, relating to the hospitalization of mentally ill and mentally retarded persons, direct that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these chapters. The function of this regulation is to describe the rights of mentally ill and mentally retarded patients and to establish rules for the use of seclusion, restraint, and treatment under emergency situations, in the treatment of these [such] patients.

[Section 1. Title. This regulation may be cited as the "Kentucky Mental Patients' Bill of Rights."]

Section 1. Definitions. For purposes of this regulation, the following definitions shall apply:

(1) "Individual treatment plan" means a written document which is a part of each patient's medical record and which must contain, but is not limited to:

(a) A statement of the diagnosis of the patient;

(b) The short and long-range objectives of care and treatment;

(c) The methods of treatment to be employed;

(d) The names of persons responsible for preparing and implementing the plan.

(2) "Substantive changes" means those changes

which reflect distinct changes in goals of treatment, methods to be employed and the names of persons primarily responsible for overall review or implementation of the individual treatment plan:

(a) Changes in the amount, frequency of administration, or specific type of medication shall not be considered substantive changes unless the changes involve introduction of new classes of medication including antipsychotic or anticonvulsant drugs;

(b) Changes in the frequency, duration, place or supervision of daily activities shall not be considered substantive changes unless the changes exclude participation in the activities previously identified in the treatment plan or initiation of new activities which could not be reasonably anticipated on the basis of short and long-term treatment goals.

(3) "Emergency situation" means the presence of a situation in which a patient's behavior in his present environment is such that it presents an immediate and substantial danger or threat of immediate or substantial danger to that person or to others.

(a) Behavior included in this definition extends to verbal threats or abuse toward other patients which creates a substantial risk that other patients may react in a manner which poses an immediate substantial danger or threat of immediate substantial danger to themselves or others, or which will interfere in a substantial manner with the realistic opportunity of other patients to improve their own level of functioning through care and treatments in a hospital or residential treatment center;

(b) Substantial deviation from an individual treatment plan which is formulated with the mutual consent of the staff and the patient or which is approved pursuant to a court hearing, or the overt or repetitious violation of rules and procedures of the hospital or residential treatment center by the patient which presents an immediate and substantial danger to that person or to others may also be considered as an emergency situation, provided the patient has previously been fully informed as to the content of his individual treatment plan and as to the rules and procedures which may be applicable to his behavior.

(4) "Restraint" means the application of any physical device, the application of physical body pressure by another in such a way as to control or limit physical activity, or the intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to a mentally ill patient or mentally retarded resident with the sole or primary purpose of controlling or limiting the physical activities of the patient or resident.

(5) "Seclusion" means the confinement of a mentally ill or mentally retarded patient alone in a locked room.

(6) "Authorized representative" means the patient's attorney, guardian of a disabled adult, parent or guardian of a juvenile, or an individual authorized in writing by the patient to act in the patient's behalf.

Section 2. Right to be Adequately Informed. [(1)] Each patient shall be adequately informed as to his individual treatment plan.

(1) [(a)] A written individual treatment plan shall be prepared and entered into the medical record of each patient. The [Such] treatment plan shall be subject to periodic review and shall be modified in the event of substantive changes;

(2) [(b)] Each patient and his or her authorized representative shall have access to a written copy of his individual treatment plan;

(3) [(c)] Upon written request, each patient and his or her authorized representative shall also be provided access to his entire medical record. In the event that full access to the medical record is refused, the patient shall be given a response in writing documenting the reasons for such refusal;

(4) [(d)] In the case of minors or other persons who appear incapable of reading or understanding a written treatment plan, a summary of pertinent features of the treatment plan may be presented orally, and the responses of parents, guardians or other members of the immediate family shall be entered into the medical record if these [such] persons can be located.

[(2) For purposes of this regulation, the following definitions shall apply:]

[(a) "Individual treatment plan" means a written document which is a part of each patient's medical record and which must contain, but is not limited to:]

[1. A statement of the diagnosis of the patient;]

[2. The short and long-range objectives of care and treatment;]

[3. The methods of treatment to be employed;]

[4. The names of persons responsible for preparing and implementing the plan.]

[(b) "Substantive changes" means those changes which reflect distinct changes in goals of treatment, methods to be employed and the names of persons primarily responsible for overall review or implementation of the individual treatment plan:]

[1. Changes in the amount, frequency of administration, or specific type of medication shall not be considered substantive changes unless such changes involve introduction of new classes of medication including antipsychotic or anticonvulsant drugs;]

[2. Changes in the frequency, duration, place or supervision of daily activities shall not be considered substantive changes unless such changes exclude participation in the activities previously identified in the treatment plan or initiation of new activities which could not be reasonably anticipated on the basis of short and long-term treatment goals.]

[(c) "Emergency situation" means the presence of a situation in which a patient's behavior in his present environment is such that it presents an immediate and substantial danger or threat of immediate or substantial danger to that person or to others.]

[1. Behavior included in this definition extends to verbal threats or abuse toward other patients which creates a substantial risk that such other patients may react in a manner which poses an immediate substantial danger or threat of immediate substantial danger to themselves or others, or which will interfere in a substantial manner with the realistic opportunity of other patients to improve their own level of functioning through care and treatments in a hospital or residential treatment center;]

[2. Substantial deviation from an individual treatment plan which is formulated with the mutual consent of the staff and the patient or

which is approved pursuant to a court hearing, or the overt or repetitious violation of rules and procedures of the hospital or residential treatment center by the patient which presents an immediate and substantial danger or threat of immediate and substantial danger to that person or to others may also be considered as an emergency situation, provided the patient has previously been fully informed as to the content of his individual treatment plan and as to the rules and procedures which may be applicable to his behavior.]

[(d) "Restraint" means the application of any physical device, the application of physical body pressure by another person in such a way as to control or limit physical activity, or the intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to a mentally ill patient or mentally retarded resident with the sole or primary purpose of controlling or limiting the physical activities of the patient or resident.]

[(e) "Seclusion" means the confinement of a mentally ill or mentally retarded patient alone in a locked room.]

[(f) "Authorized representative" means the patient's attorney, guardian of a disabled adult, parent or guardian of a juvenile, or an individual authorized in writing by the patient to act in the patient's behalf.]

Section 3. Right to Assist in Treatment Plan. Each patient shall have the right to assist in the planning of his treatment program.

(1) Each patient shall be informed of the contents of his individual treatment plan and his verbal, written or behavioral responses to this information shall be entered in the medical records. If [Whenever] possible, the responses of a patient to his treatment plan shall be used to review and modify its contents including, but not limited to, the objectives and methods of treatment to be employed;

(2) In the cases of minors and other patients who appear incapable of reading or understanding their treatment plans, the responses of parents, guardians, or other members of the immediate family shall be entered into the medical records if these [such] persons can be located.

Section 4. Right to Refuse Treatment. (1) Patients may, under certain conditions, refuse treatment offered to them by the hospital. The [Such] refusal shall be clearly documented in the medical records.

(a) All patients, whether admitted voluntarily, or committed on an involuntary basis as the result of a hearing held pursuant to KRS Chapter 202A or 202B, have the right to refuse treatment. A patient who refuses treatment may be forcibly treated only pursuant to a court order after a de novo review as set forth in KRS 202A.196.

(b) If no court findings exist to support the implementation of a specific treatment plan which is unacceptable to the patient, the [such] treatment may be implemented or continued only in [the event of] an emergency situation documented in the medical records of the patient. The hospital or residential treatment center shall seek to develop an alternative plan of treatment acceptable to both the hospital or residential treatment center and the patient or secure a court order sanctioning forced treatment. If the hospital or residential treatment center and a voluntarily admitted patient cannot agree on an acceptable alternative plan of treatment, the hospital or residential treatment center may discharge the patient or pursue other remedies under law as may be necessary. If [In the event] the hospital or residential treatment center prior to obtaining a judicial order for forced treatment determines that an emergency exists and that the patient presents an immediate and substantial danger or threat of immediate and substantial danger to self or others, the hospital or residential treatment center may intervene in the least intrusive manner possible while simultaneously seeking a de novo review.

(2) Refusal to participate in the treatment plan shall be clearly documented in the medical record and shall be honored unless an emergency situation exists or the activity has been reviewed and approved in a court hearing.

(3) In the absence of an emergency situation, the patient shall not be subjected to loss of any other privileges which he has at the time of his refusal unless such privileges are clearly documented in the individual treatment plan as being contingent upon his participation in that area where participation has been refused.

(4) If the emergency situation persists for a period of more than seventy-two (72) hours, the treatment team shall evaluate the treatment plan and make changes necessary to meet the needs of the patient. If the patient refuses the revised treatment program, emergency treatment may continue as long as the emergency continues to be documented in the patient's record and the treatment review committee shall be informed and shall proceed according to law.

Section 5. Right to Personal Effects. (1) Each patient shall have the right to maintain, keep, and use personal effects, items or money except in the following instances:

(a) Retention of the item would be contrary to the patient's individual treatment plan;

(b) Retention of the item poses a threat of subjecting the patient or others to substantial physical harm;

(c) Retention of the item would subject it to a substantial risk of loss, theft or destruction by the patient or other persons;

(d) Retention of the item would substantially impair the opportunity of the patient or other patients to benefit from care and treatment in the hospital; or

(e) Retention of the item is contrary to rules and regulations of the hospital which are reasonably related to the health and safety of the patient or other patients, except that the [such] rules and regulations shall be waived when possession of the [such] item is a part of the patient's individual written treatment plan.

(2) After written notice to a discharged patient, hospitals and residential treatment centers may dispose of all unclaimed personal items 180 days after discharge. Any proceeds from the sale of the [such] items shall be used for the benefit of persons residing at the hospital or residential treatment center.

Section 6. Right to Receive Visitors. (1) All patients shall have the right to meet with friends and relatives. This right shall not be waived except in the following instances:

(a) Exercise of the right would be inconsistent with the written provisions of the

individual treatment plan, or
(b) An emergency situation exists.
(2) Each hospital or residential treatment center shall establish and post conspicuously rules governing visitors and visiting hours.
(3) All patients shall also have the right to refuse to meet with friends or relatives except that the [such] right may be waived if the [such] meetings are prescribed in the patient's individual treatment plan.
(4) Patients shall have the right to meet their authorized representative during nonvisitation hours, if suitable arrangements are made in advance with the hospital or residential treatment centers.

Section 7. Right to Receive Compensation for Work Done. Each patient shall have the right to receive payment for work performed on behalf of the hospital.
(1) All patients shall be provided compensation as designated by appropriate federal and state statutes and regulations for work performed at a hospital or residential treatment center where the [such] work is of consequential economic benefit to the hospital or residential treatment center, any person, agency, or organization outside the hospital or the Commonwealth of Kentucky.
(2) The patient shall have the absolute right to refuse to perform any [and all] work except activities of immediate and direct benefit to the patient and his personal comfort.

Section 8. Right to De Novo Review. Involuntarily committed patients may be provided electroshock therapy or psychosurgery only pursuant to a court order after a de novo review as set forth in KRS 202A.196.

Section 9. Use of Seclusion and Restraint. The use of seclusion and other mechanical restraints in hospitals or residential treatment facilities shall be limited and shall be carried out only with appropriate precautions.
(1) Seclusion and other mechanical restraints used for the sole or principal purpose of controlling behavior which is the result of mental illness shall be instituted only when part of an individual treatment plan or in [the event of] an emergency situation.
(2) If use of seclusion or restraints is warranted under this section, the following rules shall apply:
(a) The medical records shall document the conditions which prevail at the time of the use of these [such] treatments and shall include the order of a licensed physician prescribing or justifying the [such] treatment;
(b) Mentally ill persons placed in seclusion or subjected to the use of mechanical restraints other than to prevent or treat self-inflicted injury or to treat a concomitant medical or surgical disorder shall be individually observed and the need for continuing restraints or seclusion determined by a hospital or residential treatment facility employee at least every fifteen (15) minutes. In addition, the patient shall be seen daily by a physician and the reasons for continued use of this treatment procedure shall be documented in the medical records;
(c) The patients shall be permitted access to toilet facilities at least every two (2) hours and to bathing facilities every forty-eight (48) hours;
(3) No order by a licensed physician for seclusion or use of mechanical restraints shall be effective longer than twenty-four (24) hours after the [such] treatment is implemented, and must be renewed if the [such] treatment continues to be necessary, except where the [such] treatment is prescribed to prevent or treat self-inflicted injury or a concomitant medical or surgical disorder; provided that any renewal order shall state the necessity for the [such] continued treatment.
(4) In no circumstances shall restraints or seclusion be used principally or solely for the treatment of mental illness except as part of the documented individual treatment plan or in response to a documented emergency unless the [such] treatment has received a review and approval by the court.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 11, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd
(1) Type and number of entities affected: 1,830 mentally ill and mentally retarded utilizing the facilities operated by the Department of Mental Health and Mental Retardation Services.
(a) Direct and indirect costs or savings to those affected: This regulation affects the treatment and residential care of patients and does not directly relate to costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: There is no financial effect on the administrative body.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: This regulation has no effect on revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to

harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. This regulation will be applied uniformly to all individuals utilizing the department's facilities.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 3:030. Convalescent patient status.

RELATES TO: KRS 202A.181
STATUTORY AUTHORITY: KRS 194.050, 202A.191, 202B.060
NECESSITY AND FUNCTION: KRS Chapters 202A and 202B, relating to the hospitalization of mentally ill or mentally retarded persons, direct that the Secretary of the Cabinet for Human Resources shall adopt rules and regulations relating to the release of patients to less restrictive alternative modes of treatment on convalescent status. The function of this regulation is to establish standards to be employed in determining whether a person should be released on convalescent status.

Section 1. Definition. For purposes of this regulation, the term "less confining environment" shall include, but not be limited to, a personal residence, a skilled nursing facility, an intermediate care or personal care facility, or any other facility providing a supervised residential living situation.

Section 2. [1.] Release on Convalescent Status. An authorized staff physician may release from a hospital an involuntarily committed mentally ill person on convalescent status, or an authorized staff person may release from a residential treatment center an involuntarily committed mentally retarded person on convalescent status, if the staff member concludes that the [such] person would not present danger or threat of danger to self or others if provided continued medical supervision in a less confining environment. While on convalescent status the patient shall remain the responsibility of the hospital or residential treatment center from which he was released.

Section 3. [2.] Rights of Patients on Convalescent Status. Patients on convalescent status shall enjoy all the rights and privileges afforded to an involuntarily committed patient except that patients on convalescent status who have been directly committed to convalescent status under this section [2 of this regulation] may be involuntarily admitted to a hospital or residential treatment center only upon a further court hearing and order.

Section 4. [3.] Termination of Convalescent Status. The convalescent status of a patient shall terminate upon the cessation of care and treatment or when the court order governing the patient's hospital admission or placement in convalescent status expires or is terminated.

[Section 4. Definition. For purposes of this regulation, the term "less confining environment" shall include, but not be limited to, a personal residence, a skilled nursing facility, an intermediate care or personal care facility or any other facility providing a supervised residential living situation.]

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd
(1) Type and number of entities affected: 1,830 mentally ill and mentally retarded utilizing the facilities operated by the Department for Mental Health and Mental Retardation Services.
(a) Direct and indirect costs or savings to those affected: This regulation affects the treatment and residential care of patients and does not directly relate to costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: There is no financial effect on the administrative body.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: This regulation has no effect on revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. This regulation will be applied uniformly to all individuals utilizing the department's facilities.

CABINET FOR HUMAN RESOURCES
Department for Mental Health
and Mental Retardation Services
(Proposed Amendment)

908 KAR 3:060. "Means Test" pursuant to the "Patient Liability Act of 1978."

RELATES TO: KRS 210.700 to 210.760
STATUTORY AUTHORITY: KRS 13A.210, 210.710, 210.750
NECESSITY AND FUNCTION: KRS 210.710 and 210.720 authorizes the Secretary for Human Resources to adopt a "Means Test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility operated or utilized by the cabinet for the mentally ill or mentally retarded. The function of this regulation is to adopt a "Means Test" in compliance with KRS 210.710 to KRS 210.760.

Section 1. Means Test. The Cabinet for Human Resources hereby adopts the following uniform method for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at facilities operated or utilized by the Cabinet for Human Resources for the mentally ill or mentally retarded.

(1) Ascertain the entire financial resources available to the patient or the person responsible for the patient as follows:

(a) Insurance and third party payors, including, but not limited to Medicare, Medicaid and all other governmental and private programs or payors;

(b) Income received, or expected to be received during the period of hospitalization, including:

1. Self-employed gross revenues, less operating expenses;
2. Salaried and waged hourly employees gross income;
3. Interest and dividend income;
4. Rental income;
5. Royalties;
6. Alimony; and
7. Any other similar sources of income.

(c) Assets including, but not limited to:

1. Cash, checking accounts, savings accounts, certificates of deposit;
2. Stocks and bonds at market value; and
3. All other property except as otherwise exempted by law.

(d) Benefit and support payments received or expected to be received during the period of hospitalization, including, but not limited to:

1. Social Security;
2. Veterans pension;
3. Railroad retirement;
4. United Mine Workers pension;
5. Supplemental security income;
6. Retirement; and
7. Any other similar sources of benefits or support payments.

(2) After ascertaining the entire financial resources of the patient, apply Table I, II, or III, as appropriate. The ability to pay, of the patient or person responsible for the patient, shall not exceed the total daily charges, less available Medicare, Medicaid, CHAMPUS, insurance and other benefits. Any overpayments resulting from application of the ability to pay "Means Test" by the patient or person responsible for the patient shall be refunded.

TABLE I ABILITY TO PAY INCOME TABLE

Size of Family	*Gross Income Protected For Basic Maintenance
1	$ 8,805 [$ 7,476]
2	11,810 [10,020]
3	14,816 [12,576]
4	17,822 [15,120]
5	20,828 [17,676]
6	23,834 [20,220]

*[Title XIX] Federal Guidelines [regulations] at 133% [125%] of poverty.
For each additional family member, add $2,260 [2,676].
Subtract from excess:
(a) Applicable taxes, social security, retirement.
(b) Any unpaid medical/dental bills.
(c) Any extraordinary or involuntary expenses.

TABLE II ABILITY TO PAY ASSETS TABLE

Size of Family	*Assets Protected
1	$ 2,000
2	4,000
3	4,050
4	4,100

*Per [Title XIX] Federal Guidelines.
For each additional family member add fifty (50) dollars.
Prorate excess by number of family members.
Excess asset payments may be spread over one (1) to twelve (12) months if patient or person responsible for the patient's financial situation warrants special consideration or if the patient is discharged before paying all excess assets.

TABLE III ABILITY TO PAY BENEFIT AND SUPPORT PAYMENT TABLE

*Normal Disregards:
Personal Spending $40 per month
Ineligible Spouse $217 [208] per month
Monthly Medicare Part B Insurance Premium
Monthly Hospitalization Premium
Prepaid Burial $1,500 per family member
*[Title XIX] Federal Guidelines.

If benefit and support payments are the sole sources of income or the principal sources of income to sustain the livelihood of the patient's immediate family (living in household) then an amount in addition to the normal disregards shall be excluded [so as] to meet the basic needs of food, clothing, and shelter including continuing ownership of a homestead if sufficient funds are available.

The patient or person responsible for the patient who receives benefits (Social Security, etc.) or support payments (child support, etc.) intended for the board, maintenance, and treatment of a patient shall assign or pay the [such] amount, less the above mentioned disregards and exclusions to the respective mental health/mental retardation services facility.

(3) In the event the ability to pay payment as determined from Table III creates an undue hardship, the patient or person responsible for

the patient may request an administrative review by the departmental collections officer.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd
(1) Type and number of entities affected: 1,830 mentally ill and mentally retarded utilizing the facilities operated by the Department for Mental Health and Mental Retardation Services.
(a) Direct and indirect costs or savings to those affected: This cost or savings is different in each case based upon family income.
1. First year: Undeterminable for each family unit depending on their income.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): Federal poverty scales are being utilized in order to avoid conflicts in other state agencies.
(b) Reporting and paperwork requirements: There are no reporting needs for individuals utilizing the Medicaid facilities.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Reassessment must be done on all self-pay clients currently utilizing MH/MR facilities.
(3) Assessment of anticipated effect on state and local revenues: Minimum reduction in self pay revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This change prohibits a conflict in the assessment of medical indigency and conforms with all state and federal programs.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. This regulation will be applied uniformly to all individuals utilizing the facilities.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, OCTOBER 15, 1991

AUDITOR OF PUBLIC ACCOUNTS

45 KAR 1:030. Audits of sheriff's tax settlements.

RELATES TO: KRS 43.070(1)(a), (2), (3), (4), 43.075, 64.810
STATUTORY AUTHORITY: KRS 43.070(1)(b), 43.075, 64.810
NECESSITY AND FUNCTION: The Auditor of Public Accounts is required to develop uniform auditing standards, procedures, and formats for performing and reporting audits of elected county officials. This administrative regulation establishes the auditing standards, procedures and formats, and the interpretation of these items by the Auditor of Public Accounts, that shall be applied to sheriff's tax settlement audits.

Section 1. Definitions. "Generally accepted government auditing standards" means, for reporting purposes, the "Government Auditing Standards" issued by the Comptroller General of the United States, July 1988.

Section 2. Auditing Standards. (1) The financial and compliance audit of the funds contained in each sheriff's tax settlement shall be conducted in accordance with:
(a) Generally accepted government auditing standards; and
(b) "Audit Guide for Sheriff's Tax Settlements".
(2) Financial statements shall be prepared on a cash basis.
(3)(a) The following documents are incorporated by reference:
1. "Audit Guide for Sheriff's Tax Settlements", Auditor of Public Accounts, August 15, 1991;
2. "Government Auditing Standards" issued by the Comptroller General of the United States, July, 1988; and
3. "Codification of Statements on Auditing Standards", Numbers 1 through 64, American Institute of Certified Public Accountants (Commerce Clearing House, Inc., January 1, 1991).
(b) These documents are available for public inspection and copying at the office of the Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday between the hours of 8 a.m. to 5 p.m.

Section 3. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of a fiscal court shall be an audit report that provides an opinion on whether the financial statement of a sheriff's tax settlement presents fairly, in all material respects, the taxes charged, credited, and paid during the tax year.
(2) An auditor shall make tests sufficient to determine whether:
(a) The sheriff has complied with the requirements of KRS 68.210;
(b) Receipts have been accurately recorded by source;
(c) Expenditures have been accurately recorded by payee;
(d) The sheriff has complied with applicable statutory requirements relating to the management of public tax funds; and
(e) Situations or transactions indicate fraud, abuse, or other illegal acts.
(3) If a situation or transaction indicates fraud, abuse, or other illegal act, an auditor shall:
(a) Extend audit steps and procedures to ascertain the effect on the sheriff's financial statement; and
(b) Issue a written report of such situations and effects, as required by auditing standards incorporated by reference in this administrative regulation.
(4) An auditor shall:
(a) Determine the fund balance of sheriff's official tax account;
(b) Issue a written report on internal control structure, as required by "Government Auditing Standards";
(c) Separately identify reportable conditions, and those that are considered material weaknesses, in the report required by paragraph (b) of this subsection;
(d) Issue a written report on compliance with the requirements of statutes and administrative regulations specified by "Government Auditing Standards"; and
(e) In reports required by paragraph (d) of this subsection, set forth:
1. All material compliance violations;
2. A statement of positive assurance concerning items actually tested; and
3. Negative assurance concerning items that were not tested.

Section 5. Reporting Format. (1) An auditor's report shall state that the audit was conducted in accordance with:
(a) Generally accepted government auditing standards; and
(b) "Audit Guide for Sheriff's Tax Settlements".
(2) An auditor's report shall comply with the format specified in the "Sample Audit Report", in the "Audit Guide for Sheriff's Tax Settlements".
(3) An auditor's report shall include, as applicable, documents listed in the "Sample Audit Report" of the "Audit Guide for Sheriff's Tax Settlements".
(4) An auditor shall express an overall opinion on whether the financial statement of a sheriff's tax settlement presents fairly the taxes charged, credited, and paid during the tax year.
(5) If an auditor is unable to express the opinion required by subsection (3) of this section, he shall state the reasons why.
(6) Financial statements included in an auditor's report shall be prepared on a cash basis.
(7) The "Report on Compliance with Laws and Regulations", required by the "Sample Audit Report", in the "Audit Guide for Sheriff's Tax Settlements", and the auditing procedures shall comply with the "Compliance Auditing Applicable to Governmental Entities and other Recipients of

Governmental Financial Assistance", in No. 63, "Codification of Statements on Auditing Standards".

(8)(a) The internal control structure of a sheriff's tax settlement shall be evaluated, and a report shall be prepared as provided by paragraph (b) of this subsection.

(b) The evaluation shall be conducted as provided by "Consideration of the Internal Control Structure In A Financial Statement Audit", in No. 55, "Codification of Statements on Auditing Standards".

(c) The report shall be prepared as provided by "Report on Internal Control Structure In Accordance With Government Auditing Standards" ("Sample Audit Report", in the "Audit Guide for Sheriff's Tax Settlements").

(9) An auditor's report shall include reports on other material findings.

(10) If law or regulation prohibits the disclosure of information, an auditor's report shall state the:

(a) Nature of the information that has been omitted; and

(b) Law or regulation that prohibits disclosure.

Section 6. Allowance of Audit Fees; Acceptance of Report. (1) Fees for sheriff's tax settlement audits shall be allowable as reasonable and necessary expenses of a county if the independent accountant's examination has been performed in compliance with the standards and procedures required by this administrative regulation.

(2) A sheriff shall obtain written approval of an audit report and workpapers from the Auditor of Public Accounts prior to the:

(a) Release of an audit report; and

(b) Payment of fees for a sheriff's tax settlement audit report.

(3) Failure by an independent certified public accountant to comply with the "Audit Guide for Sheriff's Tax Settlements" and this regulation shall disqualify him from conducting sheriff's tax settlement audits.

BOB BABBAGE, Auditor

APPROVED BY AGENCY: October 14, 1991

FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Auditor of Public Accounts Training Room located on 2439 U.S. 127 South, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Danny Watkins, CPA, Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Regina Grubbs

(1) Type and number of entities affected: 120 sheriffs as tax collectors.

(a) Direct and indirect costs or savings to those affected:

1. First year: No additional costs projected.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Establishes minimum reporting and workpaper standards. Establishes uniform reporting requirements.

(2) Effects on the promulgating administrative body: No material time or cost increases.

(a) Direct and indirect costs or savings:

1. First year: No additional costs projected.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All standards and requirements must, by federal and state law, apply equally to all regulated entities.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes_X_ No___ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. Sheriffs as tax collectors.

3. State the aspect or service of local government to which this administrative regulation relates. Establishes minimum auditing standards for sheriff's tax settlements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: No new requirements are being imposed. This administrative regulation is promulgated in order to comply with the format and drafting requirements of KRS Chapter 13A. No new cost or increased cost will result.

AUDITOR OF PUBLIC ACCOUNTS

45 KAR 1:040. Audits of county fee officials.

RELATES TO: KRS 43.070(1)(b), 43.075, 64.810

STATUTORY AUTHORITY: KRS 43.070(1)(b), 43.075, 64.810

NECESSITY AND FUNCTION: The Auditor of Public Accounts is required to develop uniform auditing standards, procedures, and formats for performing and reporting audits of elected county officials. This administrative regulation establishes the auditing standards, procedures and formats, and the interpretation of these items by the Auditor of Public Accounts, that shall be applied to county fee officials audits.

Section 1. Definitions. "Generally accepted government auditing standards" means, for reporting purposes, the "Government Auditing Standards" issued by the Comptroller General of the United States, July 1988.

Section 2. Auditing Standards. (1) The financial and compliance audit of the funds administered by each county fee official shall be conducted in accordance with:

(a) Generally accepted government auditing standards; and

(b) "Audit Guide for County Fee Officials".

(2) Financial statements shall be prepared on a cash basis.

(3)(a) The following documents are incorporated by reference:

1. "Audit Guide for County Fee Officials", Auditor of Public Accounts, August 15, 1991;

2. "Government Auditing Standards" issued by the Comptroller General of the United States, July, 1988; and

3. "Codification of Statements on Auditing Standards", Numbers 1 through 64, American Institute of Certified Public Accountants (Commerce Clearing House, Inc., January 1, 1991).

(b) These documents are available for public inspection and copying at the office of the Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday between the hours of 8 a.m. to 5 p.m.

Section 3. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of fee officials shall be an audit report that provides an opinion on whether the financial statements of fee officials present fairly, in all material respects, the receipts, disbursements, and excess fees arising from the cash transactions.

(2) An auditor shall make tests sufficient to determine whether:

(a) The fee officials have complied with the requirements of KRS 68.210;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee;

(d) The fee officials have complied with applicable statutory requirements relating to the management of public funds; and

(e) Situations or transactions indicate fraud, abuse, or other illegal acts.

(3) If a situation or transaction indicates fraud, abuse, or other illegal act, an auditor shall:

(a) Extend audit steps and procedures to ascertain the effect on the official's financial statement; and

(b) Issue a written report of such situations and effects, as required by auditing standards incorporated by reference in this administrative regulation.

(4) An auditor shall:

(a) Determine the fund balance of each official's accounts;

(b) Issue a written report on internal control structure, as required by "Government Auditing Standards";

(c) Separately identify reportable conditions, and those that are considered material weaknesses, in the reports required by paragraph (b) of this subsection;

(d) Issue a written report on compliance with the requirements of statutes and administrative regulations specified by "Government Auditing Standards"; and

(e) In reports required by paragraph (d) of this subsection, set forth:

1. All material compliance violations;

2. A statement of positive assurance concerning items actually tested; and

3. Negative assurance concerning items that were not tested.

Section 5. Reporting Format. (1) An auditor's report shall state that the audit was conducted in accordance with:

(a) Generally accepted government auditing standards; and

(b) "Audit Guide for County Fee Officials".

(2) An auditor's report shall comply with the format specified in the "Sample Audit Report", in the "Audit Guide for County Fee Officials".

(3) An auditor's report shall include, as applicable, documents listed in the "Sample Audit Report" of the "Audit Guide for County Fee Officials".

(4) An auditor shall express an overall opinion on whether the financial statement of fee officials present fairly the receipts, disbursements, and excess fees arising from cash transactions.

(5) If an auditor is unable to express the opinion required by subsection (3) of this section, he shall state the reasons why.

(6) Financial statements included in an auditor's report shall be prepared on a cash basis.

(7) The "Report on Compliance with Laws and Regulations", required by the "Sample Audit Report", in the "Audit Guide for County Fee Officials", and the auditing procedures shall comply with the "Compliance Auditing Applicable to Governmental Entities and other Recipients of Governmental Financial Assistance", in No. 63, "Codification of Statements on Auditing Standards".

(8)(a) The internal control structure of a fee official shall be evaluated, and a report shall be prepared as provided by paragraph (b) of this subsection.

(b) The evaluation shall be conducted as provided by "Consideration of the Internal Control Structure In A Financial Statement Audit", in No. 55, "Codification of Statements on Auditing Standards".

(c) The report shall be prepared as provided by "Report on Internal Control Structure In Accordance With Government Auditing Standards" ("Sample Audit Report", in the "Audit Guide for County Fee Officials").

(9) An auditor's report shall include reports on other material findings.

(10) If law or regulation prohibits the disclosure of information, an auditor's report shall state the:

(a) Nature of the information that has been omitted; and

(b) Law or regulation that prohibits disclosure.

Section 6. Allowance of Audit Fees; Acceptance of Report. (1) Fees for county fee officials shall be allowable as reasonable and necessary

expenses of a county fee official if the independent accountant's examination has been performed in compliance with the standards and procedures required by this administrative regulation.

(2) A fee official shall obtain written approval of an audit report and workpapers from the Auditor of Public Accounts prior to the:

(a) Release of an audit report; and

(b) Payment of fees for a fee officials' audit report.

(3) Failure by an independent certified public accountant to comply with the "Audit Guide for County Fee Officials" and this regulation shall disqualify him from conducting fee officials audits.

BOB BABBAGE, Auditor

APPROVED BY AGENCY: October 14, 1991

FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Auditor of Public Accounts Training Room located on 2439 U.S. 127 South, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Danny Watkins, CPA, Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Regina Grubbs

(1) Type and number of entities affected: 120 county clerks and sheriffs.

(a) Direct and indirect costs or savings to those affected:

1. First year: No additional costs projected.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Establishes minimum reporting and workpaper standards. Establishes uniform reporting requirements.

(2) Effects on the promulgating administrative body: No material time or cost increases.

(a) Direct and indirect costs or savings:

1. First year: No additional costs projected.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All standards and requirements must, by federal and state law, apply equally to all regulated entities.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes_X_ No___ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. County clerks and sheriffs.

3. State the aspect or service of local government to which this administrative regulation relates. Establishes minimum auditing standards for county fee officials.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: No new requirements are being imposed. This administrative regulation is promulgated in order to comply with the format and drafting requirements of KRS Chapter 13A. No new cost or increased cost will result.

AUDITOR OF PUBLIC ACCOUNTS

45 KAR 1:050. Audits of fiscal courts.

RELATES TO: KRS 43.070(1)(a), (2), (3), (4), 43.075, 64.810, 31 USC 7501-7507, "Audits of State and Local Governments", OMB Circular A-128 (Federal Register, Doc. 10877, May 3, 1985)

STATUTORY AUTHORITY: KRS 43.070(1)(a), (2), (3), (4), 43.075, 64.810, 31 USC 7501-7507, "Audits of State and Local Governments", OMB Circular A-128 (Federal Register, Doc. 10877, May 3, 1985)

NECESSITY AND FUNCTION: The Auditor of Public Accounts is required to develop uniform auditing standards, procedures, and formats for performing and reporting audits of county governments. This administrative regulation establishes the auditing standards, procedures and formats, and the interpretation of these items by the Auditor of Public Accounts, that shall be applied to fiscal court audits.

Section 1. Definitions. "Generally accepted government auditing standards" means, for reporting purposes, the "Government Auditing Standards" issued by the Comptroller General of the United States, July 1988.

Section 2. Auditing Standards. (1) The financial and compliance audit of the funds contained in each county entity shall be conducted in accordance with:

(a) Generally accepted government auditing standards;

(b) The Single Audit Act of 1984 (31 USC 7501-7507);

(c) "Audits of State and Local Governments", OMB Circular A-128; and

(d) "Audit Guide for Fiscal Court Audits".

(2) Financial statements shall be prepared on a cash basis.

(3)(a) The following documents are incorporated by reference:

1. "Audit Guide for Fiscal Court Audits", Auditor of Public Accounts, August 15, 1991;

2. "Government Auditing Standards" issued by the Comptroller General of the United States, July, 1988; and
3. "Codification of Statements on Auditing Standards", Numbers 1 through 64, American Institute of Certified Public Accountants (Commerce Clearing House, Inc., January 1, 1991).
(b) These documents are available for public inspection and copying at the office of the Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday between the hours of 8 a.m. to 5 p.m.

Section 3. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of a fiscal court shall be an audit report that provides an opinion on whether the financial statements of a fiscal court present fairly, in all material respects, the:
(a) Assets, liabilities, and fund balances arising from the cash transactions; and
(b) Cash receipts, cash disbursements, and changes in fund or cash balances.
(2) An auditor shall make tests sufficient to determine whether:
(a) The fiscal court has complied with the requirements of KRS 68.210;
(b) Receipts have been accurately recorded by source;
(c) Expenditures have been accurately recorded by payee;
(d) The county has complied with applicable statutory requirements relating to the management of public funds; and
(e) Situations or transactions indicate fraud, abuse, or other illegal acts.
(3) If a situation or transaction indicates fraud, abuse, or other illegal act, an auditor shall:
(a) Extend audit steps and procedures to ascertain the effect on the entity's financial statements; and
(b) Issue a written report of such situations and effects, as required by auditing standards incorporated by reference in this administrative regulation.
(4) An auditor shall:
(a) Determine the fund balance of each fund of a reporting entity;
(b) Issue written reports on Internal Control Structure, as required by:
1. 31 USC 7501-7507; and
2. "Government Auditing Standards";
(c) Separately identify reportable conditions, and those that are considered material weaknesses, in the reports required by paragraph (b) of this subsection;
(d) Issue written reports on compliance with the requirements of statutes and administrative regulations specified by:
1. 31 USC 7501-7507, with regard to specific and general requirements; and
2. "Government Auditing Standards";
(e) In reports required by paragraph (d)1 of this subsection, set forth:
1. All compliance violations, whether or not they are material;
2. A statement of positive assurance concerning items actually tested; and
3. Negative assurance concerning items that were not tested.

Section 5. Reporting Format. (1) An auditor's report shall state that the audit was conducted in accordance with:
(a) The Single Audit Act of 1984 (31 USC 7501-7507);
(b) "Audits of State and Local Governments", OMB Circular A-128; and
(c) "Audit Guide for Fiscal Court Audits".
(2) An auditor's report shall comply with the format specified in the "Sample Audit Report", in the "Audit Guide for Fiscal Court Audits".
(3) An auditor's report shall include, as applicable, documents listed in the "Sample Audit Report" of the "Audit Guide for Fiscal Court Audits".
(4) An auditor shall express an overall opinion on whether the financial statements of a fiscal court present fairly the:
(a) Assets, liabilities, and fund balances arising from cash transactions; and
(b) The cash receipts, cash disbursements, and changes in fund or cash balances.
(5) If an auditor is unable to express the opinion required by subsection (3) of this section, he shall state the reasons why.
(6) Financial statements included in an auditor's report shall be prepared on a cash basis.
(7) The "Report on Compliance with Laws and Regulations", required by the "Sample Audit Report", in the "Audit Guide for Fiscal Court Audits", and the auditing procedures shall comply with the "Compliance Auditing Applicable to Governmental Entities and other Recipients of Governmental Financial Assistance", in No. 63, "Codification of Statements on Auditing Standards".
(8)(a) The internal control structure of a fiscal court shall be evaluated, and reports shall be prepared as provided by paragraph (b) of this subsection.
(b) The evaluation shall be conducted as provided by "Consideration of the Internal Control Structure in a Financial Statement Audit", in No. 55, "Codification of Statements on Auditing Standards".
(c) The reports shall be prepared as provided by:
1. "Report on Internal Control Structure as Required by 31 USC 7501-7507" ("Sample Audit Report", in the "Audit Guide for Fiscal Court Audits"); and
2. "Report on Internal Control Structure In Accordance with Government Auditing Standards" ("Sample Audit Report", in the "Audit Guide for Fiscal Court Audits").
(9) An auditor's report shall include reports on other material findings.
(10) If law or regulation prohibits the disclosure of information, an auditor's report shall state the:
(a) Nature of the information that has been omitted; and
(b) Law or regulation that prohibits disclosure.

Section 6. Allowance of Audit Fees; Acceptance of Report. (1) Fees for county audits shall be allowable as reasonable and necessary expenses of a county if the independent accountant's examination has been performed in compliance with the standards and procedures required by

this administrative regulation.
(2) A county shall obtain written approval of an audit report and workpapers from the Auditor of Public Accounts prior to the:
(a) Release of an audit report; and
(b) Payment of fees for a fiscal court audit report.
(3) Failure by an independent certified public accountant to comply with the "Audit Guide for Fiscal Court Audits" and this regulation shall disqualify him from conducting fiscal court audits.

Section 7. 45 KAR 1:020 is repealed.

BOB BABBAGE, Auditor
APPROVED BY AGENCY: October 14, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Auditor of Public Accounts Training Room located on 2439 U.S. 127 South, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Danny Watkins, CPA, Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Regina Grubbs
(1) Type and number of entities affected: 119 fiscal courts.
(a) Direct and indirect costs or savings to those affected:
1. First year: No additional costs projected.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Establishes minimum reporting and workpaper standards. Establishes uniform reporting requirements.
(2) Effects on the promulgating administrative body: No material time or cost increases.
(a) Direct and indirect costs or savings:
1. First year: No additional costs projected.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All standards and requirements must, by federal and state law, apply equally to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 31 USC 7501-7507.
2. State compliance standards. KRS 43.075.
3. Minimum or uniform standards contained in the federal mandate. 31 USC 7501-7507; "Audits of State and Local Governments", OMB Circular A-128 (Federal Register, Doc. 10877, May 3, 1985).
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, where federal law applies only the specific federally required standards are imposed.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes_X_ No___ (If yes, complete questions 2-4)
2. State what unit, part or division of local government this administrative regulation will affect. Fiscal courts.
3. State the aspect or service of local government to which this administrative regulation relates. Establishes minimum auditing standards for fiscal courts.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-): 0
Expenditures (+/-): 0
Other Explanation: No new requirements are being imposed. This administrative regulation is promulgated in order to comply with the format and drafting requirements of KRS Chapter 13A. No new cost or increased cost will result.

DEPARTMENT FOR MILITARY AFFAIRS
Division of Disaster and Emergency Services

106 KAR 1:081. Kentucky emergency response commission fee system requirements.

RELATES TO: KRS 39.800 to 39.990, 42 USC 11001 to 11050
STATUTORY AUTHORITY: KRS 39.817, 39.845, 39.850, 39.890, 42 USC 11002(c), 11003(c)(d)
NECESSITY AND FUNCTION: This regulation sets forth the requirements to be followed by facilities subject to paying a fee.

Section 1. Definitions. (1) "Category One Facility" means any facility owned or operated by local, state or federal government which is exempted from paying any fee in accordance with KRS 39.817. This exemption applies solely to fees and does not exempt any Category One Facility from reporting requirements pursuant to KRS 39.800 to 39.905.
(2) "Category Two Facility" means any facility that has not less than 10,000 pounds and not more than 499,999 pounds of each of ten (10) or fewer hazardous substances. The combined total

of all hazardous substances shall not exceed 499,999 pounds.

(3) "Category Three Facility" means any facility that has 10,000 pounds or more of each of eleven (11) or more hazardous substances. The combined total of all hazardous substances shall not exceed 499,999 pounds.

(4) "Category Four Facility" means any facility that has a total inventory of over 499,999 pounds of hazardous substances.

(5) "Category Five Facility" means any facility that has an extremely hazardous substance as set out in Section 6 of this regulation in excess of the threshold planning quantity.

(6) "DES/SARA-312" means the state annual chemical inventory reporting form due March 1 each year, covering the preceding calendar year.

(7) "DES/SARA-312-C" means the confidential state annual chemical inventory reporting form due March 1 each year, covering the preceding calendar year which may be used if a facility elects to withhold location information on a specific chemical from disclosure to the public pursuant to 42 USC 11044(a).

(8) "Hazardous chemical" means any substance for which a facility is required to prepare or have available a material safety data sheet under the Occupational Safety and Health Act of 1970 and federal regulations promulgated under that Act.

(9) "Hazardous substance" means any substance defined in KRS 39.805(5) and for annual inventory reporting purposes shall include hazardous chemicals.

(10) "KyERC" means the Kentucky Emergency Response Commission.

Section 2. Facility Requirements. (1) In accordance with the planning requirements of KRS 39.845 and 39.850, 42 USC 11002(c) and 11003(c)(d), no later than sixty (60) days after a facility notifies the Kentucky Emergency Response Commission that it is subject to the requirements of this section, the facility shall provide emergency response planning information to the local emergency planning committee and shall assist the local emergency planning committee develop a Tab Q-7 as set out in Section 6 of this regulation for all extremely hazardous substances set out in Section 6 of this regulation in excess of the threshold planning quantity for submission in accordance with the requirements of 106 KAR 1:091.

(2) After initial submission and approval of the Tab Q-7 in accordance with subsection (1) of this section, each March 1 any facility that has an extremely hazardous substance as set out in Section 6 of this regulation in excess of the threshold planning quantity shall review the Tab Q-7 and send certification to the local emergency planning committee stating that there were no changes and therefore the plan is correct as is; or the plan has been revised and the revisions are included with the certification.

(3) A Category Five Facility which is not subject to the annual chemical inventory reporting requirement due on DES/SARA-312 and, if applicable DES/SARA-312-C shall comply with Section 2(1) and (2) of this regulation and shall file the fee [only] in accordance with Section 4 of this regulation.

(4) Any facility subject to the annual chemical inventory reporting requirements contained in KRS Chapter 39.890, and 42 USC 11022 shall submit Form DES/SARA-312 and, if applicable DES/SARA-312-C as set out in Section 6 of this regulation no later than March 1 each year in accordance with the filing instructions in Section 4 of this regulation.

Section 3. Fees shall be payable in accordance with the schedule listed below except the same owner or owners of two (2) or more facilities in a single county subject to paying a fee shall pay a fee not to exceed $250 for all those facilities in that county.

(1) Category One Facility fee is $0.
(2) Category Two Facility fee is $40.
(3) Category Three Facility fee is $250.
(4) Category Four Facility fee is $250.
(5) Category Five Facility fee is $250.

Section 4. Filing Requirements for Fees and Forms DES/SARA-312 and DES/SARA-312-C. A computer-generated form containing all the information in DES/SARA-312 and DES/SARA-312-C may be accepted. All fees and forms DES/SARA-312 and, if applicable DES/SARA-312-C, shall be filed simultaneously, no later than March 1 each year. Checks shall be made payable to "Kentucky State Treasurer" and shall be marked "For KyERC Fee Account". Fees and forms shall be mailed to: Chairman, Kentucky Emergency Response Commission, EOC Building-Boone National Guard Center, Frankfort, Kentucky 40601-6168.

Section 5. Penalties. Failure to comply with provisions of this regulation shall result in penalties as provided in KRS 39.990(3).

Section 6. The forms referred to in Sections 1(6), (7), 2(1), (2), (3), (4) and 4 of this regulation are set out in this section. The list of extremely hazardous substances referred to in Section 2(1), (2) of this regulation are set out in this section.

The List of Extremely Hazardous Substances and their Threshold Planning Quantities
(Alphabetical Order)

CAS No.	Chemical Name	Threshold planning quantity (pounds)	Notes
75865	ACETONE CYANOHYDRIN	1000	
1752303	ACETONE THIOSEMICARBAZIDE	1000/10000	e
107028	ACROLEIN	500	
79061	ACRYLAMIDE	1000/10000	d,l
107131	ACRYLONITRILE	10000	d,l
814686	ACRYLYL CHLORIDE	100	e,h
111693	ADIPONITRILE	1000	e,l
116063	ALDICARB	100/10000	c
309002	ALDRIN	500/10000	d
107186	ALLYL ALCOHOL	1000	
107119	ALLYLAMINE	500	e
20859738	ALUMINUM PHOSPHIDE	500	b
54626	AMINOPTERIN	500/10000	e
78535	AMITON	500	e
3734972	AMITON OXALATE	100/1000	e
7664417	AMMONIA	500	l
300629	AMPHETAMINE	1000	e
62533	ANILINE	1000	d,l
88051	ANILINE,2,4,6-TRIMETHYL-	500	e
7783702	ANTIMONY PENTAFLUORIDE	500	e
1397940	ANTIMYCINA	1000/10000	c,e
86884	ANTU	500/10000	
1303282	ARSENIC PENTOXIDE	100/10000	d
1327533	ARSENOUS OXIDE	100/10000	d,h
7784341	ARSENOUS TRICHLORIDE	500	d
7784421	ARSINE	100	e
2642719	AZINPHOS-ETHYL	100/10000	e
86500	AZINPHOSMETHYL	10/10000	
98873	BENZAL CHLORIDE	500	d
98168	BENZENAMINE,3(TRIFLUOROMETHYL)-	500	e
100141	BENZENE,I(CHLOROMETHYL)-4-NITRO-	500/10000	e
98055	BENZENEARSONIC ACID	10/10000	e
3615212	BENZIMIDAZOLE,4,5-DICHOLORO-2-(TRIFLUOROMETHYL)-	500/10000	e,g
98077	BENZOTRICHLORIDE	100	d
100447	BENZYL CHLORIDE	500	d
140294	BENZYL CYANIDE	500	e,h
15271417	BICYCLO(2.2.1)HEPTANE-2-CARBONITRILE,5-CHOLORO-6((((METHYLAMINO)CARBONYL)OXY)IMMINO-,(1 S-(2-ALPHA,2-BETA,4-ALPHA,5-ALPHA,6E))-	500/10000	e
534076	BIS(CHLOROMETHYL)KETONE	10/10000	e
4044659	BITOSCANATE	500/10000	e
10294345	BORON TRICHLORIDE	500	e
7637072	BORON TRIFLUORIDE	500	e
353424	BORON TRIFLUORIDE COMPOUND WITH METHYL ETHER(1:1)	1000	e
28772567	BROMADIOLONE	100/10000	e
7726956	BROMINE	500	e,l
1306190	CADMIUM OXIDE	100/10000	e
2223930	CADMIUM STEARATE	1000/10000	c,e
7778441	CALCIUM ARSENATE	500/10000	d
8001352	CAMPHECHLOR	500/10000	d
56257	CANTHARIDIN	100/10000	e
51832	CARBACHOL CHLORIDE	500/10000	e
26419738	CARBAMIC ACID, METHYL-,O-(((2,4-DIMETHYL-1,3-DITHIOLAN-2-yl)METHYLENE)AMINO)-	100/10000	e
1563662	CARBOFURAN	10/10000	
75150	CARBON DISULFIDE	10000	
786196	CARBOPHENOTHION	500	e
57749	CHLORDANE	1000	d
470906	CHLORFENVINFOS	500	e
7782505	CHLORINE	100	
24934916	CHLORMEPHOS	500	e
9998?5	CHLORMEQUAT CHLORIDE	100/10000	e,h
79?18	CHLOROACETICACID	100/10000	e
107073	CHLOROETHANOL	500	e
627112	CHLOROETHYLCHLOROFORMATE	1000	e

67663	CHLORFORM	10000	d,l
542881	CHLOROMETHYL ETHER	100	d,h
107302	CHLOROMETHYL METHYL ETHER	100	c,d
3691358	CHLOROPHACINONE	100/10000	e
1982474	CHLOROXURON	500/10000	e
21923239	CHLORTHIOPHOS	500	e,h
10025737	CHROMIC CHLORIDE	1/10000	e
10210681	COBALT CARBONYL	10/10000	e,h
62207765	COBALT,((2,2'-(1,2-ETHANEDIYL-BIS(NITRILO-METHYLIDYNE))[q EiIS(6-FLUOROPHENOLATO))(2-)N,NI,O,OI	100/10000	e
64868	COLCHICINE	10/10000	e,h
56724	COUMAPHOS	100/10000	
5836293	COUMATETRALYL	500/10000	e
95487	CRESOL,O	1000/10000	d
535897	CRIMIDINE	100/10000	e
4170303	CROTONALDEHYDE	1000	
123739	CROTONALDEHYDE(E)-	1000	
506683	CYANOGEN BROMIDE	500/10000	
506785	CYANOGEN IODIDE	1000/10000	e
2636262	CYANOPHOS	1000	e
675149	CYANURIC FLUORIDE	100	e
66819	CYCLOHEXIMIDE	100/10000	e
108918	CYCLOHEXYLAMINE	10000	e,l
17702419	DECABORANE(14)	500/10000	e
8065483	DEMETON	500	e
919868	DEMETON-S-METHYL	500	e
10311849	DIALIFOR	100/10000	e
19287457	DIBORANE	100	e
111444	DICHLOROETHYL ETHER	10000	d
149746	DICHLOROMETHYLPHENYLSILANE	1000	e
62737	DICHLORVOS	1000	
141662	DICROTOPHOS	100	e
1464535	DIEPOXYBUTANE	500	d
814493	DIETHYL CHLOROPHOSPHATE	500	e,h
164254	DIETHYLCARBAMAZINE CITRATE	100/10000	e
71636	DIGITOXIN	100/10000	c,e
2238075	DIGLYCIDYL ETHER	1000	e
20830775	DIGOXIN	10/10000	e,h
115264	DIMEFOX	500	e
60515	DIMETHOATE	500/10000	
2524030	DIMETHYL PHOSPHOROCHLORIDOTHIOATE	500	e
77781	DIMETHYL SULFATE	500	d
75785	DIMETHYLDICHLOROSILANE	500	e,h
57147	DIMETHYLHYDRAZINE	1000	d
99989	DIMETHYL-P-PHENYLEDIAMINE	10/10000	e
644644	DIMETILAN	500/10000	e
534521	DINITROCRESOL	10/10000	
88857	DINOSEB	100/10000	
1420071	DINOTERB	500/10000	e
78342	DIOXATHION	500	e
82666	DIPHACINONE	10/10000	e
152169	DIPHOSPHORAMIDE, OCTAMETHYL-	100	
298044	DISULFOTON	500	
514738	DITHIAZANINE IODIDE	500/10000	e
541537	DITHIOBIURET	100/10000	
316427	EMETINE, DIHYDROCHLORIDE	1/10000	e,h
115297	ENDOSULFAN	10/10000	
2778043	ENDOTHION	500/10000	e
72208	ENDRIN	500/10000	
106898	EPICHLOROHYDRIN	1000	d,l
2104645	EPN	100/10000	e
50146	ERGOCALCIFEROL	1000/10000	c,e
379793	ERGOTAMINE TARTRATE	500/10000	e
1622328	ETHANESULFONYL CHLORIDE,2-CHLORO-	500	e
10140871	ETHANOL,1,2-DICHLORO-,ACETATE	1000	e
563122	ETHION	1000	
13194484	ETHOPROPHOS	1000	e
538078	ETHYLBIS(2-CHLOROETHYL)AMINE	500	e,h
371620	ETHYLENE FLUOROHYDRIN	10	c,e,h
75218	ETHYLENE OXIDE	1000	d,l
107153	ETHYLENEDIAMINE	10000	
151564	ETHYLENEIMINE	500	d
542905	ETHYLTHIOCYANATE	10000	e
22224926	FENAMIPHOS	10/10000	e

122145	FENITROTHION	500	e
115902	FENSULFOTHION	500	e,h
4301502	FLUENETIL	100/10000	e
7782414	FLUORINE	500	k
640197	FLUOROACETAMIDE	100/10000	i
144490	FLUOROACETIC ACID	10/10000	e
359068	FLUOROACETYL CHLORIDE	10	c,e
51218	FLOUROURACIL	500/10000	e
944229	FONOFOS	500	e
50000	FORMALDEHYDE	500	d,l
107164	FORMALDEHYDE CYANOHYDRIN	1000	e,h
23422539	FORMETANATE HYDROCHLORIDE	500/10000	e,h
2540821	FORMOTHION	100	e
17702577	FORMPARANATE	100/10000	e
21548323	FOSTHIETAN	500	e
3878191	FUBERIDAZOLE	100/10000	e
110009	FURAN	500	
13450903	GALLIUM TRICHLORIDE	500/10000	e
77474	HEXACHLOROCYCLOPENTADIENE	100	d,h
4835114	HEXAMETHYLENEDIAMINE,NIN–DIBUTYL–	500	e
302012	HYDRAZINE	1000	d
74908	HYDROCYANIC ACID	100	
7647010	HYDROGEN CHLORIDE (GAS ONLY)	500	e,l
7664393	HYDROGEN FLUORIDE	100	
7722841	HYDROGEN PEROXIDE (CONC. GREATER THAN 52%)		
7783075	HYDROGEN SELENIDE	10	e
7783064	HYDROGEN SULFIDE	500	
123319	HYDROQUINONE	500/10000	
13463406	IRON,PENTACARBONYL–	100	e
297789	ISOBENZAN	100/10000	e
78820	ISOBUTYRONITRILE	10000	e,h
102363	ISOCYANIC ACID,3,4–DICHLOROPHENYL ESTER	500/10000	e
465736	ISODRIN	100/10000	
55914	ISOFLUORPHATE	100	c
4098719	ISOPHORONE DIISOCYANATE	100	b,e
108236	ISOPROPYL CHLOROFORMATE	1000	e
119380	ISOPROPYLMETHYLPYRAZOLYL DIMETHYL–CARBAMATE	500	e
78977	LACTONITRILE	1000	e
21609905	LEPTOPHOS	500/10000	e
541253	LEWISITE	10	c,e,h
58899	LINDANE	1000/10000	d
7580678	LITHIUM HYDRIDE	100	b,e
109773	MALONONITRILE	500/10000	
12108133	MANGANESE, TRICARBONYL METHYLCYCLO–PENTADIENYL	100	e
51752	MECHLORETHAMINE	10	c,e
950107	MEPHOSFOLAN	500	e
1600277	MERCURIC ACETATE	500/10000	e
7487947	MERCURIC CHLORIDE	500/10000	e
21908532	MERCURIC OXIDE	500/10000	e
10476956	METHACROLEIN DIACERATE	1000	e
760930	METHACRYLIC ANHYDRIDE	500	e
126987	METHACRYLONITRILE	500	h
920467	METHACRYLOYL CHLORIDE	100	e
30674807	METHACRYLOYLOXYETHYLISOCYANATE	100	e,h
10265926	METHAMIDOPHOS	100/10000	e
558258	METHANESULFONYL FLUORIDE	1000	e
950370	METHIDATHION	500/10000	e
2032657	METHIOCARB	500/10000	
16752775	METHOMYL	500/10000	h
151382	METHOXYETHYLMERCURIC ACETATE	500/10000	e
80637	METHYL 2–CHLOROACRYLATE	500	e
74839	METHYL BROMIDE	1000	l
79221	METHYL CHLOROFORMATE	500	d,h
60344	METHYL HYDRAZINE	500	
624839	METHYL ISOCYANATE	500	f
556616	METHYL ISOTHIOCYANATE	500	b,e
74931	METHYL MERCAPTAN	500	
3735237	METHYL PHENKAPTON	500	e
676971	METHYL PHOSPHONIC DICHLORIDE	100	b,e
5566.0	METHYL THIOCYANATE	10000	e
78944	METHYL VINYL KETON	10	e
502396	METHYLMERCURIC DICYANAMIDE	500/10000	e
75796	METHYLTRICHLOROSILANE	500	e,h

1129415	METOLCARB	100/10000	e
7786347	MEVINPHOS	500	
315184	MEXACARBATE	500/10000	
50077	MITOMYCIN C	500/10000	d
69232224	MONOCROTOPHOS	10/10000	e
2763964	MUSCIMOL	500/10000	a,h
505602	MUSTARD GAS	500	e,h
13463393	NICKEL CARBONYL	1	d
54115	NICOTINE	100	c
65305	NICOTINE SULFATE	100/10000	e
7697372	NITRIC ACID	1000	
10102439	NITRIC OXIDE	100	c
98953	NITROBENZENE	1000	
1122607	NITROCYCLOHEXANE	500	e
10102440	NITROGEN DIOXIDE	100	
62759	NITROSDIMETHYLAMINE	1000	d,h
991424	NORBORMIDE	100/10000	e
PMN82147	ORGANORHODIUM COMPLEX (PMN-82-147)	10/10000	e
630604	OUABAIN	100/10000	c,e
23135220	OXAMYL	100/10000	e
78717	OXETANE, 3,3-BIS(CHLOROMETHYL)	500	e
2497976	OXYDISULFOTON	500	e,h
10028156	OZONE	100	e
1910425	PARAQUAT	10/10000	e
2074502	PARAQUAT METHOSULFATE	10/10000	e
56382	PARATHION	100	c,d
298000	PARATHION-METHYL	100/10000	c
12002038	PARIS GREEN	500/10000	d
19624227	PENTABORANE	500	e
2570265	PENTADECYLAMINE	100/10000	e
79210	PERACETIC ACID	500	e
594423	PERCHLOROMETHYLMERCAPTAN	500	
108952	PHENOL	500/10000	
4418660	PHENOL 2,2'-THIOBIS(4-CHLORO-6-METHYL-	100/10000	e
64006	PHENOL,3-(I-METHYLETHYL)-,METHYLCARBAMATE	500/10000	e
58366	PHENOXARSINE, 10,101-OXIDI	500/10000	e
696286	PHENYL DICHLOROARAINE	500	d,h
59881	PHENYLHYDRAZINE HYDROCHLORIDE	1000/10000	e
62384	PHENYLMERCURY ACETATE	500/10000	
2097190	PHENYLSILATRANE	100/10000	e,h
103855	PHENYLTHIOUREA	100/10000	
298022	PHORATE	10	
4104147	PHOSACETIM	100/10000	e
947024	PHOSFOLAN	100/10000	e
75445	PHOSGENE	10	1
732116	PHOSMET	10/10000	e
13171216	PHOSPHAMIDON	100	e
7803512	PHOSPHINE	500	
2703131	PHOSPHONOTHIOIC ACID, METHYL-,O-ETHYL O-(4-(METHYLTHIO) ESTER	500	e
50782699	PHOSPHONOTHIOIC ACID, METHYL-,S-(2-(BIS (I-METHYLETHYL)AMINO)ETHYL O-ETHYL ESTER	100	e
2665307	PHOSPHONOTHIOIC ACID, METHYL-,O-(4-NITRO-PHENYL)O-PHENYL ESTER	500	e
3254635	PHOSPHORIC ACID, DIMETHYL4-(METHYLTHIO) PHENYL ESTER	500	e
2587908	PHOSPHOROTHIOIC ACID, O,O-DIMETHYL-S-(2-METHYLTHIO) ETHYL ESTER	500	c,e,g
7723140	PHOSPHORUS	100	b,h
10025873	PHOSPHORUS OXYCHLORIDE	500	d
10026138	PHOSPHORUS PENTACHLORIDE	500	b,e
1314563	PHOSPHORUS PENTOXIDE	10	b,e
7719122	PHOSPHORUS TRICHLORIDE	1000	
57476	PHYSOSTIGMINE	100/10000	e
57647	PHYSOSTIGMINE, SALICYLATE(1:1)	100/10000	e
124878	PICROTOXIN	500/10000	e
110894	PIPERIDINE	1000	e
23505411	PIRIMIFOS-ETHLY	1000	e
10124502	POTASSIUM ARSENITE	500/10000	d
151508	POTASSIUM CYANIDE	100	b
506616	POTASSIUM SILVER CYANIDE	500	b
2631370	PROMECARB	500/10000	e,h
106967	PROPARGYL BROMIDE	10	e
57578	PROPIOLACTONE, BETA-	500	e
107120	PROPIONITRILE	500	

542767	PROPIONITRILE, 3-CHLORO-	1000	
70699	PROPIOPHENONE, 41-AMINO	100/10000	e,1,g
109615	PROPYL CHLOROFORMATE	500	e
75569	PROPYLENE OXIDE	10000	1
75558	PROPYLENEIMINE	10000	d
2275185	PROTHOATE	100/10000	e
129000	PYRENE	1000/10000	c
140761	PYRIDINE, 2-METHYL-5-VINYL-	500	e
504245	PYRIDINE, 4-AMINO-	500/10000	4
1124330	PRIDINE, 4-NITRO-,I-OXIDE	500/10000	e
53558251	PYRIMINIL	100/10000	e,h
14167181	SALCOMINE	500/10000	e
107448	SARIN	10	e,h
7783008	SELENIOUS ACID	1000/10000	
7791233	SELENIUM OXYCHLORIDE	500	e
563417	SEMICARBAZIDE HYDROCHLORIDE	1000/10000	e
3037727	SILANE, (4-AMINOBUTYL)DIETHOXYMETHYL-	1000	e
7631892	SODIUM ARSENATE	1000/10000	d
7784465	SODIUM ARSENITE	500/10000	d
26628228	SODIUM AZIDE(NA(N3))	500	b
124652	SODIUM CACODYLATE	100/10000	e
143339	SODIUM CYANIDE(NA(CN))	100	b
62748	SODIUM FLOUOROACETATE	10/10000	
13410010	SODIUM SELENATE	100/10000	e
10102188	SODIUM SELENITE	100/10000	h
10102202	SODIUM TELLURITE	500/10000	e
900958	STANNANE, ACETOXYTRIPHENYL-	500/10000	e,g
57249	STRYCHNINE	100/10000	c
60413	STRYCHNINE, SULFATE	100/10000	e
3689245	SULFOTEP	500	
3569571	SULFOXIDE, 3-CHLOROPROPYLCOTYL	500	e
7446095	SULFUR DIOXIDE	500	e,1
7783600	SULFUR TETRAFLUORIDE	100	e
7446119	SULFUR TRIOXIDE	100	b,e
7664939	SUFURIC ACID	1000	
77816	TABUN	10	c,e,h
13494809	TELLURIUM	500/10000	e
7783804	TELLURIUM HEXAFLUORIDE	100	e,k
107493	TEPP	100	
13071799	TERBUFOS	100	e,h
78002	TETRAETHYL LEAD	100	c,d
597648	TETRAETHYLTIN	100	c,e
75741	TETRAMETHYL LEAD	100	c,e,1
509148	TETRANITROMETHANE	500	
10031591	THALLIUM SULFATE	100/10000	h
6533739	THALLOUS CARBONATE	100/10000	c,h
7791120	THALLOUS CHLORIDE	100/10000	c,h
2757188	THALLOUS MALONATE	100/10000	c,e,h
7446186	THALLOUS SULFATE	100/10000	
2231574	THIOCARBAZIDE	1000/10000	e
39196184	THIOFANOX	100/10000	
297972	THIONAZIN	500	
108985	THIOPHENOL	500	
79196	THIOSEMICARBAZIDE	100/10000	
5344821	THIOUREA, (2-CHLOROPHENYL)-	100/10000	
614788	THIOUREA, (2-METHYLPHENYL)-	500/10000	e
7550450	TITANIUM TETRACHLORIDE	100	e
584848	TOLUENE 2,4-DIISOCYANATE	500	
91087	TOLUENE 2,6-DIISOCYANATE	100	
110576	TRANS-1,4-DICHLOROBUTENE	500	e
1031476	TRIAMIPHOS	500/10000	e
24017478	TRIAZOFOS	500	e
76028	TRICHLOROACETYL CHLORIDE	500	e
115219	TRICHLOROETHYLSILANE	500	e,h
327980	TRICHLORONATE	500	e,k
98135	TRICHLOROPHENYLSILANE	500	e,h
1558254	TRICHLORO(CHLOROMETHYL)SILANE	100	e
27137855	TRICHLOR(DICHLOROPHENYL)SILANE	500	e
998301	TRIETHOXYSILANE	500	e
75774	TRIMETHYLCHLOROSILANE	1000	e
824113	TRIMETHYLOLPROPANE PHOSPHITE	100/10000	e,h
1066-51	TRIMETHYLTIN CHLORIDE	500/10000	e
639587	TRIPHENYLTIN CHLORIDE	500/10000	e
555771	TRIS(2-CHLOROETHYL)AMINE	100	e,h
2001958	VALINOMYCIN	1000/10000	c,e

1314621	VANADIUM PENTOXIDE	100/10000	
08054	VINYL ACETATE MONOMER	1000	d,l
81812	WARFARIN	500/10000	
129066	WARFARINSODIUM	100/10000	e,h
28347139	XYLYENE DICHLORIDE	100/10000	e
58270089	ZINC, DICHLORO(4,4-DIMETHYL-5((((METHYLAM-ION)CARBONYL)OXY)IMINO)PENTANENITRILE) (T-4)-	100/10000	e
1314847	ZINC PHOSPHIDE	500	

*Only the statutory or final RQ is shown. for more information, see 40 CFR Table 302.4.
Notes:
a This chemical does not meet acute toxicity criteria. Its TPQ is set at 10,000 pounds.
b This material is a reactive solid. The TPQ does not default to 10,000 pounds for nonpowder, nonmolten, nonsolution form.
c The calculate TPQ changed after technical review as described in the technical support document.
d Indicates that the RQ is subject to change when the assessment of potential carcinogenicity and/or other toxicity is completed.
e Statutory reportable quantity for purposes of notification under SARA sect 304(a)(2).
f The statutory 1 pound reportable quantity for methyl isocyanate may be adjusted in a future rulemaking action.
g New chemicals added that were not part of the original list of 402 substances.
h Revised TPQ based on new or reevaluated toxicity data.
i TPQ is revised to its calculated value and does not change due to technical review as in proposed rule.
j The TPQ was revised after proposal due to calculation error.
k Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other Chemicals").

TAB Q-7-___

COVERED FACILITIES

FACILITY NAME

_____
St._____
City_____

FAC EMERGENCY RESP COORD

_____
Title_____

COMMUNICATIONS

Office #_____
Home #_____
R. Freq_____
Pager #_____

ALTERNATE
FAC EMERG RESP COORD

_____
Title_____

Office #_____
Home #_____
R. Freq_____

HAZARDOUS CHEMICAL(S)

NAME	UN ID#/CAS#	FORM	PACKAGED CONTAINER	MAXIMUM QUANTITY	HEALTH RISK

SKETCH OF FACILITY AND STORAGE AREAS

FACILITY RESPONSE POINT (RP) AND DIRECTIONS_____
_____
_____
_____

STAGING AREA (Support units will report and await assignment by local organization)
_____
_____
_____
_____

TRANSPORTATION ROUTES AND MODES OF TRANSPORTATION (include supplier and telephone number--describe how chemicals are handled--list hazardous points along the routes)_____

SPECIAL FACILITIES LIKELY TO BE AFFECTED BY A RELEASE (List affected facilities and day/night contacts)

PROTECTIVE ACTIONS (In-place sheltering of evacuation--give brief description of area(s) where protection actions may be required--add evacuation procedures to Annex EE)_____

EMERGENCY EQUIPMENT ON HAND/TRAINING/EXERCISING_____

SPILL CONTAINMENT/CLEAN-UP/DISPOSAL_____

EMERGENCY NOTIFICATION

Local 24 hr. warning number (LEPC) ____-____-____

Haz-mat Coord. (Day)____-____-____ or ____-____-____
(Night)____-____-____ or ____-____-____

Alt. Coord. (Day)____-____-____ or ____-____-____
(Night)____-____-____ or ____-____-____

_____Fire Dept. ____-____-____

_____Police Dept. ____-____-____

DES Coord. (Day)____-____-____ or ____-____-____
(Night)____-____-____ or ____-____-____

_____ Rescue ____-____-____ or ____-____-____

_____ Ambulance ____-____-____ or ____-____-____

Kentucky Emergency Response Commission (KERC) 502-564-7815

Kentucky DES Area Coordinator (O) ____-____-____
(H) ____-____-____

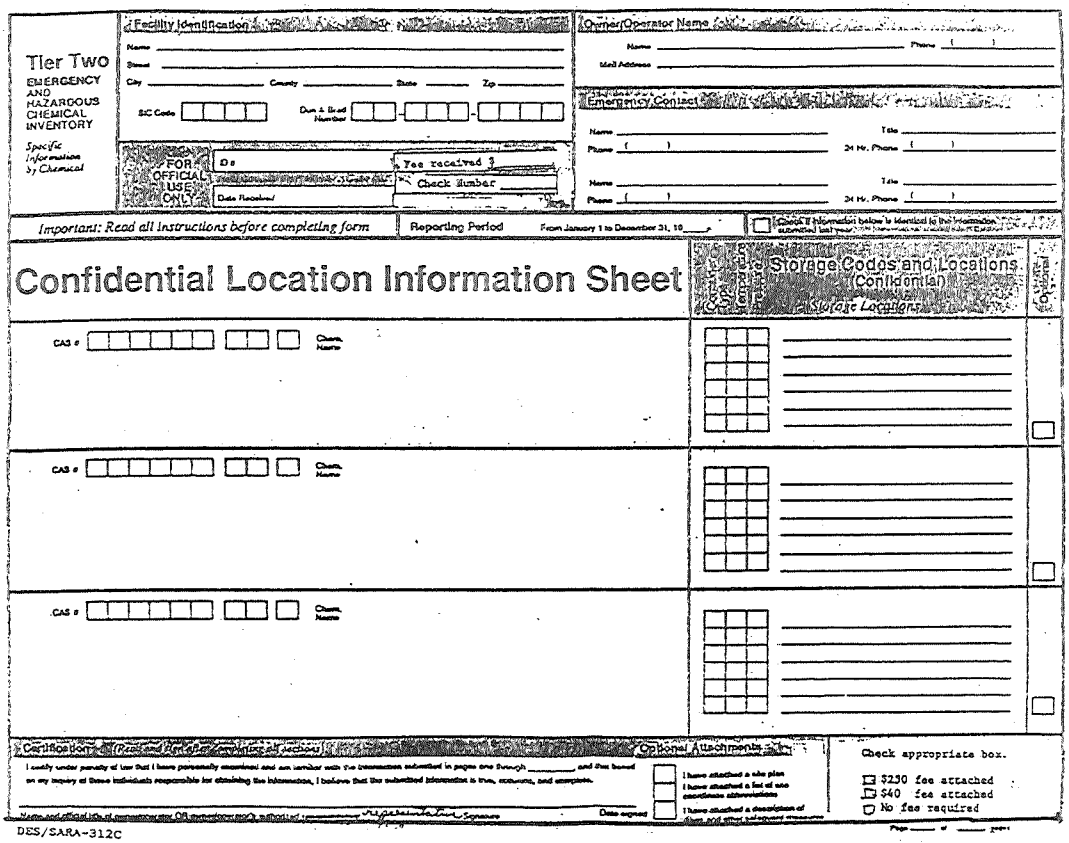
Nat. Resources & Envir. Prot. Cabinet (NR&EPC) 502-564-2380

National Response Center (NRC) 1-800-424-8802

Evir. Prot. Agency (EPA) Hotline 1-800-535-0202
Hours: 8:30 a.m. - 7:30 p.m., Mon-Fri.
including federal holidays

Chemtrec 1-800-424-9300

KENTUCKY EMERGENCY RESPONSE COMMISSION



Tier Two
EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY
Specific Information by Chemical

Facility Identification

Owner/Operator Name

Emergency Contact

FOR OFFICIAL USE ONLY — ID # — Fee received $ — Check Number — Date Received

Important: Read all instructions before completing form — Reporting Period From January 1 to December 31, 19__

Confidential Location Information Sheet

Storage Codes and Locations (Confidential) — Storage Locations — Optional

CAS # — Chem. Name

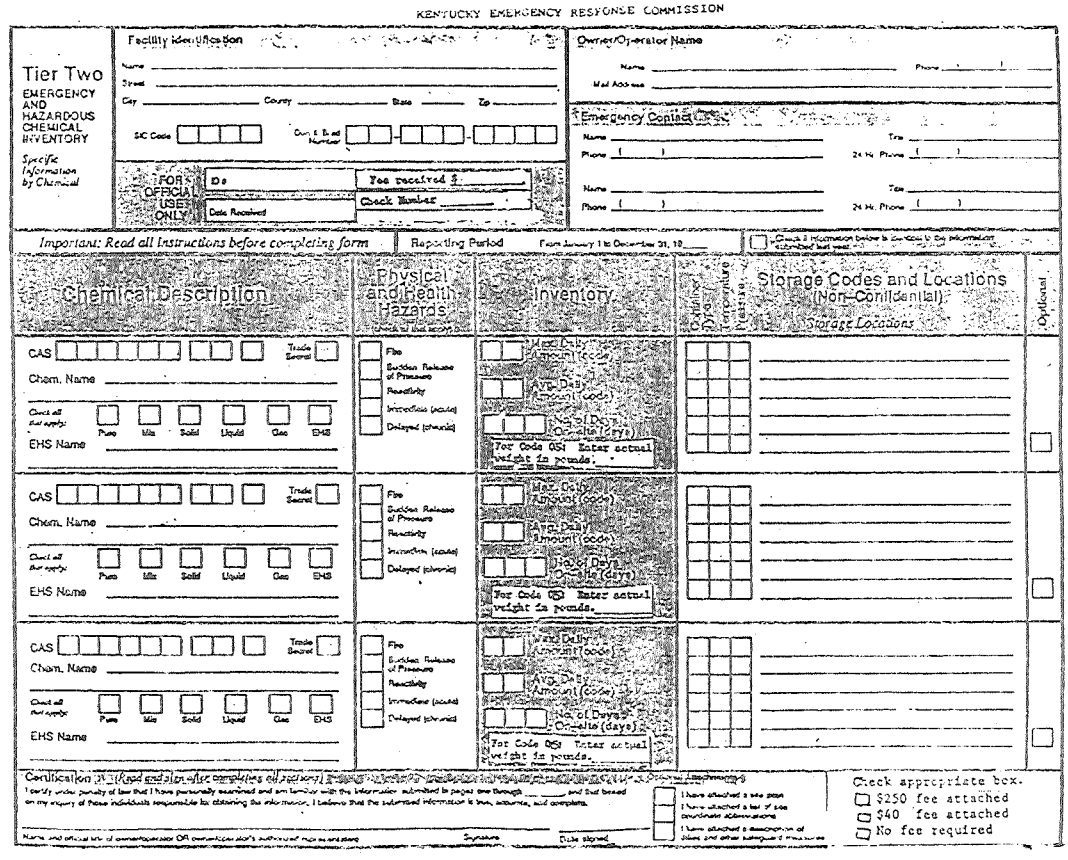
Certification (Read and sign after completing all sections)

Optional Attachments

Check appropriate box.
- ☐ $250 fee attached
- ☐ $40 fee attached
- ☐ No fee required

DES/SARA-312C

KENTUCKY EMERGENCY RESPONSE COMMISSION



Tier Two
EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY
Specific Information by Chemical

Facility Identification

Owner/Operator Name

Emergency Contact

FOR OFFICIAL USE ONLY — ID # — Fee received $ — Check Number — Date Received

Important: Read all instructions before completing form — Reporting Period From January 1 to December 31, 19__

Chemical Description | Physical and Health Hazards | Inventory | Storage Codes and Locations (Non-Confidential) — Storage Locations | Optional

CAS — Trade Secret — Chem. Name — Check all that apply: Pure, Mix, Solid, Liquid, Gas, EHS — EHS Name

Fire; Sudden Release of Pressure; Reactivity; Immediate (acute); Delayed (chronic)

Max Daily Amount (code); Avg. Daily Amount (code); No. of Days On-site (days); For Code 05: Enter actual weight in pounds.

Certification (Read and sign after completing all sections)

Optional Attachments

Check appropriate box.
- ☐ $250 fee attached
- ☐ $40 fee attached
- ☐ No fee required

DES/SARA-312

KENTUCKY EMERGENCY RESPONSE COMMISSION
TIER TWO INSTRUCTIONS
GENERAL INFORMATION

Submission of this Tier Two form is required by the Kentucky Emergency Response Commission in accordance with Title III of the Superfund Amendments and Reauthorization Act of 1986, Section 312 and KRS 39.990 and subsequent regulations. The purpose of this Tier Two form is to provide state and local officials and the public with specific information on hazardous chemicals present at your facility during the past year.

CERTIFICATION

The owner or operator or officially designated representative of the owner or operator must certify that all information included in the Tier Two submission is true, accurate, and complete. On the first page of the Tier Two report, enter your full name and official title. Sign your name and enter the current date. Also, enter the total number of pages included in the Confidential and Nonconfidential information Sheets as well as all attachments. An original signature is required on at least the first page of the submission. Submissions to the SERC, LEPC, and fire department must each contain and original signature on at least the first page. Subsequent pages must contain either an original signature, a photocopy of the original signature, or a signature stamp. Each page must contain the date on which the original signature was affixed to the first page of the submission and the total number of pages in the submission.

YOU MUST PROVIDE ALL INFORMATION REQUESTED ON THIS FORM TO FULFILL ANNUAL CHEMICAL INVENTORY REQUIREMENTS.

THE KENTUCKY EMERGENCY RESPONSE COMMISSION REQUIRES SUBMISSION OF THE TIER TWO FORM.

WHO MUST SUBMIT THIS FORM

This request applies to the owner or operator of any facility that is required, under regulations implementing the Occupational Safety and Health Act of 1970, to prepare or have available a Material Safety Data Sheet (MSDS) for a hazardous chemical present at the facility. MSDS requirements are specified in the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard, found in Title 29 of the Code of Federal Regulations at 1910.1200.

WHAT CHEMICALS ARE INCLUDED

You must report the required information on this Tier Two form for each hazardous chemical present at your facility in quantities equal to or greater than established threshold amounts (discussed below), unless the chemicals are excluded under Section 311(e) of Title III. Hazardous chemicals are any substance for which your facility must maintain an MSDS under OSHA's Hazard Communication Standard.

WHAT CHEMICALS ARE EXCLUDED

Section 311(e) of Title III excludes the following substances:

(I) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration:

(II) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use:

(III) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public:

(IV) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual:

(V) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

OSHA regulations, Section 1910.1200(b), stipulate exemptions from the requirement to prepare or have available an MSDS.

REPORTING THRESHOLDS

Minimum thresholds have been established for Tier Two reporting under Title III, Section 312. These thresholds are as follows:

For Extremely Hazardous Substances (EHSs) designated under section 302 of Title III, the reporting threshold is 500 pounds (or 227 kg.) or the threshold planning quantity (TPQ), whichever is lower:

For all other hazardous chemicals for which facilities are required to have or prepare an MSDS, the minimum reporting threshold is 10,000 pounds (or 4,540 kg.).

You need to report hazardous chemicals that were present at your facility at any time during the previous calendar year at levels that equal or exceed these thresholds. For instructions on threshold determinations for components of mixtures, see "What About Mixtures?" on page 2 of these instructions.

Please read these instructions carefully. Print or type all responses.

WHEN TO SUBMIT THIS FORM

Owners or operators of facilities that have hazardous chemicals on hand in quantities equal to or greater than set threshold levels must submit a Tier Two form by March 1.

WHERE TO SUBMIT FEE

(See Fee Schedule on page 4)

Checks shall be made payable to: "Kentucky State Treasurer" and shall be marked "For KyERC Fee Account". Fees and form shall be mailed to:

Chairman, Kentucky Emergency Response Commission
EOC Building, Boone National Guard Center
Frankfort, KY 40601-6168

WHERE TO SUBMIT THIS FORM

Send a completed Tier Two form(s) to each of the following organizations:

1. Your State Emergency Response Commission.
2. Your Local Emergency Planning Committee.

3. The fire department with jurisdiction over your facility.

PENALTIES

Any owner or operator who violates any Tier Two reporting requirements shall be subject to penalties as set forth in P.L. 99-499, Title III, Section 325 and KRS Chapter 39.990 and subsequent regulations.

If your Tier Two responses require more than one page use additional forms and fill in the page number at the bottom of the form.

REPORTING PERIOD

Enter the appropriate calendar year, beginning January 1 and ending December 31.

FACILITY IDENTIFICATION

Enter the full name of your facility (and company identifier where appropriate).

Enter the full street address or state road. If a street address is not available, enter other appropriate identifiers that describe the physical location of your facility (e.g. longitude and latitude). Include city, county, state, and zip code.

Enter the primary Standard industrial Classification (SIC) code and the Dun & Bradstreet number for your facility. The financial officer of your facility should be able to provide the Dun & Bradstreet number. If your firm does not have this information, contact the State or regional office of Dun & Bradstreet to obtain your facility number or have one assigned.

OWNER/OPERATOR

Enter the owner's or operator's full name, mailing address, and phone number.

EMERGENCY CONTACT

Enter the name, title, and work phone number of at least one local person or office who can act as a referral if emergency responders need assistance in responding to a chemical accident at the facility.

Provide an emergency phone number where such emergency information will be available 24 hours a day, every day. This requirement is mandatory. The facility must make some arrangement to ensure that a 24 hour contact is available.

IDENTICAL INFORMATION

Check the box indicating identical information, located below the emergency contacts on the Tier Two form, if the current chemical information being reported is identical to that submitted last year. Chemical descriptions, hazards, amounts, and locations must be provided in this year's form, even if the information is identical to that submitted last year.

CHEMICAL INFORMATION: Description, Hazards, Amounts, and Locations

The main section of the Tier Two form requires specific information on amounts and locations of hazardous chemicals, as defined in the OSHA Hazard Communication Standard.

If you choose to indicate that all of the information on a specific hazardous chemical is identical to that submitted last year, check the appropriate optional box provided at the right side of the storage codes and locations on the Tier Two form. Chemicals descriptions, hazards, amounts, and locations must be provided even if the information is identical to that submitted last year.

- What units should I use?

  Calculate all amounts as weight in pounds. To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

- What about mixtures?

  If a chemical is part of a mixture, you have the option of reporting either the weight of the entire mixture of only the portion of the mixture that is a particular hazardous chemical (e.g.. if a hazardous of only 5% of a particular hazardous chemical, you can indicate either 100 lbs. of the mixture or 5lbs. of the chemical).

  The option used for each mixture must be consistent with the option used in your Section 311 reporting.

  Because EHSs are important to Section 303 planning, EHSs have lower thresholds. The amount of an EHS at a facility (both pure EHS substances and EHSs in mixtures) must be aggregated for purposes of threshold determination. It is suggested that the aggregation calculation be done as a first step in making the threshold determination. Once you determine whether a threshold for an EHS has been reached, you should report either the total weight of the EHS at your facility, or the weight of each mixture containing the EHS.

CHEMICAL DESCRIPTION

1. Enter the Chemical Abstract Service registry number (CAS). For mixtures, enter the CAS number of the mixtures as a whole if it has been assigned a number distinct from its constituents. For a mixture that has no CAS number, leave this item blank or report the CAS number of as many constituent as possible.

If you are withholding the name of a chemical in accordance with criteria specified in Title III, Section 322, enter the generic class or category that is structurally descriptive of the chemical (e.g., list toulene disocyanate as organic (sooyante) and check the box marked Trade Secret. Trade secret information should be submitted to EPA and must include a substantiation. Please refer to EPA's final regulation on trade secrecy (53 FR 28772, July 29, 1988) for detailed information on how to submit trade secrecy claims.

2. Enter the chemical name or common name of each hazardous chemical.

3. Check box for ALL applicable descriptors: pure or mixture; and solid, liquid, or gas; and whether the chemical is or contains an EHS.

4. If the chemical is a mixture containing EHS, enter the chemical name of each EHS in the mixture.

EXAMPLE:
You have pure chlorine gas on hand, as well as two mixtures that contain liquid chlorine. You write "chlorine" and enter the CAS number. Then you check "pure" and "mix" — as well as "liquid" and "gas".

PHYSICAL AND HEALTH HAZARDS

For each chemical you have listed, check all the physical and health hazard boxes that apply. These hazard categories are defined in 40 CFR 370.2. The two health hazard categories and three physical hazard categories are a consolidation of the 23 hazard categories defined in the OSHA Hazard Communication Standard, 29 CFR 1910.1200.

Hazard Category Comparison
For Reporting Under Section 311 and 312

EPA's Hazard Categories	OSHA's Hazard Categories
Fire Hazard	Flammable Combustion Liquid Pyrophoric Oxidizer
Sudden Release of Pressure	Explosive Compressed Gas
Reactive	Unstable Reactive Organic Peroxide Water Reactive
Immediate (Acute) Health Hazards	Highly Toxic Toxic Irritant Sensitizer Corrosive
	Other hazardous Chemicals with an adverse effect with short term exposure
Delayed (Chronic) Health Hazard	Carcinogens
	Other hazardous chemicals with an adverse effect with long term exposure

MAXIMUM AMOUNT

1. For each hazardous chemical, estimate the greatest amount present at your facility on any single day during the reporting period.

2. Find the appropriate range value code in Table I.

3. Enter this range value as the Maximum Amount.

4. If range value 05 (100,000 to 999,999) is used for the maximum daily amount, enter the actual weight in pounds in the Inventory column directly below the code number. This is necessary to determine the appropriate fee category.

TABLE I REPORTING RANGE

Range Value	Weight Range in Pounds From...	To...
01	0	99
02	100	999
03	1,000	9,999
04	10,000	99,999
05	100,000	999,999
06	1,000,000	9,999,999
07	10,000,000	49,999,999
08	50,000,000	99,999,999
09	100,000,000	499,999,999
10	500,000,000	999,999,999
11	1 billion	higher than 1 billion

EXAMPLE:

You received one large shipment of solvent mixture last year. The shipment filled five 5,000-gallon storage tanks. You know that the solvent contains 10% benzene, which is a hazardous chemical.

You figure that 10% of 25,000 gallons is 2,500 gallons. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 2,500 gallons by 7.29 pounds per gallon to get a weight of 18.225 pounds.

Then you look at Table I and find that the range value 04 corresponds to 18.225. You enter 04 as the Maximum Amount.

AVERAGE DAILY AMOUNT

1. For each hazardous chemical, estimate the average weight in pounds that was present at your facility during the year.

   To do this, total all daily weights and divide by the number of days the chemical was present on the site.

2. Find the appropriate range value in Table I.

3. Enter this range value as the Average Daily Amount.

EXAMPLE:
The 25,000-gallon shipment of solvent you received last year was gradually used up and completely gone in 315 days. The sum of the daily volume levels in the tank is 4,536,000 gallons. By dividing 4,536,000 gallons by 315 days on site, you calculate an average daily amount of 14,400 gallons.

You already know that the solvent contains 10% benzene, which is a hazardous chemical. Since 10% of 14,400 is 1,440, you figure that you had an average of 1,440 gallons of benzene. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 1,440 by 7.29 to get a weight of 10,500 pounds.

Then you look at Table I and find that the range value 04 corresponds to 10,500. You enter 04 as the Average Daily Amount.

(If you are using the form as a worksheet for completing a Tier One form, you should write 10,500 in the shaded area.)

NUMBER OF DAYS ON SITE
Enter the number of days that the hazardous chemical was found on site.

EXAMPLE:
The solvent composed of 10% benzene was present for 315 days at your facility. Enter 315 in the space provided.

STORAGE CODES AND STORAGE LOCATIONS

List all nonconfidential chemical locations in this column, along with storage types/conditions associated with each location. Please note that a particular chemical may be located in several places around the facility. Each row of boxes followed by a line represents a unique location for the same chemical.

Storage Codes: Indicate the types and conditions of storage present.

a. Look at Table II. For each location, find the appropriate storage type and enter the corresponding code in the first box.

b. Look at Table III. For each location, find the appropriate storage types for pressure and temperature conditions. Enter the applicable pressure code in the second box. Enter the applicable temperature code in the third box.

TABLE II - STORAGE TYPES

CODES	TYPES OF STORAGE
A	Above ground tank
B	Below ground tank
C	Tank inside building
D	Steel drum
E	Plastic or nonmetallic drum
F	Can
G	Carboy
H	Silo
I	Fiber drum
J	Bag
K	Box
L	Cylinder
M	Glass bottles or jugs
N	Plastic bottles or jugs
O	Tote bin
P	Tank wagon
Q	Rail car
R	Other

TABLE III - TEMPERATURE AND PRESSURE CONDITIONS

CODES	STORAGE CONDITIONS
	(PRESSURE)
1.	Ambient pressure
2.	Greater than ambient pressure
3.	Less than ambient pressure
	(TEMPERATURE)
4.	Ambient temperature
5.	Greater than ambient temperature
6.	Less than ambient temperature but not cryogenic
7.	Cryogenic conditions

EXAMPLE:

The benzene in the main building is kept in a tank inside the building, at ambient pressure and less than ambient temperature.

Table II shows you that the code for a tank inside a building is C. Table III shows you that the code for ambient pressure is 1, and the code for less than ambient temperature is 6.

You enter: C-1-6

TIER TWO INSTRUCTIONS

Storage Locations

Provide a brief description of the precise location of the chemical, so that emergency responders can locate the area easily. You may find it advantageous to provide the optional site plan or site coordinates as explained below.

For each chemical, indicate at a minimum the building or lot. Additionally, where practical, the room or area may be indicated. You may respond in narrative form with appropriate site coordinates or abbreviations.

If the chemical is present in more than one building, lot, or area location, continue your responses down the page as needed. If the chemical exists everywhere at the plant site simultaneously, you may report that the chemical is ubiquitous at the site.

Optional Attachments: If you choose to attach one of the following, check the appropriate Attachments box at the bottom of the Tier Two form.

a. A site plan with site coordinates indicated for building, lots, areas, etc. throughout your facility.

b. A list of site coordinate abbreviations that correspond to building, lots, areas, etc. throughout your facility.

c. A description of dikes and other safeguard measures for storage locations throughout your facility.

EXAMPLE:

You have benzene in the main room of the main building, and in tank 2 in tank field 10. You attach a site plan with coordinates as follows: main building = G-2, tank field 10 = B-6. fill in the Storage Location as follows:

B-6 [Tank 2] G-2 [Main Room]

CONFIDENTIAL INFORMATION

Under Title III, Section 324, you may elect to withhold location information on a specific chemical from disclosure to the public, if you choose to do so.

- Enter the word "confidential" in the Nonconfidential Location section of the Tier Two form on the first line of the storage locations.

- On a separate Tier Two Confidential Location Information Sheet, enter the name and CAS number of each chemical for which you are keeping the location confidential.

- Enter the appropriate location and storage information, as described above for nonconfidential locations.

- Attach the Tier Two Confidential Location information Sheet to the Tier Two form. This separates confidential locations from other information that will be disclosed to the public.

CERTIFICATION

Instructions for this section are included on page one of these instructions.

FEE SCHEDULE

Check appropriate box on the form.

$0 Category One Facility is owned or operated by local, state or federal government.

$40 Category Two Facility has no less than 10,000 pounds and no more than 499,999 pounds of each of ten (10) or fewer hazardous substances.

The combined total of all hazardous substances shall not exceed 499,999 pounds.

$250 Category Three Facility has 10,000 pounds or more of each 11 or more hazardous substances. The combined total of all hazardous substance shall not exceed 499,999 pounds.

$250 Category Four Facility has a total of over 499,999 pounds of hazardous substances.

$250 Category Five Facility has an extremely hazardous substance in excess of the threshold planning quantity.

This is to certify that the Kentucky Emergency Response Commission has recommended that this administrative regulation be adopted.

JAMES H. MOLLOY, Chairman
Kentucky Emergency Response Commission

TEBBS S. MOORE, Brigadier General
APPROVED BY AGENCY: October 9, 1991
FILED WITH LRC: October 11, 1991 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1991, 9 a.m. at Boone National Guard Center, EOC Building Conference Room. Individuals interested in being heard at this hearing shall notify this agency in writing by November 21, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: James H. Molloy, Chairman, Kentucky Emergency Response Commission, Boone National Guard Center, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James H. Molloy

(1) Type and number of entities affected: This regulation applies to the owners/operators of all facilities required to report under auspices of the SARA, Title III Act. These facilities are those using, storing, or manufacturing hazardous chemicals in excess of certain amounts.

(a) Direct and indirect costs or savings to those affected: The direct cost for each facility that is required to report is either $40 or $250 annually. A facility reporting more than 10,000 but less than 499,999 pounds of each of 10 or fewer hazardous substances pays the lesser fee. A facility will pay the higher fee when it reports: (a) 10,000 pounds or more of each of 11 or more hazardous substances whose combined total does not exceed 499,999 pounds; (b) a total inventory of over 499,999 pounds of hazardous substances; or (c) 1 substances (EHS)" in excess of the threshold planning quantity. (A facility owned or operated by local, state, or federal government is exempted from paying any fee).

1. First year: The initial cost will be either $40 or $250 as explained in (1)(a) above.

2. Continuing costs or savings: The fee is an annual one to be remitted by March 1st of each year until or unless the facility no longer meets the reporting criteria.

3. Additional factors increasing or decreasing costs (note any effects upon competition): A facility which increases the number or quantity of substances used, or employs one of the EHS, may find that the $250 cost applies instead of $40; thus the cost could increase. Conversely, if a facility used fewer chemicals or smaller quantities the fee could decrease from $250 or $40 to zero. There is no known effect upon competition among reporting facilities.

(b) Reporting and paperwork requirements: Federal and state law already require the submission of both a chemical inventory form and a "plan" of response in the event of a hazardous substance incident. The chemical inventory forms attached (DES/SARA-312 and DES/SARA-312-c) have been slightly modified to assist the commission and local emergency planning committees administer the program. However, the forms are essentially federal ones and would be required in any event. The Tab Q-7 "plan" attached is to be completed by the facility and the local emergency planning committee jointly. The "tab" will become part of the emergency operations plan in each county. Only those facilities utilizing one or more of the "extremely hazardous substances" will be required to submit Tab Q-7. A plan was required by federal law; this Tab Q-7 and its incorporation into the countywide emergency operations plan is this

commission's chosen method to meet this federal requirement.

(2) Effects on the promulgating administrative body: The ultimate effect on the body will be to provide a dedicated staff to administer this program funded through the fees submitted. The department has absorbed significant costs to administer this SARA Title III program for the State Commission over the last three years. These regulations fulfill the legislative mandate to establish a fee system; a portion of the fees collected are intended to fund dedicated state positions to administer the program. The program then becomes self-sufficient and does not impinge upon the departmental budget proper.

(a) Direct and indirect costs or savings: Dedicated support staff will be administered through the department but funding for the staff will originate from the fees collected. Savings will also be realized as the departmental staff currently involved in the program are replaced by others supported by the fee system.

1. First year: The cost savings will be phased in over a certain time period. Some staff will probably remain in transition working on commission activities until enough funds are collected to enable self-sufficiency. Some dedicated staff may also be employed which will be a direct cost.

2. Continuing costs or savings: The cost to the department incurred by nondedicated staff participation should be eliminated as the program supports itself through fee submissions. The direct cost incurred by dedicated Title III staff will increase as funding is provided the agency via the fees.

3. Additional factors increasing or decreasing costs: If the amount of the fees collected increase, additional staff may be hired to conduct commission requirements.

(b) Reporting and paperwork requirements: Initially nondedicated departmental staff will be involved in tracking and accounting for the required forms submitted. This burden will diminish as the program is established. Dedicated staff will administer these requirements as employed.

(3) Assessment of anticipated effect on state and local revenues: State revenues will increase as the required fees are submitted. The revenues will be used to administer the commission's program at state and local levels.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation implements the legislative mandate found in KRS 39.817; therefore, no alternatives were contemplated.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies which are duplicative or in conflict.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Within the statute (KRS 39.817) a "tiered" approach was adopted to help ensure the fee imposed was based on usage - those using greater numbers or amounts of hazardous substances pay more than those using fewer numbers or amounts. This regulation proposes categories based on the legislation enacted. Five categories are established as follows:

(a) Category One - A facility owned or operated by local, state, or federal government which is exempted from paying any fee per KRS 39.817(2)(d). These facilities must still report.

(b) Category Two - Any facility that has not less than 10,000 pounds nor more than 499,999 pounds of each of 10 or fewer hazardous substances with a combined total not in excess of 499,999 pounds. The required fee is $40.

(c) Category Three - Any facility that has 10,000 pounds or more of each of 11 or more hazardous substances with a combined total not exceeding 499,999 pounds. The required fee is $250.

(d) Category Four - A facility with a total inventory of over 499,999 pounds of hazardous substances. The required fee is $250.

(e) Category Five - A facility one or more of the specifically identified "extremely hazardous substances" in excess of certain quantities. The required fee is $250.

DEPARTMENT FOR MILITARY AFFAIRS
Division of Disaster and Emergency Services

106 KAR 1:091. Kentucky emergency response commission fee account grant requirements for local emergency planning committees.

RELATES TO: KRS 39.800 to 39.990, 42 USC 11001 to 11050

STATUTORY AUTHORITY: KRS 39.817, 39.845, 39.850

NECESSITY AND FUNCTION: This regulation establishes criteria and procedures to be met by local emergency planning committees requesting funds generated by KRS 39.817.

Section 1. To be eligible for financial assistance, local emergency planning committees which have extremely hazardous substances as listed in 106 KAR 1:081, Section 6, in excess of the threshold planning quantity present in their community shall meet all the following criteria:

(1) The local emergency planning committee shall meet all requirements set forth in KRS 39.840.

(2) The local emergency planning committee shall have an emergency response plan pursuant to KRS 39.840(1)(a), (e), (f) and 39.860 that has been approved by the Kentucky Emergency Response Commission.

(a) The local emergency planning committee's emergency response plan shall contain an approved Tab Q-7 listed in Section 6 of 106 KAR 1:081 for each facility in the planning district that has an extremely hazardous substance listed in Section 6 of 106 KAR 1:081 in excess of the threshold planning quantity.

(b) The local emergency planning committee shall submit new Tab Q-7 plans to the State Disaster and Emergency Services Area Coordinator within sixty (60) days of notification from the facility has an extremely hazardous substance in excess of the threshold planning quantity.

(c) After new Tab Q-7 plans are submitted, no later than April 1 each year, the local emergency planning committee shall review the Tab Q-7 plans and send certification to the state disaster and emergency services area coordinator stating that there were no changes

and therefore the plan is correct as is; or the plan has been revised and the revisions are included with the certification.

(d) The State Disaster and Emergency Services Area Coordinator shall review new Tab Q-7 plans for completeness, note any recommendations and forward them to the Chairman of the Kentucky Emergency Response Commission, or designee, within thirty (30) days of receipt from the local emergency planning committee.

(e) The state disaster and emergency services area coordinator shall review Tab Q-7 revisions and certifications received from the local emergency planning committee for completeness, note any recommendations and forward them to the Chairman of the Kentucky Emergency Response Commission, or designee, no later than May 1 each year.

(3) The local emergency planning committee shall meet at least semiannually to conduct its business and a quorum shall be required.

(4) No later than December 1 each year, the local emergency planning committee shall submit an updated membership list to the Kentucky Emergency Response Commission.

(5) In accordance with KRS Chapter 424 (Legal Notice), the local emergency planning committee shall annually publish public information on committee activities entitled "Public (Legal) Notice Advertisement" on form DES/SARA-324 as set out in Section 7 of this regulation.

Section 2. To be eligible for financial assistance, local emergency planning committees which do not have any extremely hazardous substances as listed in 106 KAR 1:081, Section 6, in excess of the threshold planning quantity present in their community shall meet the following criteria:

(1) The local emergency planning committee shall meet criteria set forth in KRS 39.840 (1)(b), (c), (d), (2), (4), (5) and Section 1(4) and (5) of this regulation.

(2) The local emergency planning committee shall meet at least annually to conduct its business and a quorum shall be required.

Section 3. Local Emergency Planning Committee Procedures. (1) If a local emergency planning committee requests financial assistance, it shall use Grant Request Form DES/SARA-303 as set out in Section 7 of this regulation and shall include a detailed budget identifying how the requested funds are to be spent.

(2) The grant request form shall be submitted to the State Disaster and Emergency Services Area Coordinator no earlier than January 1 and no later than May 1.

(3) The State Disaster and Emergency Services Area Coordinator shall review the grant request form for completeness and conformance to statutes and regulations, note any recommendations and forward it to the Chairman of the Kentucky Emergency Response Commission or designee, no later than June 1.

(4) The Chairman of the Kentucky Emergency Response Commission, or designee, shall review the grant request form for completeness and conformance to statutes and regulations, note any recommendations and forward it to the Grant Review Committee no later than July 1.

(5) The Grant Review Committee, with a quorum present, shall review all grant requests and forward their recommendations no later than August 15 to the Kentucky Emergency Response Commission for final approval.

(6) The Kentucky Emergency Response Commission shall make the grant awards no later than September 15.

(7) The State Disaster and Emergency Services Area Coordinator, the Chairman of the Kentucky Emergency Response Commission, or designee, or the Grant Review Committee may request additional information which shall be provided by the local emergency planning committee. Failure to provide the requested information shall invalidate the local emergency planning committee's request for funding.

Section 4. Requests for Modifications. (1) A modification of a grant award is required if there is a change in the grant request or if a local emergency planning committee is unable to expend the funds for which the grant was awarded. A request for modification shall be submitted by the LEPC for approval by the commission. Unexpended monies shall be returned to the fund.

(2) Requests for modifications of grant awards shall be submitted on Grant Request Form DES/SARA-303 as set out in Section 7 of this regulation and, except for due dates, shall be processed in accordance with Sections 3 and 6 of this regulation.

(3) Modifications may be submitted throughout the grant period.

Section 5. Supplemental Grant Awards. (1) In the event supplemental money is available, the Kentucky Emergency Response Commission shall determine the date of the supplemental allocation award and inform the local emergency planning committees of that date.

(2) Requests for supplemental money shall be submitted on Grant Request Form DES/SARA-303 as set out in Section 7 of this regulation and, except for due dates, shall be processed in accordance with this section and Sections 3 and 6 of this regulation.

(3) If a local emergency planning committee requests supplemental money the schedule of due dates is:

(a) Thirty (30) days from notification by the Kentucky Emergency Response Commission of the availability of supplemental money, the local emergency planning committee shall submit the supplemental grant request to the State Disaster and Emergency Services Area Coordinator.

(b) Thirty (30) days from receipt of the supplemental grant request, the State Disaster and Emergency Services Area Coordinator shall review the supplemental grant request in accordance with Sections 3 and 6 of this regulation and forward it to the Chairman of the Kentucky Emergency Response Commission, or designee.

(c) Thirty (30) days from receipt of the supplemental grant request, the Chairman of the Kentucky Emergency Response Commission, or designee, shall review the supplemental grant request in accordance with Sections 3 and 6 of this regulation and forward it to the Grant Review Committee.

(d) Forty-five (45) days from receipt of the supplemental grant request, the Grant Review Committee, with a quorum present, shall review the supplemental grant request in accordance with Sections 3 and 6 of this regulation and forward their recommendations to the Kentucky Emergency Response Commission.

(e) Thirty (30) days from receipt of the recommendation of the Grant Review Committee, the Kentucky Emergency Response Commission shall make the supplemental grant award.

Section 6. Requirements for Funding Accountability. (1) Funds provided by the Kentucky Emergency Response Commission shall be deposited in a separate "(Name of County) Emergency Planning Committee Fee Account" and fiscal accountability shall be prescribed by the state auditor of public accounts. All funds shall be subject to audit by the Kentucky Emergency Response Commission and the state auditor of public accounts.

(2) The bylaws of each local emergency planning committee shall identify the position or person who will be responsible for accountability for the funds and who will be listed as the authorized applicant as shown on DES/Sara-303 and shall be submitted simultaneously with the grant request.

(3) The local emergency planning committee shall provide documentation of expenditures for the preceding year on each grant request submitted except for the initial grant request.

(4) Grant awards approved by the Kentucky Emergency Response Commission may be withheld for noncompliance with KRS 39.800 to 39.990 and administrative regulations issued thereunder and for failure to provide required documentation.

(5) All funding allocation decisions shall be made by the Kentucky Emergency Response Commission and shall be dependent upon availability of fees collected.

Section 7. Form DES/SARA-324 and grant request form DES/SARA-303 are set out in this section.

PUBLIC (LEGAL) NOTICE ADVERTISEMENT
_____ COUNTY EMERGENCY PLANNING COMMITTEE

Pursuant to Section 324, Title III of the 1986 Federal Superfund Amendments and Reauthorization Act (SARA) of 1986 (PL 99-499), the following information is provided in compliance with the Community Right-to-Know requirements of the SARA Law, and the open meetings and open records provisions of Kentucky Revised Statutes. Members of the public may contact the (name of county) County Emergency Planning Committee by writing (name of chairman), Chairman of the (name of county) County Emergency Planning Committee, (working address of chairman or committee), (city), Kentucky (zip code), or contacted by telephone at (area code), (telephone number established by the committee). The (name of county) County Emergency Planning Committee conducts meetings at (name of building), (local address), or at other locations, in accordance with the Kentucky Open Meetings Law. Members of the public may request to be notified of regular or special meetings as provided in KRS 61.820 and KRS 61.825. Records of the Planning Committee, including the county emergency response plan, material safety data sheets, and inventory forms, or any follow-up emergency notices as may subsequently be issued, are open for inspection, and members of the public who wish to review these records may do so (normal hours of business), (Eastern or Central Time), (days of the week), at (location of the office or place where custodian keeps the committee files), as required by the Kentucky Open Records Law. The local 24-hour telephone number for purposes of emergency notification, as required by SARA, is (emergency number adopted by county planning committee).

KENTUCKY EMERGENCY RESPONSE COMMISSION FEE ACCOUNT FUND

Grant Application for Grant Period 09/01/9__ to 08/31/9__

DRAFT

DUE DATES
[illegible] to ACs 05/01
[illegible] to State 06/01
[illegible]nal Award 09/15

Received by AC _____ Received by State _____
Reviewed by AC _____ Reviewed by State _____
Initial & date Initial & date

APPLICANT INFORMATION

[illegible]pplicant Name _____ County _____ Date _____

_____ Enter total number of Tab Q-7's with Extremely Hazardous Substances in your county. This is the total number of facilities with extremely hazardous substances in your county.

GRANT INFORMATION

[illegible]rant Amount Requested $_____ Circle Type of Application: LEPC New Revised
State Agency New Revised

GRANT RECIPIENT

[illegible]hecks shall be made payable to and mailed to the AUTHORIZED APPLICANT. THE AUTHORIZED [illegible]PPLICANT is the person authorized to apply for and manage the grant. The AUTHORIZED [illegible]PPLICANT shall be the designated contact person. For LEPCs, the AUTHORIZED APPLICANT [illegible]nd designated contact person will generally be the LEPC Chairperson.

[illegible]lame and Title of Authorized Applicant and Designated Contact Person

[illegible]treet Address

City, Zip and Phone Number

LEPCs shall submit grant request form DES/SARA-303 to their State Disaster and Emergency Services Area Coordinator. All required documentation shall accompany the form. Incomplete grant request forms may delay processing and may result in invalidating the request.

State agencies shall submit grant request form DES/SARA-303 to the Chairman, or designee, of the Kentucky Emergency Response Commission. All required documentation shall accompany the form. Incomplete grant request forms may delay processing and may result in invalidating the request.

CERTIFICATION

I, the undersigned, certify to the Kentucky Emergency Response Commission that all the information is true and accurate. I further represent that the money received under this grant program will be used for the administration, development and implementation of the Kentucky Emergency Planning and Community Right-to-Know program, known as SARA Title III, within the guidelines mandated by P.L. 99-499/Title III, KRS Chapter 39.800 to 39.990 [illegible]d subsequent regulations.

Name, Title and Date

DES/SARA-303
106 KAR 1:090

BUDGET FOR GRANT APPLICATION 09/01/9__ to 08/31/9___

ATTACHMENTS

Detailed budget sheet for each budget category you request
Documentation for preceeding year's award
Copy of published DES/SARA-324
Bylaws

INELIGIBLE ITEMS

Emergency response equipment
Reimbursement for emergency response and/or cleanup of a release
Requests for salaries by LEPCs

DRAFT

BUDGET CATEGORIES	GRANT REQUEST	GRANT AWARD
Right-to-Know responsibilities--includes legal notice DES/SARA-324		
Data Management--includes receiving and maintaining data under 302(c)/KRS 39.845; 304/KRS 39.840(b), 311/312/KRS 39.840(c)		
Telephone--includes 24-hour warning point for releases and cost of telephone for LEPC business		
Services--includes contracts* to support KRS 39.800 to KRS 39.990.		
Office Supplies--includes postage, printing, copying and paper		
File cabinets, desks, chairs		
Commission-approved training		
Commission-approved travel		
TOTAL GRANT REQUEST		
LESS CARRY-OVER MONIES		
ADJUSTED GRANT AWARD		

*Contracts for personal services shall be in conformance with state laws and regulations.

DES/SARA-303
106 KAR 1:090

This is to certify that the Kentucky Emergency Response Commission has recommended that this administrative regulation be adopted.

JAMES H. MOLLOY, Chairman
Kentucky Emergency Response Commission

TEBBS S. MOORE, Brigadier General
APPROVED BY AGENCY: October 9, 1991
FILED WITH LRC: October 11, 1991 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1991, 9 a.m. at Boone National Guard Center, EOC Building Conference Room. Individuals interested in being heard at this hearing shall notify this agency in writing by November 21, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: James H. Molloy, Chairman, Kentucky Emergency Response Commission, Boone National Guard Center, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James H. Molloy
(1) Type and number of entities affected: There are 120 local emergency planning committees (LEPCs) which could request funding through this regulation. LEPCs are extensions of the state commission and administer its programs at the local level.
(a) Direct and indirect costs or savings to those affected: There are no direct costs or savings to apply for a grant. Indirect costs will occur as the LEPCs meet the criteria established in order to become eligible for funding.
1. First year: Indirect costs will occur as the LEPCs meet the established eligibility criteria.
2. Continuing costs or savings: Indirect costs will occur as the LEPCs meet the established eligibility criteria.
3. Additional factors increasing or decreasing costs (note any effects upon competition): No known additional factors will affect costs.
(b) Reporting and paperwork requirements: In order to receive financial assistance the LEPC shall utilize DES/SARA Form 303. This form was designed to provide the commission with appropriate information upon which to consider a grant. The LEPC must annually have published a legal notice on committee activities. DES/SARA Form 324 is designed to provide a convenient, ready format to fulfill this obligation.
(2) Effects on the promulgating administrative body: While the overall burden on the promulgating body will significantly lessen, some staff support will continue; in this case a review of the grant application by staff will be performed to determine if the application is complete and conforms to applicable regulations. Staff will also perform an annual review of the LEPC emergency response plan for completeness and make recommendations to the commission chairman. These functions will be assumed by a dedicated Title III staff when employed.
(a) Direct and indirect costs or savings: There are no direct costs associated with this regulation. Indirect costs include the time spent by staff fulfilling their responsibilities for review and comment.
1. First year: Indirect costs for review and comments will occur.
2. Continuing costs or savings: The indirect cost to the promulgating agency will be an annual one.
3. Additional factors increasing or decreasing costs: There are no known additional factors to affect costs.
(b) Reporting and paperwork requirements: The staff members must receive and review both the LEPC plan and the LEPC grant application. A recommendation or report will be subsequently furnished the commission chairman.
(3) Assessment of anticipated effect on state and local revenues: LEPCs will receive funds to administer commission programs at the local level. The funds will be state revenue generated through program fees.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternate methods were not assessed as the commission was obligated to adopt grant requirements for LEPCs.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting regulations, statutes, or policy.
(a) Necessity of proposed regulation if in conflict: Not in conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not in conflict.
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. This regulation separates the LEPCs into those with facilities reporting extremely hazardous substances and those without such facilities.

DEPARTMENT FOR MILITARY AFFAIRS
Division of Disaster and Emergency Services

106 KAR 1:101. Kentucky emergency response commission fee account grant requirements for state agencies.

RELATES TO: KRS 39.800 to 39.990
STATUTORY AUTHORITY: KRS 39.817
NECESSITY AND FUNCTION: This regulation establishes criteria and procedures to be met by state agencies requesting funds generated by KRS 39.817.

Section 1. Eligibility of State Agencies. State agencies that perform functions to assist the Kentucky Emergency Response Commission in the administration of its programs and activities at the state level are eligible to apply for funding.

Section 2. State Agency Procedures. (1) State agencies may apply for financial assistance by completing Grant Request Form DES/SARA-303 as set out in 106 KAR 1:091 and shall include a

detailed budget identifying how the requested funds are to be spent.

(2) State agencies may request funding for staff to support the commission in the administration of its programs and activities at the state level. If a request for staff is included in the grant request, the state agencies shall attach a position description detailing job duties and an organization chart defining that position within the agency.

(3) The grant request form shall be submitted directly to the Chairman of the Kentucky Emergency Response Commission, or designee, no later than May 1.

(4) The Chairman of the Kentucky Emergency Response Commission, or designee, shall review the grant request form for completeness and conformance to administrative regulations and statutes, note any recommendations and forward it to the Grant Review Committee no later than July 1.

(5) The Grant Review Committee, with a quorum present, shall review all grant requests from state agencies and forward their recommendations no later than August 15 to the Kentucky Emergency Response Commission for final approval.

(6) The Kentucky Emergency Response Commission shall make the grant awards no later than September 15.

(7) The Chairman of the Kentucky Emergency Response Commission, or designee, or the Grant Review Committee may request additional information which shall be provided by the state agency. Failure to provide the requested information shall invalidate the state agency's request for funding.

Section 3. Requests for Modifications. (1) A request for modification of a grant award is required if there is a change in the grant request or if a state agency is unable to expend the funds for which the grant was awarded. A request for modification must be submitted by the state agency for approval by the commission. Unexpended monies shall be returned to the fund.

(2) Requests for modifications of grant awards shall be submitted on Grant Request Form DES/SARA–303 as set out in 106 KAR 1:091 and, except for due dates, shall be processed in accordance with Sections 2 and 4 of this regulation. Requests for modifications may be submitted throughout the grant period.

Section 4. Requirements for Funding Accountability. (1) Funds provided by the Kentucky Emergency Response Commission shall be subject to fiscal accountability prescribed by the state auditor of public accounts. A memorandum of agreement between the state agency making application and the Chairman of the Kentucky Emergency Response Commission shall be executed. All funds shall be subject to audit by the Kentucky Emergency Response Commission and the state auditor of public accounts.

(2) Grant awards approved by the Kentucky Emergency Response Commission may be withheld for noncompliance with KRS 39.800 to 39.990 and administrative regulations issued thereunder and for failure to provide required documentation.

(3) All funding allocation decisions shall be made by the Kentucky Emergency Response Commission and shall be dependent upon availability of fees collected.

This is to certify that the Kentucky Emergency Response Commission has recommended that this administrative regulation be adopted.

JAMES H. MOLLOY, Chairman
Kentucky Emergency Response Commission

TEBBS S. MOORE, Brigadier General
APPROVED BY AGENCY: October 9, 1991
FILED WITH LRC: October 11, 1991 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1991, 9 a.m. at Boone National Guard Center, EOC Building Conference Room. Individuals interested in being heard at this hearing shall notify this agency in writing by November 21, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: James H. Molloy, Chairman, Kentucky Emergency Response Commission, Boone National Guard Center, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James H. Molloy

(1) Type and number of entities affected: This regulation establishes criteria and procedures to be met by state agencies applying to the commission for financial assistance.

(a) Direct and indirect costs or savings to those affected: The state agencies applying for and receiving financial assistance will realize a significant savings to their respective developmental budgets. Presently the state agencies involved with SARA, Title III choose to absorb the costs of this mandated program within existing budgets. With commission funding this will no longer occur.

1. First year: A cost for completing the required application will occur initially.

2. Continuing costs or savings: A cost to the agencies will be saving annually since resources will not divert.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: The state agencies which apply for assistance must complete DES/SARA Form 303 and include a detailed budget.

(2) Effects on the promulgating administrative body: The promulgating body will receive the staff and resources to assist the commission administer state agency grant applications. The funds will originate from the fees remitted, not the existing agency budget. Therefore a cost to the agency will be ongoing.

(a) Direct and indirect costs or savings: Direct costs will accrue to the agency each year to support the fund application process.

1. First year: Direct costs will accrue to the

agency each year to support the fund application process.
2. Continuing costs or savings: Direct costs will accrue to the agency each year to support the fund application process.
3. Additional factors increasing or decreasing costs: No known additional factors will increase or decrease costs.
(b) Reporting and paperwork requirements: Staff will process the fee application paperwork.
(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered as the commission was required to establish grant requirements for state agencies.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies which are duplicative or in conflict.
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering was not applied since requirements must apply equally to all applicants.

DEPARTMENT FOR MILITARY AFFAIRS
Division of Disaster and Emergency Services

106 KAR 1:111. Kentucky emergency response commission fee account grant review committee.

RELATES TO: KRS 39.800 to 39.990
STATUTORY AUTHORITY: KRS 39.817
NECESSITY AND FUNCTION: This regulation establishes the Kentucky Emergency Response Commission Grant Review Committee to review requests for financial assistance.

Section 1. Purpose of the Grant Review Committee. (1) The Grant Review Committee shall review all grant requests from local emergency planning committees and state agencies and make recommendations to the Kentucky Emergency Response Commission.
(2) The Grant Review Committee shall monitor all grant awards to ensure compliance with statutes and administrative regulations.

Section 2. Grant Review Committee Organization. (1) The Grant Review Committee shall consist of not less than five (5) nor more than nine (9) members of the Kentucky Emergency Response Commission who shall be appointed by the Chairman of the Kentucky Emergency Response Commission with approval of the commission.
(2) The chairman of the Grant Review Committee shall be elected by members of the Grant Review Committee.
(3) Members shall serve for a term of one (1) year and may be reappointed.
(4) Proxy votes or proxy membership shall not be permitted.
(5) If a member misses two (2) consecutive meetings, the position shall be considered vacant and the Chairman of the Kentucky Emergency Response Commission, with the approval of the Kentucky Emergency Response Commission, shall appoint a replacement.
(6) A quorum is required for the Grant Review Committee meetings.

This is to certify that the Kentucky Emergency Response Commission has recommended that this administrative regulation be adopted.

JAMES H. MOLLOY, Chairman
Kentucky Emergency Response Commission

TEBBS S. MOORE, Brigadier General
APPROVED BY AGENCY: October 9, 1991
FILED WITH LRC: October 11, 1991 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1991, 9 a.m. at Boone National Guard Center, EOC Building Conference Room. Individuals interested in being heard at this hearing shall notify this agency in writing by November 21, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: James H. Molloy, Chairman, Kentucky Emergency Response Commission, Boone National Guard Center, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James H. Molloy
(1) Type and number of entities affected: This regulation establishes a commission grant review committee to review financial assistance requests from the 120 local emergency planning committees (LEPCs).
(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs.
1. First year: Not applicable.
2. Continuing costs or savings: Not applicable.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Not applicable.
(b) Reporting and paperwork requirements: The commission grant review committee will review grant applications received from LEPCs in order to determine awards.
(2) Effects on the promulgating administrative body: The promulgating body will employ staff dedicated to commission activities. Funding for staff and resources will be provided by the fees submitted. This staff will help process the grant applications.
(a) Direct and indirect costs or savings:
1. First year: These costs could include staff time for department employees not directly tied to the Title III program. Other costs would be incurred for any dedicated Title III staff employed.
2. Continuing costs or savings: Dedicated

Title III staff will continue to support the review process in future years.

3. Additional factors increasing or decreasing costs: No additional factors will increase or decrease cost.

(b) Reporting and paperwork requirements: Staff will process applications in the first year to assist the committee.

(3) Assessment of anticipated effect on state and local revenues: This regulation has no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because a committee to review applications was required by the commission.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are none.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not required since the committee must apply criteria equally to all applicants.

DEPARTMENT FOR MILITARY AFFAIRS
Division of Disaster and Emergency Services

106 KAR 1:121. Kentucky emergency response commission fee account grant distribution formula.

RELATES TO: KRS 39.800 to 39.990

STATUTORY AUTHORITY: KRS 39.817

NECESSITY AND FUNCTION: This regulation establishes administrative support and the grant distribution formula to be used in awarding grants for funds generated by KRS 39.817.

Section 1. Local Emergency Planning Committee Grant Distribution Formula. (1) At least fifty (50) percent of funds collected annually by KRS 39.817 shall be awarded to eligible local emergency planning committees which submit grant requests for administration, development and implementation of the Kentucky Emergency Planning and Community Right-to-Know program, known as SARA Title III, within the guidelines mandated by PL 99-499, Title III, KRS 39.800 to 39.990 and subsequent administrative regulations.

(2) The grant distribution formula to determine how much money will be available to each local emergency planning committee is:

(a) Ten (10) percent of the total amount (A) collected by April 1 divided by 120 local emergency planning committees.

$$\frac{.1(A)}{120 \text{ Local Emergency Planning Committees}}$$

Hypothetical example: $\frac{.1(200,000)}{120} = \$167$

(b) Plus twenty (20) percent of the total amount (A) collected statewide times the ratio of Kentucky Emergency Response Commission – required and approved Tab Q-7s (Qc) in the county to the total Kentucky Emergency Response Commission – approved Tab Q-7s (Qs) in the state.

$$.2(A)\ \frac{Qc}{Qs}$$

Hypothetical example: $.2(200,000)\frac{13}{1,000} = \$520$

(c) Plus twenty (20) percent of the total amount (A) collected statewide times the ratio of fee-generating Tiers (Tc) in the county to the total number of fee generating Tiers (Ts) in the state.

$$.2(A)\ \frac{Tc}{Ts}$$

Hypothetical example:
$.2(200,000)\ \frac{30}{1,000} = \$1200$

(d) Therefore the formula for local emergency planning committee grant (Ga) distribution to determine how much money will be available to each eligible local emergency planning committee is:

$$Ga = \frac{.1(A)}{120 \text{ LEPCs}} + .2(A)\ \frac{Qc}{Qs} + .2(A)\ \frac{Tc}{Ts}$$

(3) The grant (Gr) distribution formula to determine how much money an eligible local emergency planning committee which submits a grant request form may receive is:

$$Gr = \frac{.1(A)}{\text{Total eligible LEPCs}} + .2(A)\ Qc + .2(A)\ \frac{Tc}{Ts}$$

(4) All grant awards shall be based upon the amount of money requested by the eligible local emergency planning committee and the formula shown in this section.

Section 2. Notice of Amount of Availability of Funds to Each Local Emergency Planning Committee. (1) No later than April 1 each year the Kentucky Emergency Response Commission shall notify the local emergency planning committees how much money will be available to each eligible local emergency planning committee which submits a grant request form. This amount shall be based upon the total amount of funds available in the Kentucky Emergency Response Commission fee account divided pursuant to Section 1 of this regulation.

(2) Notification of money available shall not be construed as an automatic grant award to a local emergency planning committee. Each local emergency planning committee who wants an award shall submit a grant request form in accordance with 106 KAR 1:091.

Section 3. State Agency Grant Distribution. No more than fifty (50) percent of funds collected annually by KRS 39.817 shall be allocated by the Kentucky Emergency Response Commission to state agencies other than local emergency planning committees which submit grant requests for administration, development and implementation of the Kentucky Emergency Planning and Community Right-to-Know program, known as SARA Title III, within the guidelines mandated by PL 99-499, Title III, KRS 39.800 to 39.990 and subsequent administrative regulations.

Section 4. Availability of Additional Funds. The Kentucky Emergency Response Commission may set a date and notify all local emergency planning committees and state agencies of the availability of additional funds collected after April 1 or which were returned to the commission during the year. Any additional funds shall be distributed in accordance with Sections 1(1) and 3 of this regulation.

Section 5. Administrative support required by KRS 39.817 shall be provided by the Division of Disaster and Emergency Services.

This is to certify that the Kentucky Emergency Response Commission has recommended that this administrative regulation be adopted.

JAMES H. MOLLOY, Chairman
Kentucky Emergency Response Commission

TEBBS S. MOORE, Brigadier General
APPROVED BY AGENCY: October 9, 1991
FILED WITH LRC: October 11, 1991 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1991, 9 a.m. at Boone National Guard Center, EOC Building Conference Room. Individuals interested in being heard at this hearing shall notify this agency in writing by November 21, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: James H. Molloy, Chairman, Kentucky Emergency Response Commission, Boone National Guard Center, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James H. Molloy
(1) Type and number of entities affected: The commission will utilize this distribution formula to make grant awards. The 120 local emergency planning committees (LEPCs) will receive funding based on this distribution formula.
(a) Direct and indirect costs or savings to those affected: Direct costs will accrue to the commission as dedicated staff performs the administrative tasks required, such as collecting fees, estimating funds available locally, notifying LEPCs of amount estimates, and managing the actual allocation process.
1. First year: Direct costs will be incurred by the commission for the tasks listed in (1)(a).
2. Continuing costs or savings: Direct costs will be incurred by the commission for the tasks listed in (1)(a).
3. Additional factors increasing or decreasing costs (note any effects upon competition): No known additional factors will affect costs.
(b) Reporting and paperwork requirements: Commission staff will process the paperwork/forms associated with the grant application process.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: Direct costs for staff and resources to provide administrative tasks will occur.
1. First year: Direct costs for staff and resources to provide administrative tasks will occur.
2. Continuing costs or savings: Direct costs for staff and resources to provide administrative tasks will occur.
3. Additional factors increasing or decreasing costs: No known additional factors will affect costs.
(b) Reporting and paperwork requirements: Staff will process the required paperwork/forms to administer the grant process.
(3) Assessment of anticipated effect on state and local revenues: This regulation has no affect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered as the commission was compelled to provide a formula for grant distribution.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are none.
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. Tiering was applied in the application to differentiate within the formula those LEPCs whose jurisdictions contain extremely hazardous substance users and those with a greater number of fee-generating facility reports.

DEPARTMENT FOR MILITARY AFFAIRS
Division of Disaster and Emergency Services

106 KAR 1:131. Kentucky emergency response commission civil penalty assessment and hearings procedure.

RELATES TO: KRS 39.800 to 39.990
STATUTORY AUTHORITY: KRS 39.990
NECESSITY AND FUNCTION: This regulation establishes procedures to be followed to assess civil penalties by the Kentucky Emergency Response Commission as provided for in KRS 39.990.

Section 1. General Provisions. (1) Administrative action will be initiated when the commission has notice of a violation, the commission chairman (or his designee) shall mail to the alleged violator a writing styled "NOTICE OF VIOLATION", which shall contain the specific date, time and place for the assessment hearing, the specific provisions of KRS 39.800 to 39.905 or the commission's administrative regulations that were allegedly violated, and shall advise the alleged violator that he may be represented by an attorney at the hearing.
(2) The hearing shall be held in Frankfort,

Kentucky.
(3) All documents filed by any party shall be served by mail, upon all other parties.

Section 2. Assessment Hearing. When a notice of violation has been issued, an administrative hearing shall be held to determine if a violation of the provisions of KRS 39.800 to 39.905 or the commission's administrative regulations have been committed and to determine the amount of the civil fine to be imposed.

Section 3. Designation of a Hearing Officer. The full commission shall designate a hearing officer who shall be a person trained in the law who will serve for the duration of the hearing.

Section 4. Parties. The parties to the proceeding shall be the hearing officer, the commission chairman (or his designee) and the alleged violator who shall be designated respondent, and in any action under this section, any person may intervene when such person has a direct interest which is or may be adversely affected by the action and the disposition of the the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the hearing officer or commission chairman (or his designee) determines the person's interest is adequately represented by existing parties in the action.

Section 5. Continuances. (1) Any party may request a continuance of a scheduled hearing for good cause. The request shall be in writing and include the reason for the request. The request shall be submitted to the commission chairman (or his designee) at least ten (10) days prior to the hearing date.
(2) Any party objecting to a requested continuance may file a written objection to the commission chairman (or his designee) at least five (5) days prior to the scheduled hearing.
(3) The hearing officer shall rule on all requests for a continuance. In the hearing officer's absence, the commission chairman (or his designee) shall rule on such requests. The commission chairman (or his designee) shall execute and transmit an order either granting or denying the continuance to all parties involved.

Section 6. Conduct of Hearing. (1) The designated hearing officer shall conduct the hearing at the date, time and place set out in the notice of violation.
(2) The hearing officer shall be empowered to rule on all questions of law and procedure as well as the appropriate weight to be given to specific testimony or evidence.
(3) The formal rules of civil procedure do not apply.
(4) The hearing officer shall require an orderly hearing with proper decorum and shall be empowered to issue orders compelling discovery, the attendance of witnesses and the production of documents for the purposes of conducting the hearing.
(5) The proceedings and evidence shall be recorded.

Section 7. Exemptions. Any party seeking an exemption or relief from the payment of a fine shall have the burden of persuasion to establish that he qualifies for the exemption.

Section 8. Burden of Proof. The commission chairman (or his designee) shall have the burden of persuasion in establishing a prima facie case. When a prima facie case has been presented to the satisfaction of the hearing officer, the burden of persuasion shall shift to the respondent who shall have the burden of persuasion to rebut the prima facie case.

Section 9. Findings of Fact, Conclusions of Law, and Recommended Order. The hearing officer shall make findings of fact, conclusions of law and recommended order for review and approval by the full commission with service on all parties. Any party may take exception in writing within seven (7) days of receipt of the hearing officer's recommended order. Thereafter, the commission may elect to approve the findings of fact, conclusions of law and recommended order or it may modify the recommended order subject to the requirements of KRS Chapter 39.

Section 10. Service shall be made by mailing the alleged violator the notice of violation to the address shown on the annual inventory reporting forms required to be filed by KRS Chapter 39.

This is to certify that the Kentucky Emergency Response Commission has recommended that this administrative regulation be adopted.

JAMES H. MOLLOY, Chairman
Kentucky Emergency Response Commission

TEBBS S. MOORE, Brigadier General
APPROVED BY AGENCY: October 9, 1991
FILED WITH LRC: October 11, 1991 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1991, 9 a.m. at Boone National Guard Center, EOC Building Conference Room. Individuals interested in being heard at this hearing shall notify this agency in writing by November 21, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: James H. Molloy, Chairman, Kentucky Emergency Response Commission, Boone National Guard Center, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James H. Molloy
(1) Type and number of entities affected: This regulation applies to the owners/operators of all facilities required to report under auspices of the SARA, Title III Act. These facilities are those using, storing, or manufacturing hazardous chemicals in excess of certain amounts.
(a) Direct and indirect costs or savings to those affected: A direct cost to those cited for

an alleged violation will include the legal and administrative fees necessary to prepare a proper response. Also, a fine may be assessed for those found to be in violation.

1. First year: Costs will occur as each alleged violation is identified.

2. Continuing costs or savings: Costs will occur as each alleged violation is identified.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors have been identified which may increase or decrease costs.

(b) Reporting and paperwork requirements: Paperwork will be required as part of the overall hearing procedures process.

(2) Effects on the promulgating administrative body: The promulgator will administratively support the process through which the commission reviews and examines each case.

(a) Direct and indirect costs or savings: Indirect costs for this administrative function will accrue.

1. First year: Indirect costs will occur as each violation is identified and the hearing process undertaken.

2. Continuing costs or savings: Indirect costs will occur as each violation is identified and the hearing process undertaken.

3. Additional factors increasing or decreasing costs: No additional factors have been identified which may increase or decrease costs.

(b) Reporting and paperwork requirements: The paperwork necessary to support the process will be completed.

(3) Assessment of anticipated effect on state and local revenues: Fines assessed against a violator will increase state revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statutes provide an alternative to this civil hearing procedure. KRS 39.900 provides criminal penalties for violators.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes or regulations.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not applied as the process must apply to alleged violators in an equal manner.

DEPARTMENT OF LOCAL GOVERNMENT

109 KAR 13:010. Uniform financial information report.

RELATES TO: KRS 65.900 to 65.925

STATUTORY AUTHORITY: KRS 65.905

NECESSITY AND FUNCTION: KRS 65.906 requires the Department of Local Government to prescribe the format of the uniform financial information report. This administrative regulation prescribes the format that shall be used for the report. This administrative regulation also describes the mechanism for initiating the penalty provisions of KRS 65.920 for failure to submit the report annually.

Section 1. (1) The County Uniform Financial Information Report, Fiscal Year 1990-91, form F-65 (KY-2), dated August 7, 1991, is hereby incorporated by reference.

(2) The City Uniform Financial Information Report, Fiscal Year 1990-91, form F-65 (KY-3), dated August 1, 1991, is hereby incorporated by reference.

(3) The Special Taxing Districts Uniform Financial Information Report, Fiscal Year 1990-91, form F-65 (KY-5), dated September 3, 1991, is hereby incorporated by reference.

(4) The appropriate form will be provided to each county, city, and special district by the Department of Local Government. Other interested parties may inspect and obtain copies of the forms at the offices of the Department of Local Government, 1024 Capital Center Drive, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Section 2. (1) Each county, city and special district which has not completed and submitted a uniform financial information report to the Department of Local Government by February 1 of each year shall be notified by mail of its noncompliance. The notice to a county or city shall also advise it of the possible suspension of its road aid moneys pursuant to KRS 65.920. A list of all noncomplying counties, cities and special districts shall be sent to the Legislative Research Commission, the Kentucky League of Cities, the Kentucky Association of Counties, area development districts, and such other state agencies which may have an interest.

(2) Each county and city which has not completed and submitted a uniform financial information report by March 1 of each year shall be notified by mail of the suspension of its road aid moneys pursuant to KRS 65.920. A list of all noncomplying counties, cities and special districts shall be sent to the Legislative Research Commission, the Kentucky League of Cities, the Kentucky Association of Counties, area development districts, and such other state agencies which may have an interest. Specific notice shall be sent to the Transportation Cabinet and the Finance and Administration Cabinet to suspend payments of road aid moneys to the listed counties and cities.

(3) Each county, city and special district which submits an incomplete or incorrect report shall be notified in writing and shall be given thirty (30) days to complete or correct the report.

(4) The Department of Local Government shall notify the Transportation Cabinet and the Finance and Administration Cabinet to resume payment of road aid moneys upon submission of a complete and correct report by the affected county or city.

LEE TROUTWINE, Commissioner

APPROVED BY AGENCY: October 3, 1991

FILED WITH LRC: October 3, 1991 at 2 p.m.

PUBLIC HEARING:A public hearing on this administrative regulation shall be held on November 21, 1991, at 2 p.m. at Department of Local Government Conference Room. Individuals in being heard at this hearing shall notify this agency in writing by November 16, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open

to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gene Stinchcomb, Department of Local Government, 1024 Capital Center Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gene Stinchcomb
(1) Type and number of entities affected: 119 counties, 436 cities, 574 special taxing districts.
(a) Direct and indirect costs or savings to those affected:
1. First year: $500 cost if CPA is hired to complete the form, otherwise local administrative personnel may complete the form.
2. Continuing costs or savings: $500 costs - (Same as #1).
3. Additional factors increasing or decreasing costs (note any effects upon competition): This is a new project mandated by KRS 65.900.
(b) Reporting and paperwork requirements: Uniform Financial Information Report must be completed each year. Replaces KY-3, KY-4, KY-5 U.S. Bureau of Census Forms.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Direct and indirect costs or savings: $113,800 provided in 1991-92 budget for 4 additional personnel and computer equipment.
2. Continuing costs or savings: Continued personnel cost and additional computer costs.
3. Additional factors increasing or decreasing costs: Additional computer equipment for data base development and support.
(b) Reporting and paperwork requirements: Paper copies of reports to be filed with each county clerk and LRC. Electronic transfer of data base to LRC.
(3) Assessment of anticipated effect on state and local revenues: No impact on revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Forms required by statute. Future use of electronic transfer rather than paper forms to be evaluated as DLG and local agencies become more familiar with computers.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. KRS 65.900 specifically requires all local taxing units to report in a uniform manner.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___ (If yes, complete questions 2-4)
2. State what unit, part or division of local government this administrative regulation will affect. General government.
3. State the aspect or service of local government to which this administrative regulation relates. Financial accounting.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-): No change.
Expenditures (+/-): +$500.
Other Explanation: Costs are based on an average charge by a CPA to complete the UFIR. Larger local governments may experience a higher cost. Some local governments may complete the form themselves without assistance from a CPA.

FINANCE AND ADMINISTRATION CABINET

200 KAR 5:076. Small and small minority business set asides.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.665, 45A.670
NECESSITY AND FUNCTION: KRS 45A.670 provides for the Finance and Administration Cabinet to promulgate regulations defining standards regarding the classifications and definitions for small and small minority business as they relate to KRS 45A.665 to 45A.685. This regulation also replaces and repeals 200 KAR 5:075 pertaining to small and small minority business set asides.

Section 1. Definitions. (1) "Small business" for purposes of purchasing commodities and services, except construction services, is a business, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on state contracts and employs not more than 100 employees.
(2) "Small business" for the purposes of purchasing contractual services for capital construction projects, is a business, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on state contracts and shall further qualify under the following criteria:
(a) Single or limited trade projects: the bidding firm shall not employ more that fifteen (15) full-time employees and shall not have gross receipts for the past year of more that $200,000.
(b) Multitrade projects: the bidding firm shall not employ more than thirty (30) full-time employees and shall not have gross receipts for the past year of more than $600,000.
(3) "Small minority business" for the purposes of purchasing commodities and services, and contractual services for capital projects shall, be a business, which, in addition to meeting the criteria established for a small business under this regulation for the respective area of purchasing activity, is owned and operated by fifty-one (51) percent or more females or persons of African American, Hispanic, Asian,

Pacific Islander, American Indian or Alaskan native heritage.

Section 2. Capital Construction Projects. Highly technical and single source projects are exempt from the small business and small minority business set aside designation regardless of costs. Single or limited trade projects estimated to cost $10,000 or less, and multitrade projects estimated to cost $25,000 or less, shall be eligible to be designated as small business and small minority business set asides provided the bidder meets the criteria established in Section 1 of this regulation.

Section 3. Certification. The bidder submitting a bid in response to an invitation designated as a small business or small minority business set aside shall certify as a part of his bid, to the purchasing agency, that his firm is a small business or small minority business meeting all of the criteria established under this regulation. The bidder shall supply any information requested by the purchasing agency for the purpose of verifying the bidder's eligibility for the set aside designation.

Section 4. 200 KAR 5:075, Small business classifications and definitions, is hereby repealed.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 30, 1991
FILED WITH LRC: October 1, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made at cost to the requesting party. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III
(1) Type and number of entities affected: This regulation will affect all state agencies purchasing commodities and services, including construction services.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: This amendment will not change the reporting requirements of state agencies as it pertains to the set aside program.
(2) Effects on the promulgating administrative body: No effects, since this regulation is very similar to the provisions of existing regulation 200 KAR 5:075, which is being repealed by this regulation.
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No change in reporting or paperwork requirements by the Finance and Administration Cabinet.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method considered since mandated by KRS 45A.665 and 45A.670.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None, since repealing 200 KAR 5:075.
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. This regulation was narrowly tailored to apply only to state agencies purchasing goods and services under KRS Chapter 45A.

FINANCE AND ADMINISTRATION CABINET

200 KAR 6:011. Repeal of Finance and Administration Cabinet Regulations.

RELATES TO: KRS Chapters 45A, 61
STATUTORY AUTHORITY: KRS 45A.045, 61.490
NECESSITY AND FUNCTION: 200 KAR 5:300, 200 KAR 5:303, 200 KAR 5:308, 200 KAR 5:314, 200 KAR 5:316, and 200 KAR 6:010, are being repealed because the substance of these regulations are duplicative of provisions of KRS Chapter 45A or are contained in the Finance and Administration Cabinet's Manual of Policies and Procedures, which is incorporated by reference as an administrative regulation pursuant to 200 KAR 5:020. 200 KAR 13:010 is being repealed due to changes which have been made in the federal law governing Social Security reporting requirements by state agencies making the provisions of this regulation obsolete by enactment of the Omnibus Budget Reconciliation Act of 1990 (PL 101-508).

Section 1. 200 KAR 5:300, Distribution of procurement activities and functions, is hereby repealed.

Section 2. 200 KAR 5:303, Written procurement determination, is hereby repealed.

Section 3. 200 KAR 5:308, Small purchase procedures, is hereby repealed.

Section 4. 200 KAR 5:314, General food and perishable items purchasing, is hereby repealed.

Section 5. 200 KAR 5:316, Works of art, is hereby repealed.

Section 6. 200 KAR 6:010, Personal property inventories, is hereby repealed.

Section 7. 200 KAR 13:010, Social Security reports, is hereby repealed

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 30, 1991
FILED WITH LRC: October 1, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made at cost to the requesting party. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III
(1) Type and number of entities affected: This regulation repeals various purchasing regulations, which duplicate the provisions of KRS Chapter 45A or are contained in the Finance and Administration Cabinet's Manual of Policies and Procedures which is incorporated by reference as an administrative regulation pursuant to 200 KAR 5:020. 200 KAR 13:010 is being repealed due to changes in the federal law governing Social Security reporting requirements by state agencies, making the provisions of this regulation obsolete. The repeal of these regulations will have little or no effect on state agencies.
(a) Direct and indirect costs or savings to those affected:
1. First year: No direct or indirect costs or savings to state agencies will result from the repeal of the subject regulations.
2. Continuing costs or savings: See previous response.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs as a result of the repeal of these regulations.
(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of the repealing of these regulations.
(2) Effects on the promulgating administrative body: There will be no effects on the Finance and Administration Cabinet.
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: There will be no change in the Finance and Administration Cabinet's reporting and paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: The repeal of the subject regulations will have no effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: There is no alternative method for repealing regulations under KRS Chapter 13A.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 200 KAR 6:011 does not conflict, overlap or duplicate any state or federal statute or regulation or any governmental policy.
(a) Necessity of proposed regulation if in conflict: See previous answer.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. The provisions of 200 KAR 6:011 have been closely tailored to only repeal those regulations under the authority and jurisdiction of the Finance and Administration Cabinet.

FINANCE AND ADMINISTRATION CABINET
Board of Examiners and Registration of Landscape Architects

201 KAR 10:080. Continuing education.

RELATES TO: KRS 323A.210
STATUTORY AUTHORITY: KRS 323A.210(2)(a), (b)
NECESSITY AND FUNCTION: KRS 323A.210(2)(a) empowers the board to adopt such rules and regulations as are necessary to establish a program of continuing education for registrants under this chapter. This proposed regulation is intended to establish those rules and regulations.

Section 1. General Statement. Each in-state and out-of-state registrant shall be required to meet the continuing education requirements of these regulations for professional development as a condition for registration renewal. Continuing education obtained by a registrant should maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge.

Section 2. Definitions. (1) Contact (clock) hour - not less than fifty (50) minutes of instructions.
(2) Sponsor - an individual, organization, association institution, or other entity which provides an educational activity for the purpose of fulfilling the continuing education requirements of these guidelines.
(3) Annual - a twelve (12) month period beginning July 1 of a given year and extending to June 30 of the following year.
(4) Board - the legal state entity having jurisdiction to register, licensee or institute

legal proceedings against a license for the practice of landscape architecture and as defined in KRS Chapter 323A.

(5) UNE - Uniform National Exam.

(6) Committee - the Professional Development Review Committee.

(7) Continuing education unit (CEU) - ten (10) contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction and qualified instruction as approved by the "Council on the Continuing Education Unit".

Section 3. Professional Development Education Requirements. To demonstrate that a licensed landscape architect maintains an acceptable level of competency, a licensee must meet the continuing education requirements as prescribed by the board for each year of registration. The requirements must be obtained and documented to the board prior to the time of licensure renewal. The following are the continuing education requirements as prescribed by the board:

(1) Eight (8) contact hours of continuing education must be obtained between November 1990 and June 30, 1992.

(2) Ten (10) contact hours of continuing education must be obtained between July 1, 1992 and June 30, 1993.

(3) Twelve (12) contact hours of continuing education must be obtained between July 1,1993 and June 30, 1994.

(4) Fifteen (15) contact hours of continuing education must be obtained between July 1, 1994 and June 30, 1995.

(5) A total of fifteen (15) continuing education hours must be obtained by each licensed landscape architect each year after 1995. Continuing education hours may be carried over for a maximum of one (1) year to apply to the subsequent year's requirements.

Section 4. Professional Development Committee. (1) The board shall form a Professional Development Review committee and provide guidelines for its operation. The committee shall be composed of five (5) registered professional landscape architects. At least one (1) board member shall be a member of the Professional Development Review committee.

(2) Members shall be appointed by the board and serve a term of office for two (2) years.

(3) Members shall be appointed in staggered terms with three (3) members being appointed in one (1) year and two (2) members being appointed the following year.

(4) The board shall appoint a chairman and a secretary at the first meeting of every calendar year to serve a one (1) year period.

(5) The secretary shall keep minutes of the meeting to document all transactions of the committee and shall submit a report to the Board.

(6) The committee shall meet at least once per quarter of a year or when called to order by the chairman.

(7) Duties of the committee shall be to review and approve all sponsors and programs as being relevant to the practice of landscape architecture. Further, the committee shall establish the methods for documentation needed to fulfill continuing education credits for licensing.

Section 5. Approval of Educational Programs. (1) The sponsor or attendee shall submit to the committee documents or other materials for evaluation. The committee shall approve those activities which will further the competence of a licensee and determine the number of contact hours allowed.

(2) The conversion to contact hours from other units is as follows:

(a) One (1) continuing education unit (CEU) - ten (10) contact hours.

(b) One (1) university quarter hour of credit - thirty (30) contact hours.

(c) One (1) university semester hour of credit - forty-five (45) contact hours.

Section 6. Professional Development Requirement. Continuing education activities which satisfy the professional development requirement shall include, but not be limited to, college and university courses, activities which awarded continuing education units (CEU's) and those portions of technical meetings, seminars, or other courses which are related to landscape architectural practice or management as approved by the Professional Development Review Committee. Landscape architects teaching a continuing education program shall be given contact hours equal to the time spent teaching the program. Continuing education contact hours less than one (1) hour will not be counted as credit towards the annual continuing education requirements. Although, partial hours in increments of one-half (1/2) of an hour above one (1) hour will be acceptable. In addition, travel and self-directed study are acceptable with prior approval of the Professional Development Review Committee and the board.

Section 7. Certificate of Completion. A sponsor shall provide each participant, within thirty (30) days after completion, a certificate of completion form as provided by the committee. The form shall state the participant's full name, and the number of contact hours authorized by the committee for that sponsor's program. If a sponsor does not provide a certificate of completion, the participant must obtain an affidavit for their attendance from the board and the affidavit must be properly completed so that credit for participation can be obtained. The certificate of completion or affidavit of completion must be filed with the board in order to obtain the continuing education credit. Failure by a registrant to submit a truthful and accurate affidavit may result in revocation of a registrant's license. The board will maintain all records of continuing education.

Section 8. Reciprocity. Continuing education reciprocity may be granted from a registrant's resident state.

(1) If a registrant does not reside in the state, and is registered in another state having continuing education requirement equal to, or more stringent to these requirements, and the registrant meets all other requirements of that state or district to maintain registration. The state shall certify to the board that their continuing education requirements are equal to or more stringent and shall certify that the registrant has met their requirements for the current renewal period.

(2) Should the required number of contact hours required for continuing education of a

registrant's resident state be less that those required by the board, contact hours obtained in the registrant's resident state may be credited against the contact hours required by the board.

Section 9. Exempt Registrant. A registrant may make a formal request in writing to the board that he may be granted exempt status. The board shall respond in writing sixty (60) days after the receipt to the registrant's request. An individual on said status shall be exempt from the requirements of this section during this period. The registrant shall not be allowed to use the title, "landscape architect," or to practice landscape architecture in the state during this time. The board shall update and make available for public inspection a list naming all exempt registrants. A registrant, if on exempt status for five (5) or more years, shall be classified as lapsed, and his license will be suspended and the board may proceed with a hearing for revocation or suspension of a registrant's license.

Section 10. Reinstatement to Active Registration. A registrant who wishes to reinstate a registration may be required as determined by the board to satisfy one (1) of the following requirements:

(1) Complete all the continuing education requirements multiplied by the number of years of exempt status.

(2) Complete the Uniform National Examination within one (1) year immediately prior to application for reinstatement.

Section 11. Exemption. A registrant may be exempt from the professional development educational requirements for one (1) of the following reasons:

(1) New registrants by way of UNE shall be exempt for their first renewal period.

(2) If a registrant is employed as a landscape architect and is employed or assigned to duty outside the United States for a period of time exceeding 120 consecutive days in a calendar year, he shall be exempt from the fifteen (15) contact hours required during that renewal period.

(3) Due to physical disability, illnesses, hardships, or other extenuating circumstances as reviewed and approved by the board. The board may request supporting documentation.

Section 12. Disciplinary Action. Failure of a registrant to satisfy the continuing education requirement for registration renewal may be cause to deny license renewal for the licensee.

Section 13. Noncompliance. A registrant who does not satisfy the continuing education requirement for registration renewal shall be suspended, and the registrant so notified following the renewal date. The registrant must comply with the continuing education requirements of the prior year within six (6) months following the renewal date or the board may proceed with a hearing for revocation of a registrant's license. The contact hours needed to fulfill the prior annual period requirement shall not be included in computing the subsequent renewal period.

MARK E. HORMAN, President
APPROVED BY AGENCY: August 6, 1991

FILED WITH LRC: October 14, 1991 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation, 201 KAR 10:080, shall be held November 25, 1991 at 1:30 p.m., at the office of the board, The Kentucky Engineering Center, 160 Democrat Drive, Frankfort, KY 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 20, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation amendment. A transcript of the hearing will not be made unless a written request for a transcript is requested. If you do not wish to attend the public hearing, you may submit written comments on the proposed amendment. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation amendment to: Larry S. Perkins, Executive Director, Kentucky State Board Examiners and Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry S. Perkins

(1) Type and number of entities affected: Approximately 250.

(a) Direct and indirect costs or savings to those affected:

1. First year: Minimal costs each year. Registrants will have some costs for classwork, however, this may be offset by deduction from income tax.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Registrants will be required to file with the board statements of attendance at CE seminars, etc.

(2) Effects on the promulgating administrative body: The board will maintain record of attendance.

(a) Direct and indirect costs or savings: Minimal costs because of low number of registrants.

1. First year: Same

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Most of recordkeeping will be done on computer.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No.
All registrants are treated equally.

CABINET FOR HUMAN RESOURCES
Office of Inspector General

900 KAR 2:050. Transfer and discharge rights.

RELATES TO: KRS 194.030(12)(b)
STATUTORY AUTHORITY: KRS 216.515, 216.525, 216.557, 216.560, 42 CFR 483.12
NECESSITY AND FUNCTION: 42 CFR 483.12 requires that the state shall have in effect a fair and impartial decision making process for appeals related to involuntary transfer and discharge. This regulation sets forth guidelines for this process for long-term care facilities as licensed by 902 KAR 20:300 or those long-term care facilities certified in accordance with 42 CFR 483. This regulation sets forth the requirements of the Kentucky Nursing Home Reform Act as it relates to residents' transfer and discharge rights.

Section 1. Definitions. (1) "Discharge" means movement from a facility to a noninstitutional setting when the discharging facility provides notice in accordance with this regulation that it intends to cease to be legally responsible for the care of the resident.

(2) "Facility" means a long-term care facility as defined by KRS 216.510(1) excluding those facilities licensed as family care homes.

(3) "Resident" means a resident of a facility or any legal representative or individual acting on behalf of the resident.

(4) "Transfer" means movement from a specific licensed long-term care facility to another health care facility when the legal responsibility for the care of the resident changes from the transferring facility to the receiving facility. A transfer shall only be effective, and the transferring facility's responsibility for the resident shall end, after the receiving facility accepts legal responsibility for the care of the resident.

(5) "Transfer or discharge rights" means those rights of notification and appeal guaranteed in KRS 216.515 and outlined in this regulation.

Section 2. Transfer and Discharge Rights. (1) Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility; or

(b) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility; or

(c) The safety of individuals in the facility is endangered; or

(d) The health of individuals in the facility would otherwise be endangered; or

(e) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or state supplementation) a stay at the facility; or

(f) The facility ceases to operate.

(2) Documentation. Before a facility transfers or discharges a resident under any of the circumstances specified in subsection (1)(a) or (e) of this section, the reasons for this transfer or discharge shall be documented in the resident's record. The documentation shall be made by:

(a) The resident's physician when transfer or discharge is necessary under subsection (1)(a) or (b) of this section; and

(b) A physician when transfer or discharge is necessary under subsection (1)(d) of this section.

(3) Notice before transfer. Before a facility transfers or discharges a resident, the facility shall:

(a) Notify the resident and, if known, a family member or legal representative of the resident, in writing, of the transfer or discharge and the reasons;

(b) Record the reasons in the resident's clinical record; and

(c) Include in the notice the items described in subsection (5) of this section.

(4) Timing of the notice.

(a) Except when specified in paragraph (b) of this subsection, the notice of transfer or discharge required under subsection (3) of this section shall be made by the facility at least thirty (30) days before the resident is transferred or discharged.

(b) Notice may be made as soon as practicable before transfer or discharge when:

1. An immediate transfer or discharge is required by the resident's urgent medical needs, under subsection (1)(b) of this section; or

2. The resident's health improves sufficiently to allow a more immediate transfer or discharge, under subsection (1)(a) of this section; or

3. The safety of individuals in the facility would be endangered, under subsection (1)(c) of this section; or

4. The health of individuals in the facility would be endangered, under subsection (1)(d) of this section; or

5. The resident has not resided in the facility for thirty (30) days.

(5) Contents of the notice. The written notice specified in subsection (3) of this section shall include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location to which the resident is transferred or discharged;

(d) A statement that the resident has the right to appeal the action to the cabinet;

(e) The name, address and telephone number of the state long-term care ombudsman; and

(f) For nursing facility residents with developmental disabilities, or who are mentally ill, the mailing address and telephone number of the Department of Public Advocacy.

(6) Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(7) Notice of bed-hold policy and readmission.

(a) Notice before transfer. Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility shall provide written information to the resident and a family member or legal representative that specifies:

1. That for residents receiving Medicare or Medicaid, that if available under the Medicaid state plan and provider agreement bed-hold days will be requested and the duration to the bed-hold policy under the Medicaid state plan during which the resident is permitted to return and resume residence in the facility; and

2. The facility's policies regarding bed-hold

periods, which must be consistent with paragraph (c) of this subsection, permitting a resident to return.

(b) Notice upon transfer. At the time of transfer of a resident to a hospital or for therapeutic leave, a long-term care facility shall provide written notice to the resident and a family member or legal representative, which specifies the duration of the bed-hold policy described in paragraph (a) of this subsection.

(c) Permitting resident to return to facility. A long-term care facility shall establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period under the Medicaid state plan, is readmitted to the facility immediately upon the first availability of a bed in a semiprivate room if the resident:

1. Requires the services provided by the facility; and

2. Is eligible for Medicaid or Medicare nursing facility services and the facility is certified to participate in Title XVIII or Title XIX of the Social Security Act.

(3) Equal access to quality care. A facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of service under the Medicaid state plan for all individuals regardless of source of payment.

Section 3. Appeals Rights. (1) A resident may appeal any discharge.

(2) A resident may appeal a transfer when he is transferred from:

(a) A certified bed into a noncertified bed; or

(b) A bed in a certified entity to a bed in an entity which is certified as a different provider.

(3) A resident has no appeal rights when he is moved from a certified bed into another certified bed of the same certification in the same facility.

(4) A resident, or any person acting on behalf of the resident, may request that the cabinet review any proposed transfer or discharge. The cabinet shall investigate this transfer or discharge to ascertain whether there has been a violation of the resident's transfer or discharge rights. If the cabinet finds that a violation of the resident's transfer or discharge rights has occurred, the cabinet shall issue a Type B citation and fine the facility $500 per day for any day or portion of a day that the resident is not in the facility due to an actual or attempted transfer or discharge, except for those days a resident requires acute care. The fine shall end when the resident is readmitted, refuses readmission or for health or other reasons cannot be readmitted.

(5) A resident may appeal any discharge or appealable transfer to the cabinet. The resident must inform the cabinet in writing of his intent to appeal within ten (10) days from the resident's receipt of notice of the facility's intent to transfer or discharge. Hearing procedures for appeals are set forth at 900 KAR 2:060.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 14, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander/David Crane/Ralph Von Derau

(1) Type and number of entities affected: Approximately 500 long-term care facilities.

(a) Direct and indirect costs or savings to those affected:

1. First year: Minimal administrative costs.

2. Continuing costs or savings: Administrative costs.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors.

(b) Reporting and paperwork requirements: Notice requirements will increase paperwork.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $500 for reproductions of regulation.

2. Continuing costs or savings: No continuing costs since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No addition factors.

(b) Reporting and paperwork requirements: Additional paperwork will be necessitated for all long-term care facilities.

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The regulation and the areas it covers is necessary by 42 CFR.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 42 CFR 483.12 overlaps state requirements.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. This regulation sets forth standards as they relate to federal certification requirements and Kentucky's Nursing Home Reform statutes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CRF part 483.

2. State compliance standards. 902 KAR 20:310 - Facility specifications; nursing facilities. 902 KAR 20:300 - Operation and services; nursing facilities.

3. Minimum or uniform standards contained in the federal mandate. Federal standards require that the state have in place an appeals procedure for those individuals who feel that their transfer and discharge rights have bee violated. This regulation sets forth those rights as described in the federal certification

standards for nursing facilities. Specific provisions for the conduct of administrative hearings into these matters are provided for in 900 KAR 2:060. Hearings concerning transfer and discharge rights.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. While this regulation mirrors the federal standards, additional providers beyond the federal mandate are included under the authority of the Kentucky Nursing Home Reform statutes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. All long-term care facilities must meet state requirements as they relate to Kentucky Nursing Home Reform. This law provides for transfer and discharge rights and this regulation sets forth the standards for all long-term care facilities.

CABINET FOR HUMAN RESOURCES
Office of Inspector General

900 KAR 2:060. Hearings concerning transfer and discharge rights.

RELATES TO: KRS 194.030(12)(b)

STATUTORY AUTHORITY: KRS 216.515, 216.525, 216.557, 216.560, 216.567, 42 CFR 483.12

NECESSITY AND FUNCTION: 42 CFR 483.12 requires that the state shall have in place a fair and impartial decision-making process for appeals related to involuntary transfer and discharge. This regulation sets forth guidelines for this process for long-term care facilities as licensed by 902 KAR 20:300 or those long-term care facilities certified in accordance with 42 CFR 483. This regulation sets forth the hearing process for appeals related to residents' transfer and discharge rights under Kentucky's Nursing Home Reform statutes and regulations.

Section 1. Definitions. (1) "Facility" means a long-term care facility as defined by KRS 216.510(1) excluding those facilities licensed as family care homes.

(2) "Hearing officer" means the person designated by the cabinet to conduct a hearing and make a decision regarding any appealed transfer or discharge.

(3) "Resident" means a resident of a facility or any legal representative or individual acting on behalf of the resident.

Section 3. Hearing Procedure. (1) Upon receipt of notice of appeal in accordance with 900 KAR 2:050 or 900 KAR 2:020, Section 2(1) and (2), the secretary of the cabinet shall appoint a hearing officer.

(2) Notice of hearing shall be mailed to the facility and resident not less than ten (10) days prior to the commencement of the hearing. The notice of hearing shall contain the reasons, time, and place of the hearing. The notice of hearing shall be mailed by certified mail, return receipt requested, to the facility and the resident.

(3) The facility and the resident may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions of witnesses who, in his opinion, for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.

(4) All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript.

(5) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

(6) The hearing officer shall make a determination as to whether the resident's transfer or discharge rights, as set forth in 900 KAR 2:050, have been violated. If the hearing officer agrees with the findings of the cabinet that the facility violated the resident's transfer or discharge rights and the imposed fine, this fine shall continue until such time as the resident is readmitted, refuses readmission, or for health or other reasons cannot be readmitted to the facility. If the hearing officer finds that the facility has violated the resident's transfer or discharge rights and the cabinet has not made a similar finding, the facility shall be fined $500 per day from the date of the hearing officer's finding until the resident is readmitted, refuses readmission or for the health or other reasons cannot be readmitted to the facility. If the hearing officer finds that no violation has occurred, any fine imposed by the cabinet shall be voided.

(7) The hearing shall be the only hearing as it relates to cabinet findings regarding fines, citations and cited deficiencies concerning transfer and discharge rights under this or any licensure regulations.

(8) The hearing officer's decision shall be the final determination of the cabinet. The cabinet shall forward the decision to the resident and facility within ten (10) days of the receipt of the hearing officer's decision.

(9) No hearing officer shall participate in any hearing involving a facility with which he has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, fiduciary, contractual creditor or consultative relationship or any familial relation to the resident.

(10) A judicial review may be accorded the resident or facility as specified the KRS 216.570.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: October 14, 1991

FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran,

Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander/David Crane/Ralph Von Derau
(1) Type and number of entities affected: Approximately 500 long-term care facilities.
(a) Direct and indirect costs or savings to those affected:
1. First year: No direct costs, but it is impossible to determine potential indirect costs that may include legal costs.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Legal paperwork will become necessary should the hearing process be used.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $500 for reproduction of regulation.
2. Continuing costs or savings: Legal costs associated with hearings will be incurred.
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Legal paperwork will become necessary should the hearing process be used.
(3) Assessment of anticipated effect on state and local revenues: Impossible to determine frequency of hearings or their costs.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This resolution is necessary due to 42 CFR 483.12.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None exists.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. This regulation sets forth standards as they relate to federal certification requirements and Kentucky's Nursing Home Reform statutes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CRF part 483.
2. State compliance standards. 902 KAR 20:310 - Facility specifications; nursing facilities. 902 KAR 20:300 - Operation and services; nursing facilities.
3. Minimum or uniform standards contained in the federal mandate. Federal standards require that the state have in place an appeals procedure for those individuals who feel that their transfer and discharge rights have been violated. 900 KAR 2:050 sets forth those rights as described in the federal certification standards for nursing facilities. Specific provisions for the conduct of administrative hearings into these matters are provided for in in this regulation.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. While this regulation mirrors the federal standards, additional providers beyond the federal mandate are included under the authority of the Kentucky Nursing Home Reform statutes.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. All long-term care facilities must meet state requirements as they relate to Kentucky Nursing Home Reform. This law provides for transfer and discharge rights and this regulation sets forth the standards for all long-term care facilities.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 13:101. Repeal of 902 KAR 13:100.

RELATES TO: KRS 211.964
STATUTORY AUTHORITY: KRS 211.964
NECESSITY AND FUNCTION: 902 KAR 13:100 was promulgated to provide an emergency certification extension period for emergency medical technicians whose certifications were due to expire between July 1, 1984 and December 31, 1985. The certification period was extended to give these emergency medical technicians time to comply with certification requirements of KRS 211.964 which were amended by 1984 House Bill 493. The extension period expired December 31, 1985 and 902 KAR 13:100 is no longer needed.

Section 1. 902 KAR 13:100, Emergency extension of certifications, is hereby repealed.

C. HERNANDEZ, M.D., M.P.H., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert P. Calhoun
(1) Type and number of entities affected: No entities will be affected. This proposed administrative regulation repeals 902 KAR 13:100

which provided for an extension period that has expired.

(a) Direct and indirect costs or savings to those affected: No entities affected.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: This proposed administrative regulation repeals 902 KAR 13:100. There are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This proposed administrative regulation repeals 902 KAR 13:100. There will be no effects on the promulgating administrative body.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: This proposed administrative regulation repeals 902 KAR 13:100. There are no reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation repeals 902 KAR 13:100. There will be no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This proposed administrative regulation repeals 902 KAR 13:100. No alternatives were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This proposed administrative regulation does not conflict, overlap, or duplicate any statute administrative regulation or government policy.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering is not appropriate since this proposed administrative regulation repeals 902 KAR 13:100 which provided and extension period that has expired.

CABINET FOR HUMAN RESOURCES
Office of Inspector General

902 KAR 20:340. Withholding or withdrawal of life-prolonging treatment from patients of health care facilities.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990, 311.622 to 311.644, 311.970 to 311.978, 311.990

STATUTORY AUTHORITY: KRS 194.030(12)(b), 216B.042, 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 mandates that the Cabinet for Human Resources regulate health facilities and health services. This regulation relates to the licensure standards for health care facilities to provide clarification and guidance in the area of withholding or withdrawal of life-prolonging treatment from patients with terminal conditions.

Section 1. Definitions. (1) "Facility" means a health care facility as defined by KRS 311.624(4) and 311.970(7).

(2) "Incompetent" means having been adjudicated disabled to make health care decisions pursuant to KRS 387.500 to 387.990, being under the age of fourteen (14), or incapable of making health care decisions as documented and determined by the patient's attending physician.

(3) "Life-prolonging treatment" means treatment as defined by KRS 311.624(5).

(4) "Terminal condition" means a condition defined by KRS 311.624(8).

(5) "Written declaration" means the designation of a health care surrogate in accordance with KRS 311.970 to 311.986; or the declaration by living will in accordance with KRS 311.622 to 311.644, or the designation of a durable power of attorney in accordance with KRS 386.093.

(6) "Immediate family member" means a parent, spouse, adult son or daughter, or sibling of the affected patient.

(7) "Private legal guardian" means a person appointed under KRS Chapter 387 who is serving as a private citizen rather than as a representative of the Guardianship Branch of the Department for Social Services, of the Cabinet for Human Resources.

Section 2. A competent adult patient has the right to refuse medical treatment. In the absence of a written declaration, where the patient is incompetent the attending physician in conjunction with the patient's private legal guardian, or in the absence of a private legal guardian the patient's immediate family members can order the withholding or withdrawal of life-prolonging treatment where the individual is suffering from a terminal condition, as documented in the medical chart by the attending physician.

Section 3. A decision to withhold or an order to withdraw life-prolonging treatment in no way authorizes a facility to abrogate good nursing practices in caring for the basic needs of a patient including: feeding, hydration, cleaning and turning, except as provided for in KRS 311.978(3).

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 23, 1991
FILED WITH LRC: October 4, 1991 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander

(1) Type and number of entities affected: 500 providers of inpatient health care.

(a) Direct and indirect costs or savings to those affected: There should be no additional costs associated with this amendment.

1. First year: No additional costs.

2. Continuing costs or savings: No additional costs.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No additional requirements.
(2) Effects on the promulgating administrative body: There should only be no effects since this should provide clarification to facilities.
(a) Direct and indirect costs or savings: The costs should be limited to reprinting of this regulation.
1. First year: $500 for reprinting regulation and publication.
2. Continuing costs or savings: No additional costs since reprinting costs are a part of continuing budget.
3. Additional factors increasing or decreasing costs: No additional factors.
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This amendment clarifies what the cabinet expects from facilities. This is a necessary clarification.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict exists.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: No additional comments.
TIERING: Was tiering applied? No. This regulation applies to all facilities, and as a clarification it is not related to facility size.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 2:080. Child day care services.

RELATES TO: KRS 199.892 through 199.896, 45 CFR Part 98, 256, 257, PL 99-457 Part H, 94-142.2
STATUTORY AUTHORITY: KRS 194.050, 199.892
NECESSITY AND FUNCTION: KRS 194.050 provides that the Secretary for the Cabinet for Human Resources shall adopt regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Human Resources. In accordance with KRS 199.892, to enable the Cabinet for Human Resources to qualify to receive federal funds under the child care and development block grant, and pursuant to KRS 194.050, the Department for Social Services has drafted procedures that shall enable the provisions of child day care services to be implemented.

Section 1. Definitions. (1) "At-risk child care (ARCC)" means child care assistance provided through the state to non-AFDC families who need care in order to work and who may otherwise be at risk of becoming dependent upon AFDC.
(2) "Attending a job training or educational program" means regular and scheduled participation in a program offering appropriate skills training or education, if postsecondary, consistent with employment goals.
(3) "Certificate" means a payment mechanism provided by DSS and used by a family to secure day care from the provider of choice.
(4) "Child care and development block grant (CCDBG)" means child care assistance provided to families through the state to improve the affordability, quality and availability of child care services for a low income family to work or attend training or educational programs.
(5) "Child protective cases" means cases registered for services in which the case file contains case documentation that substantiates child abuse, neglect, dependency or exploitation. This category may include services to prevent abuse, neglect, dependency or exploitation, including multiproblem families.
(6) "Day care" means the provision of essential child care for a portion of a day on a regular basis and is designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development and supervision.
(7) "Dedicated child care workers (DCW)" means the Department for Social Services staff who work strictly with the day care program. The dedicated child care worker provides services to families through the following federally funded programs: social services block grant (SSBG), child care and development block grant (CCDBG), at-risk child care (ARCC), and transitional child care (TCC).
(8) "Dependent care disregard" means a method of providing child care for AFDC and medical assistance recipients with earned income and food stamp recipients with earned income or in training or educational programs which are preparatory to employment by deducting child care expenses from the gross income, thus allowing the AFDC recipient to retain more income to pay child care expenses. In cases where recipients are receiving assistance under more than one (1) program, the highest disregard shall be used.
(9) "Eligibility requirements" means that for a family to qualify for child day care funds, except in those instances where day care is provided under SSBG for child protective cases, a family shall meet both need and income status criteria.
(10) "Employment" means public or private, full- or part-time, permanent or temporary work, including self-employment.
(11) "Family" means one (1) or more adults and children related by blood or law, including stepparents, residing in the same residence.
(12) "Licensed child day care facility" means a facility as governed by KRS 199.894.
(13) "Physical or mental incapacity" means a child under the age of eighteen (18) who has multiple or severe problems diagnosed by a physician or qualified professional, that prevent the child from caring for himself or herself for a part of the day.
(14) "Priorities" mean that the client groups identified for receipt of day care are ranked in chronological order by priority.
(15) "Provider" means a person, including a volunteer, who works in a Type I or Type II day care facility, certified small family day care home, unregulated home or registered home.
(16) "Purchase of care" means the purchase of child day care services from state licensed facilities, certified registered homes or other eligible provider for authorized children.

(17) "Registered provider" means a provider that is registered with the Department for Social Services as a provider of child care services through the child care and development block grant (CCDBG) or at-risk program (ARCC)

(18) "Small family day care home (SFDCH)" means a home or dwelling unit which voluntarily meets the minimum standards set by the cabinet, with a certified provider, where care is provided for no more than three (3) children, who are unrelated by blood, marriage or adoption to the family child care provider.

(19) "Social services block grant (SSBG)" means child care assistance provided by licensed or certified providers that is reimbursed by the department for families receiving protective and preventive services, including multiproblem families, and low income working parents.

(20) "Special needs child" means a child who has multiple or severe problems, and the severity of the disability requires ongoing specialized care as defined under PL 99-457 Part H or 94-142.2.

(21) "Transitional child care (TCC)" means child care assistance that is provided by the department to families whose eligibility for AFDC has ceased due to earnings from employment, or as a result of the loss of income disregards due to the expiration of the time limit according to the federal regulation on AFDC. The purpose of TCC is to help prevent welfare dependency or potential welfare dependency.

(22) "Type I day care facility" means a facility other than a dwelling unit which regularly receives four (4) or more children for day care; or a facility, including a dwelling unit, which regularly provides day care for thirteen (13) or more children. If preschool children of any day care staff receive care in the facility, they shall be included in the number for which the facility is licensed.

(23) "Type II day care facility" means a home or dwelling unit which regularly provides care apart from parents for four (4), but not more than twelve (12) children. The provider's own preschool children shall be included in the number for which the home is licensed.

(24) "Unregulated provider" means a child care provider who is not subject to be licensed, certified or registered by the state or federal government. Families receiving day care funds through the SSBG may not use unregulated care, however, unregulated care may be used by families receiving TCC or ARCC funds. Relative care as provided through the ARCC program, which is not required to be registered, shall be deemed unregulated.

(25) "Waiting list" means a list maintained by district DSS staff once funds are depleted in a district. The list is based on the availability of district day care funds. TCC families shall not be placed on a waiting list due to the uncapped funding source.

(26) "Without regard to income" means that SSBG child day care services for child protective cases shall be provided or purchased without regard to family income. In situations where the court is involved, parents may be ordered to pay for part or all of the cost of day care for their child. Voluntary payments by parents may be accepted

Section 2. Lead Agency Responsibilities. The Department for Social Services, as the lead agency, shall administer the CCDBG program directly, or through contracts or agreements and shall retain overall responsibility for the administration of the program and shall:

(1) Determine the basic usage and priorities for expenditures;

(2) Promulgate regulations governing the administration of the plan;

(3) Submit reports required by the federal government;

(4) Ensure the program complies with the CCDBG plan and federal requirements;

(5) Oversee the expenditure of funds;

(6) Monitor programs and services; and

(7) Comply with federal requirements in a complaint compliance hearing or appeal hearing.

Section 3. Eligibility. A child shall be eligible for services if he:

(1) Is under the age of thirteen (13) or is under the age of eighteen (18) and:

(a) Is physically or mentally incapable of caring for himself; or

(b) Is under court supervision;

(2) Resides with a family whose income does not exceed:

(a) Sixty (60) percent of the states median income for a family of the same size at time of application; or

(b) Seventy-five (75) percent of the states median income for a family of the same size at the time of reauthorization; or

(c) Receives, or needs to receive protective services under SSBG;

(3) Resides with parents who are working or attending a job training or educational program except under CCDBG;

(4) Other eligibility conditions or priority requirements including childhood development and before and after school care services, may be established in addition to subsection (1) through (5) of this section and Section 5(4) of this regulation as long as they shall not:

(a) Discriminate against children on the basis of:

1. Race;
2. National origin;
3. Ethnic background;
4. Sex;
5. Religious affiliation; or
6. Handicap.

(b) Limit parental rights as governed by Section 4 of this regulation; or

(c) Violate provisions of Section 5(4) of this regulation.

(5) The DCW shall verify the client's eligibility for services and complete the DSS-1A, Application for Services, herein incorporated by reference.

Section 4. Parental Rights and Responsibilities. (1) Parents of an eligible child who receive or are offered child care services shall be offered a choice:

(a) To enroll the child with an eligible child care provider that has a grant or contract, selected by the parent to the maximum extent practicable; or

(b) To receive a child care certificate, the DSS-76, Day Care Services Agreement and Child Care Certificate, herein incorporated by reference, which shall:

1. Be issued to the parent;
2. Be of value commensurate with the value of child care services provided in paragraph (a) of this subsection;

3. If chosen by the parent, may be used for child care services provided by a sectarian organization or agency;
4. Not be considered a contract or grant to the provider but assistance to the parent; and
5. Allow parents to choose from a variety of child care categories in compliance with federal regulations governing child day care programs including:
a. Licensed child care facilities;
b. Certified child care facilities (SFDCH);
c. Unregulated child care facilities; or
d. Registered child care facilities.
(2) Providers of child care services shall afford parents unlimited access to their children and to the provider during normal hours of operation and whenever the child is in the care of the provider.
(3) The cabinet shall:
(a) Maintain a record of substantiated parental complaints; and
(b) Make information regarding parental complaints available to the public upon request.
(4) The cabinet shall make available to the parents and general public, consumer education about parental options relating to child care services including:
(a) Licensing and regulatory requirements; and
(b) Complaint procedures.

Section 5. State and Provider Requirements. (1) The cabinet shall assure that providers of child care services:
(a) Shall comply with licensing and regulatory requirements as governed by 905 KAR 2:010 and 905 KAR 2:070;
(b) That are not required to be licensed or certified as governed by 905 KAR 2:010 and 905 KAR 2:070 shall be registered with the cabinet prior to payment under the block grant using the DSS-77, Day Care Billing Statement, herein incorporated by reference except under TCC and relative provided care under AARC; and
(c) Under CCDBG, nonrelative providers registered with the cabinet shall become certified as governed by 905 KAR 2:070.
(2) The cabinet has established maximum child day care payments as follows:

PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		Infants		Toddlers	
Providers	FD	PD	FD	PD	FD	PD
Licensed	$10	10	10	7	10	7
Certified	$ 9	9	9	6	9	6
Unregulated	$ 8	8	8	5	8	5

	Preschool		School Age	
Providers	FD	PD	FD	PD
Licensed	$10	7	10	7
Certified	$ 9	6	9	6
Unregulated	$ 8	5	8	5

PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		Infants		Toddlers	
Providers	FD	PD	FD	PD	FD	PD
Licensed	$10	10	10	7	9	6
Certified	$ 9	9	9	6	8	5
Unregulated	$ 8	8	8	5	7	4

	Preschool		School Age	
Providers	FD	PD	FD	PD
Licensed	$ 9	6	9	6
Certified	$ 8	5	8	5
Unregulated	$ 7	4	7	4

GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs		Infants		Toddlers	
Providers	FD	PD	FD	PD	FD	PD
Licensed	$10	10	9	6	9	6
Certified	$ 9	9	8	5	8	5
Unregulated	$ 8	8	7	4	7	4

	Preschool		School Age	
Providers	FD	PD	FD	PD
Licensed	$ 9	6	8	5
Certified	$ 8	5	7	4
Unregulated	$ 7	4	6	3

BARREN RIVER AREA DEVELOPMENT DISTRICT #4

	Special Needs		Infants		Toddlers	
Providers	FD	PD	FD	PD	FD	PD
Licensed	$12	12	12	9	10	7
Certified	$11	11	11	8	9	6
Unregulated	$10	10	10	7	8	5

	Preschool		School Age	
Providers	FD	PD	FD	PD
Licensed	$10	7	10	7
Certified	$ 9	6	9	6
Unregulated	$ 8	5	8	5

LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

	Special Needs		Infants		Toddlers	
Providers	FD	PD	FD	PD	FD	PD
Licensed	$10	10	10	7	9	6
Certified	$ 9	9	9	6	8	5
Unregulated	$ 8	8	8	5	7	4

	Preschool		School Age	
Providers	FD	PD	FD	PD
Licensed	$ 9	6	8	5
Certified	$ 8	5	7	4
Unregulated	$ 7	4	6	3

KIPDA AREA DEVELOPMENT DISTRICT #6

	Special Needs		Infants		Toddlers	
Providers	FD	PD	FD	PD	FD	PD
Licensed	$13	13	13	10	13	10
Certified	$12	12	12	9	12	9
Unregulated	$11	11	11	8	11	8

	Preschool		School Age	
Providers	FD	PD	FD	PD
Licensed	$11	8	11	8
Certified	$10	7	10	7
Unregulated	$ 9	6	9	6

NORTHERN KENTUCKY DEVELOPMENT DISTRICT #7

Providers	Special Needs FD	Special Needs PD	Infants FD	Infants PD	Toddlers FD	Toddlers PD
Licensed	$12	12	12	9	12	9
Certified	$11	11	11	8	11	8
Unregulated	$10	10	10	7	10	7

Providers	Preschool FD	Preschool PD	School Age FD	School Age PD
Licensed	$12	9	11	8
Certified	$11	8	10	7
Unregulated	$10	7	9	6

BUFFALO TRACE DEVELOPMENT DISTRICT #8

Providers	Special Needs FD	Special Needs PD	Infants FD	Infants PD	Toddlers FD	Toddlers PD
Licensed	$10	10	8	5	8	5
Certified	$ 9	9	7	4	7	4
Unregulated	$ 8	8	6	3	6	3

Providers	Preschool FD	Preschool PD	School Age FD	School Age PD
Licensed	$ 8	5	8	5
Certified	$ 7	4	7	4
Unregulated	$ 6	3	6	3

GATEWAY AREA DEVELOPMENT DISTRICT #9

Providers	Special Needs FD	Special Needs PD	Infants FD	Infants PD	Toddlers FD	Toddlers PD
Licensed	$10	10	8	5	8	5
Certified	$ 9	9	7	4	7	4
Unregulated	$ 8	8	6	3	6	3

Providers	Preschool FD	Preschool PD	School Age FD	School Age PD
Licensed	$ 8	5	8	5
Certified	$ 7	4	7	4
Unregulated	$ 6	3	6	3

FIVCO AREA DEVELOPMENT DISTRICT #10

Providers	Special Needs FD	Special Needs PD	Infants FD	Infants PD	Toddlers FD	Toddlers PD
Licensed	$10	10	10	7	10	7
Certified	$ 9	9	9	6	9	6
Unregulated	$ 8	8	8	5	8	5

Providers	Preschool FD	Preschool PD	School Age FD	School Age PD
Licensed	$10	7	9	6
Certified	$ 9	6	8	5
Unregulated	$ 8	5	7	4

BIG SANDY AREA DEVELOPMENT DISTRICT #11

Providers	Special Needs FD	Special Needs PD	Infants FD	Infants PD	Toddlers FD	Toddlers PD
Licensed	$10	10	10	7	10	7
Certified	$ 9	9	9	6	9	6
Unregulated	$ 8	8	8	5	8	5

Providers	Preschool FD	Preschool PD	School Age FD	School Age PD
Licensed	$10	7	10	7
Certified	$ 9	6	9	6
Unregulated	$ 8	5	8	5

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

Providers	Special Needs FD	Special Needs PD	Infants FD	Infants PD	Toddlers FD	Toddlers PD
Licensed	$11	11	11	8	11	8
Certified	$10	10	10	7	10	7
Unregulated	$ 9	9	9	6	9	6

Providers	Preschool FD	Preschool PD	School Age FD	School Age PD
Licensed	$ 9	6	9	6
Certified	$ 8	5	8	5
Unregulated	$ 7	4	7	4

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

Providers	Special Needs FD	Special Needs PD	Infants FD	Infants PD	Toddlers FD	Toddlers PD
Licensed	$10	10	10	7	10	7
Certified	$ 9	9	9	6	9	6
Unregulated	$ 8	8	8	5	8	5

Providers	Preschool FD	Preschool PD	School Age FD	School Age PD
Licensed	$ 9	6	10	7
Certified	$ 8	5	9	6
Unregulated	$ 7	4	8	5

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

Providers	Special Needs FD	Special Needs PD	Infants FD	Infants PD	Toddlers FD	Toddlers PD
Licensed	$10	10	9	6	9	6
Certified	$ 9	9	8	5	8	5
Unregulated	$ 8	8	7	4	7	4

Providers	Preschool FD	Preschool PD	School Age FD	School Age PD
Licensed	$ 9	6	9	6
Certified	$ 8	5	8	5
Unregulated	$ 7	4	7	4

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

Providers	Special Needs FD	Special Needs PD	Infants FD	Infants PD	Toddlers FD	Toddlers PD
Licensed	$12	12	12	9	12	9
Certified	$11	11	11	8	11	8
Unregulated	$10	10	10	7	10	7

Providers	Preschool FD	Preschool PD	School Age FD	School Age PD
Licensed	$11	8	11	8
Certified	$10	7	10	7
Unregulated	$ 9	6	9	6

(3) The cabinet shall assess a fee which the family shall pay to the provider for the cost of child day care based on the following sliding scale:

Income Range (Monthly)		FAMILY SIZE Fee per day per family			
		2	3	4	5
0	399	0.10	0.10	0.10	0.10
400	499	0.20	0.20	0.20	0.20
500	599	0.25	0.25	0.25	0.25
600	699	0.40	0.30	0.30	0.30
700	799	1.00	0.35	0.35	0.35
800	899	2.00	0.60	0.40	0.40
900	999	3.25	1.15	0.45	0.45
1,000	1,099	4.50	2.25	0.80	0.50
1,100	1,199	6.00	3.50	1.60	0.55
1,200	1,299	7.50	5.00	3.10	0.90
1,300	1,399	8.00	6.00	4.60	1.60
1,400	1,499		7.00	6.10	2.65
1,500	1,599		7.75	7.00	4.05
1,600	1,699		8.25	7.85	5.50
1,700	1,799			8.35	7.10
1,800	1,899			8.80	8.35
1,900	1,999			9.30	9.30
2,000	2,099			9.55	9.75
2,100	2,199				10.25
2,200	2,299				10.70
2,300	2,399				11.00
2,400	2,499				
2,500	2,599				
2,600	2,699				
2,700	2,799				

Income Range (Monthly)		FAMILY SIZE Fee per day per family		
		6	7	8*
0	399	0.10	0.10	0.10
400	499	0.20	0.20	0.20
500	599	0.25	0.25	0.25
600	699	0.30	0.30	0.30
700	799	0.35	0.35	0.35
800	899	0.40	0.40	0.40
900	999	0.45	0.45	0.45
1,000	1,099	0.50	0.50	0.50
1,100	1,199	0.55	0.55	0.55
1,200	1,299	0.60	0.60	0.60
1,300	1,399	1.00	0.65	0.65
1,400	1,499	2.00	0.70	0.70
1,500	1,599	3.05	1.25	0.75
1,600	1,699	4.50	2.30	0.80
1,700	1,799	6.25	3.50	1.50
1,800	1,899	7.50	5.20	2.50
1,900	1,999	8.80	7.00	3.80
2,000	2,099	9.75	8.50	5.30
2,100	2,199	10.25	10.00	7.10
2,200	2,299	10.70	10.70	8.90
2,300	2,399	11.25	11.25	10.80
2,400	2,499	11.75	11.75	11.75
2,500	2,599	12.25	12.25	12.25
2,600	2,699	12.60	12.75	12.75
2,700	2,799		12.90	13.00

* For family size above eight (8), the family fee shall not increase.

(a) Except fees shall not be assessed in:

1. A child protective case under SSBG; or

2. An AFDC, medical assistance or food stamp case where clients are receiving dependent care disregard.

(b) The DCW shall determine the maximum daily reimbursement rate and parent fee, not to exceed rates as specified in subsection (2) of this section and monitor the payment to the child care provider. If the parent fails to pay the fee the DCW shall:

1. Develop a plan with the parent to pay the fee; or

2. In TCC cases report nonpayment to DSI if the client refuses to pay.

(c) The DCW shall advise the client to report family and financial changes that may affect authorization of payments. Reauthorizations shall be determined:

1. Every six (6) months; and

2. Upon receipt of reported changes.

(4) The Cabinet for Human Resources shall, except for SSBG protective service cases, establish priorities for child care services as follows with a ninety (90) day waiting list for approved clients maintained at each local office:

(a) Children with special needs;

(b) Job opportunity and basic skills program or TCC participants who have children ineligible for child care payments under the program;

(c) Families who lose eligibility in another child care program; and

(d) Other low income working parents or parents attending training or educational programs.

(5) The Department for Social Services shall exchange TCC client specific information to the Department for Social Insurance within ten (10) days of discovery.

(a) The DCW shall report the following changes in client information to the local DSI office:

1. Termination of client's job;

2. A child left home;

3. A child moved into the home or a newborn was reported;

4. Client's address changes;

5. An absent parent returns to the home;

6. Client failed to cooperate in paying the fee;

7. Case terminated; or

8. Overpayment or underpayment of TCC benefits.

(b) The DCW shall report the following changes in client information to the Division for Child Support Enforcement:

1. TCC case approval for payments;

2. A child left the home;

3. Payments cease for a child;

4. Client's address changes; or

5. Except for reapprovals for the AFDC program, discontinuances.

(6) The DCW shall terminate day care services when:

(a) DSI determines the client has lost eligibility for TCC benefits; or

(b) Due to need or income criteria, clients lose eligibility. If due to program policy changes the DCW shall:

1. Reassess the families so clients may be given ten (10) days notice of their eligibility, if they do not meet the new criteria after their authorization period expires;

2. Send written notices explaining new eligibility criteria with a notice of intended action.

(7) The day care worker shall notify the client of their rights as governed by 905 KAR 1:320, Fair hearing.

Section 6. Material Incorporated by Reference. (1) Forms necessary for the implementation of child day care services are herein incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 26, 1991
FILED WITH LRC: October 4, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Rawlings
(1) Type and number of entities affected: The type and number of entities affected are children needing child day care services. It is estimated that CCDBG will serve an additional 3,500 children during KFY '92. SSBG will continue to serve 5,000 children. Currently these children are being served by approximately 500 licensed and certified providers throughout the state. Under the higher payment rates made available under the new initiatives, parents may choose from a variety of providers including, sectarian, nonsectarian, public and private child day care providers. Thus the number and variety of providers will increase.
(a) Direct and indirect costs or savings to those affected: Direct and indirect costs or savings to those affected are found in a savings to the parents through eligibility for child care services as a result of the CCDBG.
1. First year: Kentucky will receive an allotment of $13,540,782 in unmatched federal dollars to be obligated in FFY '92 under the CCDBG to be used for direct child care services and to improve and expand existing child care. This is in addition to the $5,901,700 SSBG federal dollars received for child day care.
2. Continuing costs or savings: The CCDBG has guaranteed federal authorization through FFY '95. Continued authorizations may be made at that time. An SSBG appropriation is made annually up to authorized levels.
3. Additional factors increasing or decreasing costs (note any effects upon competition): A new parent sliding fee scale has been adopted that gradually increases the amount of the parent fee assessed as the families gross income increases. The income scale is set in $100 increments so as to allow for slight income increases without affecting the amount a parent is required to pay for child care.
(b) Reporting and paperwork requirements: Day care services under SSBG and CCDBG will require an application for services and eligibility will be monitored every 6 months at redeterminations or when reported changes occur. Providers of child care will bill for payment monthly.
(2) Effects on the promulgating administrative body: The effect on the promulgating administrative body is that the Department for Social Services is the lead agency in administering the CCDBG and is responsible for the coordination of service delivery.
(a) Direct and indirect costs or savings: Since no matching funds are required to receive these federal dollars the state will receive $13,540,782 under the CCDBG to be used for direct child care services and to improve and expand existing child care.
1. First year: Administrative funding for the CCDBG program is included in the allotment.
2. Continuing costs or savings: The CCDBG program will continue to result in no cost to the state as the federal allotment will pay for benefit and administrative costs.
3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or effect competition for the Department for Social Services.
(b) Reporting and paperwork requirements: By April 1 of each year, the state shall report to the Secretary of HHS the status of funds (obligated or unobligated). Beginning 90 days after the end of the fiscal year 1992, and within 90 days after the end of each succeeding fiscal year, grantees must submit to the Secretary of HHS a financial report for each fiscal year's grant which must include: the total amount of funds expended from the grant during the fiscal year; and the total unliquidated obligations for the program period. The state must audit the use of funds after the close of each 12 month program period and submit a copy to the legislature of the state not later than 30 days after the completion of the audit. The state must also submit to the Secretary of HHS a report of activities carried out with block grant funds covered in the most recent program period.
(3) Assessment of anticipated effect on state and local revenues: Positive effect on state and local revenues are in the payments to day care providers that will be turned over in the local economy in payments to cover care giver costs and supplies. Additionally the ability of parents to enter and remain in the job market will increase.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because implementation of this program requires that the federal mandate be followed.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 45 CFR 98.32 requires that a record of substantiated parental complaints be maintained and made available to the public upon request may be in conflict with KRS 620.050(4) which limits the department in releasing information regarding investigations of abuse, neglect and dependency.
(a) Necessity of proposed regulation if in conflict: There is not a need to promulgate a proposed regulation to comply with 45 CFR 98.32.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was not an effort to harmonize this proposed regulation with 45 CFR 98.32.
(6) Any additional information or comments: There are no additional information or comments of which we are aware.
TIERING: Was tiering applied? Yes. In situations whereby SSBG rates, including full time and part time, were higher than the new reimbursements rate scale DSS will continue to use the higher SSBG rate for reimbursement until a new market rate survey is completed and implemented.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 7:091. Repeal of 905 KAR 7:090.

RELATES TO: KRS 210.700 to 210.760
STATUTORY AUTHORITY: KRS 210.710, 210.720, 210.750
NECESSITY AND FUNCTION: 905 KAR 7:090 which sets forth the formula for patient costs at the children's treatment services is no longer required because children's treatment services is no longer in operation.

Section 1. 905 KAR 7:090, Patient charges at children's treatment services, is hereby repealed.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 21, 1991
FILED WITH LRC: October 4, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul Gibson
(1) Type and number of entities affected: The only entity affected is children's treatment services which is no longer in operation.
(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the affected entity as it no longer is in operation.
1. First year: There will not be any direct and indirect costs or savings to the affected entity as it no longer is in operation.
2. Continuing costs or savings: There will not be any direct and indirect costs or savings to the affected entity as it no longer is in operation.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There will not be any additional factor increasing or decreasing the cost to the affected entity as it no longer is in operation.
(b) Reporting and paperwork requirements: There will not be any change in the affected entity reporting and paperwork requirements as it no longer is in operation.
(2) Effects on the promulgating administrative body: There will not be any cost or savings to the Department for Social Services as the affected entity is no longer in operation.
(a) Direct and indirect costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the affected entity is no longer in operation.
1. First year: There will not be any direct or indirect cost or savings to the Department for Social Services as the affected entity is no longer in operation.
2. Continuing costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the affected entity is no longer in operation.
3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or effect competition for the Department for Social Services because the affected entity is no longer in operation.
(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because the affected entity is no longer in operation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.
(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulation.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulation.
(6) Any additional information or comments: There are no additional information or comments of which we are aware.
TIERING: Was tiering applied? No.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 8:160. Adult day and Alzheimer's respite program.

RELATES TO: KRS 205.201, 205.203, 205.455-465, 902 KAR 20:066, 902 KAR 20:200, 905 KAR 8:180, 42 USC 3001 et seq.
STATUTORY AUTHORITY: KRS 194.050, 205.204(2)
NECESSITY AND FUNCTION: 42 USC 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194.050 authorizes the Cabinet for Human Resources to adopt regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Human Resources as the state agency to administer the Older Americans Act in Kentucky. The function of this regulation is to set forth the standards of operation for the adult day and Alzheimer's respite program in Kentucky, in compliance with the statutory requirement of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter.

Section 1. Definitions. (1) "Adult day services" means a supportive and therapeutic social program of supervision and care provided

to an eligible adult during any part of a day, but less than twenty-four (24) hour care. All programs provide supervision for:
(a) Self-administration of medications;
(b) Personal care services;
(c) Self-care training;
(d) Social activities; and
(e) Recreational opportunities.
(2) "Adult day health services" means a licensed program to provide continuous supervision of the participant's medical and health needs.
(3) "Adult day center" means a community based facility in which adult day supervision is provided in a group setting.
(4) "Alzheimer's disease and related dementing diseases" mean neurological diseases causing gradual and irreversible impairment of intellectual functioning of a sufficient severity to interfere with an individual's daily activities.
(5) "Alzheimer's respite" means a therapeutic social program of supervision and care provided to a participant with Alzheimer's disease or related dementing disease to enable the caregiver temporary relief from caregiving duties.
(6) "Assessment" means the collection of information about a person's situation and functioning which identifies needs and resources so that a comprehensive plan of care can be developed.
(7) "Case management" means:
(a) A process for ensuring that participants receive appropriate, comprehensive and timely services to meet their needs as identified in the assessment process;
(b) Planning;
(c) Linking the participant to all appropriate agencies in the formal and informal caregiving systems;
(d) Monitoring; and
(e) Advocacy through case work activities in order to achieve the best possible resolution of individual needs.
(8) "Center respite" means respite provided in a group setting outside the home.
(9) "Identifiable space" means space set apart by visible barriers from other activities within the setting.
(10) "In-home respite" means respite provided in the participant's home.
(11) "Licensed adult day health center" means a program licensed by the Kentucky Commission for Health Economics Control in accordance with 902 KAR 20:066.
(12) "Personal care services" means activities to help participants achieve and maintain good personal hygiene, including assistance with walking, eating, grooming and toileting.
(13) "Plan of care" means a written guide of action:
(a) Developed and agreed upon by the participant, the primary caregiver, the director and program case manager;
(b) Based upon the participant's needs, goals, and resources; and
(c) Including appropriate services to meet identified needs and achieve objectives.
(14) "Reassessment" means the formal reevaluation of the participant's situation and functioning and of the services delivered to identify changes which may have occurred since the last assessment.
(15) "Unit of service" means one-half (1/2) hour of direct service.

Section 2. Eligibility. To participate in the adult day and Alzheimer's respite programs, an individual shall be able to respond and share in program activities without health and safety problems to self or others and shall meet at least one (1) of the following requirements:
(1) A person age sixty (60) or older who is physically disabled or frail as a result of medical condition or age and who needs supervision or assistance during part of the day;
(2) A person age sixty (60) or older who is mentally confused and needs supervision to prevent injury and assure proper nutrition and medication use;
(3) A person age sixty (60) or older who, because of emotional or social needs, may benefit from the individualized attention and social structure available through these services which are not otherwise available; or
(4) A person of any age with a diagnosis of probable Alzheimer's or related dementing disease, as confirmed by a written statement from a physician after a diagnostic evaluation.

Section 3. Assessment and Case Management. (1) Each applicant for services shall be assessed and certified eligible and in need of services. A plan of care shall be developed using the completed assessment, with participant involvement to the fullest extent of his abilities.
(2) The participant shall be referred by the case manager for other needed services identified by the assessment. Case management shall be provided to those participants receiving multiple services, but shall be provided by one (1) service provider only.
(3) The program director shall arrange or provide a formal reassessment at least every six (6) months.

Section 4. Fee for Service. (1) The following adult day and Alzheimer's respite fee schedule shall be utilized in determining the minimum fee which shall be charged an eligible individual who has received service. The cost of the service unit as determined by the state or contracting entity in accordance with its contract shall be multiplied by the applicable percentage rate based upon income and size of family as set forth below.

Adult Day and Alzheimer's Respite Participant Income and Applicable Percentage of Fee

Annual Income	1 Person	2 Persons
$ 8000 and below	0%	0%
$ 8001 - $10150	20%	0%
$10151 - $12300	40%	20%
$12301 - $14450	60%	40%
$14451 - $16650	80%	60%
$16651 - $18850	100%	80%
$18851 - $20950		100%

For each additional family member, add $2150.

(2) In determining the eligible individual's ability to pay a fee, any extraordinary medical or other related expense may be taken into consideration.
(3) SSI income shall not be considered

available to other family members. When an applicant is receiving SSI benefits, he shall be considered a family of one (1) for the purpose of fee determination.

Section 5. Responsibilities of the Service Provider. (1) The service provider shall meet the following general requirements:

(a) Assure that program staff shall treat the participant and caregiver in a respectful and dignified manner, involving them in decisions regarding the delivery of services;

(b) Assure that services are provided in a safe manner;

(c) Provide a unit cost figure to the case manager or assessor to be used as a basis for determining the applicable percentage of the fee schedule;

(d) Collect the fee for service as determined by the case manager or assessor. Fees and donations shall be budgeted and used to increase services;

(e) Have and use appropriate procedures for referrals to other service agencies or programs;

(f) Conduct community education and outreach activities to reach prospective participants;

(g) Comply with all applicable administrative policies and procedures and service contracts; and

(h) Provide access for staff of the area development district and the Cabinet for Human Resources for monitoring and evaluation purposes.

(2) The service provider shall meet the following program requirements for in-center services:

(a) Establish a schedule of days and hours of operation to be posted in a conspicuous place. A written copy of the schedule shall be given to the participant and the caregiver;

(b) Operate the program a minimum of four (4) hours per day, three (3) days per week, excluding holiday and emergency closings;

(c) Supervise program activities. Supervision shall be provided by staff or volunteers meeting staff requirements as set forth in Section 7 of this regulation;

(d) Provide a balance of planned individual and group activities to meet participant needs, abilities and interests as determined by the individual plan of care;

(e) Provide participants an opportunity to plan and evaluate activities on a monthly basis;

(f) Provide participants a choice of activities and an opportunity to refuse to participate in the activity;

(g) Post a monthly calendar of planned activities and available services in a conspicuous place. Records shall be maintained for monitoring purposes;

(h) Provide assistance, when necessary, with activities of daily living including:

1. Walking;
2. Eating;
3. Grooming;
4. Toileting; and
5. Personal hygiene;

(i) Comply with the Division of Aging Services, Department for Social Services policies and procedures for self-administration of medications;

(j) Provide a meal that complies with the Division of Aging Services' nutrition program policies if the program is in operation during a normal meal hour. Therapeutic diets shall be available in accordance with a physician's order at licensed adult day centers;

(k) Allow participants, as a supplementary activity to staff assignments, an opportunity to assist in planning menus;

(l) Offer nutrient dense snacks, water and other liquids at regularly scheduled times during the day;

(m) Post a monthly calendar of menus in a conspicuous place if meals are provided. Maintain menus for monitoring purposes;

(n) Provide first aid and make arrangements for medical care with the participant's physician or hospital in case of accidents or medical emergencies;

(o) Notify the family or other appropriate person of any significant changes in the participant's mental or physical condition;

(p) Refer participants to health professionals of their choice, as needed;

(q) Establish linkages with other community agencies and institutions to better coordinate services;

(r) Assist participants and their families in identifying and accessing community agencies for:

1. Financial;
2. Social;
3. Recreational;
4. Educational;
5. Medical; and
6. Other services;

(s) Assist the family in arranging transportation; and

(t) Notify the area agency on aging immediately of a negative incident or accident involving a participant or employee, providing a written report if requested.

(3) The service provider operating a licensed adult day health center shall:

(a) Comply with licensure requirements of 902 KAR 20:066;

(b) Assure that health care needs are met;

(c) Provide self-care training;

(d) Provide personal care services; and

(e) Maintain a medication sheet in accordance with 902 KAR 20:066 if medications are administered to a participant.

(4) In-home respite care service providers shall comply with the following:

(a) Establish a monthly schedule of days and hours of service for each client based on the assessment, plan of care, and agreement with the participant and caregiver;

(b) Provide a copy of the schedule to the caregiver; and

(c) Supervise the participant and program activities as determined by the assessment and plan of care.

Section 6. Facility Requirements. Adult day and Alzheimer's respite program providers operating facilities for services shall:

(1) Comply with requirements outlined in 902 KAR 20:066 for a licensed adult day health center;

(2) Locate the center in a geographic area that provides convenient access to a majority of older persons;

(3) Locate, design, and furnish the center to assure access and to accommodate the special needs of older persons, including individuals with handicaps;

(4) Provide sufficient space and arrangements of furnishings to allow for:

(a) Adequate client movement;

(b) Program activities;

(c) Food service; and
(d) Socialization;
(5) Provide sufficient private office space to permit individual counseling and confidential maintenance of records;
(6) Provide appropriate lighting, heating, cooling and ventilation for participant comfort and program activities;
(7) Equip each center with bathroom facilities meeting the following requirements:
(a) A minimum of one (1) toilet for each ten (10) participants with equal number of wash basins;
(b) Easy accessibility to the handicapped;
(c) In men's bathrooms urinals may be substituted for up to one-half (1/2) the number of toilets required;
(d) Cleaned and sanitized daily; and
(e) Hot and cold running water, mirror, soap and towels;
(8) Comply with applicable housing and health codes;
(9) Obtain initial and annual inspection by state or local fire safety officials and comply with requirements;
(10) Maintain at least one (1) fire extinguisher with initial and annually updated inspection tags;
(11) Maintain a fully equipped first aid kit, with unexpired contents, as defined by the American Red Cross;
(12) Provide identifiable space during hours of operation for participants in need of a more private environment or rest area;
(13) Provide separate identifiable space during operational hours, if co-located in a facility housing other services. Certain space may be shared, such as the dining room, kitchen and therapy rooms.

Section 7. Program Staff. (1) Staffing requirements for in-center programs shall include:
(a) Trained and experienced staff shall be present each day of operation;
(b) Staffing ratios shall be one (1) staff for each five (5) participants;
(c) There shall be at least two (2) responsible persons at the center at times when there are more than one (1) participant in attendance, one (1) of whom shall be a paid staff member;
(d) Volunteers may be included in the staff ratio if they meet staff qualifications and training requirements;
(e) At least one (1) staff member who has completed first aid training shall be present at times that participants are in attendance.
(2) Staff qualifications for programs shall be as follows:
(a) Directors of centers shall meet one (1) of the following requirements:
1. A trained social worker possessing:
a. A minimum of a bachelor's degree in social work or a related field relevant to geriatrics; and
b. Two (2) years professional experience; or
c. A master's degree in social work; and
d. Six (6) months professional experience working directly with the elderly; or
2. A registered or practical nurse licensed in Kentucky with two (2) years professional experience working directly with the elderly while an employee of a:
a. Home health agency;
b. Long-term care facility;
c. Public health agency; or
d. Social service agency;
3. An individual at least twenty-one (21) years of age with:
a. A high school diploma or GED certificate;
b. Two (2) years professional education in social services, health or geriatrics; and
c. Two (2) years professional experience working directly with the elderly;
d. Professional experience shall substitute for professional education on a year-for-year basis, and shall include working directly with the elderly while an employee of a public or private health or social service agency.
(b) Administrators of licensed adult day health programs shall meet requirements as governed by 902 KAR 20:066, Operations and services, day health care programs.
(c) Staff responsible for assessments or case management for participants shall meet one (1) of the following:
1. A bachelor's degree in social work or related field relevant to geriatrics;
2. A master's degree in social work;
3. A bachelor's or master's degree in nursing with a Kentucky registered nursing license;
4. A bachelor's degree supplemented by two (2) years professional experience in working directly with the elderly; or
5. A registered or practical nurse licensed in Kentucky with two (2) years professional experience working directly with the elderly.
(d) Employees and volunteers with ongoing client contact shall submit evidence of tuberculosis testing as governed by 902 KAR 20:200:
1. Within one (1) year prior to employment; or
2. During the first week of employment; and
3. Annually thereafter;
4. Evidence of testing shall be maintained in the personnel file.
(e) An employee or volunteer contracting an infectious disease shall not appear at work until the infectious disease can no longer be transmitted.
(f) In-home respite staff shall meet the above requirements and shall:
1. Be twenty-one (21) years of age if working independently; or
2. If working as a team to provide direct services, one (1) member shall be at least twenty-one (21) years of age and the other staff member shall be at least eighteen (18) years of age.
(3) Training of staff shall be provided by appropriate qualified professionals as follows:
(a) Prior to assuming duties, paid and volunteer personnel shall receive orientation to the program and center including:
1. Program objectives;
2. Program policies and procedures;
3. Health, sanitation, emergency and safety codes and procedures;
4. Participant confidentiality; and
5. Personnel policies and procedures;
6. Policies and procedures shall be explained verbally and provided in writing.
(b) Within three (3) months of employment, personnel shall be provided basic training that includes:
1. The aging process;
2. Communications;
3. Personal care;
4. First aid;

5. Identifying and reporting health problems; and
6. Stress management.
(c) In addition to basic training, Alzheimer's respite personnel shall be provided training in:
1. Dementia;
2. Causes and manifestations of dementia;
3. Managing the participant with dementia;
4. Crisis intervention with combative participants; and
5. Effects of dementia on the caregiver.
(d) A minimum of eight (8) hours of annual training to review and update knowledge and skills shall be provided.
(e) If in-home respite care is provided in teams, at least one (1) member shall have orientation and basic training and the other member shall be provided:
1. Orientation within two (2) weeks of employment; and
2. Basic training within three (3) months of employment.

Section 8. Participant Records. (1) Records shall be typed or legibly written in ink with each entry dated and signed by the recorder and shall include the recorder's title. Each participant record shall be maintained at the program site and shall contain:
(a) Signed and dated medical summary and care plan, if referred on orders of a physician;
(b) A completed assessment;
(c) Signed eligibility statements;
(d) Application for services;
(e) Client notification;
(f) Fee assessment;
(g) An individualized plan of care including specific activities and objectives and signed DSS 1253, Quality Assurance Statement, as incorporated by reference into 905 KAR 8:180, prepared by the center director and case manager with the input and agreement of the participant and primary caregiver;
(h) An ongoing record, indicating any changes in the participant's:
1. Objectives and goals;
2. Progress;
3. Physical and mental conditions;
4. Behaviors;
5. Responses;
6. Attitudes;
7. Appetite; or
8. Other changes or observations noted by program staff and case manager;
(i) Emergency contact information including responsible party and personal physician;
(j) Attendance record;
(k) Record of services provided by in-home or other program services;
(l) Signed authorization for participant to receive emergency medical care if necessary;
(m) Ongoing reassessments and care plans;
(n) Correspondence; and
(o) Closing summary.
(2) Licensed day care centers shall maintain records as governed by 902 KAR 20:066.
(3) The service provider shall comply with reporting requirements of the area agency on aging and the Cabinet for Human Resources.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 30, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sue Tuttle
(1) Type and number of entities affected: The type and number of entities affected are the 598 elderly persons who were served in the adult day and Alzheimer's respite program during FY '90. It is anticipated that with additional funds 1,326 elderly persons may be served in the program during FY '91.
(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the affected entities as the result of this proposed regulation.
1. First year: There will not be any direct and indirect costs or savings to the affected entities.
2. Continuing costs or savings: There will not be any continuing costs or savings to the affected entities.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities.
(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.
(2) Effects on the promulgating administrative body: The effect on the promulgating agency is that existing policy and procedures regarding adult day and Alzheimer's respite program are drafted into regulation in compliance with KRS Chapter 13A.
(a) Direct and indirect costs or savings: There will not be any direct or indirect costs or savings to the Department for Social Services.
1. First year: There will not be any direct or indirect costs or savings during the first year for the Department for Social Services.
2. Continuing costs or savings: There will not be any continuing costs or savings for the Department for Social Services.
3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or affect competition for the Department for Social Services.
(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered as statutes and federal regulations require the cabinet to provide adult day and Alzheimer's respite programs.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is

no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(6) Any additional information or comments: There are no additional information or comments of which were are aware.

TIERING: Was tiering applied? No. This regulation was not tiered as it establishes statewide procedures for the operation of the adult day care and Alzheimer's respite program and is applicable to all applicants and contractors.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 8:170. Supportive services for the elderly.

RELATES TO: KRS 205.201, 205.203, 205.455-465, 905 KAR 8:180, 42 USC 3001 et seq.

STATUTORY AUTHORITY: KRS 194.050, 205.204(2)

NECESSITY AND FUNCTION: 42 USC 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194.050 authorizes the Cabinet for Human Resources to adopt regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Human Resources as the state agency to administer the Older Americans Act in Kentucky. The function of this regulation is to set forth the standards of operation for the Supportive Services Program in Kentucky, in compliance with the statutory requirement of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter.

Section 1. Definitions. (1) "Access" means information and referral services, outreach service and transportation service.

(2) "Adequate proportion" means no less than sixty-five (65) percent of the federal funding allocated by the Older Americans Act of 1965, as amended, excluding administrative funds.

(3) "Agency" means the area agency on aging, an entity designated by the state to administer, at the local level, the programs funded by the Older Americans Act of 1965, as amended.

(4) "Division" means the Division of Aging Services, Department for Social Services, Cabinet for Human Resources.

(5) "In-home services" means the following supportive services:

(a) Homemaker and home health aide;

(b) Visiting and telephone reassurance;

(c) Chore maintenance;

(d) In-home respite; and

(e) Home repair.

(6) "Legal assistance" means:

(a) Legal advice and representation by an attorney;

(b) Counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney; or

(c) Counseling or representation by a nonlawyer, where permitted by law, to older individuals with economic or social needs.

(7) "OAA" means the Older Americans Act of 1965, as amended.

(8) "Supportive service provider" means an entity that provides supportive services, authorized and funded by the OAA, under an approved area plan.

(9) "Unit of service" means:

(a) One-half (1/2) hour of direct contact with or on behalf of the participant;

(b) One (1) contact for the information and referral service;

(c) One (1) call for the telephone reassurance service;

(d) One (1) mile for the transportation service; and

(e) For federal reporting purposes, the following:

1. One (1) visit for the friendly visiting service;

2. One (1) session for the health promotion and recreation services;

3. One (1) contact for the outreach service; and

4. One (1) one-way trip for the transportation service.

Section 2. Eligibility. (1) Participants receiving supportive services funded by the OAA shall be sixty (60) years of age or older.

(2) Agencies shall establish systems for prioritizing applicants to ensure services are targeted to those in greatest need.

(3) Means tests shall not be allowed to determine eligibility.

Section 3. Service Provider Responsibilities. (1) Services shall be provided in accordance with the approved agency plan which shall ensure an adequate proportion is planned and expended to fund access, in-home and legal assistance services.

(2) Eligibility of each participant shall be established and personnel who approve services shall be designated.

(3) Volunteers and paid staff with the same written job description and responsibilities shall meet comparable requirements for training and skills.

(4) Services shall be provided under the supervision of qualified personnel.

(5) Services shall be accessible to participants by telephone, home visit, center location or person-to-person contact.

(6) Center services shall be available on a regularly scheduled basis. Major permanent changes shall have prior approval of the agency and be publicized to participants.

(7) Staff training shall be as follows:

(a) New staff shall receive an orientation;

(b) New staff shall be trained prior to assuming responsibilities or shall receive on-the-job training from qualified agency staff;

(c) Existing staff shall receive training on job-related topics at a minimum of once per year.

(8) Staff shall not accept personal gratuities

from participants or vendors.
(9) Staff shall not, without prior approval of the supervisor, pay bills or cash checks for participants.
(10) Designated staff, who are trained and skilled in assessing and dealing with the needs of the elderly and in the delivery of each service, shall be provided.
(11) There shall be a staff person, qualified by training and experience, responsible for administering each service and supervising assigned staff.
(12) The following activities shall not be reported as units of service except where required for a specific service:
(a) Review, update or maintenance of resource or agency files;
(b) Travel time incurred in the delivery of services;
(c) Training sessions or staff meetings; or
(d) Project management.
(13) A record documenting participant identification data, requests for service, eligibility for services provided and follow-up shall be maintained for each participant.
(14) A procedure shall be utilized annually for the evaluation of unmet need, the results to be made available to the agency.
(15) The legal assistance provider shall:
(a) Specify how it intends to target services for the needs of low-income minority individuals;
(b) Attempt to provide services to the population of low-income minority individuals in at least the same proportion as the population bears to the older population as a whole;
(c) Provide individual legal casework, legal referral, and legal education to the elderly and training for attorneys in areas of law relevant to the elderly;
(d) Contact institutionalized elderly and inform and educate these individuals about the legal assistance services available;
(e) Specify how it intends to coordinate its efforts with the efforts of the Long-term Care Ombudsman Office;
(f) Meet at least annually with the local ombudsman program;
(g) Submit a written quarterly activities report to the agency, documenting the legal activities and services provided to participants as follows:
1. Aggregate data as requested by the agency shall be provided on the quarterly program performance report, herein incorporated by reference; and
2. Information protected by the attorney-client privilege shall not be divulged.

Section 4. Support Services. Services funded by the OAA and administered by the area agencies on aging shall be provided as follows:
(1) Advocacy shall be action taken on behalf of an older person or group of older persons to secure rights or benefits. Advocacy services shall:
(a) Include receiving, investigating, and working to resolve disputes or complaints;
(b) Not include services provided by an attorney or person under the supervision of an attorney;
(c) Arrange annual public hearings within each area development district to:
1. Provide public information;
2. Identify areas of concern; and
3. Develop plans to address concerns;
(d) Keep the public informed of available services through other means identified in the area plan; and
(e) Include assessments as to whether or not provided services are reaching the population most in need.
(2) Counseling services shall be either singly or in a group and provided in a private, confidential setting to:
(a) Interview, discuss and actively listen to participants to advise and enable participants and families to resolve problems;
(b) Relieve temporary stress encountered by participants and families.
(3) Education services shall:
(a) Provide formal or informal opportunities for individuals or groups to acquire knowledge, experience or skills and increase awareness;
(b) Be presented by persons qualified by education or experience, on topics relevant to participant need and interest as identified through staff and participant input;
(c) Use donated resources for the provision of services whenever possible; and
(d) Maintain records which include topics, presenters, location and number of participants.
(4) Employment services shall include:
(a) Provision of consultation, job development and other services designed to assist participants in securing paid employment:
1. Information to participants concerning available employment;
2. Counseling which may include advise on taking tests, preparing a resume, attitude during an interview, and how to locate potential employers; and
3. Educating prospective employers;
(b) Referrals to prospective employers;
(c) Transportation assistance to participants involved in job search activities; and
(d) Follow-up activities on participants seeking paid employment.
(5) Friendly visiting services shall be planned visits to socially or geographically isolated participants:
(a) To express interest in his welfare by providing companionship and continuing contact with the community;
(b) Provided by trained staff or trained volunteers who have a staff person identified as supervisor;
(c) With consideration given for participant preference regarding the person providing service, schedule of times for, and length of service; and
(d) Using volunteers to provide the service whenever possible.
(6) Health promotion services shall develop programs designed to maintain or improve the health and well-being of older persons, including health screening, health promotion and other related activities. Services shall include:
(a) Assisting participants in securing and utilizing the available health services for attaining and maintaining a favorable condition of health;
(b) Education on the need for health care;
(c) Assistance to participants to help them understand health insurance policies; and
(d) Wellness activities such as walking programs, exercise programs and other group activities.
(7) Information and referral services shall:
(a) Provide information in response to an inquiry regarding opportunities and services

available;
(b) Assist in accessing opportunities and services;
(c) Follow-up to determine whether services were received and identified needs were met; and
(d) Utilize current records of appropriate community resources, including local procedures for assessing participant needs and for making referrals to appropriate agencies.
(8) Legal assistance services shall:
(a) Be available for institutionalized older persons and other elderly persons otherwise entitled to legal assistance;
(b) Not be denied because of a person's failure to disclose information about income or resources; and
(c) Assure providers maintain records to include individual client services and group activities, covering topics, presenters, locations and numbers of participants.
(9) Outreach services shall:
(a) Locate or reestablish contact initiated by providers, to identify participants in need of services;
(b) Provide information;
(c) Encourage the use of existing services;
(d) Be provided in the total geographic area served by the agency, in accordance with a plan to identify the elderly in the area, with priority given to low income minority; and
(e) Be provided by a worker with current knowledge of services available to the elderly, in accordance with an established procedure for worker assistance to the participant in accessing appropriate services, including follow-up to assure needs have been met.
(10) Recreation services shall provide activities which foster the health or social well-being of individuals through social interaction and the satisfying use of leisure time:
(a) By a person who is knowledgeable and skilled in the recreational activities provided, including a volunteer under the supervision of the center director; and
(b) With consideration for the physical and mental conditions and activity preferences of the participants.
(11) Telephone reassurance services shall:
(a) Provide regular telephone contact to or from isolated individuals:
1. To determine if they are safe and well;
2. To determine if they require special assistance; or
3. To provide psychological reassurance;
(b) Include a prearranged schedule for contacting the participant, and:
1. A plan of action for each participant to be implemented in the event of a nonanswered call;
2. The participant's preference regarding the person providing service; and
3. A record of calls and length of calls.
(12) Transportation services shall:
(a) Carry older persons to or from community resources to access or receive needed services;
(b) Comply with federal, state, and local regulations to ensure a safe journey from the point of departure to destination; and
(c) Use vehicles safe and accessible to older persons and properly insured to protect the participants in accordance with state laws.
(13) Provision of the following supportive services shall be governed by 905 KAR 8:180, homecare program for the elderly:
(a) Assessment;
(b) Case management;
(c) Chore;
(d) Escort;
(e) Home health aide;
(f) Homemaker, home management and homemaker, personal care;
(g) Home repair; and
(h) Respite.

Section 5. Material Incorporated by Reference. (1) The form necessary for the implementation of the supportive services for the elderly program shall be herein incorporated by reference.
(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 30, 1991
FILED WITH LRC: October 4, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sue Tuttle
(1) Type and number of entities affected: The type and number of entities affected are the 105,012 individuals served at 250 senior citizens centers as contracted through the 15 area development districts and 148 subcontracts at the local level.
(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the affected entities as the result of this proposed regulation.
1. First year: There will not be any direct and indirect costs or savings to the affected entities.
2. Continuing costs or savings: There will not be any continuing costs or savings to the affected entities.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities.
(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.
(2) Effects on the promulgating administrative body: The effect on the promulgating agency is that existing policy and procedures regarding the supportive services program are drafted into regulation in compliance with KRS Chapter 13A.
(a) Direct and indirect costs or savings: There will not be any direct or indirect costs or savings to the Department for Social Services.
1. First year: There will not be any direct or indirect costs or savings during the first year for the Department for Social Services.
2. Continuing costs or savings: There will not

be any continuing costs or savings for the Department for Social Services.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or affect competition for the Department for Social Services.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered as statutes and federal regulations require the cabinet to provide supportive services.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulation.

(6) Any additional information or comments: There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? No. This regulation was not tiered as it establishes statewide procedures for the operation of the supportive services program for the elderly and is applicable to all applicants and contractors.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 8:180. Homecare program for the elderly.

RELATES TO: KRS 205.010(6), 205.201, 205.203, 205.455-465, 42 USC 3001 et seq.

STATUTORY AUTHORITY: KRS 194.050, 205.204(2)

NECESSITY AND FUNCTION: 42 USC 3001 et seq., Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194.050 authorizes the Cabinet for Human Resources to adopt regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Human Resources as the state agency to administer the Older Americans Act in Kentucky and promulgate regulations for this purpose. The function of this regulation is to set forth the standards of operation for the homecare program for older persons in Kentucky, in compliance with the statutory requirements of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter. This administrative regulation consolidates the provisions of 905 KAR 8:020, 8:110, 8:120, and 8:130 which shall be repealed.

Section 1. Definitions. (1) "Activities of daily living" means activities of self-help: being able to feed, bathe, dress, transfer and toilet oneself.

(2) "Assessment" means the collection of in-depth information about a person's situation and functioning. Assessment shall identify needs and resources so that a comprehensive plan can be made with the client.

(3) "Case management" means a process for ensuring clients receive appropriate, comprehensive and timely services to meet their needs as identified in the assessment by:

(a) Planning;

(b) Linking the client to appropriate agencies in the formal and informal caregiving systems;

(c) Monitoring; and

(d) Advocacy through the employment of casework activities in order to achieve the best possible resolution to individual needs in the most effective way.

(4) "Homecare services" means those services to eligible individuals directed toward preventing unnecessary institutionalization of functionally impaired older persons and toward maintaining those eligible for services in the least restrictive environment, excluding residential facilities. Homecare services shall include:

(a) Homemaker;

(b) Home health aide;

(c) Chore;

(d) Home delivered meals;

(e) Core;

(f) Escort;

(g) Home repair; and

(h) Respite care services.

(5) "Personal care services" means services directed toward maintaining, strengthening or safeguarding the functioning of a person in his home. These services may include:

(a) Assisting the individual in activities of daily living; and

(b) Helping to identify and report health needs.

(6) "Home management services" means those services ordinarily involved with housekeeping necessary to maintain a person in his own home. These services may include:

(a) Shopping;

(b) Budgeting;

(c) Meal preparation;

(d) Laundry; and

(e) Cleaning.

(7) "Instrumental activities of daily living" means the components identified in home management plus the taking of prescribed medication.

(8) "Reassessment" means the formal reevaluation of the client's situation and functioning and of the services delivered to identify changes which may have occurred since the previous assessment.

Section 2. Service Provider Responsibilities. The service provider contracting to provide homecare services supported in whole or in part from funds received from the Cabinet for Human Resources shall:

(1) Assure the provision of services

throughout the geographic area covered under its plan or proposal;
(2) Justify in the area plan a decision not to fund a defined homecare service, including an assurance of adequate availability from another funding source;
(3) Treat the client in a respectful and dignified manner, involve the client and caregiver in the delivery of services and provide services in a safe manner;
(4) Permit staff of the Cabinet for Human Resources and the area development districts to monitor and evaluate services provided;
(5) Assure that each paid or voluntary staff member meets qualification and training standards established for each specific service by the Division of Aging Services, Cabinet for Human Resources;
(6) Maintain written job descriptions for all staff and volunteer positions involved in direct service delivery;
(7) Develop and maintain written personnel policies and wage scales for each job category; and
(8) Designate a supervisor and assure that staff providing homecare services are provided professional supervision.

Section 3. Homecare Plan. For program approval, the area development district shall submit to the Cabinet for Human Resources a proposal included in the area plan to include at least the following:
(1) An assurance of access for the Division of Aging Services to records of the contracting agency pertaining to its contract for delivery of homecare services;
(2) A plan for the delivery of homecare services in the area to be served by the contracting agency containing:
(a) Identification of services currently provided in the district;
(b) Identification of uniform procedures for certification and eligibility and case management;
(c) Methods for referral for service to other appropriate programs and services;
(d) Explanation of volunteer programs to be utilized;
(e) Identification of service providers for each specific service;
(f) Methods for the periodic monitoring of clients for the appropriateness of service;
(g) Unit cost and number of proposed clients for services to be provided directly or by contract;
(h) Procedures for the acceptance of voluntary contributions and assurance that income shall be used to maintain or increase the level of service; and
(i) Identification of linkages to existing services including adult protective services;
(3) A plan for implementation of case management responsibilities;
(4) A description of long- and short-range goals in the provision of approved homecare services;
(5) A description of the manner in which delivery of services to eligible individuals is to be undertaken;
(6) A procedure published for monitoring subcontracts for direct services;
(7) Assurance that assessment for eligibility shall be conducted initially and at least every six (6) months thereafter; and
(8) Assurance that assessment shall include the following:
(a) Physical health;
(b) Activities of daily living and instrumental activities of daily living (potential and actual performance);
(c) Physical environment and living arrangements;
(d) Mental status (cognitive and emotional);
(e) Financial resources;
(f) Social support and participation; and
(g) Current services utilization.

Section 4. Eligibility. (1) Each applicant for homecare services shall file an application for participation and demonstrate that he is a person sixty (60) years of age or older and meets at least one (1) of the following criteria:
(a) The applicant has functional limitations that require a sheltered environment with provision of social and health related services specific to his activities of daily living and who has been determined impaired in at least:
1. Two (2) physical activities of daily living; or
2. Three (3) instrumental activities of daily living;
(b) The applicant has a stable medical condition requiring skilled health services along with services related to activities of daily living who would otherwise require an institutional level of care; or
(c) The applicant is currently residing in a skilled nursing facility, an intermediate care facility or a personal care facility and can be maintained at home if appropriate living arrangements and support systems can be established.
(2) Eligibility shall be determined at the initial assessment and at each reassessment. Only individuals who have been trained and meet the qualifications of an assessor or case manager pursuant to Section 5(1) of this regulation shall determine eligibility.
(3) Homecare clients shall be informed that they shall be eligible for services as long as they meet eligibility requirements.
(4) Eligibility determination shall be based upon physical (functional) impairments; however, the assessor and case manager may consider individuals whose deficiencies are caused by mental or emotional impairments including Alzheimer's or other related disorders if these impairments affect physical (functional) capacities.
(5) The assessor or case manager shall determine eligibility for individuals being referred as needing adult day care, adult day health care, Alzheimer's respite care, or in-home services. Use of this procedure may be waived by the Director, Division of Aging Services, Cabinet for Human Resources, for those area development districts who provide generic assessment and case management.
(6) The homecare program shall not supplant or replace services provided by the client's informal support system. If needs are being met by the informal support system, the client shall be deemed ineligible. An applicant who needs respite services shall not be deemed ineligible as a result of this subsection.

Section 5. Case Management. (1) Case managers shall meet one (1) of the following qualifications:

(a) A bachelor's degree or master's degree in social work, no experience required;
(b) A bachelor's degree or master's degree in nursing with a current Kentucky nursing license, no experience required;
(c) A bachelor's degree with two (2) years experience in working with the elderly; or
(d) A Kentucky nursing license with two (2) years experience in working with the elderly.
(2) Each client shall be assigned a specific case manager.
(3) Clients shall be assessed initially and reassessed every six (6) months thereafter by a person who meets case manager qualifications. After each assessment or reassessment, the Homecare Certification of Eligibility, herein incorporated by reference, shall be completed. If the client is ineligible, the case shall be closed with the reason documented in the case record.
(4) The case manager shall be responsible for arranging and documenting those services provided by other funding sources or volunteers. Reasonable effort shall be made to secure and utilize informal supports for each client.
(5) Case managers shall:
(a) Monitor each client monthly including one (1) home visit with face-to-face contact at least every other month; and
(b) Document in the case record each contact with a client or on behalf of a client.
(6) Case management providers shall assure a minimum of one (1) full-time equivalent case manager for each 100 homecare clients. When the case manager also provides assessment services, his caseload shall not exceed seventy-five (75) clients. Time used to provide agency administration or supervision of other staff shall not be counted toward meeting the full-time equivalency requirement. Two (2) adult day care, adult day health care or Alzheimer's respite care clients may be counted as one (1) for the purpose of determining compliance with this subsection.
(7) Each homecare client shall receive services in accordance with an individualized care plan developed cooperatively with his case manager and revised whenever appropriate. The plan shall:
(a) Relate to the assessed problem;
(b) Identify the goal to be achieved;
(c) Identify the scope, duration and units of service required;
(d) Identify the source of service;
(e) Include a plan for reassessment; and
(f) Be signed by the client and case manager.

Section 6. Quality Assurance. (1) Upon admission to the homecare program, each client shall:
(a) Read, or have read and explained to him if necessary;
(b) Sign and receive a copy of a completed DSS 1253, Quality Assurance Agreement, herein incorporated by reference. The agreement shall contain the name, address and telephone number of:
1. The current case manager; and
2. The area development district homecare coordinator.
(2) A client call or other contact with the case manager, area development district or Division of Aging Services shall be documented on the DSS 1254, Report of Complaint or Concern, herein incorporated by reference. The identity of the complainant shall be kept confidential when requested.
(3) Copies of written complaints and detailed reports of telephoned or verbal complaints, concerns or service suggestions shall be maintained in the case manager's permanent file. Documentation of investigation and efforts at resolution or service improvement shall be available for monitoring by the area development district and Division of Aging Services staff.

Section 7. Fees and Contributions. (1) The assessor or case manager shall be responsible for determining fee paying status, using the following criteria:
(a) A fee shall not be assessed for the provision of assessment or case management services.
(b) The assessor or case manager shall consider extraordinary out-of-pocket expenses when determining a client's ability to pay. Waiver or reduction of fee due to extraordinary out-of-pocket expenses shall be documented on the Homecare Authorization Statement for Extraordinary Expenses, herein incorporated by reference.
(c) A fee shall not be assessed an eligible individual who meets the definition of "needy aged" as governed by KRS 205.010(6).
(d) SSI income shall not be deemed available to other family members. The applicant receiving SSI benefits shall be considered a family of one (1) for the purpose of fee determination.
(2) Eligible persons shall be charged a fee determined by the cost of the service unit multiplied by the applicable percentage rate based upon income and size of family as set forth below. Service unit cost shall be determined by the state agency or contracting entity in accordance with its contract.

Homecare Client Income and
Applicable Percentage of Fee

Annual Income	1 Person	2 Persons
$ 8000 and below	0%	0%
$ 8001 - $10150	20%	0%
$10151 - $12300	40%	20%
$12301 - $14450	60%	40%
$14451 - $16650	80%	60%
$16651 - $18850	100%	80%
$18851 - $20950		100%

For each additional family member add $2150.

(3) Contributions from individuals, families or other entities shall be encouraged. Suggested contribution or donation rates may be established; however, pressure shall not be placed upon the client to donate or contribute. Services shall not be withheld from an otherwise eligible individual based upon his failure to voluntarily contribute to support services.
(4) The area development district shall review and approve the procedures implemented by provider agencies for the collecting, accounting, spending and auditing of fees and donations.

Section 8. Allocation Formula. The homecare program funding formula shall consist of a $20,000 base for each district, with the remaining amount of funds distributed in

proportion to the district's elderly (sixty (60) plus) population in the state.

Section 9. Termination or Reduction of Services. (1) The case manager and the client shall decide when to terminate services. Services may be reduced or terminated when:

(a) The client's condition or support system improves; or

(b) A determination is made that the care plan cannot be followed.

(2) When services are terminated or reduced, the case manager shall:

(a) Complete page two (2) of the Application for Homecare Services, Notification to Client, herein incorporated by reference;

(b) Inform the client of his right to file a complaint;

(c) Complete section IV of the DSS 864 Homecare Services, herein incorporated by reference, listing the closure reason; and

(d) Assist the client and family in making referrals to other agencies if applicable.

(3) When services are terminated or reduced due to reasons unrelated to the clients needs or condition, the homecare coordinator, in conjunction with the case manager, shall determine reduction or termination on a case-by-case basis.

Section 10. Material Incorporated by Reference. (1) Forms necessary for the implementation of the homecare program for the elderly shall be herein incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m..

Section 11. Repeal. The following administrative regulations are hereby repealed:

(1) 905 KAR 8:020;
(2) 905 KAR 8:110;
(3) 905 KAR 8:120; and
(4) 905 KAR 8:130.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 30, 1991
FILED WITH LRC: October 4, 1991 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sue Tuttle

(1) Type and number of entities affected: The type and number of entities affected are the 8,784 functionally impaired elderly persons who were served through the homecare program as contracted through the 15 area development districts during FY '90. It is anticipated that with additional funds, 1,300 elderly persons may be served in the program during FY '91.

(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the affected entities as a result of this proposed regulation.

1. First year: There will not be any direct and indirect costs or savings to the affected entities.

2. Continuing costs or savings: There will not be any continuing costs or savings to the affected entities.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities.

(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: The effect on the promulgating agency is that existing policy and procedures regarding the homecare program are drafted into regulation in compliance with KRS Chapter 13A.

(a) Direct and indirect costs or savings: There will not be any cost or savings to the Department for Social Services.

1. First year: There will not be any direct or indirect cost or savings during the first year for the Department for Social Services.

2. Continuing costs or savings: There will not be any continuing costs or savings to the Department for Social Services.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or affect competition for the Department for Social Services.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered as statutes and federal regulations require the cabinet to provide homecare services.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulation.

(6) Any additional information or comments: There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? No. This regulation was not tiered as it establishes statewide procedure for the operation of the homecare program for the elderly. All applicants

and contractors are required to comply with these regulations.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 8:190. Nutrition program for the elderly.

RELATES TO: KRS 205.201, 205.203, 205.460-465, 902 KAR 45:005, 42 USC 3001 et seq.
STATUTORY AUTHORITY: KRS 194.050, 205.204(2)
NECESSITY AND FUNCTION: 42 USC 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194.050 authorizes the Cabinet for Human Resources to adopt regulations as necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds. KRS 205.204 designates the Cabinet for Human Resources as the state agency to administer the Older Americans Act in Kentucky. The function of this regulation is to set forth the standards of operation for the nutrition program as implemented by the area agencies on aging. This regulation is promulgated to comply with the statutory requirement of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter. This regulation contains the substance of 905 KAR 8:030 which is repealed.

Section 1. Definitions. (1) "Acceptable brands list" means a listing of food brands which have been tested and approved by the State Food Committee, Cabinet for Finance and Administration, Division of Purchases.
(2) "Agency" means the area agency on aging, an entity designated by the state to administer, at the local level, the programs funded by the Older Americans Act of 1965, as amended.
(3) "Area development district" means any of fifteen (15) regional planning and development agencies with which the Division of Aging Services contracts for the local delivery of aging services.
(4) "Certified nutritionist" means one who has completed a master's degree in food science, nutrition or a closely related field and has a minimum of twelve (12) semester hours of graduate credit in nutrition from an accredited college or university.
(5) "Chilled food system" means any system of food production which results in the partial or complete cooking of a prepared product which is then chilled, maintained at refrigeration temperatures and reheated at the time of service.
(6) "Dietitian" means one who has met the training and education requirements for membership in the American Dietetic Association, including a master's degree or advanced training in addition to an undergraduate degree in dietetics, food and nutrition, or institutional management.
(7) "District nutrition program" means the program approved by the division and administered in each of the fifteen (15) planning and service areas in Kentucky by the area development districts or other contract agencies. The district program shall include meals or nutrition services funded by the:
(a) Older Americans Act of 1965;
(b) United States Department of Agriculture;
(c) Homecare program;
(d) Adult day care program;
(e) Adult day health care program;
(f) Alzheimer's respite program; or
(g) Other funds designated in the approved plan.
(8) "Division" means the Division of Aging Services, Department for Social Services, Cabinet for Human Resources.
(9) "Meal" means a portion of food consisting of a minimum of:
(a) Five (5) dissimilar components;
(b) Three (3) cups total volume; and
(c) The equivalent of one-third (1/3) of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences - National Research Council.
(10) "Nutrition service provider" means an entity that is awarded a contract under the area plan to provide nutrition services covered under this regulation.
(11) "OAA" means the Older Americans Act of 1965, as amended.
(12) "Registered dietitian" means one who has successfully completed a standard competency test administered by the American Dietetic Association.
(13) "Standardized recipe" means a written formula for producing food items of a consistent quality and quantity.
(14) "State nutrition program for the elderly" means the nutrition program administered by the division and shall include meals or nutrition services funded as designated in subsection (6) of this section.
(15) "USDA" means the United States Department of Agriculture.

Section 2. Responsibilities of Nutrition Service Providers. (1) The service provider contracting to provide meals and services shall:
(a) Provide the agency with statistical and other information necessary for state reporting requirements;
(b) Provide recipients with an opportunity to voluntarily contribute to the cost of the service;
(c) Assure that an older person shall not be denied service because he does not or cannot contribute to the cost of the service;
(d) Protect the privacy of each older person with respect to contributions;
(e) Use meal contributions to increase the number of meals served, and to facilitate access to these meals;
(f) Report to appropriate officials for follow-up, conditions or circumstances which place the older person or his household in imminent danger;
(g) If feasible and appropriate, make arrangements for services to older persons in weather-related emergencies;
(h) Assist participants in taking advantage of benefits under other programs;
(i) Employ adequate numbers of qualified staff to ensure satisfactory conduct of the service;
(j) Have a site director, on a paid or volunteer basis, responsible for activities at the site:
1. If OAA Title III-C funds are utilized the maximum paid hours per day shall be five (5); and
2. OAA Title III-B or other funds may be used

to pay for additional hours;
(k) Permit staff of the agency or the cabinet and federal representatives to monitor and inspect the operation; and
(l) Attend meetings scheduled by the agency and the division.
(2) The service provider contracting to provide meals only shall:
(a) Provide the contracting agency with statistical and other information necessary for state reporting requirements;
(b) Employ adequate numbers of qualified staff to ensure satisfactory conduct of the service;
(c) Permit staff of the nutrition service provider, the agency, the Cabinet for Human Resources and federal representatives to monitor and inspect the operation; and
(d) Attend meetings scheduled by the agency and the division.

Section 3. Eligibility. (1) Eligibility for congregate meals shall be based on the following criteria:
(a) A person aged sixty (60) or older and the spouse of that person;
(b) Volunteers to handicapped persons residing in elderly housing complexes where a congregate site is located;
(c) Disabled individuals who reside in noninstitutional households with and accompany persons eligible for congregate meals; and
(d) Clients in adult day care, adult day health care, and Alzheimer's respite programs.
(2) Eligibility for home-delivered meals shall be based on the following criteria:
(a) A person aged sixty (60) or over and the spouse of that person, if:
1. Either is, by reason of illness or incapacitating disability, unable to attend a congregate site; and
2. There is no one in the home able to prepare a nutritious meal on a regular basis; or
(b) A nonelderly disabled person who is a member of a noninstitutional household with an elderly person.

Section 4. Meal Planning. Nutrient dense meals shall be planned using preparation and delivery methods that preserve the nutritional value of foods. The use of saturated fats, salt and sugar shall be restricted to maintain good health.
(1) Menus shall be:
(a) Planned with suggestions from participants. A formal procedure shall be established in each district.
(b) Planned on a monthly or quarterly basis using inclusive months, and prepared on menu forms which shall bear the name of the person who prepared the menu.
(c) Certified in writing as providing one-third (1/3) of the current daily recommended dietary allowances for persons fifty-one (51) years and older as established by the Food and Nutrition Board of the National Academy of Sciences - National Research Council. Certification shall be by the dietitian or certified nutritionist whose services are used by the provider.
(d) Submitted for approval to the division dietitian.
1. Two (2) copies of the menu shall be prepared:
a. The original shall be submitted to the division for approval; and
b. One (1) copy shall be retained in the agency.
2. Copies of corrected menus shall be resubmitted to the division.
(e) Adhered to, subject to seasonal availability of food items as well as availability of USDA donated foods, if applicable. Substitution to the approved menu shall be minimal. A list shall be submitted to the division compositely each month that includes:
1. The date of substitution;
2. The original menu item; and
3. The substitution.
(f) Posted in a conspicuous location, including each congregate meal site and each preparation site. Notification of the meals to be served shall be provided to participants receiving home delivered meals.
(2) Special menus which allow for religious, ethnic, cultural and regional dietary practices may be provided where feasible and appropriate but are not required on an individual basis; dietary preferences of a majority of the participants shall be reflected.
(3) Therapeutic diets may be offered if practical and feasible. A written order signed by the physician shall be on file, and reviewed and reordered whenever a change in the condition of the participant is reported or observed, but at least annually. Therapeutic menus shall be planned and prepared under the supervision of a registered dietitian.
(4) Additional foods such as fresh produce, baked items, and donated canned items, may be added to the meal to provide personal satisfaction and additional nutrition. Home-canned foods shall not be used.
(5) When a potluck meal is served at a particular site, no congregate meal shall be served at that site. Home delivered meals shall be provided on the same basis as if the potluck meal had not been scheduled.
(6) Vitamin and mineral supplements shall not be provided with nutrition program funds; however, citrus juice or drinks fortified with vitamin C are recommended. Only full strength juices shall be used as one (1) of the required meal components. A fruit beverage or drink, even if fortified, shall be used in the optional beverage category.
(7) A minimum of four (4) hours of consultation per month by a registered dietitian or certified nutritionist is required. Responsibilities shall include, but are not restricted to:
(a) Evaluation of the food preparation and service operations including measurement of food temperatures and portion sizes;
(b) Assessment of food quality and employee practices;
(c) Staff training; and
(d) Menu preparation or review.
(8) Individual diet counseling with participants shall only be provided by a dietitian.

Section 5. Meal Components. Meal component standards shall be as follows:
(1) The meat or meat alternate requirement shall be three (3) ounces of cooked edible portion of meat, fish or poultry with each meal. A three (3) ounce equivalent of meat alternate (nonmeat protein source) may be used to fulfill the requirement. Additional requirements include:
(a) Breading shall be in addition to the three

(3) ounce requirement;
(b) The use of cured and processed meat items shall be limited to one (1) time per week due to their high sodium content;
(c) The use of meat extender items shall be limited to a maximum of twice per week to minimize portion control problems;
(d) Cold entrees may be used during the hot months but shall not be used in the winter.
(2) The vegetable and fruit requirement shall be a minimum of two (2) one-half (1/2) cup servings or three (3) one-third (1/3) cup servings of a fruit or vegetable, or full-strength fruit or vegetable juice. The following criteria shall apply:
(a) Partial strength or simulated fruit juice or drinks, even when fortified, shall only be considered optional beverages;
(b) One (1) cup portions of tossed salad shall be considered as one-half (1/2) cup servings;
(c) A rich source of vitamin A shall be included at least every other day;
(d) The vitamin C meal requirement shall not come from more than two (2) food items, which shall be designated by an asterisk on each menu; because extended heating of food diminishes vitamin C content, the C source shall be a cold item as often as possible;
(e) When fruit or fruit salad is used in place of a second vegetable, the dessert shall not be a "fruit only" item;
(f) When soup is served as one (1) of the fruit and vegetable components, juice shall not be served as the second;
(g) Starchy vegetables shall be limited to one (1) per meal, and a good balance of succulent and starchy vegetables shall be presented;
(h) A bread alternate shall be used as one (1) of the vegetable choices only if a full one-half (1/2) cup portion of fruit is used as the dessert in the same meal;
(i) Vegetables that may be used as meat alternates shall not simultaneously fulfill both the vegetable and the protein requirement; and
(j) Fresh and frozen vegetables shall be used to the capacity that freezer and refrigerated storage shall allow. To minimize the sodium content of meals provided in the nutrition program, salt shall not be added during the cooking of canned vegetables.
(3) The bread or bread alternate requirement shall:
(a) Be one (1) serving of enriched or whole grain bread, biscuits, muffins, rolls, sandwich buns, cornbread or other hot breads with each meal;
(b) Weigh at least one (1) ounce;
(c) Furnish a minimum of two (2) grams protein; and
(d) Be one-half (1/2) cup volume for bread alternates.
(4) The butter or fortified margarine requirement shall be one (1) teaspoon per meal. The following criteria shall apply:
(a) All purchased margarine shall be from predominantly vegetable sources; special emphasis shall be placed on limiting saturated fats and cholesterol.
(b) Butter or margarine used in cooking may count toward the required amount.
(c) Condiments shall be served in place of butter or margarine:
1. On days when the bread item is used to make a sandwich; and
2. The menu shall indicate the condiment.
(5) The dessert requirement shall be one-half (1/2) cup serving and shall meet the following criteria:
(a) Fruit shall be served for dessert twice weekly, and desserts containing fruits as well as fruit only items shall be included;
(b) Fresh fruit shall be used weekly or a minimum of twice monthly;
(c) A dessert which furnishes a minimum of 100-200 milligrams of calcium shall be provided at least weekly;
(d) Ice cream, ice milk or sherbet shall be served weekly during the hot months and at least monthly thereafter, except that yogurt or puddings made with milk may be served instead of ice cream in the home delivered meals program or in those sites not equipped with freezer storage; and
(e) Juice may be served occasionally as the dessert item but shall be accompanied by a small cookie or peanut butter cracker to provide the satiety value normally furnished by the dessert.
(6) The milk requirement shall be:
(a) One-half (1/2) pint of skim or two (2) percent milk served:
1. In an unopened, commercially filled container; or
2. From an approved bulk milk dispenser;
(b) Other choices such as fortified whole milk, buttermilk or the calcium equivalent in cheese; or
(c) A calcium alternate for the required one (1) cup fluid milk if approved by the division dietitian.
(7) Other foods or beverages may be provided according to the following criteria:
(a) Coffee, tea, decaffeinated beverages, fruit juice and fruit-flavored drinks may be offered but are not required.
(b) The service of water is required with meals; it is recommended that cups and pitchers of cold water be preset just prior to meal service in locations convenient to participants.
(c) When a full-strength citrus juice listed under other foods and beverages is to fulfill the vitamin C requirement for the meal, then it shall be so indicated with an asterisk; this designation shall require the service of this menu item to participants.

Section 6. Food Procurement. Foods purchased for use in the nutrition program shall be of good quality and shall be obtained from sources which conform to federal, state and local regulatory standards for quality, sanitation, and safety. The following requirements apply:
(1) Foods shall be purchased and received according to the acceptable brands list or the approved equal to those brands.
(2) Quantity food purchases shall be made using specifications on the current acceptable brands list.
(3) Purchases for canned, packaged and frozen foods shall, when feasible, be made quarterly.
(4) Meat products shall be ordered monthly.
(5) Fresh dairy products, bread and eggs shall be purchased weekly.
(6) Fresh fruits and vegetables shall be purchased on a local market basis.
(7) Other methods of purchasing may be used provided that they result in the best price for the quality desired.
(8) Use of term contracts for repetitively purchased items is encouraged. Fixed quantity contracting shall be used when definite items

and quantities can be determined for future delivery dates.

Section 7. Food Preparation. Standardized recipes shall be used in food preparation and yield shall be indicated. Recipes shall specify the yield adjusted for the requirements of the nutrition program for the elderly.

(1) The following standards shall be established for quality control:

(a) Food production standards.

1. Hot foods shall be produced within eight (8) hours preceding service unless otherwise directed in the recipe;

2. Protein foods shall be cooked completely once the cooking cycle has begun;

3. Foods to be served cold and neutral temperature foods may be prepared earlier than the preceding eight (8) hours if so directed in the recipe;

4. Solid and semisolid cooked foods stored under refrigeration shall be placed in containers that are no more than four (4) inches in depth.

(b) A chilled food system for bulk food shall not be used; chilled food systems for individually portioned meals may be considered for approval by the division dietitian provided that the cumulative hot-holding time for these meals is less than two (2) hours.

(c) Holding times shall be kept to an absolute minimum, but the holding time for hot foods shall not exceed three (3) hours after preparation. Exception to this requirement may be granted by the division provided that meal quality is not compromised with extended hot-holding and that appropriate temperatures are maintained.

(d) Temperature standards.

1. Potentially hazardous foods (protein foods) shall be cooked to heat all parts of the product to an internal temperature of at least 140 degrees Fahrenheit; minimum internal temperature shall be 165 degrees Fahrenheit for poultry and 150 degrees Fahrenheit for pork;

2. Hot foods shall be packed at temperatures of at least 160 degrees Fahrenheit, and the internal temperature of hot foods to be transported shall be at least 140 degrees Fahrenheit during transportation and service;

3. Cold foods shall not exceed forty-five (45) degrees Fahrenheit during transportation and service; and

4. Thermometers used to check food temperatures shall be:

a. Of metal stem-type construction;

b. Numerically scaled;

c. Accurate to plus or minus three (3) degrees Fahrenheit; and

d. Checked periodically to ensure that each thermometer is registering accurately.

5. Food temperatures for both hot and cold items shall be checked and recorded daily at the kitchen and at the site of service.

(2) Food preparation facilities shall be in compliance with state and local fire, health, sanitation and safety regulations which apply to food service operations. Food preparation and service kitchens shall be inspected periodically by state and local health officials and the division dietitian.

(3) Standards for food handling and personal hygiene shall be in accordance with the State Food Service Code governed by 902 KAR 45:005.

Section 8. Congregate Meal Service. Congregate meals shall be provided by nutrition service providers who, five (5) or more days per week, provide at least one (1) hot or other appropriate meal per day and any additional meals which the recipient of a grant or contract may elect to provide in a congregate setting.

(1) The following requirements shall apply to the transportation of meals to congregate sites:

(a) Insulated containers shall be used for bulk food delivery;

(b) Bulk foods shall be transported in stainless steel pans or aluminum disposable pans. Use of plastic shall be restricted to cold foods only; and

(c) Hot items shall be transported in bulk containers separate from cold products. Containers shall be preheated or prechilled before being loaded.

(2) The following order of service shall be followed:

(a) Congregate meals shall be served after packaging the home delivered meals. Foods shall be maintained at appropriate temperatures during all phases of food service.

(b) Milk and other cold food items shall not be preset on tables prior to meal service; tables shall not be preset with eating or drinking utensils for more than four (4) hours prior to meal service unless each item is individually wrapped.

(c) After all participants have been served, volunteers and other staff may be served.

(d) Food items left over from meals may be:

1. Offered as seconds to participants after all have been served;

2. Packaged in individual trays, labeled, dated and immediately frozen for later use in the home delivered meals program:

a. Frozen meals shall be stored at zero degrees Fahrenheit or below; and

b. Distributed within two (2) weeks from the date they are packaged in the center.

3. If neither of these options is possible, the foods shall be discarded.

(3) Only complete meals shall be claimed for payment. The omission of any of the required meal components shall cause that meal to be incomplete and ineligible for payment and for USDA reimbursement. Refusal by a participant of specific meal components shall not render that meal incomplete.

(4) Center carry-out policy shall:

(a) Discourage the carry out of food items with particular emphasis on potentially hazardous foods but shall not prohibit this practice. Food items which may be taken home are those items which a participant has left from his own meal;

(b) Assure participants shall be advised concerning the risks involved when foods are held at unsafe temperatures; and

(c) Assure staff or volunteers shall not devote time or supplies to the task of packaging individual menu items as carry-outs for participants or staff.

(5) Participants shall have an opportunity to evaluate meals and service.

(6) The aging planner or representative shall monitor the food service operation a minimum of twelve (12) times per year to evaluate compliance with nutrition program policies.

(7) An ongoing nutrition education program shall be implemented and may include a minimum of one (1) session each month at each nutrition

site. The program shall include using a wide range of teaching techniques for a variety of topics including, but not limited to:
(a) Health promotion and disease prevention;
(b) Consumer approaches; and
(c) Food fads and diets.

Section 9. Home Delivered Meal Service. Home delivered meals shall be provided by nutrition service providers who, five (5) or more days a week, provide at least one (1) home delivered hot, cold, frozen, dried, canned or supplemental foods meal per day and any additional meals which the recipient of a grant or contract may elect to provide.
(1) Meals shall be delivered only to eligible persons in their homes. Meals may be left with a designee of the older person provided the designee has been informed of the requirements of the nutrition program and has indicated a willingness to comply with those requirements.
(2) Frozen meals or shelf stable meals shall not be used in the home delivered meals program without prior approval of the division dietitian. Alternatives to frozen meals shall be sought especially during the hot months for those participants who do not have fans or air conditioning and the heating of a frozen meal in the home could substantially increase the temperature of the home. Documentation for the provision of frozen or shelf stable meals must show:
(a) The participant has expressed a preference for frozen or shelf stable meals; or
(b) The participant lives off an established route; and
(c) Proper storage and heating facilities are available in the home; and
(d) The participant is able to prepare and consume the meal alone or with available assistance.
(3) Providers of home delivered meals shall use methods of delivery that shall prevent outside contamination and hold food at appropriate temperatures. Delivery of meals shall meet the following criteria:
(a) Delivery routes shall be kept as short as possible to minimize nutrient loss and to facilitate temperature retention;
(b) Meals shall be delivered within three (3) hours from the end of preparation to the final destination, unless an exception is approved by the division;
(c) Nutrition site personnel shall check and record temperatures of meals at least weekly toward the end of the longest delivery route. When temperature retention problems are found, daily checks of temperatures shall be made until the problem is corrected;
(d) When heated delivery equipment is not available, other means to hold temperature shall be used;
(e) Eutectic plates or artificial ice shall be placed over the cold foods within the food boxes. Ice may be used if the food containers are constructed so as to prevent water seepage into the food;
(f) Neutral temperature foods shall be packaged and delivered in a way as to prevent outside contamination; and
(g) Frozen meals shall be maintained in a frozen state during delivery. When the meal has thawed to the extent that ice crystals are not contained in the meal:
1. The meal shall not be refrozen for later use; however,
2. A meal which has begun to thaw may be held for a brief period at forty-five (45) degrees Fahrenheit or below, or heated and consumed immediately.
(4) The aging planner or representative shall monitor the food service operation a minimum of twelve (12) times per year to evaluate compliance with nutrition program policy.

Section 10. Emergency Meals. Provisions shall be made for furnishing emergency meals during inclement weather conditions, power failure, or any disaster that may cause isolation or create a special need. Meals may be shelf stable, frozen, freeze-dried, dehydrated, or a combination of these, provided they meet the nutritional requirements of the program and menus have been approved by the division dietitian. Additional criteria include:
(1) Menus shall be planned for a minimum of three (3) days;
(2) Frozen meals shall be used only:
(a) If the participant is able to store, prepare and consume the meal alone or with available assistance; and
(b) If the delivery system is arranged so that storage time after delivery is minimal;
(3) Water shall be provided if necessary;
(4) Butter or margarine may be optional;
(5) The menu plan shall include some foods which require no cooking prior to consumption;
(6) One (1) dish meals may be used provided that both the protein and one (1) of the vegetable requirements are contained in the single serving;
(7) Foods may be taken to the nutrition sites and participants may assist with packaging the foods for distribution;
(8) Emergency meal packages shall be distributed to homebound clients with home delivered meals and may be used for congregate participants when centers are closed;
(9) For reporting purposes, meals shall be counted during the quarter in which they were distributed.

Section 11. USDA Assistance. The USDA provides a per meal rate of assistance, in the form of commodities or cash-in-lieu-of commodities, for each meal served to an eligible participant. Revenue generated shall accrue to the division.
(1) The area development district shall disburse USDA monies to service providers based upon each provider's proportion of the total number of eligible meals served in the state.
(a) Disbursements of cash and receipt of commodities shall be reflected in the next billing after receipt by the provider.
(b) The provider shall expend USDA monies within one (1) year from the time payment is received.
(c) USDA funds shall be used to expand the total number of meals provided in the state and shall not be used to reduce funds from any other grant or contract which the provider may be given.
(2) When commodities are accepted, the provider shall:
(a) Place orders according to procedures established by the division;
(b) Maintain records to indicate items received and utilized; and
(c) Store commodities together on designated shelves or pallets separate from purchased

goods; a separate room is not required.
(3) When cash-in-lieu-of commodities is accepted, the provider shall:
(a) Maintain records to show the amount of cash received and how it was expended;
(b) Use cash to purchase USDA commodities and other foods for the nutrition program;
(c) Purchase meals provided the cost of the meal is quoted as a unit cost which includes both food and labor. Ready to serve meals may be purchased on a unit cost basis provided each meal contains food equivalent in value to the current rate of reimbursement.
(4) Cash reimbursement criteria include:
(a) Only meals containing the components of the required meal pattern and actually consumed by eligible participants may be claimed;
(b) Meals claimed for reimbursement shall not be claimed under other USDA reimbursement programs;
(c) Section 2 of the USDA-NPE Budget and Financial Summary Report, herein incorporated by reference, shall be submitted to the division by the 15th of the month following the report period to:
1. Claim cash reimbursement;
2. Certify commodity meals served; and
3. Certify meals ineligible for USDA reimbursement.
(d) Cash reimbursement is to be based on the total number of meals served to eligible participants multiplied by the reimbursement rate as established by USDA less commodity entitlement monies if applicable.
(5) Financial records kept by the provider shall show:
(a) Meals provided are bid without regard to USDA reimbursement;
(b) USDA funds are used as a revenue source for expansion of meals served in the state;
(c) The unit cost of a meal is not reduced in anticipation of future USDA reimbursement but is stated as a true cost in both bidding and reporting procedures; and
(d) Monthly financial reports reflect USDA expenditures.

Section 12. Nutrition Program Costs. (1) Ready-to-serve meal costs shall include the following:
(a) The cost of raw food, including food purchased with USDA cash resources and the dollar value of USDA donated foods used;
(b) The costs of serving supplies, disposables, cleaning materials, and noncapital items used in the preparation of food;
(c) The costs of labor for food preparation, cooking, portioning of foods, and delivery of food to the site of service. Labor costs shall include:
1. Fringe benefits;
2. Wages for persons who prepare and maintain the sanitary condition of the kitchen and storage areas; and
3. Wages paid for time spent in food and supplies inventorying, storing and receiving and in direct supervision of employees;
(d) Equipment costs of capital items like ranges, dishwashers, trucks and vans, steam tables, freezers, etc.;
(e) The costs of space, related utility costs, and equipment operation, maintenance and repair costs; and
(f) The nonlabor costs of transporting food, food storage, handling charges for USDA donated foods, insurance and general liability.
(2) Food service and delivery costs shall include:
(a) The total labor costs for serving foods and for home delivery of meals to participants;
(b) Mileage and maintenance of vehicles costs for home delivery of meals;
(c) Costs incurred for nutrition education and nutrition outreach services;
(d) Project management costs, including personnel, equipment and supply costs; and
(e) Other general expenses related to overall program management.
(3) Food service contract bids shall be structured according to the request for proposal outline developed by the division. Meals shall be bid without regard to funding source, and shall contain both a ready-to-serve cost and a served, delivered cost.

Section 13. Material Incorporated by Reference. (1) The form necessary for the implementation of the nutrition program for the elderly shall be herein incorporated.
(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

Section 14. Repeal. 905 KAR 8:030 is hereby repealed.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 30, 1991
FILED WITH LRC: October 4, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sue Tuttle
(1) Type and number of entities affected: The type and number of entities affected are the 19 service providers that produce 3.5 million meals per year to more than 62,000 eligible persons across the state. Congregate meals constitute 49% of meals served, and 51% are home delivered.
(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the affected entities as a result of this proposed regulation.
1. First year: There will not be any direct and indirect costs or savings to the affected entities.
2. Continuing costs or savings: There will not be any continuing costs or savings to the affected entities.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities.
(b) Reporting and paperwork requirements: There will not be any change in the affected

entities reporting and paperwork requirements.
(2) Effects on the promulgating administrative body: The effect on the promulgating agency is that existing policy and procedures regarding the nutrition program are drafted into regulation in compliance with KRS Chapter 13A.
(a) Direct and indirect costs or savings: There will not be any cost or savings to the Department for Social Services.
1. First year: There will not be any direct or indirect cost or savings during the first year for the Department for Social Services.
2. Continuing costs or savings: There will not be any continuing costs or savings to the Department for Social Services.
3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or affect competition for the Department for Social Services.
(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered as statutes and federal regulations require the cabinet to provide homecare services.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.
(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulation.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulation.
(6) Any additional information or comments: There are no additional information or comments of which we are aware.
TIERING: Was tiering applied? No. This regulation was not tiered as it establishes statewide procedure for the operation of the nutrition program for the elderly.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 8:200. Senior community service employment program.

RELATES TO: KRS 205.201, 42 USC 3001 et seq.
STATUTORY AUTHORITY: KRS 194.050, 205.204(2)
NECESSITY AND FUNCTION: 42 USC 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194.050 authorizes the Cabinet for Human Resources to adopt regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Human Resources as the state agency to administer the Older Americans Act in Kentucky. The function of this regulation is to set forth the standards of operation for the senior community service employment program in Kentucky, in compliance with KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter.

Section 1. Definitions. (1) "Allotment" means the initial designation of an amount of appropriated funds to project sponsors and subproject sponsors operating in the state.
(2) "Authorized position" means an enrollment opportunity during a program year.
(3) "Cash welfare payment" means public assistance through federal, state or local government cash payments for which eligibility is determined by a need or income test.
(4) "Community service":
(a) Means:
1. Social, health, welfare and educational services;
2. Legal assistance and other counseling services, including tax counseling and assistance and financial counseling;
3. Library, recreational and similar services;
4. Conservation, maintenance or restoration of natural resources;
5. Community betterment or beautification;
6. Pollution control and environmental quality efforts;
7. Weatherization activities;
8. Economic development; and
9. Other types of services which the department may approve.
(b) Excludes:
1. Building and highway construction except that normally performed by the project sponsor; and
2. Work which primarily benefits private, profit-making organizations.
(5) "Department" means the United States Department of Labor, including its agencies and organizational units.
(6) "Division" means the Division of Aging Services, Department for Social Services, Cabinet for Human Resources.
(7) "Employment and training program" means publicly funded efforts designed to offer training and placement services which enhance an individual's employability.
(8) "Enrollee" means an individual who is eligible, receives services, and is paid wages for engaging in community service employment under a project.
(9) "Grant agreement" means a legally binding agreement in document form which is a grant or other form of agreement entered into between the Department for Social Services and an eligible organization and which awards federal funds and provides for authorized activities under Title V of the Act.
(10) "Host agency" means a public agency or private, nonprofit organization, other than a political party, exempt from taxation under the provision of Section 501(c)(3) of the Internal Revenue Code of 1954, which provides a worksite and supervision for an enrollee.
(11) "Local government" means a local unit of government, including:
(a) County;

(b) Municipality;
(c) City, town or township;
(d) Local public authority;
(e) Special or intrastate district;
(f) Council of governments;
(g) Sponsor group representative organization;
(h) Other regional or interstate government entity; or
(i) Any agency or instrumentality of a local government, except institutions of education and hospitals.

(12) "Low income" means an income which during the preceding six (6) months on an annualized basis or the actual income during the preceding twelve (12) months, whichever is more beneficial to the applicant, is not more than 125 percent more than the poverty levels established and periodically updated by the United States Department of Health and Human Services. In addition, an individual who receives or is a member of a family which receives regular cash welfare payments shall be deemed to have a low income.

(13) "National average unit cost" means all administration costs, other enrollee costs and enrollee wage and fringe benefit costs.

(14) "OAA" means the Older Americans Act of 1965, as amended.

(15) "Project" means an undertaking by a project sponsor pursuant to a grant agreement between the department and a project sponsor which provides for the employment of eligible individuals and the delivery of associated services.

(16) "Project sponsor" means an eligible organization which has entered into a grant agreement with the department. The Cabinet for Human Resources is the state agency project sponsor.

(17) "Project year" means the twelve (12) month period covered by a grant agreement.

(18) "Reallocation" means the redistribution of Title V funds as proposed by the department from one (1) state to another or from one (1) project sponsor to another.

(19) "SCSEP" means senior community service employment program as authorized under Title V of the OAA.

(20) "Subproject agreement or contract" means an agreement entered into between a project sponsor and an organization which provides for the transfer of federal funds to the organization for the purpose of carrying out activities authorized in the grant agreement.

(21) "Subproject sponsor" means the area development district or the community action agency which contracts with the division.

(22) "Temporary position" means an enrollment opportunity in addition to the authorized positions made available during a project year when a portion of project funds is not being used as planned in the grant agreement.

Section 2. Responsibilities of the Subproject Sponsor. (1) Subproject sponsors shall obtain and record the personal information necessary for a proper determination of eligibility for each individual and may request documentation to ensure that only eligible individuals are enrolled.

(2) Subproject sponsors shall recertify the income of each enrollee once each year according to the schedule set forth in contract. Enrollees found to be ineligible for continued enrollment because of income shall be given immediate written notice of termination and shall be terminated thirty (30) days after the notice.

(3) If a subproject sponsor determines that an enrollee was incorrectly declared eligible as a direct result of false information given by that individual, the enrollee shall be terminated immediately.

(4) If a subproject sponsor determines that an enrollee was incorrectly declared eligible through no fault of the enrollee, the project shall give the enrollee immediate notice and the enrollee shall be terminated thirty (30) days after the notice.

(5) If a subproject sponsor makes an unfavorable determination on continued eligibility the project shall explain in writing to the enrollee the reason or reasons for the determination. Individuals affected by an unfavorable determination shall be informed of the appeals procedures available.

(6) If a subproject sponsor terminates an enrollee for failure to perform assigned tasks, the enrollee shall be informed in writing of the reason or reasons for termination and of the right to appeal in accordance with procedures described in the grant application.

(7) If a subproject sponsor makes an unfavorable determination of enrollment eligibility pursuant to certification for continued enrollment the subproject sponsor shall assure that the individual is referred to other potential sources of assistance.

(8) The subproject sponsor shall assure by contract provision that persons shall not, on the grounds of race, color, religion, sex, national origin, or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination in connection with any program or activity funded in whole or in part with funds made available from the division or under Title V of the Act.

(9) Subproject sponsors shall cooperate with other project and subproject sponsors, agencies providing services to elderly persons and persons with low incomes, and agencies providing employment and training services.

(10) Subproject sponsors shall not select, reject, promote or terminate individuals based on political affiliations. The selection or advancement of enrollees as a reward for political services or as a form of political patronage, whether or not the political service or patronage is partisan in nature shall be prohibited.

(11) Subproject sponsors shall not involve political activities, as defined in Section 674.321(a)-(c) Title V OAA, in the overall operations of their projects.

(12) Subproject sponsors shall not use funds provided under the Act or regulations to assist, promote or deter union organizing.

(13) Subproject sponsors shall not hire and a host agency shall not be a worksite for a person in an administrative capacity, staff position, or community service employment position funded under this project if a member of that person's immediate family is engaged in an administrative capacity for that subproject or host agency.

(a) If there are state or local legal requirements regarding nepotism which are more restrictive, those requirements shall be followed by the subproject sponsor;

(b) Immediate family shall mean wife, husband, son, daughter, mother, father, brother, sister, brother-in-law, sister-in-law, son-in-law,

daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild; and

(c) Engaged in an administrative capacity shall include those persons who in the administration of projects, subprojects or host agencies have responsibility for the selection of enrollees from among eligible applicants.

(14) Subproject sponsors shall ensure through provisions in the annual program plan that host agencies provide adequate orientation, instruction and supervision for enrollees regarding responsibilities and safety.

(15) Subproject sponsors shall require each enrollee selected for enrollment to receive physical examinations as follows:

(a) Each enrollee shall have an examination within the two (2) month period immediately before the first day of employment;

(b) An enrollee shall have an additional examination at intervals which ensure that no enrollee participates in community service employment more than fifteen (15) months without an examination or a waiver of examination;

(c) If an enrollee is terminated he may reenroll without an additional examination provided the time elapsed since the last examination has not exceeded fifteen (15) months and provided the schedule of one (1) examination per fifteen (15) month period is resumed based on the date of the last examination;

(d) An examination shall not be the basis for denial of participation unless there is clear indication of potential adverse health effects as a result of the performance of the tasks to be assigned; and

(e) If an individual objects to an examination the subproject sponsor shall obtain a signed waiver prior to the enrollee's first day of employment.

(16) Subproject sponsors shall provide orientation as follows:

(a) As soon as practicable to enrollees with information on:

1. Project objectives;
2. Community service employment assignments;
3. Training;
4. Supportive services;
5. Responsibilities, rights and duties of the enrollees;
6. Permitted and prohibited political activities; and
7. Plans for transition to unsubsidized employment.

(b) For host agencies and individuals who will supervise enrollees to ensure that enrollees receive adequate supervision and opportunities for transition to the host agency staff or other unsubsidized employment.

(17) Subproject sponsors shall assess each new enrollee to determine the most suitable assignment for the individual, permitting the effective use of each enrollee's skills and aptitudes. The sponsor shall consider the individual's:

(a) Preference of occupational category;
(b) Work history;
(c) Skills;
(d) Aptitudes;
(e) Potential for performing community service duties; and
(f) Potential for transition to unsubsidized employment.

(18) Subproject sponsors shall evaluate at least yearly each enrollee's potential for transition to unsubsidized employment and the appropriateness of the enrollee's current job assignment. An alternate assignment shall be developed if a determination is made that an alternate assignment will:

(a) Provide greater opportunity for use of the enrollee's skills and aptitudes;

(b) Provide work experience to enhance the potential for unsubsidized employment; or

(c) Serve the best interests of the enrollee.

(19) Assessments and evaluations shall be documented and a part of each enrollee's permanent record. Information on assessments and evaluations shall be submitted to the division as the activities occur during the program year and at least annually.

Section 3. Recruitment and Eligibility. (1) Recruitment methods shall:

(a) Assure that the maximum number of eligible individuals shall have an opportunity to participate in the project; and

(b) Assure equitable participation of minority individuals, Indians, and limited English speaking eligible individuals in proportion to their numbers in the state.

(2) Eligibility criteria shall be as follows:

(a) An individual shall not be less than fifty-five (55) years of age and no upper age limit shall be imposed for initial or continued enrollment;

(b) The income of an individual seeking initial enrollment, reenrollment after termination, or certification for continued enrollment, or of the family of which the individual is a member shall not exceed the low income standards defined in Section 674.103 of Title V OAA regulations;

(c) Residency requirements shall include:

1. An individual upon initial enrollment shall reside in the state in which the project or subproject is authorized;
2. Place of residence shall be the individual's declared permanent dwelling place; and
3. Requirements pertaining to length of residency prior to enrollment shall not be imposed.

(d) Subproject sponsors shall not impose additional conditions or requirements for enrollment eligibility.

(3) Enrollment priorities shall apply to vacant positions, including temporary positions, and shall not require the termination of an eligible enrollee. Enrollment priorities shall be as follows:

(a) Eligible individuals who are sixty (60) years old or older;

(b) Eligible individuals seeking reenrollment following termination due to illness, or unsubsidized placement provided that reenrollment is sought within one (1) year of termination;

(c) Eligible individuals enrolled in temporary positions;

(d) Other eligible individuals; and

(e) Consideration shall be given to within the above established priorities to individuals most in need. In determining those most in need, subproject sponsors may consider the extent to which the individual's income is below the low income standard.

Section 4. Community Service Employment. (1) The subproject sponsor shall place the enrollee

in a community service job as soon as possible after the completion of enrollee orientation or training.

(2) Hours of community service employment shall be as follows:

(a) A subproject sponsor or host agency shall not require an enrollee to work more than twenty (20) hours during one (1) week;

(b) A subproject sponsor or host agency shall not offer an enrollee an average of fewer than twenty (20) hours of paid participation per week unless the shorter period is:

1. Authorized by the division's grant agreement;

2. In writing by the Department of Labor; or

3. By written agreement between an enrollee and the subproject sponsor, provided that the agreement has been approved by the division;

(c) An enrollee shall not work more than 1,300 hours including paid hours of orientation, training, sick leave, and vacation during the twelve (12) month period specified in the annual program plan and Title V Section 674.310(b)(1) of the OAA;

(d) A subproject sponsor or host agency shall to the extent possible ensure that enrollees work during normal business hours if they so desire.

(3) Enrollees shall be employed at worksites in or near their home areas.

(4) Enrollees shall be employed in assignments which:

(a) Contribute to the general welfare of the community;

(b) Provide services related to publicly owned and operated facilities and projects;

(c) Provide services related to projects sponsored by organizations, other than political parties, exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954; and

(d) Provide community services as defined in Section 1 of this regulation.

(5) Subproject sponsors or host agencies shall to the fullest extent possible give enrollees first consideration for assignments involved in the operation of projects.

(6) Enrollees shall not be assigned to work involving the construction, operation or maintenance of a facility used or to be used for sectarian religious instruction or worship, or to work which primarily benefits private profit-making organizations.

(7) Enrollees shall not be permitted to work in buildings, surroundings or conditions which are unsanitary, hazardous or dangerous to the enrollees' health or safety. Periodic visits shall be made to the worksites to assure the working conditions and treatment of enrollees are consistent with provisions of the Act and regulations promulgated under the Act.

(8) If a portion of the project funds have not been used as planned in the annual program plan, subproject sponsors may use funds during the period of agreement to enroll additional eligible individuals in temporary positions as follows:

(a) The number of temporary positions may not exceed twenty (20) percent of the total number of authorized positions established in the contract;

(b) Payments to or on behalf of enrollees shall not exceed the amount of the unused funds available;

(c) Subproject sponsors or host agencies shall inform individuals enrolled in temporary positions that the employment is temporary and may be terminated at any time;

(d) Subproject sponsors or host agencies shall seek to maintain full enrollment in authorized positions and shall seek to schedule enrollments and terminations to avoid excessive terminations at the end of the project period;

(e) Subproject sponsors shall notify the division in writing of action taken in the area of employing temporary positions; and

(f) Enrollee file information shall indicate the temporary status of the enrollee and the written agreement between the individual and the host agency. Copies shall be sent to the subproject sponsor and the project sponsor.

(9) Individuals enrolled in this program shall not be federal employees as a result of employment.

(10) Enrollees shall receive wages for community service employment which shall not be lower than whichever is the highest of:

(a) The minimum wage which would be applicable to the employee under Fair Labor Standards Act of 1938, if Title V, Section 6(a)(1) of the OAA applied to the participant and the participant were not exempt under Title V, Section 13 of the OAA;

(b) The state or local minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rates of pay for persons employed in similar public occupations by the same employer.

(11) Subproject sponsors shall administer fringe benefits uniformly to all enrollees including enrollees in temporary positions as follows:

(a) Enrollees shall receive all fringe benefits required by law;

(b) Where enrollees are not covered by the state workers' compensation law the subproject sponsor shall provide enrollees with workers' compensation benefits equal to that provided by law for covered employment and OAA Section 504(b) guidelines;

(c) Subproject sponsors shall be authorized to pay the cost of unemployment insurance where required by law and the OAA Section 502(b)(1)(N);

(d) Fringe benefits which shall be allowable costs include the following:

1. Annual leave;

2. Sick leave;

3. Holidays;

4. Health insurance; and

5. Other fringe benefits approved in the annual plan.

(e) Subproject sponsors shall not expend federal funds for contributions into a retirement system unless the project can demonstrate that:

1. Contributions bear a reasonable relationship to the cost of providing benefits to enrollees;

2. Enrollees have a reasonable expectation of receiving the value of contributions vested at the time they are made on behalf of the enrollees; and

3. The retirement system or plan is of a defined benefit type and a separate actuarial determination has established a reasonable expectation that the enrollees will receive benefits as a result of contributions.

Section 5. Enrollee Supportive Services. Subproject sponsors shall provide supportive

services designed to assist enrollees in successful participation in community service employment and to prepare enrollees for and assist them in attaining unsubsidized employment. Supportive services may include:

(1) Counseling or instruction, including that designed to assist enrollees personally in areas like health, nutrition, Social Security benefits, Medicare benefits and retirement laws;

(2) Incidentals including work shoes, badges, uniforms, safety glasses, eyeglasses and hand tools; and

(3) Transportation for enrollees provided the service is in the direct performance of employment or employment related activities. Reimbursement from Title V OAA funds shall not exceed the limitation on mileage rates established by federal travel regulations.

Section 6. Training. (1) Training which in the judgment of the subproject has the primary purpose of providing or improving skills which an enrollee will be expected to use in the performance of his job assignment shall be provided as follows:

(a) An enrollee shall be paid for the hours of training at the established wage rate;

(b) Subproject sponsors shall not schedule required training for an enrollee which exceeds 240 hours during a project year without prior approval from the division; and

(c) Enrollees engaging in required training may be reimbursed for the cost of travel and room and board necessary to participate, provided reimbursement does not exceed rates established by current federal travel regulations.

(2) Training which is available to an enrollee but does not have the primary purpose of providing or improving skills necessary in the performance of job assignments shall be voluntary. Voluntary training may enhance skills for the regular job assignment and an enrollee's potential for unsubsidized employment and may be provided as follows:

(a) Subproject sponsors are not required to compensate enrollees for hours of voluntary training or to count uncompensated hours of voluntary training within the 1300 hour limit on compensated participation;

(b) Subproject sponsors may provide new enrollees with training related to assignments prior to and as a preparation for employment;

(c) Training in preparation for employment combined with time spent in orientation shall be completed within the first eighty (80) hours of the individual's enrollment except when extended periods are approved by the division;

(d) Subproject sponsors shall enroll each individual in the project prior to orientation and training in preparation for community service employment and shall initiate enrollee status as a paid employee;

(e) Subproject sponsors shall seek to obtain training for enrollees at no cost to the project. Where training is not available from other sources Title V funds may be used for training; and

(f) Subproject sponsors shall not prevent or limit enrollees from engaging in training available from sources other than Title V during hours other than hours of community service employment.

Section 7. Placement into Unsubsidized Employment. Subproject sponsors shall employ reasonable means to place enrollees into unsubsidized jobs using the following criteria:

(1) Subproject sponsors shall place into unsubsidized employment the number of enrollees which equals twenty (20) percent of the authorized positions;

(2) Subproject sponsors shall contact public and private employers directly to develop or identify suitable unsubsidized employment opportunities;

(3) Subproject sponsors shall encourage host agencies to employ enrollees in their regular work forces; and

(4) Subproject sponsors shall follow up on enrollees who are placed into unsubsidized employment and document follow-up at least once within three (3) months of placement.

Section 8. Duration of Enrollment. A subproject sponsor shall establish and use time limitations on enrollment within a subproject. Limitations shall be approved in the annual program plan and grant application. The subproject sponsor shall demonstrate the following:

(1) The limitation shall be applied in an equitable and uniform manner;

(2) Enrollees whose only source of income is the Title V program shall not be terminated solely because of the limitations;

(3) No limitation shall be less than 1,040 hours of paid community enrollment in a twelve (12) month period;

(4) No hours of paid enrollment prior to July 1, 1985 shall be counted against the limitation; and

(5) Enrollees subject to termination because of a limitation on enrollment shall be informed in writing no less than twelve (12) months prior to scheduled termination.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 30, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sue Tuttle

(1) Type and number of entities affected: The type and number of entities affected are the 247 individuals, 55 years of age or older, who are provided useful part-time employment through the senior community service employment program.

(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the affected entities as the result of this proposed regulation.

1. First year: There will not be any direct and indirect costs or savings to the affected entities as the result of this proposed

regulation.

2. Continuing costs or savings: There will not be any continuing costs or savings to the affected entities.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities.

(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: The effect on the promulgating agency is that existing policy and procedures regarding the senior community service employment program are drafted into regulation in compliance with KRS Chapter 13A.

(a) Direct and indirect costs or savings: There will not be any direct or indirect costs or savings to the Department for Social Services.

1. First year: There will not be any direct or indirect costs or savings during the first year for the Department for Social Services.

2. Continuing costs or savings: There will not be any continuing costs or savings for the Department for Social Services.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or affect competition for the Department for Social Services.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered as statutes and federal regulations require the cabinet to provide senior community service employment services.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(6) Any additional information or comments: There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? No. This regulation was not tiered as it establishes statewide procedures for all applicants under the senior community services program.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 8:220. General administration, programs for the elderly.

RELATES TO: KRS 205.201, 205.203, 205.455-465.31, 45 CFR 92.25(g)(2), (3) Part 74, Subpart B. 213, 1321, 5 USC 552, 7501 et seq., 42 USC 3001 et seq., 905 KAR 8:170

STATUTORY AUTHORITY: KRS 194.050, 205.204(2)

NECESSITY AND FUNCTION: 42 USC 3001 et seq.,the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194.050 authorizes the Cabinet for Human Resources to adopt regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Human Resources as the state agency to administer the Older Americans Act in Kentucky. The function of this regulation is to set forth the policies and procedures governing the general administration of the Older Americans Act in Kentucky, in compliance with the statutory requirement of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter. This proposed administrative regulation consolidates the provisions of 905 KAR 8:010, 8:040, 8:050, 8:060, and 8:080.

Section 1. Definitions. (1) "Area development district" means one (1) of the fifteen (15) regional planning and development agencies with which the Division of Aging Services contracts for the local delivery of aging services.

(2) "Area agency on aging" means that local agency designated under the provisions of Title III of the Older Americans Act to administer funds received under that title for a given planning and service area.

(3) "Administration on Aging" means that federal agency housed within the Office of the Secretary of Health and Human Services which is responsible for the administration of grant awards to state units on aging under Title III of the Older Americans Act.

(4) "Area plan" means the plan submitted by an area agency on aging for the approval of the Division of Aging Services which releases funds under contract for the delivery of services within the planning and service area.

(5) "Division" means the Division of Aging Services.

(6) "Fidelity bond" means a bond indemnifying the recipient against losses resulting from the fraud or lack of integrity, honesty, or fidelity of one (1) or more employees, officers or other person holding positions of trust.

(7) "In-kind resources" means the value of property or services which benefit a grant-supported project or program and which are contributed by nonfederal third parties without charge to the grantee.

(8) "Local cash match" means cash donated to pay costs of centers or sites or services.

(9) "Planning and service area" means that multicounty geographical entity in which a given area agency on aging is responsible for the delivery of aging services.

(10) "Program income" means the gross income earned by a contractor from activities part or all of the cost of which is either borne as a

direct cost by federal funds or counted as a direct cost towards meeting a cost sharing or matching requirement of federal funds.

(11) "State plan" means the formal application of the division for federal Title III funds under the Older Americans Act and provides a basis for the expenditures of these funds.

Section 2. The Division of Aging Services shall distribute federal and state funds for aging programs through contract allocation under authorization of:

(1) Title III of the Older Americans Act, which shall be distributed by formula:

(a) Funds authorized under the following categories shall be for the purpose of assisting the division and the area agencies on aging to develop or enhance for older persons, comprehensive and coordinated community-based services throughout the state:

1. State administration;
2. AAA - administration;
3. State long-term care ombudsman, Title III-B;
4. Supportive services, Title III-B;
5. Congregate meals services, Title III C 1;
6. Home-delivered meals services, Title III C 2;
7. In-home services, Title III-D;
8. Special needs services, if funds are available, Title III E;
9. Elder abuse services, if funds are available, Title III G;
10. Preventive health services, if funds are available, Title III F;
11. Outreach services, if funds are available.

(b) Except for the Office of the Long-Term Care Ombudsman and state administration, the division shall award the available funds to designated area agencies on aging according to the intrastate funding formula determined by the division after consultation with the area agencies on aging in the state and publication of the formula by the division for review and comment by older persons and the general public.

(2) The Acts of the General Assembly, Kentucky Homecare Program, as amended, and a grant from the United States Department of Health and Human Services, the division shall distribute available state and federal funds to area development districts according to a funding formula determined by the division. The contracting agency may provide services directly, subcontract for all or part of the services, provide the services through other funding sources or through volunteer efforts. Regardless of the method, the contracting agency shall assure availability of the following services based on approved definitions under the homecare program:

(a) Assessment;
(b) Case management;
(c) Chore;
(d) Escort;
(e) Home-delivered meals;
(f) Home health aide;
(g) Homemaker and home management;
(h) Homemaker personal care;
(i) Home repair;
(j) Respite.

(3) Title V of the Older Americans Act, the division shall distribute federal funds made available by the United States Department of Labor for the provision of useful part-time employment to low-income persons, fifty-five (55) years of age or older. The division shall allocate funds made available to designated agencies according to number of employment slots in each area. Designated agencies shall administer these funds either directly or by contract.

(4) Funds authorized under other federal and state programs shall be for the purpose of assisting the division to develop or enhance for older persons, comprehensive and coordinated community-based services throughout the planning and service areas. The division shall allocate funds made available to designated area agencies on aging according to need and population, through contracts with area development districts. Designated agencies shall administer these funds either directly or by contract.

Section 3. Responsibilities of the Division. (1) Advisory councils. The division shall:

(a) Utilize the Institute for Aging as one (1) of the methods to obtain citizen participation;

(b) Cooperate with the Council for Social Services as appropriate in accordance with its mandate; and

(c) Participate on the Long-Term Care Coordinating Council and provide input in the area of long-term care for the elderly.

(2) The division shall advocate for older persons in the Commonwealth pursuant to the Older Americans Act regulation 45 CFR 1321.13 and shall:

(a) Review, monitor, evaluate and comment on federal, state and local plans, budgets, regulations, programs, laws, levies, hearings, policies and actions which affect or may affect older individuals and recommend changes in these which the division deems appropriate;

(b) Provide technical assistance to agencies, organizations, associations or individuals representing older persons;

(c) Review and comment, upon request, on applications to state and federal agencies for assistance relating to meeting the needs of older persons;

(d) Conduct public hearings on the needs of older persons;

(e) Represent the interests of older persons before appropriate legislative, executive branch and regulatory bodies in the Commonwealth;

(f) Establish and operate the long-term care ombudsman program in accordance with the provisions of Section 307(12)(A) of the Older Americans Act; and

(g) Require area agencies on aging to indicate in area plans advocacy activities in which they shall engage on behalf of the elderly.

(3) The division shall encourage the appointment of older Kentuckians to boards and commissions in state and local governments in an effort to actively involve these individuals in the development of services and programs for the elderly. The division shall conduct the following activities in meeting this responsibility:

(a) Work with citizens advocate groups participating on boards and commissions;

(b) Assist agencies and organizations seeking appointees by identifying potential older people to serve on boards or commissions and referring them to the appropriate agencies or individuals;

(c) Obtain information from agencies and organizations on qualifications for selection to boards or commissions, periods of service, and appointment dates; and

(d) Transmit information on qualifications for

membership or participation, period of service, and appointment and expiration dates to senior citizen organizations, service providers, and area agencies on aging for the future appointment of older people to boards and commissions.

(4) Area agencies on aging designation and funding.

(a) The Division of Aging Services shall designate planning and service areas (PSAs) in accordance with the provisions of Section 305(a)(1)(E) of the Older Americans Act and shall consider:

1. The geographical distribution of individuals age sixty (60) and older in the Commonwealth;

2. The incidence of the need for supportive services, nutrition services, multipurpose senior centers and legal assistance;

3. The distribution of older individuals who have the greatest social need with particular attention to low-income minority individuals residing in these areas;

4. The distribution of older Indians residing in these areas;

5. The distribution of resources available to provide services or centers;

6. The boundaries of existing areas within the Commonwealth which were drawn for the planning or administration of supportive services programs;

7. The location of general purpose local government within the Commonwealth with regard to its PSA-wide service delivery capability; and

8. Other factors deemed relevant.

(b) In designating within each planning and service area (PSA) a public or private nonprofit agency or organization as the area agency on aging the division shall:

1. Designate in accordance with Section 305 (b)(5)(C) of the Older Americans Act according to the following:

a. An established office of aging which is operating within a designated planning and service area and has a PSA-wide service capability;

b. An office or agency of a unit of general purpose local government, which is designated to function only for the purpose of serving as an area agency on aging by the chief elected official of the unit;

c. An office or agency designated by the appropriate chief elected officials of any combinations of units of general purpose local government to act only on behalf of a combination for this purpose; or

d. A public or nonprofit private agency in a planning and service area or a separate organizational unit within the agency which is under the supervision or direction for this purpose of the designated state agency and which can and shall engage only in the planning or provision of a broad range of supportive services, or nutrition services within the planning and service area.

2. When designating a new area agency on aging, give right of first refusal to a unit of general purpose local government; and

3. Give preference, when the unit of general purpose local government declines designation, to an established office on aging in conformity with Section 305(c)(5) of the Older Americans Act.

(c) The division shall develop and make known to the area agencies on aging procedures for and conditions under which area plan funding may be suspended. The following shall be applied:

1. The suspension of funding authority to an area agency on aging by the state agency temporarily suspends federal assistance under the area plan pending corrective action by the area agency on aging or pending a decision by the division to terminate the contract;

2. When conditions warrant, the division may suspend area plan operations in whole or in part. The conditions shall result from the area agency on aging's failure to comply with contract award stipulations, standards or conditions;

3. To suspend area plan operations, the division shall notify the area agency on aging in writing of the action being taken, the reason for the action and the conditions of the suspension. This notice shall be given at least thirty (30) days prior to the effective date of suspension and shall note the right of the area agency on aging to appeal the decision and the procedures to be followed for an appeal;

4. The division shall grant to an area agency on aging whose area plan has been suspended in whole or in part an opportunity for a hearing in accordance with the provisions set forth in Section 15 of this regulation;

5. The division may, at its discretion, allow federal financial participation in necessary and proper costs which the area agency on aging could not reasonably avoid during the period of suspension;

6. In suspending area plan operations, the division shall determine the amount of unearned Title III funds the area agency on aging has on hand. The anticipated length of suspension, the extent of area plan operations suspended, and the amount of funds balance on hand shall determine whether the division shall require the balance to be returned;

7. The division may, at its discretion, reinstate the suspended area plan operations if it determines that conditions warrant;

8. Federal participation in reinstated area plan operations may resume immediately upon reinstatement, but not for costs accrued for those area plan operations while they were suspended. The obligational authority unearned at the time of suspension again becomes available for earning by the project at the previously established matching ratio; and

9. If the suspension of area plan operations continues for three (3) consecutive months in a budget year, federal funding of area plan operations is automatically terminated.

(d) The termination of funding means the cancellation of state or federal assistance, in whole or in part, under a contract at a time prior to the date of completion.

1. The division may terminate state or federal support for an area plan prior to the end of an approved budget year or project period if:

a. The area development district violates the conditions under which the contract was approved;

b. Program performance is inadequate; or

c. Nonfederal resources are not available.

2. If the division terminates funding for an area plan, the division shall:

a. Notify the area development district in writing of the actions being taken and the reasons for the action. This notice shall be given at least thirty (30) days prior to the effective date of termination;

b. Specify reports to be completed;

c. Notify the area agency on aging of the right to appeal; and

d. The procedure to be followed for appeal.

3. The division shall grant to the area development district whose area plan has been terminated in whole or in part an opportunity for a hearing.

4. The division or the area development district may terminate the contract in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two (2) parties shall agree upon the termination conditions, including the effective date and, in case of partial terminations, the portion to be terminated. The area development district shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Division of Aging Services shall allow full credit to the area development district for the federal share of the noncancellable obligations, properly incurred by the area development district prior to termination.

5. A termination of area plan obligation or authority which leads to withdrawal of designation shall comply with paragraph (e) of this subsection.

(e) The division shall withdraw the area agency on aging designation if, after reasonable notice and opportunity for a hearing, the division finds that:

1. The area agency on aging does not meet the requirements set out in paragraph (b)1 through 3 of this subsection;

2. The plan or plan amendment is not approved;

3. There is substantial failure in the provision or administration of an approved area plan to comply with provisions of the area plan requirements under the Older Americans Act; or

4. There is a request by the area development district.

(f) If the division withdraws the area agency on aging's designation, it shall:

1. Notify the commissioner of the administration on aging in writing of its action;

2. Provide a plan for the continuity of services in the affected planning and service area; and

3. Designate a new area agency on aging in the planning and service area in a timely manner.

(g) If necessary to ensure continuity of services in a planning and service area, the Division of Aging Services may, for a period of up to 180 days after its final decision to withdraw designation of an area agency on aging:

1. Perform the responsibilities of the area agency on aging; or

2. Assign the responsibilities of the area agency on aging to another agency in the planning and service area.

(h) If necessary the commissioner of the administration on aging may extend for a period of up to an additional 180 days the limit in paragraph (e) 3 of this subsection if the state agency:

1. Requests an extension; and

2. Demonstrates to the commissioner of the administration on aging a need for the extension.

(i) The division shall initiate the designation withdrawal process and shall:

1. Notify the area agency on aging of intent to withdraw designation, citing influencing factors and outlining steps to be taken in appeal of the intent;

2. Extend to the area agency on aging a minimum of thirty (30) days in which to respond;

3. Following the area agency on aging's response, if appropriate, the division may require of the area agency on aging the submission within an additional thirty (30) days a corrective action plan which would avert withdrawal of designation;

4. If the area agency on aging requests a state hearing, the division shall assist in the facilitation of the hearing; and

5. Following the appeal process, the division shall notify the area agency on aging in writing of the hearing.

(j) Close-out procedures for the grant. When federal support for an area plan is terminated, the following shall apply:

1. The area agency on aging shall immediately refund to the division any unencumbered balance of cash advanced to the area agency on aging;

2. The area agency on aging shall complete and submit to the division, within sixty (60) days after the date of completion or termination, a final program and financial report and other financial or performance reports required as a condition of the grant;

3. The division shall make a settlement for the upward or downward adjustments to the federal share of costs after these reports are received;

4. The area agency on aging shall dispose of equipment and supplies purchased with Title III funds in accordance with established policies of the Cabinet for Human Resources. Funds realized from the sale of this equipment or supplies shall be an adjustment in program costs;

5. If a final audit has not been performed prior to close-out of the grant, the division shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit; and

6. The area agency on aging shall provide for the close-out of all subcontracted service providers in accordance with the Cabinet for Human Resources policies.

(5) The division shall coordinate and, as appropriate, enter into agreements with departments within the Cabinet for Human Resources, Corrections Cabinet, Justice Cabinet, Administrative Office of the Courts, Public Advocacy, the Kentucky Department of Agriculture, Department of Transportation, and other state offices, study groups, and councils in the planning for and provision of health and supportive services to the elderly and to appropriately utilize funding sources. The division shall encourage area agencies on aging in advocacy roles to undertake activities on a regular basis which are designed to facilitate the coordination of plans and activities with other public and private agencies and organizations.

(6) The division shall conduct, within budget limitations, activities to implement training and education programs which include the following:

(a) Conduct annual assessments to informally identify training needs and develop correlating plans;

(b) Identify and review resources available to meet training needs;

(c) Develop a comprehensive education and training plan;

(d) Seek additional resources to implement the plan;
(e) Effect interagency coordination for the provision of specialized training;
(f) Facilitate and assist the efforts of higher education in statewide forums of a gerontological orientation;
(g) Coordinate education programs with private, public, governmental and educational organizations and institutions;
(h) Provide and coordinate training opportunities for personnel of agencies and programs utilizing aging services' funding;
(i) Provide training to area agencies and local programs on self-evaluation and monitoring; and
(j) Provide training as part of the state training plan including ongoing technical assistance and annual program evaluation.
(7) The division shall include assurances in the state plan that preference is given to older persons in greatest social or economic need in the provision of services under the plan and shall utilize the following methods for preference to older persons with the greatest economic or social need and low-income minority:
(a) After consultation with the area agency on aging, develop and use an intrastate funding formula which shall reflect the proportion among the planning and service areas of persons age sixty (60) and over in greatest economic or social need with particular attention to low-income minority individuals;
(b) Seek input from area agencies on aging and service providers in the development of methods for giving preference;
(c) Review priorities for services and needs assessment data in order to determine the specific types of services most needed by the target population;
(d) Encourage the location and access to senior centers and services in geographic areas which contain known populations of older persons with greatest economic or social need;
(e) Encourage local coordination efforts with those agencies or organizations which provide services or entitlements to the target population; and
(f) Monitor and evaluate area agencies on aging to ensure services are targeted to meet the needs of older persons with the greatest economic or social need, with particular attention to low-income minority individuals.
(8) In compliance with 45 CFR 1321.17(f)(9), the division shall:
(a) Have and employ appropriate procedures for data collection from area agencies on aging to permit the state to compile and transmit statewide data requested by the commissioner on aging in a form the commissioner directs on an annual basis.
(b) Establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems, with provision for submission of this data to the agency of the state responsible for licensing or certifying long-term care facilities in the state and to the commissioner on aging on an annual basis.
(c) Require each area agency on aging to assure that providers of services shall provide the area agency on aging in a timely manner with statistical and other information which the area agency on aging requires to meet its planning, coordination, evaluation and reporting requirements.
(d) Not request, nor shall an area agency on aging request, for the purpose of Older Americans Act reporting, information or data from providers which is not pertinent to services furnished pursuant to the Older Americans Act or a payment made for these services.
(9) Each fiscal year the division in order to meet the required nonfederal share applicable to its allotments under Title III of the Older Americans Act, shall expend under the state plan for both services and administration at least the average amount of state funds it expended under the plan for the three (3) previous fiscal years. Funds made available under Title III Part D shall be in addition to, and shall not be used to supplant, funds that are or would otherwise be expended under a federal, state, or local law by a state or unit of general purpose local government, including area agencies on aging which have in their planning and services areas existing services which primarily serve older individuals who are victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction, and the families of these victims.
(10) The division shall monitor the performance of programs and activities initiated under the Older Americans Act for quality and effectiveness and shall monitor other programs for which the division has administrative responsibility.
(a) In compliance with the monitoring and evaluation responsibilities the division shall:
1. Monitor and assess services as approved in area plans to determine compliance with contract requirements, approved area plans, and with applicable federal and state statutory requirements;
2. Conduct annual or more frequently, if indicated on-site monitoring visits to the area development districts;
3. Conduct on-site visits to assess and approve potential new service delivery sites;
4. Monitor, through on-site visits, the implementation of new programs;
5. Conduct on-site visits when problems occur to assess and make recommendations for improvement and to bring the program into compliance with the contract;
6. Conduct on-site follow-up visits, as appropriate, to assure that the plan of correction has been implemented;
7. Conduct monitoring through the review and analysis of reports submitted to the division by the area agencies on aging;
8. Submit written evaluation of findings with recommendations regarding on-site monitoring visits to the area development district;
9. Submit written evaluation of findings and recommendations regarding review and analysis of reports to the area development districts, if indicated; and
10. Provide training to area agencies on aging and local programs on self-evaluation and monitoring.
(b) The division shall take corrective action when a contractor is not fulfilling its contract.
1. Upon identification of the deficiency, the division shall:
a. Notify the contractor, describing the precise nature of the problem, identify the corrective action desired and the time frame in

which the action shall be taken or the problem shall be resolved. The contractor shall submit a written corrective action plan as specified by the division. If the contractor deficiencies appear to endanger or seriously affect the health or welfare of participants or staff, corrective measures shall be taken immediately;

b. Monitor and follow up, to assure that action was taken and the problem or deficiency resolved. The contractor shall submit documentation to confirm the problem or deficiency was resolved; and

c. Notify other licensing or regulatory agencies if the problems are within their jurisdiction.

2. If the contractor continues to be in noncompliance, the following procedures shall be implemented:

a. The division shall notify the contractor of the continuing problem or deficiency and the action to be taken.

b. The division shall advise the Commissioner of the Department for Social Services of the problem and make a recommendation for the Cabinet for Human Resources action.

c. The contractor shall be advised of the actions that shall be taken if noncompliance continues. Actions include but are not limited to the following: renegotiation of the contract, employment of financial sanctions or cancellation of the contract.

(11) The needs assessment and program analysis shall provide another means of coordination of needs and services, and shall provide area-specific information and a statewide summary. Persons age sixty (60) and over who are frail, homebound by reason by illness or incapacitating disability, or otherwise isolated shall be given priority in the delivery of services. Activities which shall be conducted to evaluate and determine the needs, specific groups within the aging population, and services which shall be addressed or receive top priority include the following:

(a) Review and analyze the findings of the needs assessment and other surveys and documents that provide information regarding the needs of the elderly;

(b) Compile and analyze data obtained from area and local program plans;

(c) Conduct public hearings and compile and analyze data obtained;

(d) Review and analyze census and other data which reflect the status of the elderly;

(e) Gather and analyze client data from the homecare program and other applicable information systems;

(f) Analyze program performance reports;

(g) Analyze financial reports;

(h) Conduct literature search;

(i) Distribute needs assessment information related to the delivery or planning of services to the elderly; and

(j) Establish statewide service priorities based on the needs assessment.

(12) The division, as the state unit on aging, shall have an adequate number of qualified staff to carry out the functions prescribed in 45 CFR 1321.9 of the Older Americans Act regulations and other programs for which the division has administrative responsibility and shall, subject to the requirements of merit employment systems of state and local governments, give preference to individuals aged sixty (60) or older for staff positions in state and area agencies on aging for which individuals qualify.

(13) The division shall, when deemed appropriate, utilize public hearings as one (1) method of obtaining both proactive and reactive community and consumer participation in prioritizing and evaluating activities and projects carried out under the state plan. The division shall:

(a) Schedule a minimum of one (1) public hearing annually for the purpose of evaluating activities and projects carried out in the state plan;

(b) Specify the inclusion of an evaluation of the state plan's effectiveness in reaching older individuals with the greatest economic or social needs, with particular attention to low-income minority individuals;

(c) When deemed appropriate, schedule public hearings for the purpose of receiving community and consumer participation in the development and implementation of service activities;

(d) Require of the area agency on aging a timely conducted public hearing prior to the consideration of a request of the division for a waiver from a service provision responsibility required in the area plan; and

(e) Schedule, advertise and conduct public hearings it deems appropriate in a manner designed to encourage, enhance and facilitate community and consumer participation.

(14) The division shall consider the views of older persons and the general public in developing and administering the state plan and shall:

(a) Utilize methods which may include but are not limited to public hearings, in receiving public and consumer participation in identifying service needs and establishing funding priorities prior to the submission of the state plan for federal approval;

(b) When appropriate, advertise the date, time, location and purpose of each public hearing in at least one (1) major newspaper in the planning and service area in and for which the hearing is being held;

(c) Respond to requests of the Institute for Aging for information and submit for its review and comment proposed plans, budgets, programs, policies and general initiatives;

(d) Elicit input from appropriate external sources as opportunities present themselves;

(e) Require area agencies on aging to develop procedures for receiving community and consumer participation in the planning and service delivery process in conformance with 45 CFR 1321.57(c) and 1321.61 (b); and

(f) Review and consider comments received regarding program plans, budgets, policies and general initiatives, and make changes when feasible and in the best interests of those individuals for whom the programs are designed.

(15) Required services.

(a) The division shall assure that the area agency on aging allots an adequate proportion of its funding under Title III-B, excluding amounts waived or used for administration, for the provision of the following categories of services:

1. Services associated with access to services for transportation, outreach, and information and referral;

2. In-home services for homemaker, home health aide, visiting and telephone reassurance, chore maintenance, supportive services for families of elderly victims of Alzheimer's disease and

related disorders; and
3. Legal assistance.
(b) If the division proposes to grant a waiver to an area agency on aging:
1. The division shall publish the intention to grant a waiver together with the justification for the waiver at least thirty (30) days prior to the effective date of the decision to grant the waiver;
2. An individual or service provider from the area with respect to which the proposed waiver applies may request a hearing before the state agency on the request for waiver; and
3. The division shall afford the individual or service provider an opportunity for a hearing within the thirty (30) day period prior to the effective date of the decision to grant the waiver.
(c) If the division grants a waiver of the requirement the following information shall be provided to the commissioner, administration on aging (AOA):
1. A report regarding the waiver that details the demonstration made by the area agency on aging to obtain the waiver;
2. A copy of the record of the public hearing conducted which indicates the notification of the interested parties and the testimony of these individuals; and
3. A copy of the record of a public hearing conducted by the division for an individual or service provider from the area to which the waiver applies.
(16) A waiver of the division administration and program requirements based on federal or state laws and regulations shall be allowed by the division only when there is federal or state statutory provision to grant a waiver.
(17) The division shall conduct joint meetings with the area agencies on aging (AAAs). The division, as the state unit on aging, is mandated to coordinate statewide planning and development of activities, and provide technical assistance to each area agency on aging to ensure effective procedures for coordination of programs within the planning and service area and shall:
(a) Notify the area agencies on aging in writing in advance of the date the joint meeting shall take place.
(b) Solicit input from the area agencies on aging as to the topics and concerns to address and discuss at the joint meeting.

Section 4. Area Agencies on Aging Responsibilities. (1) Each area agency on aging shall establish an advisory council as follows:
(a) Functions of council. The area advisory council shall carry out advisory functions which further the area agency's mission of developing and coordinating community-based systems of services for older persons in the planning and service area. The council shall advise the agency relative to:
1. Developing and administering the area plan;
2. Conducting public hearings;
3. Representing the interest of older persons; and
4. Reviewing and commenting on community policies, programs and actions which affect older persons with the intent of assuring maximum coordination and responsiveness to older persons.
(b) Composition of council. The council shall include individuals and representatives of community organizations who shall help to enhance the leadership role of the area agency in developing community-based systems of services. The advisory council shall be made up of:
1. More than fifty (50) percent older persons, including minority individuals who are participants or who are eligible to participate in programs under the Older Americans Act;
2. Representatives of older persons;
3. Representatives of health care provider organizations, including providers of veterans' health care if providers of veterans' health care are located in the geographical area development district;
4. Representatives of supportive services providers organizations;
5. Persons with leadership experience in the private and voluntary sectors;
6. Local elected officials; and
7. The general public.
(c) Review by advisory council. The area agency on aging shall submit the area plan and amendments for review and comment to the advisory council before transmittal to the division for approval.
(2) Area agencies on aging shall be required to serve as the public advocate for the development or enhancement of comprehensive and coordinated community-based systems of services in each community throughout the planning and service area. The area agency on aging shall:
(a) Monitor, evaluate, and provide comment on policies, programs, hearings, levies, and community actions which affect older persons;
(b) Solicit comments from the public on the needs of older persons;
(c) Represent the interests of older persons to local-level and executive branch officials, public and private agencies or organizations;
(d) Consult with and support the Commonwealth's long-term care ombudsman program;
(e) Undertake on a regular basis activities designed to facilitate the coordination of plans and activities with other public and private organizations, including units of general purpose local government, with responsibilities affecting older persons in the planning and service area to promote new or expanded benefits and opportunities for older persons;
(f) Undertake a leadership role in assisting communities throughout the planning and service area to target resources from appropriate sources to:
1. Meet the needs of older persons with greatest economic or social need, with particular attention to low-income minority individuals; and
2. Influence the location of services and specialization in the types of services most needed by the above-referenced group; and
(g) Prohibit grantees or contractors from employing a means test for services funded from the area agency on aging.
(3) The area agency on aging shall ensure that service providers verify eligibility of those individuals participating in the Title III programs utilizing the Title III Age Verification and Eligibility form, except for those individuals utilizing only ombudsman, legal, outreach, and information and referral services.
(a) Prior to the implementation of the contract, the area agency on aging shall review with the Title III subcontractors their

procedures for documenting participant age or other eligibility determinants.

(b) Subcontractors' records shall include the following information:

1. The participant's age or birth date;

2. The method of verifying the reported age;

3. The staff involved in the verification process;

4. Other eligibility determinants; and

5. Verification of other eligibility determinants.

(c) The area agency on aging shall approve the subcontractor's form and procedures, if other than the state form, and forward a copy of the information to the Division of Aging Services, prior to the implementation of the contract, for final approval.

(d) Require verification of eligibility only once even though the participant may receive both supportive and nutrition services.

(e) Not require verification of eligibility to be updated each fiscal year if the subcontractor maintains the participant's central file or if a new subcontractor makes arrangements for the transfer of the verification information.

(f) Participants who receive services from different subcontractors need verify eligibility only once under the following conditions:

1. The area agency on aging designates a subcontractor as the primary agency responsible for verifying eligibility and for maintaining and filing the verification information;

2. Other subcontractors may contact the primary agency to confirm that eligibility has been verified. The primary agency may send to the requesting subcontractor a copy of the eligibility verification, which is filed in the record, or may give the information verbally. Verbal confirmation of eligibility shall be documented in the participant's record. The record shall include data specified in paragraph (b)1 through 5 of this subsection.

(4) The area agency on aging shall be the leader relative to aging issues on behalf of older persons in the planning and service area. The agency shall proactively carry out, under the leadership and direction of the Division of Aging Services, a wide range of functions related to the development or enhancement of comprehensive and coordinated community-based systems in, or serving, each community in the planning and service area.

(a) A comprehensive and coordinated community-based system shall:

1. Have a visible focal point of contact where anyone can go or call for help, information or referral on an aging issue;

2. Provide a range of options;

3. Assure that these options are readily accessible to older persons; the independent, semidependent and totally dependent, no matter what their income;

4. Include a commitment of public, private, voluntary and personal resources committed to supporting the system;

5. Involve collaborative decisionmaking among public, private, voluntary, religious and fraternal organizations and older people in the community;

6. Offer special help or targeted resources for the most vulnerable older persons, those in danger of losing their independence;

7. Provide effective referral from agency to agency to assure that information or assistance is received no matter how or where contact is made in the community;

8. Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for the vulnerable older person;

9. Have a unique character which is tailored to the specific nature of the community; and

10. Be directed by leaders in the community who have the respect, capacity, and authority necessary to convene interested persons, assess needs, design solutions, track overall success, stimulate change and plan community responses for the present and for the future.

(b) For the purpose of assuring access to information and services for older persons, the area agency on aging shall work with community leadership in the planning and service area to designate one (1) or more focal points on aging in each community, as appropriate. The area agency on aging shall:

1. List designated focal points in the area plan;

2. Define "community" as it relates to population served by a given focal point; the definition shall be approved by the division;

3. Give special consideration to developing and designating multipurpose senior centers as focal points;

4. Assure that services financed under the Older Americans Act, in or on behalf of the community shall be either based at, linked to or coordinated with the focal points;

5. Assure access from the focal points to services financed under the Older Americans Act;

6. Work with or work to assure that community leadership works with other applicable agencies and institutions in the community to achieve maximum comprehensive arrayal of, coordination with or access to other services and opportunities for the elderly from the focal points; and

7. Refrain from engaging in an activity which is inconsistent with its statutory mission prescribed in the Older Americans Act or policies prescribed by the state under regulation 45 CFR 1321.11.

(5) Each area agency on aging shall provide for adequate and qualified staff to perform its functions and shall:

(a) Function organizationally as prescribed under designation provision of Section 305(b)(5)(C) of the Older Americans Act;

(b) Have on file for review a staffing plan that identifies the number and types of staff assigned to carry out area agency on aging responsibilities and functions;

(c) Indicate in the area plan staffing patterns and relationships when the area agency on aging is housed under an umbrella organization; and

(d) Respond to corrective action initiatives and general information requests of the division when issues arise concerning staffing practices.

(6) Each designated area agency on aging shall prepare and develop, for a specified planning and service area, a plan of duration as determined by the division. Each plan shall be subject to amendment by the area agency on aging upon request of the division and shall include:

(a) Procedures for delivery, through a comprehensive and coordinated system, of an array of supportive, nutrition and other services as may be prescribed under federal, state and local programs and policies;

(b) Description of arrangements with local providers to ensure the delivery of these

services and identification of the service providers;

(c) Assurances that categorical service allotments shall be expended in the manner prescribed by policy of the Division of Aging Services;

(d) Designation, where feasible, of multipurpose senior centers as community focal points for comprehensive service delivery;

(e) Procedures for establishment and maintenance of information and referral services to assure access to services;

(f) Procedures for ensuring preferential consideration in the provision of services to older individuals with greatest economic or social needs, targeting low-income minority individuals, in compliance with all federal and state statutory and regulatory provisions and Division of Aging Services policy;

(g) Procedures for identifying for each previous fiscal year the number of low-income minority older individuals in the planning and service area and for describing methods used to satisfy their service needs;

(h) Procedures for outreach efforts which assure service access by eligible individuals and which target the rural, disabled and low-income minority elderly and those general population older persons with greatest social need;

(i) Procedures for conducting periodic evaluation of and public hearings on activities carried out under the area plan;

(j) Procedures for providing technical assistance to service providers and focal points and for an annual evaluation of the effectiveness of outreach;

(k) Procedures for receiving the views of service recipients;

(l) Procedures for serving as the advocate and focal point for the elderly within the community;

(m) Procedures, when needed, for the provision by existing organizations of day care for adults and respite for their families;

(n) Procedures for establishing an advisory council of older individuals, including minority elderly and program participants, representatives of older individuals, local elected officials, providers of veterans health care and the general public, to advise routinely on the development and administration of the area plan and the operations for which it provides;

(o) Procedures for developing and publishing methods by which services, particularly those identified through state policy as access services, are prioritized;

(p) Procedures for effective and efficient coordination of programs and services operated or delivered in accordance with all state and federal statutory and regulatory provisions;

(q) Procedures for facilitating the coordination of community-based long-term care services emphasizing the development of client-centered case management;

(r) Procedures for determining the service needs of abused, neglected and exploited older individuals, and for identifying public and private nonprofit entities involved in prevention, identification and treatment of these individuals;

(s) Procedures which facilitate the involvement of long-term care providers in coordination of community-based long-term care services and for working to ensure community awareness of and involvement in addressing the needs of residents of long-term care facilities;

(t) Procedures which facilitate the coordination of access services with community activities which benefit victims of Alzheimer's disease and the families of these victims;

(u) Procedures which facilitate the coordination of area agency-funded mental health services with those provided by other community organizations;

(v) Procedures for conducting outreach activities, where feasible, to identify eligible older Indians and ensure access to services;

(w) Procedures for compiling and disseminating in the planning and service area enrollment policies and course-study information of institutions of higher education specifically related to older individuals;

(x) Procedures for conducting outreach activities to identify older individuals eligible for supplemental security income, Medicaid and food stamp benefits; for informing them of eligibility requirements; and for assisting them in accessing those benefits;

(y) Assurances that funds received under Title III shall be expended in accordance with applicable state and federal statutory and regulatory provisions and with Division of Aging Services' policy; and

(z) Assurances that, if applicable, operation of the district long-term care ombudsman program shall be in accordance with state and federal statutory and regulatory provisions and with Division of Aging Services' policy.

(7) Each area agency on aging shall have a plan for denial, suspension or reduction of services to eligible persons. Each plan shall be maintained on file at the area agency on aging and shall be accessible for monitoring purposes. The plan shall specify, at a minimum:

(a) That when services for a client or participant are denied, suspended or reduced, one (1) of the following situations shall be present and documented:

1. Funds are no longer available or are reduced;

2. The service level is no longer needed;

3. Prioritization and needs determination indicate the client no longer meets the criteria established for receiving services; or

(b) The division shall receive written notice of actions other than those listed in paragraph (a)1through 3 of this subsection which may result in the denial of access to a program to an eligible participant.

(8) The area agencies on aging shall implement, within budget limitations, education and training programs that respond to the needs of senior citizens, service providers and other groups as needs are identified and funding sources become available. Activities which shall be conducted by the area agency on aging to implement such training and education programs include the following:

(a) Conduct annual assessments to informally identify training needs and develop correlating plans;

(b) Identify and review resources available to meet training needs;

(c) Develop a comprehensive education and training plan;

(d) Seek additional resources to implement the plan;

(e) Effect interagency coordination for the provision of specialized training;

(f) Facilitate and assist the efforts of higher education in statewide forums of a gerontological orientation;
(g) Conduct and coordinate specific training on aging programs districtwide;
(h) Coordinate education programs with private, public, governmental and educational organizations and institutions;
(i) Conduct training for area advisory councils;
(j) Specify the training requirements of the service providers;
(k) May enter into contracts through the area development districts with providers of education and training services which can demonstrate the experience or capacity to provide these services, except that these contract authority shall be effective for a fiscal year only to the extent, or in amounts as are provided in appropriate Acts; and
(l) Plan and implement staff development initiatives.
(9) Each area development district may use its own definition of equipment as long as it includes tangible personal property having a useful life of at least one (1) year and a unit cost of $500 or more.
(a) Equipment records shall be current and shall contain at least the following information:
1. Description of the item;
2. Serial number;
3. Source of funds used to purchase the item;
4. Federal share (%) of the cost;
5. Acquisition cost and date;
6. Unit cost;
7. Location, use and condition of the equipment and date this equipment was obtained;
8. Information on the disposition of the item.
(b) There shall be a system to prevent loss, damage, or theft and adequate maintenance procedures to keep equipment in good condition.
(c) Purchase of equipment with a unit cost of $500 or more requires prior approval from the Division of Aging Services.
(d) Equipment which is replaced may be traded in, or may be sold and the proceeds applied to the acquisition cost. If equipment with a unit cost of $1,000 or more is to be disposed of, not replaced, the granting agency has the right to require transfer of the equipment and title to an eligible party. If approved by the granting agency, the equipment may be sold with the federal share of the proceeds applied to the program as program income. If the federal share is not applied to the program as program income, the federal share, less selling expenses, shall be returned to the federal government or an eligible nonfederal party named by the cabinet's Department of Social Services.
(e) The area development district shall agree to the transfer of items of equipment and supplies with a value of less than $1,000 to a new provider, if a new provider is selected as a result of competition, or if a contract is terminated by the provider or the cabinet, and a new provider is secured. This equipment and supplies shall be transferred to the cabinet's Department for Social Services if no new provider has been secured. If there is a termination of a contract or a selection of a new provider, the transfer shall be made within thirty (30) days from the date of receipt of notice from the department, this notice to be by certified mail, return receipt requested.
(10) Area agency on aging responsibilities for monitoring and evaluation shall:
(a) Permit staff of the Cabinet for Human Resources, persons acting for the Cabinet for Human Resources, and staff designated by appropriate federal agencies to monitor and evaluate programs and activities initiated under the Older Americans Act and other programs for which the division has administrative responsibility;
(b) Respond to monitoring reports prepared by the division by submission of and compliance with a corrective action plan based on monitoring findings;
(c) Be responsible for fiscal or program exceptions established by evaluation, monitoring or audit and promptly settle monitoring, fiscal and program audit exceptions by making direct payment, or reduction of future reimbursement, or by other methods approved by the Cabinet for Human Resources;
(d) Furnish appropriate technical assistance to providers of supportive services, nutrition services, or multipurpose senior centers in the planning and service area covered by the area plan and conduct an annual evaluation of the effectiveness of outreach;
(e) Conduct periodic evaluations of, and public hearings on, activities carried out under the area plan;
(f) Monitor, evaluate, and, where appropriate, comment on the policies, programs, hearings, levies, and community actions which affect older persons;
(g) Monitor and assess services as approved in area plans to determine compliance with contract requirements, approved area plans, and with applicable federal and state statutory requirements;
(h) Submit written evaluation of findings with recommendations regarding on-site monitoring visits and reports to the service providers;
(i) Require the service provider to permit staff of the Cabinet for Human Resources, persons acting for the Cabinet for Human Resources, and staff designated by appropriate federal agencies to monitor and evaluate programs and activities initiated under the Older Americans Act and other programs for which the division has administrative responsibility; and
(j) Require the service provider to have provision for interview of clients by persons and agencies listed in paragraph (i) of this subsection, and the area agency on aging, except where confidentiality requirements are applicable.
(11) The area development districts shall adhere to the procurement requirements contained in the references and shall:
(a) Promote open and free competition among qualified competitors.
(b) Not restrict or eliminate competition by placing unreasonable or unnecessary requirements on potential bidders.
(c) Establish procurement procedures which take into account the requirements of OMB Circular A-102 and other federal, state and local requirements. Procedures shall include:
1. Method for resolving protests, disputes and claims;
2. Written code or standards of conduct;
3. Review process to avoid unnecessary purchases or duplicative items;
4. Affirmative action standards which encourage contracting with minority-owned, small

businesses;
5. Methods for procurement; and
6. Evaluation and selection criteria.
(d) Efforts shall be made by the area development districts to formally advertise programs and services. If the area development districts choose to utilize noncompetitive negotiations, they shall clearly document, and maintain on file, that only one (1) responsible provider is available, capable and qualified to provide the service; and that by using noncompetitive negotiations, open and free competition shall not be restricted. Area development districts shall maintain records sufficient to detail the significant history of the procurement. In addition to maintaining these documents on file, the area development districts shall provide, upon request, copies to the division, prior to subcontracting, supporting noncompetitive negotiations.
(12) Area agencies on aging shall conduct public hearings on area plans prior to their submission to the division. Amendments to area plans determined by the division to be nonadministrative in nature shall also be subject to public hearings. Area agencies on aging shall comply with the following provisions in scheduling public hearings:
(a) The selected hearing site shall be that most readily accessible to residents in the planning and service area.
(b) Notice of the hearing date, time and location shall be advertised in the area media at least ten (10) days prior to the hearing.
(c) A copy of the area plan or amendment shall be available for public review during the ten (10) working day period prior to the scheduled public hearing and the opportunity for review publicly advertised.
(d) A verbal presentation on the plan or amendment shall be given at the public hearing and written summaries of the plan or amendment made available for distribution. Area agency staff shall be present to respond to questions from the audience, which shall be encouraged.
(e) The area agency shall elicit from the audience both verbal and written recommendations and extend for a period of up to two (2) weeks the opportunity to submit comments.
(f) Written suggestions and summaries of verbal comments shall be kept on file by the area agency on aging for the duration of the plan.
(13) The area agencies on aging shall comply with the following program reporting requirements of the division:
(a) A quarterly program performance report shall be submitted to the division fifteen (15) calendar days after each quarter in accordance with format and instructions provided by the division.
(b) An annual program performance report shall be submitted to the division for the federal fiscal year October 1 - September 30 in accordance with format and instructions provided by the division.
(c) A homecare quarterly report shall be submitted to the division in accordance with format and instructions provided by the division.
(d) A monthly meal count report for Title III and homecare shall be submitted to the division by the 15th of each month following the month reported.
(e) The statewide computerized reporting system shall be utilized to collect information on homecare services in accordance with the homecare reporting instructions. This system shall be utilized and maintained in accordance with instructions and format provided by the division.
(f) Title V progress reports shall be submitted to the division fifteen (15) to twenty (20) calendar days after the end of each quarter in accordance with format and instructions provided by the division.
1. Title V monthly narrative reports shall be submitted on local administration, job development, enrollee activities, orientation, on-the-job training, coordination and cooperation between agencies, outstanding activities, or problem areas.
2. Information on individual Title V enrollees shall be submitted at least annually or as various enrollee activities occur. Information shall include program certification or income eligibility, physical examination, client intake, job description, and evaluation activities.
(g) Special reports shall be required by the division as periodically specified. These reports may include but are not limited to:
1. Evaluations of outreach activities. In accordance with the Older Americans Act, Section 306(a)(6)(P), area agencies on aging shall conduct evaluations of outreach activities as prescribed by guidelines received from the Administration on Aging.
2. Evaluation of unmet need. In accordance with the Older Americans Act regulations, Section 1321.52, the division shall submit objectively collected and statistically valid data with evaluative conclusions concerning the unmet need for supportive services, nutrition services, and multipurpose senior centers gathered pursuant to Section 307(a)(3)(A) of the Older Americans Act to the Administration on Aging. The evaluations shall consider services in these categories regardless of the source of funding for the services. This information shall conform to guidance issued by the administration on aging.
(14) The area agency on aging shall assure that a written uniform system is in place for maintenance of waiting lists and shall follow these guidelines:
(a) Each waiting list for services shall be reported to the division as part of the quarterly program performance report.
(b) The waiting list for homecare services shall be updated monthly and shall include persons awaiting assessment, those assessed, and those for whom additional services are needed.
(c) The system shall be based on either a first-come, first-served basis or an approved objective method to prioritize applicants.
(d) Applicants shall be advised and presented with the written procedures and method of facilitating the waiting list.
(e) Applicants who are determined to be potentially eligible based on prescreening information gathered by the case manager may be placed on a waiting list.

Section 5. Service Provider Responsibilities. (1) Each service provider shall specify in writing to the area development district how the provider intends to satisfy the needs of low-income minority individuals in the area served. The provider shall provide services to low-income minority individuals at least in

proportion to the numbers of low-income minority older persons in the population served by the provider.

(2) The service provider shall provide the area agency on aging with statistical and other information which enables the area agency on aging to conform with state-required planning, coordination, evaluation and reporting provisions.

(3) The service provider shall provide for each homemaker providing services funded through the division a comprehensive training course designed by the division.

Section 6. Participant Responsibilities. (1) To receive services from a program or service administered by the division, the participant shall:

(a) Sign an application for services within thirty (30) days of receiving services or if the client is unable for physical or mental reasons to consent and has a legal guardian, caregiver, spouse or other proxy, the application shall be signed by that person.

(b) Signify the following voluntarily by signing the application:

1. Verification of income, if questionable except for Title III, which prohibits a means test;

2. Release of information to specified agencies;

3. Access by the cabinet and the area development district to the participant's records for monitoring purposes; and

4. Understanding by the participant of "participant responsibilities".

(2) If either party feels that an offense has occurred, recourse shall be sought through the mediation, grievance, or complaint procedures established by the provider, the area development district or the department.

(3) Participant services shall not be suspended by a provider agency until the case manager, center director or agency director has determined that the provisions of the care plan cannot be met due to the behavior of the participant or family. Services may be suspended if the service provider or case manager deems that a worker shall be at imminent risk or danger. The provider agency shall report suspension of services immediately to the area agency on aging who shall investigate the suspension and make a final determination.

(4) A written report which documents the grounds requiring suspension, attempts to resolve the situation and written notice that the client may file a grievance under fair hearing procedures shall be forwarded to the area development district or to the division if the area development district provides case management directly.

(5) When conflicts or disagreements occur involving either staff or participants regarding mutual respect, the following steps shall be followed:

(a) A verbal warning to the staff or participant for the first conflict;

(b) A written warning for a second conflict;

(c) Suspension;

(d) In situations of suspension as described in subsection (3) of this section, a written report which documents the grounds requiring suspension, attempts to resolve the situation and written notice that the client may file a grievance under the fair hearing procedures shall be forwarded to the area development district or to the Division of Aging Services if the area development district provides case management directly; and

(e) Detailed written records shall be maintained for the service provider.

(6) The following shall be excluded from subsections (1) through (5) of this section:

(a) Residents and family members who receive services under the long-term care ombudsman program.

(b) Participants and providers of intake and referral, outreach and legal assistance.

(c) Congregate services provided in or arranged by a senior citizens center, nutrition site or other provider. Senior centers, nutrition sites, day care or other congregate programs may develop and display conspicuously a policy of mutual respect as appropriate for the congregate location.

Section 7. Confidentiality and Disclosure. (1) Client information obtained by the division or its contractors from an older person shall not be disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or legal representative unless the disclosure is required by court order, or for program monitoring by authorized federal, state or local monitoring agencies.

(2) The division, the area agencies on aging, and the service providers shall refer reports of abuse, neglect, exploitation or spouse abuse received to Adult Protective Services, Department for Social Services.

(3) The division shall not be required to disclose those types of information or documents that are exempt from disclosure by a federal agency under the Federal Freedom of Information Act, 5 USC 552.

(4) The division or an area agency on aging shall not require a provider of legal assistance to reveal information that is protected by attorney-client privilege.

(5) Each area agency on aging shall have written confidentiality procedures.

Section 8. Center and Nutrition Site Operation. The division shall set minimum requirements for the types of service sites. Title III-B or Title III-C services shall be funded at a site only when the site has been approved by the division. A site shall not become operational until an on-site visit by the division has been completed and express approval given by the division, except for emergency situations.

(1) The following criteria shall apply to the types of service sites:

(a) Services shall comply with the standard service definitions as governed by 905 KAR 8:170, Support services for the elderly.

(b) Prior to approval of any Title III-B or III-C site, it shall be inspected by the following:

1. Local health department for compliance with applicable health codes. These codes shall vary depending on the types of services provided at the site;

2. Local fire department for compliance with fire and building safety codes; and

3. Division shall conduct on-site visits for compliance with Section 307(a)(8) of the Older Americans Act.

(c) Sites shall be located as near as possible

to the target group of individuals.
(d) Sites shall comply with the confidentiality and disclosure requirements.
(e) Sites shall be clearly identified to the public with a sign.
(f) Location of the facility.
1. The selection of a site for a center shall be based on information on older people in its service area and on the advice of public and voluntary agencies serving the elderly. The following factors shall be given consideration in choosing a site:
a. Demographic information and projections;
b. Accessibility to the maximum number of people who are socially or economically deprived;
c. Proximity to other services and facilities;
d. Convenience to public or private transportation or location within comfortable walking distance for participants;
e. Free of structural barriers or difficult terrain; and
f. Safety and security of participants and staff.
2. A center shall take necessary actions to create for handicapped older people barrier-free access and movement within the facility in conformance with the requirements of Section 504 of the Rehabilitation Act of 1973.
3. Arrangements shall be made for security of facility equipment, furniture, and files.
4. If appropriate, the facility shall make arrangements to offer activities and services at other locations in its service area.
5. If feasible, the location shall be a place where the people in the service area feel free to attend and participate.
(g) Safety requirements of local, state, and federal laws shall be met.
1. The center shall be free of physical hazards.
2. Signs shall be visible for exits, entrances, and other areas of importance.
3. Bathrooms and kitchens shall include safety features appropriate to their special uses.
4. Procedures for fire safety shall be adopted, including fire drills, inspection, and maintenance of fire extinguishers, periodic inspection and training by fire department personnel.
5. Procedures for disaster other than fire shall be developed and posted.
6. The facility shall be properly maintained and repaired as appropriate.
(h) Existing service sites that do not meet the above requirements shall comply with a corrective action plan administered by the division.
(2) Nutrition site requirements.
(a) Each nutrition site shall have an individual, either volunteer or paid staff, who is responsible for the administration of the site. At least one (1) staff person shall be present at the site during hours of operation.
(b) Minimum services which shall be available at a nutrition site are:
1. At least one (1) hot meal shall be provided two (2) or more days a week.
2. Arrangements for outreach services shall be in place. These services may be funded by III-B or III-C.
3. Information and referral shall be available through the nutrition site.
4. Nutrition education shall be available through the nutrition site.
(c) An optional service may be home-delivered meals.
(d) The total number of participants to be served shall be adequate to justify the cost of operating the site.
(e) Meals may be either prepared on site, catered, or prepared in a central kitchen.
(3) Senior service site requirements.
(a) Each senior service site shall have an individual, either paid or volunteer staff, who is responsible for the administration of the site. At least one (1) staff person shall be present at the site during hours of operation.
(b) At a minimum, services shall be provided on a regularly scheduled basis, and be in operation two (2) or more days per week.
(c) The total number of participants to be served shall be adequate to justify the cost of operating the site.
(d) Minimum services which shall be available at this site:
1. Outreach activities, in addition to one (1) or more services, shall be provided;
2. Congregate meals shall not be provided at this site; and
3. Information and referral shall be available through the senior service site.
(4) Senior center requirements.
(a) Each senior center shall have an individual, either paid or volunteer staff who is responsible for the administration of the center. At least one (1) staff person shall be present at the site during hours of operation.
(b) The senior center shall be open at least four (4) hours a day, three (3) or more days per week.
(c) The total number of participants to be served shall be adequate to justify the cost of operating this center.
(d) Minimum services which shall be available at this center:
1. Services which are available at a nutrition site, with emphasis on outreach activities; and
2. At least one (1) additional supportive service shall be provided at this center.
(5) Multipurpose senior citizens center responsibilities.
(a) Each multipurpose senior citizens center shall have a full-time center director and an adequate number of qualified full-time or part-time staff to administer the center and provide quality service.
(b) At a minimum, a multipurpose senior citizens center shall be open six (6) hours per day and five (5) days per week.
(c) The total number of participants to be served shall be adequate to justify the cost of operating this center.
(d) Minimum services which shall be available at a multipurpose senior citizens center:
1. The services which are available at a nutrition site with emphasis on mandated outreach services;
2. At least one (1) component service shall be provided in each of the following categories:
a. Access services which includes transportation, outreach and information and referral;
b. In-home services which includes homemaker, home health aide, telephone, visiting reassurance and chore maintenance;
c. Other services which may be provided include services to residents of care-providing facilities, health-related services, volunteer activities, placement, individual and group activities and other services as defined by the

division standard service definitions.
(6) Altering center operations.
(a) Prior approval shall be obtained from the division by an area agency on aging which intends to:
1. Close a center or open a new senior center;
2. Change the hours or days of operation;
3. Change the location of the center;
4. Change the method of providing services in a manner that affects availability of ongoing services;
5. Substantially reduce the level or number of services.
(b) Justification for the change shall include:
1. The proposed effective date of this change;
2. Need or reason for the change;
3. The number of participants affected by this particular change or action;
4. Whether this change is temporary or permanent; explanation;
5. The cost benefit;
6. If a change is being made to an existing center, whether this facility was altered, renovated or constructed with Older Americans Act funds; date work was completed;
7. Whether the area agency on aging advisory council recommended this change;
8. What provisions are proposed to continue services to these participants; and
9. For a proposed new center, costs involved in meeting local fire, health, safety and sanitation regulations.
(c) A request to open a new center shall include copies of the completed health and fire department inspection forms and completed Title III site and focal point pages, if applicable.
(d) When meal preparation at a new center is proposed, notify the division and the local fire and health departments.
(e) The division shall review the information submitted and if necessary or feasible conduct an on-site visit before a determination is made.
(f) In case of altered center operations due to damages caused by fires, floods, storms, high winds, and tornadoes, the Division of Aging Services shall be notified by telephone that emergency alterations are necessary. Prior approval shall be obtained by telephone from the Division of Aging Services on a conditional basis under emergency circumstances with final approval pending written documentation of the proposed change; local fire, health and safety inspections, and an on-site visit by the division.

Section 9. Sectarian Use of a Facility. With respect to the acquisition (in fee simple or by lease for ten (10) years or more), alteration, or renovation of existing facilities, or the construction of new facilities, the division shall assure that Title III funds shall not be used for sectarian instruction or to provide a facility for religious worship. The prohibition does not preclude the use of a facility owned by a religious organization for the delivery of services to the elderly.

Section 10. Contracts. (1) The division shall designate planning and service areas in the state and shall make a contract under an approved area plan with one (1) area agency (area development district) in each planning and service area for the purpose of building comprehensive systems for older persons throughout the state. The area development district, in turn, shall contract with service providers to perform certain specified functions. Each contract negotiated shall contain at least the following:
(a) A complete detailed description of services to be provided by the contractor;
(b) A complete description of other responsibilities of the contractor including: records retention, reporting requirements, cost-sharing, and compliance with applicable assurances, laws, and regulations;
(c) A complete description of the cabinet's responsibilities and commitments to the contractor including: technical assistance which shall be provided and activities which the cabinet shall perform in order for the contractor to meet its obligations;
(d) A complete description of the basis for reimbursement to the contractor for services rendered including:
1. Rates;
2. Frequency of billing;
3. Invoice requirements;
4. Office where invoices are to be submitted; and
5. A budget when applicable;
(e) Assurances regarding the rights of cabinet personnel or designees; state or federal officials or auditors; or independent auditors to inspect records and monitor service delivery of the contractor relative to evaluation and audits;
(f) A requirement that the contractor accepts responsibility for an audit exceptions arising from its failure to comply with the terms of the contract including regulations applicable to federally-funded activities;
(g) A final invoice for services rendered under the contract shall be submitted to and received by the Department for Social Services no later than thirty (30) days following the expiration date of the contract, unless a written request for waiver of this deadline is submitted by the contractor and approved by the Department of Social Services fifteen (15) days prior to the expiration date and accompanied by a signed statement from the contractor that it is the final invoice and that no further billings shall be sent to the Department for Social Services relative to cost for services provided under the agreement; and
(h) A clause that either party shall have the right to terminate the contract upon thirty (30) days written notice served on the other by registered or certified mail.
(2) A certified public accountant shall be engaged by an area development district to make independent audits of the area development district's financial and other records for the period for which the contract is in effect.
(a) The certified public accountant engaged by the area development district shall make an independent audit of the area development district's financial and other records for the period for which the contract is in effect, and submit an original of the audit to the Kentucky Department of Local Governments and a copy of the audit to the division properly certified by the certified public accountant, not later than ninety (90) days after the end of said period or upon completion of an organization-wide audit conducted in accordance with OMB A-128 and the Single Audit Act of 1984, PL 98-502. The engagement letter between the area development district and its certified public accountant

shall contain the following clauses:

1. The auditor shall, in accordance with generally accepted auditing standards, examine the agency's final expenditure reports as required and issue a report on the examination. Specifically included within the scope of this examination are the following audit procedures:

a. The auditor shall familiarize himself with the agency's approved cost allocation plan as submitted to the Kentucky Department of Local Government or to the area development district if provider agency is a subcontractor of the area development district and verify that the agency used the correct accounting methodology to derive the expenditures presented on the above-mentioned final expenditure reports;

b. The audit report shall contain a supplemental schedule that consolidates individual subcontractor's final expenditure reports into a total expenditure report for each major service program. While the auditor may disclaim an opinion on this supplemental schedule, he shall verify its mathematical accuracy;

c. The auditor shall familiarize himself with applicable requirements as set forth in the Department for Social Services' aging policies, contract requirements, and applicable Federal requirements. Deviations from these requirements which, in the judgment of the independent auditor, relate to substantive program or financial matters, shall be furnished directly by the auditor to the division , Kentucky Department for Social Services.

(b) The cabinet, Kentucky Auditor of Public Accounts, U.S. Department of Health and Human Services, U.S. General Accounting Office, and other appropriate federal agencies retain the right to audit and review the area development district's records and accounts for a period of three (3) years from the date of the last payment received for the contract period, or until audited and audit exceptions are resolved; and

(c) The final audited fiscal report, reconciled with the audit, shall be submitted not later than ninety (90) days after the ending date of the contract, or upon completion of an organization-wide audit conducted in accordance with OMB A-128 and the Single Audit Act of 1984, PL 98-502, or, if termination or cancellation occurs, not later than sixty (60) days after notice of the termination or cancellation. The cabinet has the right to deny payment for a fiscal report that does not comply with this provision.

(3) The division shall authorize the carry over of federal funds on a case-by-case basis. Area agencies on aging shall submit a narrative request for permission to carry over federal funds explaining the reason for a fund surplus and the intended use of these funds. Under Title III of the Older Americans Act, carry-over federal funds shall be matched with fifteen (15) percent local funds and no state general funds shall be carried over. Program income shall be expended in the same year in which it is collected. Each area agency on aging shall be advised to plan, administer and monitor its programs in a manner which assures that funds are utilized in the year in which they are allocated.

(4) The contractor shall certify that it is not and shall not violate either directly or indirectly a conflict of interest statute or other applicable statute or principle by the performance of the contract.

(5) Contributions.

(a) Contributions or donations, as pertains to Title III programs, made by participants and other contributors shall be considered program income and shall be utilized to expand services provided under the Older Americans Act. Each service provider shall have an established method for providing the opportunity for participants to voluntarily contribute to the estimated cost of services rendered. Participants may be provided information to assist them in determining the amount, if any, of an individual contribution. If the participant is unable to contribute, that person shall not be denied services for failure to contribute. A means test shall not be used.

(b) Confidentiality of contributions from participants and other contributors shall be assured. Collection of contributions shall be done in a discreet manner. No written acknowledgement of the amount of contributions shall be issued except upon request of the person making the contribution at the time the contribution is made. Participants desiring a record of their contributions shall be encouraged to use checks when making contributions. To insure against loss, mishandling or theft of contributions, the following procedures shall be followed:

1. Two (2) persons, a participant and a staff person, shall be selected at each site to be responsible for counting and recording contributions daily;

2. Provision shall be made for safe-keeping of money from the date of collection until the provider arranges for transfer of funds. This shall be a locked box placed in a safe or a secure cabinet, file closet, or daily deposit; and

3. Funds shall be verified and collected at least weekly by the service provider.

(6) In-kind contributions shall be allowed to be used for the purpose of meeting the match when state funds, available local cash, and program income are not enough to provide the match required to obtain maximum federal funds.

(a) The subcontractor shall provide to the area agencies on aging certified statements of donated items;

(b) Match verification requirements shall be completed by the service provider and submitted to the area agency on aging when applicable; and

(c) The Cabinet for Human Resources shall retain the right to request a review of these documents.

(7) In accordance with the contract, the contractor or area development district shall have a properly executed fidelity bond. The bond shall be sufficient to cover maximum sums handled quarterly under the contract with the Division of Aging Services; and a copy shall be provided to the Department for Social Services no later than sixty (60) days from the effective date of the contract. Bonds required shall be obtained from companies holding certificates of authority as acceptable sureties.

(8) Matching requirements.

(a) The area agency on aging shall meet the matching requirements through allowable costs and third party in-kind contributions, program income or cash. Match may be cash or in-kind. Match, whether it is cash or in-kind, shall meet the following requirements:

1. It shall not be supported with federal funds;
2. It shall be an allowable cost;
3. It shall be included in the accounting records and audit; and
4. It shall not be used to match other federal program.

(b) Certification of the appropriate match amount shall be submitted to the Department for Social Services by the area agency on aging on a quarterly basis. The match requirement shall be met by category by the end of each quarter of the fiscal year. The procedure for certifying match shall be as follows:

1. The area agency on aging monthly financial reports shall indicate the amount of match collected and applied during the month;
2. At the end of the quarter, the financial report shall indicate the total amount of funds necessary to meet the match requirement, by category, for the quarter; and
3. Requests for reimbursement shall reflect the amount of federal and state funds that is due based on expenditures and match. The Division of Aging Services shall not penalize contractors in terms of reimbursement of federal and state funds during the first two (2) months of the quarter if the required match is not documented on the report. The required amount of match shall be documented at the end of each quarter. Adjustments, decreases if necessary, in payment shall be made at this time.

(9) Program income shall pertain to revenue received by service agencies under contract or subcontract with the division to conduct programs and provide services which are paid for either fully or partially with federal or matching funds. Program income includes participant contributions, proceeds from the sale of equipment or property, and rental fees. Program income shall be spent during the same fiscal year it is collected and shall be used to further the objectives of the aging program. The cost principles applicable to federal funds also apply to program income. Program-related income, under Title III, shall be used in either the additive alternative in 45 CFR 92.25(g)(2) or the cost-sharing or matching alternative in 45 CFR 92.25(g)(3) or a combination of the two (2). The deduction alternative described in 45 CFR 92.25(g)(1) shall not be permitted.

(10) The area development district and subcontractors shall maintain records pertaining to the contract for a period of not less than three (3) years after the matters pertaining to the contract are resolved in accordance with applicable federal and state laws, regulations and policies.

(11) The area development district may enter into subcontracts only upon receipt of a final contract with the Cabinet for Human Resources. To conduct activities or services on its behalf, the area development district may enter into subcontracts, and amendments thereof, with profit-making corporations with prior approval of the Cabinet for Human Resources. Recipients of awards shall be incorporated to safeguard the interest of the cabinet, the area agency on aging, the recipient of the award itself, the individuals involved in the delivery of services, and the individuals participating in the program, unless award is made to an individual under a personal service contract.

(a) The area development district shall execute a formal subcontract for those activities and services to be conducted by an agency or organization other than the area development district. The subcontract shall contain sufficient program and fiscal information to assure that the activities and services under an approved plan shall be conducted in conformity with the Older Americans Act. Once a subcontract has been executed by an area development district to carry out a service or activity under an approved plan, the subcontract shall be forwarded within thirty (30) days to the division and made part of the approved area plan.

(b) If the unit cost rate of a fixed rate subcontract is increased, a subcontract amendment reflecting the increase shall require prior review by the area agency on aging advisory council, approval by the area development district board and approval of the division.

(12) The division shall require prior approval of transfers of funds allocated to area development districts. With respect to Title III funds, the following shall apply:

(a) The area agency on aging may elect, in its area plan to transfer a portion of the funds for use as the area agency on aging considers appropriate to meet the needs of the area served;

(b) The area agency on aging may elect to transfer between allotments up to a percentage, set by the division, of an agency's separate allotments for congregate and home-delivered nutrition services;

(c) The area agency on aging may elect to transfer not more than a percentage, set by the division, of the funds allotted for a fiscal year between programs under part B and part C of Title III, for use as the agency considers appropriate;

(d) Title III funds shall not be transferred from Part B, C1, C2 after approval of the original budget by the division; and

(e) If the area agency on aging proposes to transfer more than the above percentages from one (1) allotment to another, the request shall be submitted to the division by March 1 of each approaching fiscal year and shall be by written request with justification for each transfer.

Section 11. Medication Assistance. Providers other than licensed home health agencies may allow staff to assist participants in medication usage. Assistance shall be provided only by staff who have received training in medication assistance and only to individuals whose care plans include this service.

(1) The assessor or case manager shall:

(a) Conduct an assessment of the individual to determine the presence of sensory or functional impairment which may indicate problems with taking medication.

(b) Collect information from the client on medications, including prescriptions and over-the-counter drugs and the following:

1. Name and dosage of the medication;
2. Purpose of the medication;
3. The amount of the medication ordered;
4. Amount to be taken each time and when;
5. The physician's name.

(c) Prepare a list of medications prescribed including the times at which they shall be taken.

(d) If a client is using over-the-counter medications or home remedies, contact the client's physician or pharmacist to secure approval for their continued use.

(2) The provider shall:
(a) Set up a schedule to be followed daily. After each medication has been taken, the provider shall check it off. Refer to the schedule and remind the client when medicine is due.
(b) Assure that the correct medication is given by checking the prescription label before giving the medicine bottle to the client.
(c) Assure that the method of taking the medication is followed.
(d) Explain to the client the importance of taking prescription or over-the-counter medication as directed.
(e) Place certain medications within the client's reach so that the client can place these tablets under the tongue the moment chest pain occurs.
(f) Put away sleep and pain medications after each use. Sleeping pills and other addicting drugs shall be used only as ordered by the doctor.
(g) Review the evening medication schedule with the client, being sure the client knows the method and time to take medications when no assistance can be given, leaving the medications within easy reach of the client and encouraging the client to take nighttime doses in a well-lit room.
(h) If the client has questions about the medications, encourage the client to consult his doctor.

Section 12. Volunteers. Each area agency on aging shall develop mechanisms for volunteer recruitment and training. The division shall coordinate with the foster grandparent program, retired senior volunteer program, senior centers, and other agencies or organizations in the provision of meaningful volunteer services. The division shall review proposals for continuation of volunteer programs, comment to the respective agencies, and submit letters of support upon request of the applicant agencies.

Section 13. Records Check. In the programs administered by the division, applicants for employment and volunteers with direct client contact shall be requested to authorize the release of police records to the area development district using a request for police record search. An applicant or volunteer with a criminal record may be employed only with the approval of the executive director of the area development district. It shall not be a condition of employment for the applicant to authorize the release of police records. It shall not be a condition of participant eligibility in the Title V program for the applicant to authorize the release of police records. Title V participants applying to be employed by the area development district or service provider in direct ongoing program responsibilities shall authorize the release of police records.

Section 14. State Plan. The division shall develop and submit for federal approval and funding a state plan for the delivery of services to the elderly in accordance with the provisions of Section 307 of the Older Americans Act and which advances the state agency mission as set forth under 45 CFR 1321.7. Administration of the state plan shall be subject to the federal legislative and regulatory provisions and Division of Aging Services policies.
(1) The state plan shall include:
(a) Identification of the single state agency that has been designated to develop and administer the plan;
(b) Statewide program objectives to implement the requirements under Title III of the Older Americans Act and subsequent objectives established through the rulemaking process;
(c) A resource allocation plan indicating the proposed use of all Title III funds directly administered by the state agency, and the distribution of Title III funds to each planning and service area;
(d) Identification of the geographic boundaries of each planning and service area and of area agencies on aging designated for each planning and service area;
(e) Provision of prior federal fiscal year information relating to low-income minority and rural older individuals as required by Sections 307(a)(23) and (29) of the Older Americans Act;
(f) Assurances and provisions required in Sections 305 and 307 of the Act and requirements under 45 CFR 1321.5-1231.75; and
(g) Assurances as prescribed by the Commissioner of the U.S. Administration on Aging.
(2) The division shall provide for amendments to the state plan on aging services in accordance with the provisions of 45 CFR 1321.19. The state plan shall be amended to:
(a) Reflect new or revised federal statutes or regulations.
(b) Reflect a material change in any law, organization, policy or state agency operation.
(c) Reflect information required annually by Sections 307(a)(23) and (29) of the Older Americans Act.
(3) The division shall submit for prior approval of the commissioner of the Administration on Aging proposed amendments to the state plan required under 45 CFR 1321.17(a) or (f); and shall notify the commissioner of changes of provisions under 45 CFR 1321.17(b) through (d).
(4) The division shall exercise the right of appeal and request for hearing on federal disapproval of state plan on aging services under the provisions of Sections 307(c) and 207(d) of the Older Americans Act which are subject to the provisions of 45 CFR Part 213.

Section 15. Hearing Procedures for Area Agency on Aging. (1) The division shall provide an opportunity for a hearing to area agencies on aging when the division proposes the following adverse actions:
(a) Disapproves the area plan or plan amendment submitted by the area agency as specified in 45 CFR 1321;
(b) Withdraws the area agency on aging's designation as provided in 45 CFR 1321; or
(c) Denies an application for designation as a planning and service area under 45 CFR 1321.
(2) If a complaint is filed, the area agency on aging shall be afforded:
(a) An opportunity to review pertinent evidence on which the adverse action was based;
(b) An opportunity to appear in person before a group which shall render an impartial decision to refute the basis for the decision;
(c) An opportunity to be represented by counsel;
(d) An opportunity to present witnesses and documentary evidence;

(e) An opportunity to cross-examine witnesses; and

(f) A written impartial decision which sets forth:

1. The reasons for the decision;

2. The evidence on which the decision is based; and

3. A statement explaining the complainant's rights to appeal.

(3) Complaints filed by area agencies on aging shall be as follows:

(a) Area agencies on aging shall file a written request for a hearing with the Commissioner, Department for Social Services, within thirty (30) days following its receipt of the notice of the adverse action. The request shall contain reasons for the appeal.

(b) When a request for a hearing is received, the Commissioner, Department for Social Services, shall:

1. Appoint a hearing officer and provide written notification of the appointment to the interested parties;

2. Notify the area agency on aging of the date, time and location of the hearing;

3. Make arrangements for official recording of the hearing and retain the official transcript, if transcribed, of testimony and other material submitted. Interested parties may obtain transcripts of hearings upon request to the Department for Social Services and upon payment at rates that do not exceed the actual cost. An expense shall be borne by persons requesting the transcript;

(c) The Department for Social Services may terminate formal hearing procedures if the department and area agency on aging, and other interested parties participating in the hearing, negotiate a written agreement that resolves the issue which led to the hearing.

(d) It is the responsibility of the hearing officer to conduct a fair and impartial hearing, avoid delay, and maintain order. In so doing, he has authority that includes but is not limited to:

1. Regulating the course of the hearing;

2. Regulating the participation and conduct of parties, amicus curiae, and others at the hearing;

3. Ruling on procedural matters and, if necessary, issuing protective orders or other relief to a party against whom discovery is sought;

4. Taking an action authorized by the regulations;

5. Administering oaths and affirmations;

6. Examining witnesses;

7. Receiving or excluding evidence;

8. Ruling on or limiting evidence or discovery; and

9. Recommending a final decision.

(e) The final decision on an area agency on aging appeal to the Department for Social Services shall be rendered by the Commissioner, Department for Social Services. The decision of the commissioner shall contain information from the federal regulations 45 CFR 1321 regarding appeal rights.

(f) The Department for Social Services shall complete the hearing within eighty (80) days of the date the request for hearing was received by the state agency. The state agency shall issue the hearing decision within ten (10) working days after the hearing is completed.

Section 16. Hearing Procedures for Title III Subcontractors or Applicants to be Subcontractors. Subcontractors or applicants to be subcontractors of area agencies on aging shall be provided an opportunity for a hearing whose application to provide services under an area plan is denied or a service provider funded under Title III whose subcontract is terminated or not renewed except as provided in 45 CFR Part 74 Subpart B.

(1) The procedure for complaints lodged by service providers or applicants to provide services who are subcontractors shall be as follows:

(a) The service provider or unsuccessful applicant to provide services shall contact the contracting agency to try to work out a satisfactory solution.

(b) If a complaint is filed, the complainant shall comply with the contracting agency's hearing procedures which shall include the following provisions:

1. A service provider or unsuccessful applicant to provide services aggrieved by an adverse action of a contracting agency shall, within ten (10) working days from receipt of notice of the adverse action, file a written complaint with the agency;

2. The contracting agency shall notify all parties of interest that a complaint has been filed and determine a time and place for the hearing;

3. An opportunity to review pertinent evidence on which the adverse action was based;

4. An opportunity to appear in person before an individual or a group of three (3) persons which can render an impartial decision to refute the basis for the decision;

5. An opportunity to be represented by counsel;

6. An opportunity to present witnesses and documentary evidence;

7. An opportunity to cross-examine all witnesses; and

8. A written impartial decision within ten (10) days of receipt of complaint which sets forth:

a. The reasons for the decision;

b. The evidence on which the decision is based; and

c. A statement explaining the complainant's rights to appeal.

(2) If the complainant is not satisfied with the decision of the contracting agency, the complainant shall file a notice of appeal within five (5) working days of the adverse action to the area development district and the area development district board of directors shall be responsible for the provision of a full evidentiary hearing within twenty (20) days of receipt of written notice of the complaint in order to render a final impartial decision. It shall be the responsibility of the area development district to provide an official transcript of the hearing at the final local appeal level to include all testimony, a copy of findings of fact, conclusions of law and final order, along with other evidence and exhibits submitted for the record. An impartial decision shall be made as soon as practicable or within ten (10) working days.

(3) The hearing shall be limited to those issues included in the original complaint. Only those issues shall be addressed unless issues have been added, modified, or deleted through written agreement of the involved parties.

(4) The complainant may drop the complaint if satisfied with the response of the area development district. If the complainant is not satisfied, the complainant may appeal to the Department for Social Services for a state-level review within five (5) working days from the time the decision is received.

(5) Upon receipt of the request, the hearing officer appointed by Department for Social Services shall request the transcript of the hearing before the area development district board of directors and notify interested parties that the appeal has been filed. Upon proper motion of any interested party, the hearing officer may dismiss an appeal if it was not timely filed, or remand the appeal to the area development district board of directors if the appellant did not exhaust his administrative remedies at the local level.

(6) The hearing officer shall make a determination of the issues based on the transcript of the hearing before the area development district board of directors. New evidence shall not be introduced during the appeal to the Department for Social Services unless it is determined by the hearing officer that additional evidence is necessary in order to make a decision.

(7) The hearing officer shall forward his recommended decision to the Commissioner, Department for Social Services, within ten (10) days of receipt of appeal. The final decision shall be rendered by the Commissioner, Department for Social Services, within ten (10) working days after receipt of hearing officer's recommendation. The decision of the Commissioner of the Department for Social Services shall be the final order.

Section 17. Material Incorporated by Reference. (1) Forms necessary for the implementation of the general administration of programs for the elderly are being incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department of Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

Section 18. Repeal. The following administrative regulations are repealed:

(1) 905 KAR 8:010, Older Americans Act audit guide.

(2) 905 KAR 8:040, Allocation formula for Older Americans Act.

(3) 905 KAR 8:050, Older Americans Act procedural instructions for contractors.

(4) 905 KAR 8:060, Older Americans Act state plan.

(5) 905 KAR 8:080, Older American Act financial management and nutrition guide.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 9, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sue Tuttle

(1) Type and number of entities affected: The type and number of entities affected are the programs administered by the Division of Aging Services which serve an estimated 175,000 unduplicated clients per year throughout Kentucky. The majority are 60 years of age or older except under Title V; 55 years or older; Personal Care attendant Program: 18 years or older.

(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the affected entities as the result of this proposed regulation.

1. First year: There will not be any direct and indirect costs or savings to the affected entities.

2. Continuing costs or savings: There will not be any continuing costs or savings to the affected entities.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities.

(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: The effect on the promulgating agency is that existing policy and procedures regarding general administration of programs for the elderly are drafted into regulation in compliance with KRS Chapter 13A.

(a) Direct and indirect costs or savings: There will not be any direct or indirect costs or savings to the Department for Social Services.

1. First year: There will not be any direct or indirect costs or savings during the first year for the Department for Social Services.

2. Continuing costs or savings: There will not be any continuing costs or savings for the Department for Social Services.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or affect competition for the Department for Social Services.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered as statutes and federal regulations require the cabinet to provide general administration of the Older Americans Act and other programs for the elderly.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.
(6) Any additional information or comments: There are no additional information or comments of which we are aware.
TIERING: Was tiering applied? No. This regulation was not tiered as it establishes statewide procedures for the general administration of the Older Americans Act and other programs for the elderly and is applicable to all applicants and contractors.

CABINET FOR HUMAN RESOURCES
Office of Inspector General

906 KAR 1:021. Repeal of 906 KAR 1:020.

RELATES TO: KRS Chapter 13A, 194.050(1)
STATUTORY AUTHORITY: KRS 13A.224(3)
NECESSITY AND FUNCTION: 906 KAR 1:020 is repealed because KRS 13A.224(3) prohibits incorporation by reference of material where federal regulations set forth a comprehensive scheme of regulation of the subject matter.

Section 1. 906 KAR 1:020. Policies and procedures, is hereby repealed.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 1, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander/Ralph Von Derau/David Crane
(1) Type and number of entities affected: 0
(a) Direct and indirect costs or savings to those affected: There should be no additional cost.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: There should be no costs involved.
(a) Direct and indirect costs or savings: No costs involved.
1. First year: No costs involved.
2. Continuing costs or savings: No continuing costs should be associated with this regulation.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This change is necessary in order to bring the affected regulation into compliance with KRS Chapter 13A drafting requirements.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.
(a) Necessity of proposed regulation if in conflict: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. This regulation repeals an existing regulation and therefore tiering cannot be applied in this case.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services

908 KAR 1:300. Chemical dependency program evaluation.

RELATES TO: KRS Chapter 222.460 to 222.475
STATUTORY AUTHORITY: KRS 194.050, 222.460 to 222.475
NECESSITY AND FUNCTION: KRS 194.050 and 222.460 to 222.475 empowers the cabinet to prescribe rules governing the gathering of information on clients discharged from publicly funded chemical dependency treatment programs and the format of reports of such information to the cabinet in order to assess treatment effectiveness.

Section 1. Definitions. (1) "Program" means a substance abuse or chemical dependency treatment program, licensed under KRS Chapters 210, 216B and 222 and receiving state or federal funds.
(2) "Client" means an individual on whom a record or chart has been opened by a program (or subcontractor of a program) and a treatment plan has been prepared for a primary substance abuse problem. Clients receiving only DUI education services, DUI assessment services, or clients receiving only detoxification services during the treatment episode are excluded from the definition.
(3) "Department" means the Department for Mental Health and Mental Retardation Services within the Cabinet for Human Resources.
(4) "Division" means the Division of Substance Abuse within the Department for Mental Health and Mental Retardation Services.
(5) "Follow-up study" means a department defined survey of clients to assess their progress twelve (12) months after discharge from substance abuse treatment.
(6) "Minimum data set client identifier" means a unique and nonintelligent number used by programs and the department to identify clients in a departmental data set.

Section 2. Survey Procedures. (1) Each client discharged from treatment since July 13, 1990 shall be contacted by the discharge program for an assessment of progress after treatment.

(2) Each program shall decide whether to contact clients first by mail or by telephone.

(a) Mail survey. If the method chosen for first contact is a mail survey, each client shall be mailed a return postage guaranteed postcard or a letter questionnaire from the discharging program within thirty (30) days of the twelve (12) month anniversary after discharge.

(b) If the client does not respond to the mailed questionnaire within thirty (30) days of the mailing, the program shall make up to three (3) attempts within a three (3) week period to contact the client by telephone for completion of the survey.

(c) Telephone survey. If the method chosen for first contact is a telephone survey, the program shall follow the telephone procedures in paragraph (b) of this subsection.

(d) If no contact can be made because of incorrect or missing address or phone number, the client can be deleted from the contact list and noted as "unable to contact" on the report to the department.

(3) Telephone interviewers shall observe all state and federal confidentiality regulations when attempting to contact clients. Interviewers shall ask to speak to the client or ask for a means of contacting the client. Interviewers shall not reveal the nature of the call or the treatment program identity to anyone other than the client without specific written consent.

Section 3. Compliance. (1) Programs shall keep a record of all attempted contacts for each client for whom follow-up contact is attempted.

(a) The record shall include client's name, minimum data set client identifier, date, time, method, results of the attempt to contact, and the name of the staff person making the contact.

(b) The record shall be kept on file by the program and made available to departmental staff that shall monitor compliance with the statutes and regulations.

(2) Program compliance shall be determined by site visits and program audits.

(3) If a program is determined to be noncompliant, their federal and state substance abuse funds shall be held in escrow until such time as an acceptable reason for noncompliance is received or the program is in compliance. Escrow decisions shall be reached with the input of division staff and shall be approved by the department commissioner.

Section 4. Reporting. (1) Responses shall be reported to the department using the client identifier from the minimum data set and submitted in a department specified format.

(2) Responses shall be reported to the department quarterly.

(a) Reports shall be due each October 31, January 31, April 30 and July 31.

(b) The first report shall be due January 31, 1992.

(3) Following the receipt of each program's reports, the division shall compile the data received and prepare an annual report to the Governor indicating the results by specific program, as well as a statewide comparison.

(a) The survey data shall be linked to the minimum data set, where possible, for analysis and reporting.

(b) Draft copies of all reports shall be sent to the programs prior to their release as departmental reports.

(c) Program review and comment on reports shall be welcomed by the department.

(4) Division staff shall be available to provide training and technical assistance regarding the follow-up study requirements.

Section 5. Costs. All costs incurred in conducting the follow-up study shall be the responsibility of the program.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: 14 community mental health centers, 1 state residential treatment center and one urban methadone program are affected. These treat 20,000 clients per year.

(a) Direct and indirect costs or savings to those affected: Programs can be expected to expend up to $280,000 per year to administer these regulations. This includes $5,000 for mail and postage, $15,000 for telecommunications, $240,000 for staff time (including interviewers and clerical staff), and $20,000 for report preparation and data processing.

1. First year: $280,000.

2. Continuing costs or savings: $280,000.

3. Additional factors increasing or decreasing costs (note any effects upon competition): If client population increases or decreases so will evaluation costs.

(b) Reporting and paperwork requirements: Regulations will require quarterly reporting to the department and recordkeeping to assure quality control.

(2) Effects on the promulgating administrative body: There is some financial effect on the administrative body.

(a) Direct and indirect costs or savings: Cost of $26,000 consisting of $16,000 salary and fringe, and $10,000 data processing.

1. First year: Cost of $26,000.

2. Continuing costs or savings: $21,000 because of decreased programming time for data processing.

3. Additional factors increasing or decreasing costs: Some effect caused by fluctuation in the number of clients.

(b) Reporting and paperwork requirements: Requires an annual report to governor.

(3) Assessment of anticipated effect on state and local revenues: This has no effect on

revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Consideration was given to having an independent evaluation contract through a university. This method was determined by legal counsel to not comply with the requirements of KRS 222.460 to 222.475.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Regulations apply to all programs in order to have comparable data.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the October 7 and 8, 1991 Meeting

The Ocotober meeting of the Administrative Regulation Review Subcommittee was held on Monday, October 7, 1991 at 2 p.m. in Room 327 of the Capitol and on Tuesday, October 8, 1991 at 10 a.m. in Room 327 of the Capitol. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the September 3 and 4, 1991 meeting were approved.

Present were:

Members: Representative Tom Kerr, Chairman; Senators Gene Huff, Pat McCuiston and Bill Quinlan; Representatives Woody Allen, Jim Bruce and James Yates.

Guests: Paul P. Borden, Richard Casey, KHEAA; George Russell, Carla Arnold, State Board of Elections; Pam Johnson, William P. Hanes, KERS; Don R. McCormick, Pete Pfeiffer, Lauren Schaaf, Ronald Pritchart, Fish and Wildlife Resources; Dave Rosenbaum, Jim Villines, George Risk, Surface Mining; Christopher W. Johnson, Byron W. Wesley, Mark Bubenzer, Justice; Kevin Noland, Perry Watson, H. M. Snodgrass, Ron Moubray, Stewart W. Roscoe, Vicki Phillips, Education; Richard C. Gibson, Attorney General; Lee Troutwine, Peggy Satterly, H. Gene Taylor, Dan Tuttle; Local Government; David Nicholas, Occupations and Professions; Chris Kring, Agriculture; Tom Campbell, Jack Damron, Lori Poole, Corrections; Sandy Pullen, Transportation; David Garnett, Motor Vehicle Commission; Patrick Watts, Insurance; Dudley J. Conner, Janice Kline, John P. Draper, Marcia A. Burklow, Eric Friedland, Ralph Von Derau, Mark Cornett, Barbara Coleman, Ked Fitzpatrick, Anita Moore, Gary W. Bevill, Human Resources; Sam Crawford, Kentucky Farm Bureau; James E. Baker, Western Kentucky Coal Association; Tom Fitzgerald, Kentucky Resources Council; Chris Goddard, Marcum and Wallace Memorial Hospital; Stephen L. Goodman, Ginseng Industry; Nancy Galvagni, Kentucky Hospital Association; Bill Miller; Paul Urban; Gary Beck; John T. Underwood, Christi LeMay, Kentucky Auto and Truck Recyclers Association Inc.

LRC Staff: Joe Hood, Greg Karambellas, Susan Wunderlich, Donna Pierce, Peggy Jones, Susan Eastman, Doug Terry.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

State Board of Elections: Forms and Procedures

31 KAR 4:070 (Recanvass procedures.) Section 2 was clarified to specify which report of vote totals is sent to the Secretary of State and which report to the county clerk. Other amendments were made to conform to KRS Chapter 13A.

Finance and Administration: Kentucky Employees' Retirement Systems: General Rules

105 KAR 1:120 (Participation of agencies.) Section 2 was amended to specify the correct federal statutes.

105 KAR 1:130 (Hazardous duty coverage.) Section 1 was amended to clarify "if an agency...chooses to provide hazardous duty coverage..."

105 KAR 1:140 (Contribution reporting.) Section 1 was amended to clarify the submittal of electronic data in a format "acceptable to" the agency. Section 6 was amended to clarify that the agency has the right to review all "relevant" employee files.

105 KAR 1:160 (Sick leave plans.) Section 4(3) was amended to correct the citation of Section "3" instead of Section "2". The forms for the sick leave programs which were omitted from the material incorporated by reference were also submitted.

105 KAR 1:170 (Membership form requirements.) Section 4(2) was amended by inserting the word "and" for proper sentence construction after the words "forfeited by the employee".

105 KAR 1:200 (Retirement procedures and forms.) In Section 6, the word "prior" at the end of the second sentence, was deleted and the word "credit" was inserted in lieu thereof. In the last sentence in Section 6, and in Section 7, after the words "within thirty (30) days", delete the word "of" and insert the word "following" to clarify the time period to purchase service credit.

105 KAR 1:215 (Administrative hearing.) Section 3 was amended to clarify formal hearing process rights and delete the sentence referring to judicial review. Section 19 was amended to delete the last sentence relating to judicial review.

Department of Local Government: Policy and Management

109 KAR 10:010 (Local government economic assistance fund grants.) This administrative regulation was amended to delete the reference to "rules" to comply with KRS 13A.120(5); to comply with the requirements of KRS 13A.222(4)(d),(e) relating to definitions; to specify the required auditing standards; and to reword Section 4(1) to make it clear when additional funds may or may not be transferred.

Advancement to Sheriffs

The following three regulations were amended to comply with KRS 13A.222(4)(b) governing the form in which mandatory requirements are stated; and to delete unnecessary repetitions.

109 KAR 12:020 (Application form; information required.)

109 KAR 12:030 (Initial advancement; procedure.) This regulation used two terms to refer to the supervisor of county fee systems. The term "supervisor of county audit" was deleted and replaced by "supervisor of county fee systems".

109 KAR 12:040 (Subsequent advancements.)

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:044 (Taking of migratory wildlife.) Section 6(8) was amended to specify that all hunters shall be advised that density guidelines may be exceeded, and that they may be hunting at their own risk.

301 KAR 2:195 (Raptor propagation and falconry.) Section 4(3) was amended to incorporate by reference the falconry permit application form, and specify the hours and days the agency is open.

Justice Cabinet: Office of the Secretary: Breath Analysis Operators

500 KAR 8:010 (Certification of operators.) The "RELATES TO" line was amended by deleting KRS 186.565, which has been repealed. Section 5(1)(d) was amended to specify a "criminal justice agency" rather than a "criminal justice company".

500 KAR 8:020 (Breath alcohol analysis instruments.) Section 2 was amended to conform with the drafting requirements of KRS 13A.222, by changing the word "must" to the word "shall".

Corrections Cabinet: Office of the Secretary

501 KAR 6:020 (Corrections policies and procedures.) CPP 20-01-01 was amended to cite KRS 197.045. The initial review had raised questions concerning CPP 15-07-01 relating to the number of times an inmate's account may be frozen, and as to the meaning of "restitution order". Agency personnel stated that the number of times an inmate's account may be frozen is not stated because it may be frozen at any time a reasonable suspicion exists that money had been obtained illegally or had been ordered to pay restitution. With regard to "restitution orders", agency personnel stated that the Adjustment Committee is authorized to order an inmate to pay for the damage of property; a restitution order can be made to require payment to institutions and third persons; and, if there is no existing court order, or restitution order, an account will be released to the inmate upon final discharge.

501 KAR 6:040 (Kentucky State Penitentiary.) KSP 02-01-01 was amended to provide that large purchase items had to be approved by the warden or his designee. An objection had been raised concerning KSP 02-12-01 because the policy governing the freezing of accounts did not agree with the Cabinet's policies and procedures. The Cabinet proposed an amendment removing the policy governing the freezing of accounts. The Subcommittee approved the amendments.

501 KAR 6:140 (Bell County Forestry Camp.) An objection had been raised to BCFC 09-06-01 because the provision relating to the preservation of physical evidence or contraband did not make the required reference to KRS 197.061. Agency personnel proposed an amendment adding that the preservation of evidence or contraband shall be in accordance with KRS 197.061. The Subcommittee approved the amendment.

Transportation Cabinet: Motor Vehicle Commission: Motor Vehicle Commission

605 KAR 1:190 (Motor vehicle advertising.) At the September 1991 Subcommittee meeting, Christi LeMay, of the Kentucky Auto and Truck Recyclers Association, raised questions relating to Section 15, requiring that a dealer disclose to a prospective purchaser that a motor vehicle is a rebuilt motor vehicle. Ms. LeMay stated that this section did not require individual sellers, or other sellers who were not dealers, to disclose this information. Agency personnel stated that the Commission did not have the authority to regulate nondealers. Upon motion of Representative Bruce, the Subcommittee requested that this regulation be deferred in order to permit the agency and interested parties to come to an agreement relating to this matter. Agency personnel agreed.

At this Subcommittee meeting, agency personnel stated that the agency and the Kentucky Auto and Truck Recyclers Association had agreed that sections governing the disclosure of information relating to rebuilt motors should be deleted, and that the Association and the agency would propose legislation at the 1992 Regular Session to provide specific requirements for this matter. The agency proposed to accomplish this by amending the regulation as follows: (1) Delete Section 1(3), defining "rebuilt motor vehicle"; (2) Delete the first sentence in Section 15, that required a dealer to disclose that a motor vehicle is a rebuilt motor vehicle. The Subcommittee approved these two amendments.

Additional amendments were approved by the Subcommittee as follows: (1) Sections 1 and 3 were amended to include "lease" as a transaction to which the definitions of advertising and bait advertising applied, and to require the conspicuous identification of the dealer in an advertisement for the lease of new and used vehicles by a licensee; and (2) Sections 1, 3, 4, 5, 14-17 were amended to comply with the drafting requirements of KRS 13A.222, to correct the numbering in various sections of the regulation, and to redraft sections in order to make their requirements clear.

Education and Humanities Cabinet: Department of Education: Office of Learning Programs Development: Instructional Services

704 KAR 3:006 (Annual performance reports and standards for students, program, service, and operational performance.) KRS 158.6453 was added to the "RELATES TO" and "STATUTORY AUTHORITY" lines; KRS 156.160 was added to the "STATUTORY AUTHORITY" line. Section 2(1)(b) was amended to specify what shall be included in, but not limited to, the continuous assessment program. Section 2(3) was amended by requiring that each school district shall be notified by October 1 of each year of their operational performance according to the previous year data. Section 2(3)(a)3 was amended by changing a county district category of "2,200 to 2,299" to "2,200 to 2,999".

Cabinet for Human Resources: Department for Health Services: Emergency Medical Technicians

902 KAR 13:080 (Authorized procedures.) Section 1(2)(a)2 was amended to correct an incorrect cross-reference to another administrative regulation: the correct administrative regulation is 902 KAR 13:130 instead of 902 KAR 13:030.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Kentucky Higher Education Assistance Authority: Kentucky Higher Education Assistance Authority

11 KAR 4:040 (Educational institution participation requirements.)

Finance and Administration: Kentucky Employees' Retirement Systems: General Rules

105 KAR 1:070 (Allocation of special appropriation for military service credit.)

105 KAR 1:150 (Installment purchase procedures.)

105 KAR 1:180 (Death before retirement procedures.)

105 KAR 1:190 (Qualified domestic relations orders.)
105 KAR 1:210 (Disability procedures. (Repeals 105 KAR 1:110))
105 KAR 1:220 (Annual disability review.)
105 KAR 1:230 (Reemployment after retirement.)
105 KAR 1:240 (Death after retirement procedures.)

Department of Local Government: Advancement to Sheriffs
109 KAR 12:050 (Refunding procedure.)

Tourism Cabinet: Department of Fish and Wildlife Resources: Fish
301 KAR 1:015 (Boats and outboard motors; restrictions.)
301 KAR 1:075 (Gigging, grabbling or snagging, tickling and noodling.)
301 KAR 1:200 (Seasons and limits for angling.)

Justice Cabinet: Office of the Secretary: Breath Analysis Operators
500 KAR 8:030 (Administration of chemical analysis tests.)

Corrections Cabinet: Office of the Secretary
501 KAR 6:130 (Western Kentucky Correctional Complex.) The initial review had raised a question concerning the meaning of provisions in WKCC 16-01-01 relating to the "facilitation" of transportation to members of the public visiting inmates. Agency personnel explained that to "facilitate" transportation simply meant that the institution would provide information to visitors relating to public transportation, directions, etc.; that state funds would not be expended to provide transportation; and that the American Correctional Association requires that institutions "facilitate" the transportation of visitors in order for the institution to be accredited. A question had been raised with regard to Attachment II that provides that three warnings may be given to visitors before their visit is terminated. The initial review stated that Corrections Policy and Procedure (CPP) in 501 KAR 6:020 did not address this matter. Agency personnel stated that this was limited to one institution, did not conflict with CPP, and a visit may be terminated without warning when appropriate (e.g., fighting). The Subcommittee accepted the Cabinet's explanations.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers: Division of Motor Vehicle Enforcement: Transportation of Solid Waste
601 KAR 40:010 (Identification of motor vehicles transporting solid waste.) In response to a question raised by Representative Bruce, agency personnel stated that although a license was required by the operator of municipal waste vehicles, there was no charge for such a license. A $10 fee was charged for the required identification of each vehicle. Chairman Kerr asked whether only municipal solid waste could be transported. Agency personnel stated that they had requested an interpretation from the Cabinet for Natural Resources and Environmental Protection as to whether this limitation applied or commercial waste could also be included. Chairman Kerr requested that agency personnel notify the Subcommittee when it received the interpretation.

601 KAR 40:020 (Application for license to operate vehicles transporting solid waste.)

Education and Humanities Cabinet: Department of Education: School District Finance
702 KAR 3:220 (Guidelines for waiver of school fees.)
Pupil Transportation
702 KAR 5:030 (Superintendent's responsibilities.)
702 KAR 5:080 (Bus driver's qualifications; responsibilities.)
Office of Education for Exceptional Children: Exceptional and Handicapped Programs
707 KAR 1:054 (Programs for children and youth with emotional-behavioral disabilities.)

Public Protection and Regulation Cabinet: Department of Insurance: Authorization of Insurers and General Requirements.
806 KAR 3:160 (Life reinsurance agreements.)
806 KAR 3:170 (Annual audited financial reports.)
Fees and Taxes
806 KAR 4:010 (Fees of the Department of Insurance.)
Agents, Consultants, Solicitors and Adjusters
806 KAR 9:220 (Agent continuing education.)

Cabinet for Human Resources: Department for Health Services: Emergency Medical Technicians
902 KAR 13:130 (Emergency medical technician maintenance and discontinuation of a preestablished peripheral intravenous (I.V.) infusion.)
Health Services and Facilities
902 KAR 20:018 (Operation and services; renal dialysis facilities.)
902 KAR 20:036 (Operation and services; personal care homes.)
902 KAR 20:041 (Operation and services; family care homes.) In response to a question by Representative Allen, agency personnel outlined the differences between services provided under family care homes and those under the caregiver program. They stated that family care homes were homes in which two or three people resided. Representative Allen asked whether services were provided in these homes to critical care patients. Agency personnel responded that family care homes did not involve such patients. Representative Allen asked for an explanation of cost involved. Agency personnel stated that the maximum reimbursement rate was $510 per month, with the state supplementing the difference between the amount received from the resident and the maximum rate. Forty dollars of resident Social Security funds were reserved for the personal needs of the resident. Representative Allen asked about the cost and payments for necessary medical equipment. Agency personnel explained that Medicare or Medicaid payments would cover the cost of equipment. Representative Allen stated that he was concerned about possible abuses in charges for medical equipment. Agency personnel stated that authorization by physicians, and auditing by state or federal authorities, were required, and that improper charges would be corrected. Representative Allen compared the cost of and allowable charges for family care homes with caregiver services. He stated that if a family provided a home for an elderly relative, the amount provided under the caregiver service

program was much less than the amount that would provided if the relative were placed in a family care home. In response to a question by Representative Allen, agency personnel stated that the Cabinet inspected food and other items provided by a family care home. Marie Cull explained the difference between personal care and family care homes. She stated that personal care provides nursing services, serves a greater number of people, provides registered nurses or LPNs, and dietician services.

902 KAR 20:106 (Operation and services; ambulatory surgical center.)

902 KAR 20:111 (Medical detoxification services.)

902 KAR 20:160 (Chemical dependency treatment services and facility specifications.)

902 KAR 20:220 (Dual licensure of hospitals.)

902 KAR 20:230 (Comprehensive physical rehabilitation hospital; facility specifications.)

902 KAR 20:240 (Comprehensive physical rehabilitation hospital services.)

902 KAR 20:250 (Specialized medical technology services.)

902 KAR 20:260 (Special health clinics.)

Food and Cosmetics

902 KAR 45:080 (Salvage.)

902 KAR 45:100 (Vending machines; food and beverages.)

902 KAR 45:130 (Inspector's manual for state food and drug officials.)

Department for Social Insurance

Public Assistance

904 KAR 2:015 (Supplemental programs for the aged, blind, and disabled.)

Food Stamp Program

904 KAR 3:010 (Definitions.)

904 KAR 3:030 (Application process.)

904 KAR 3:035 (Certification process.)

904 KAR 3:045 (Coupon issuance procedures.)

904 KAR 3:050 (Additional provisions.)

904 KAR 3:060 (Administrative disqualification hearings and penalties.)

904 KAR 3:070 (Fair hearings.)

Department for Medicaid Services: Medicaid Services

907 KAR 1:013 (Payments for hospital inpatient services.)

907 KAR 1:022 (Nursing facility and intermediate care facility for the mentally retarded services.)

907 KAR 1:025 (Payments for nursing facility and intermediate care facility for the mentally retarded services.)

907 KAR 1:044 (Mental health center services.)

907 KAR 1:045 (Payments for mental health services.)

907 KAR 1:061 (Payments for medical transportation.)

907 KAR 1:535 (Tax assessment schedule for mental health centers.)

The following regulations were deferred upon agreement by the promulgating agency and the Subcommittee:

Department of Local Government: Accounts

A question had been raised concerning the statutory authority of the Department to promulgate the following three administrative regulations. Agency personnel stated that Executive Order 85-964, confirmed by H.B. 567, Acts 1986, c. 374, transferred authority from the Finance Cabinet to the Department. House Bill 567 did not amend KRS Chapter 24A to provide for a transfer of authority. The Department has submitted a request to the Statute Revisor to review the Executive Order and to determine whether, under the authority granted him by statute, he may substitute the Department for the Cabinet in KRS Chapter 24A. If so, the Department would have the authority to promulgate these administrative regulations. These regulations were deferred pending the determination of the Statute Revisor. Agency personnel were prepared to proposed additional amendments to these regulations. It was agreed that these amendments would also be deferred.

109 KAR 11:010 (Reimbursable revenues of local courts.)

109 KAR 11:020 (Reimbursement to law enforcement officers for certain expenses.)

109 KAR 11:030 (Allocation of driving under the influence service fees.)

General Government Cabinet: Board of Veterinary Examiners

201 KAR 16:010 (Code of conduct.)

Board of Examiners of Social Work.

201 KAR 23:070 (Specialty certifications.) Agency personnel requested that this regulation be deferred so that it might work with Subcommittee staff on amendments to which they had agreed.

Department of Agriculture: Ginseng

302 KAR 45:010 (Ginseng, general provisions.) Representative Allen asked agency personnel how regulations governing the harvesting, sale, export and import of ginseng were enforced, what penalties were imposed, and the number and nature of agency personnel involved in this program. Agency personnel stated that the statute did not provide for penalties. Representative Allen asked how many in the industry were not licensed. Agency personnel stated that approximately 100 were not. In response to a question by Representative Allen, agency personnel stated that there were approximately 135 to 140 dealers. Representative Bruce asked how it was determined whether exported ginseng was raised in Kentucky. Agency personnel stated that it could not be determined but that the requirements of this administrative regulation had to be imposed because of federal law and regulation in order to have the state program approved. Chairman Kerr asked why the harvesting seasons had been changed. Agency personnel stated that they were changed to conform with the seasons imposed by surrounding states which would make regulation and enforcement easier. Chairman Kerr stated that there was no reference to either or federal law or regulation, and proposed that this regulation be deferred. He instructed Subcommittee staff to meet with agency personnel in order to determine the proper method for citation or adoption of federal regulations. Agency personnel had submitted amendments to this administrative regulation required by KRS 13A.222. Consideration of these amendments were deferred.

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: General Provisions

There was considerable discussion concerning conformity to the requirements of KRS Chapter 13A in regard to incorporation by reference and the use of definitions. Definitions of terms

used in 405 KAR Chapters 7 through 24 are contained in one regulation: 405 KAR 7:020. It was pointed out that KRS 13A.222 provides that the agency has the right to choose to put definitions in the first section of a particular regulation, or have a separate regulation, which is the first regulation in a specific chapter, for use for that chapter. Representative Bruce stressed that the statute was clear as to what is required and that it is extremely important that this Subcommittee follow the procedures specified in KRS Chapter 13A. Senator Huff mentioned that if the procedures were not followed correctly, court action could result in the regulations being overturned. Because the package of regulations listed below need to be amended to conform with KRS 13A.222, the Subcommittee and the promulgating agency agreed to defer the regulations to the next meeting of the Subcommittee in order to provide enough time for agency personnel to meet with Subcommittee staff and draft appropriate amendments.

405 KAR 7:015 (Documents incorporated by reference.) Chairman Kerr questioned the incorporation of materials by reference in one regulation, which is prohibited by KRS 13A.221(2). Agency personnel explained that as they amend specific regulations which need to include material incorporated by reference, they were deleting that incorporation in 405 KAR 7:015; and eventually, 405 KAR 7:015 would no longer be in effect. The regulation was initially approved by the Subcommittee. Upon discussion with the problems with the remainder of the regulations being considered at this meeting, the Subcommittee approved a motion to reconsider. The Subcommittee and the promulgating agency agreed to defer this regulation.

405 KAR 7:020 (Definitions of terms used in 405 KAR Chapter 7 through 24.)

405 KAR 7:030 (Applicability.)

405 KAR 7:035 (Exemption for coal extraction incidental to the extraction of other minerals.)

405 KAR 7:080 (Small operator assistants.)

Permits

405 KAR 8:010 (General provisions for permits.)

405 KAR 8:020 (Coal exploration.)

405 KAR 8:030 (Surface coal mining permits.)

405 KAR 8:040 (Underground coal mining permits.)

Bond and Insurance Requirements

405 KAR 10:200 (Kentucky bond pool.)

Performance Standards for Surface Mining Activities

405 KAR 16:180 (Protection of fish, wildlife, and related environmental values.)

405 KAR 16:190 (Backfilling and grading.)

405 KAR 16:200 (Revegetation.)

405 KAR 16:210 (Postmining land use capability.)

Performance Standards for Underground Mining Activities

405 KAR 18:180 (Protection of fish, wildlife, and related environmental values.)

405 KAR 18:190 (Backfilling and grading.)

405 KAR 18:200 (Revegetation.)

405 KAR 18:220 (Postmining land use capability.)

Special Performance Standards

405 KAR 20:010 (Coal exploration.)

Cabinet for Human Resources: Department for Health Services: Sanitation

902 KAR 10:140 (On-site sewage disposal system installer certification program standard.)

The following regulation was withdrawn by the promulgating agency:

Department of Personnel: Classified

101 KAR 2:035 (Compensation plan and pay incentive systems.)

The Subcommittee had no objections to emergency regulations which had been filed.

OTHER BUSINESS:

The Subcommittee approved a motion by Chairman Kerr that the Subcommittee go into closed session to discuss Subcommittee staff needs. When the Subcommittee returned to open session, the Subcommittee approved a motion accepting the Chairman's recommendations and authorizing the Chairman and Senator McCuiston to meet with legislative leadership in order to implement the recommendations.

The Subcommittee adjourned at 11:00 p.m. until November 6, 1991 at 2 p.m. in Room 327 of the Capitol

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of September 11, 1991

The Interim Joint Committee on State Government met September 11, 1991, and submits this report.

The Committee determined that the following regulation of the Finance and Administration Cabinet complies with KRS Chapter 13A:
200 KAR 3:010 (Vehicle parking and traffic control).

The Committee determined that the following regulation of the Finance and Administration Cabinet DOES NOT comply with statutory authority:
200 KAR 5:316 (Works of art).

INTERIM JOINT COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of September 24, 1991

The Interim Joint Committee on Business Organizations and Professions met on Tuesday, September 24, 1991, and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A: Agency agreed to defer consideration of **201 KAR 9:300** until next meeting so additional witnesses could be there to address issues raised during committee meeting.

Board of Medical Licensure
201 KAR 9:031
201 KAR 9:175
201 KAR 9:305
Board of Nursing
201 KAR 20:056
Board of Physical Therapy
201 KAR 22:020
201 KAR 22:040
201 KAR 22:070
201 KAR 22:101
201 KAR 22:110
201 KAR 22:135

The Committee adjourned at 10:50 a.m.

INTERIM JOINT COMMITTEE ON CITIES
Meeting of September 24, 1991

The Interim Joint Committee on Cities met on September 24, 1991, and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A and has approved such regulations without objection:

815 KAR 15:020 – Boilers and Pressure Vessels (administrative procedures; requirements)
815 KAR 46:010 – Volunteer Fire Department Fund (aid to fire departments)

The Committee requested, and the agency agreed, that the following regulation be deferred until its October 8th meeting:

815 KAR 30:060 – Hazardous Materials (certification of underground petroleum storage tank contractors)

TOURISM DEVELOPMENT AND ENERGY TASK FORCE
Meeting of September 24, 1991

The Tourism Development and Energy Task Force completed its review of administrative regulation 807 KAR 5:001 on September 24, 1991 and approved it without objection.

Another regulation referred to the task force, 807 KAR 5:014, was withdrawn by the agency before the meeting, and therefore was not reviewed.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of September 25, 1991

The Interim Joint Committee on Agriculture and Natural Resources met September 25, 1991, and submits this report:

The committee determined that the following Department for Environmental Protection administrative regulations comply with KRS Chapter 13A:

401 KAR 31:010
401 KAR 31:030
401 KAR 31:040
401 KAR 31:060
401 KAR 31:110
401 KAR 32:010
401 KAR 32:100
401 KAR 34:230
401 KAR 35:200
401 KAR 35:220
401 KAR 35:240
401 KAR 37:100
401 KAR 48:050

The committee also determined that the Petroleum Storage Tank Environmental Assurance Fund Commission administrative regulations 415 KAR 1:010, 415 KAR 1:020, 415 KAR 1:030, and 415 KAR 1:040 comply with KRS Chapter 13A.

The committee determined that Department of Fish and Wildlife Resources administrative regulation 301 KAR 10:010 complies with KRS Chapter 13A.

The committee determined that Department of Mines and Minerals administrative regulations 805 KAR 1:020, 805 KAR 1:050, 805 KAR 1:120, 805 KAR 1:130, and 805 KAR 1:140 comply with KRS Chapter 13A.

The committee adjourned at 2:35 p.m., September 25, 1991.

INTERIM JOINT COMMITTEE ON CITIES
Meeting of October 8, 1991

The Interim Joint Committee on Cities met on October 8, 1991, and submits this report:

The Committee determined that the following administrative regulation, as amended, complied with KRS Chapter 13A:

815 KAR 30:060 - Hazardous Materials (certification of underground petroleum storage tank contractors)

The Committee approved two amendments to 815 KAR 30:060: (1) on page 6, Section 5, subsection (5), insert the following words at the beginning of the subsection: "Upon application or prior to the issuance of the certificate,"; and (2) on page 7, Section 6, subsection (2), delete the word "eliminate" and insert in lieu thereof "reduce" and at the end of the sentence, insert "by one-third (1/3)".

INTERIM JOINT COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of October 11, 1991

The Interim Joint Committee on Business Organizations and Professions met on Friday, October 11, 1991, and submits this report:

The Committee determined that the following regulation complied with KRS Chapter 13A.

Board of Medical Licensure
201 KAR 9:300

The Committee adjourned at 11:35 a.m.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of October 1, 1991

The Interim Joint Committee on Transportation met on Tuesday, October 1, 1991, and submits this report:

The Committee determined that the following administrative regulation complied with KRS Chapter 13A:

601 KAR 12:060
603 KAR 5:071
605 KAR 1:010
605 KAR 1:030
605 KAR 1:050
605 KAR 1:090
605 KAR 1:130
605 KAR 1:160

603 KAR 5:070 was amended by the Administrative Regulations Review Subcommittee, and was adopted by the Interim Joint Committee on Transportation as amended. The amendment added the following sections of roads to the state system of roads subject to maximum motor vehicle dimension limits: (1) U.S. 25 - from KY 461 in Rockcastle County to I-75 in Rockcastle County; (2) U.S. 60 - from KY 109 at Sullivans in Union County to Young Street in Morganfield; (3) KY 109 - from KY 670 in Webster County to U.S. 60 in Union County; (4) U.S. 421 - from KY 55 in Henry County to I-71 in Henry County; and KY 461 - from KY 80 in Pulaski County to U.S. 25 in Rockcastle County.

The Committee adjourned at 2:45 p.m.

CUMULATIVE SUPPLEMENT

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LOCATOR INDEX — EFFECTIVE DATES

NOTE: Emergency regulations expire 120 days from publication or upon replacement or repeal.

VOLUME 17

Emergency Regulation	17 Ky.R. Page No.	Effective Date
200 KAR 17:030E	3085	4-15-91
Replaced		8-22-91
200 KAR 17:040E	3088	4-15-91
Replaced		8-22-91
200 KAR 17:050E	3090	4-15-91
Replaced		8-22-91
415 KAR 1:010E	3356	4-25-91
Replaced		9-25-91
415 KAR 1:020E	3357	4-25-91
Replaced		9-25-91
415 KAR 1:030E	3358	4-25-91
Replaced		9-25-91
900 KAR 4:010E	3360	4-16-91
Replaced		10-6-91
902 KAR 20:290E	3363	5-7-91
Replaced	3538	8-21-91

Regulation	17 Ky.R. Page No.	Effective Date
201 KAR 16:010		
Amended	3494	
415 KAR 1:010	3592	(See 18 Ky.R.)
415 KAR 1:020	3594	(See 18 Ky.R.)
415 KAR 1:030	3597	(See 18 Ky.R.)
605 KAR 1:190	3600	(See 18 Ky.R.)
704 KAR 3:035		
Amended	3254	(See 18 Ky.R.)
780 KAR 2:130		
Amended	3260	(See 18 Ky.R.)
805 KAR 4:085		
Amended	3270	(See 18 Ky.R.)
805 KAR 4:100		
Amended	3272	(See 18 Ky.R.)
805 KAR 4:110		
Amended	3274	(See 18 Ky.R.)
807 KAR 5:014	3072	
Withdrawn		9-13-91
900 KAR 4:010	3342	(See 18 Ky.R.)
902 KAR 10:030		
Amended	3048	(See 18 Ky.R.)
902 KAR 20:290		
Amended	3538	8-21-91
902 KAR 55:075	3606	(See 18 Ky.R.)
905 KAR 1:180		
Amended	3558	8-22-91
905 KAR 1:320	3608	(See 18 Ky.R.)
905 KAR 1:330	3612	8-22-91
905 KAR 5:060	3075	
Amended	3470	(See 18 Ky.R.)
905 KAR 5:070	3618	8-22-91

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Emergency Regulation	18 Ky.R. Page No.	Effective Date
101 KAR 1:325E	256	6-21-91
Replaced	82	9-6-91
101 KAR 2:035E	4	6-14-91
Died		10-7-91
105 KAR 1:215E	979	8-21-91
109 KAR 13:010E	1288	10-4-91
200 KAR 5:330E	980	8-30-91
301 KAR 2:044E	619	8-9-91
301 KAR 2:220E	1288	10-15-91
415 KAR 1:040E	7	6-13-91
Replaced	715	9-25-91
500 KAR 8:010E	9	5-31-91
Withdrawn		7-1-91
Resubmitted	257	7-1-91
500 KAR 8:020E	258	7-1-91
500 KAR 8:030E	259	7-1-91
501 KAR 6:020E	983	8-21-91
601 KAR 12:060E	621	7-26-91
Replaced	1007	10-1-91
701 KAR 5:090E	10	5-29-91
Replaced	217	9-6-91
702 KAR 1:001E	259	7-11-91
Replaced	569	10-6-91
702 KAR 3:220E	1293	9-18-91
704 KAR 3:006E	260	7-11-91
704 KAR 20:580E	263	6-17-91
Replaced	75	8-2-91
902 KAR 20:006E	985	8-22-91
903 KAR 5:270E	265	6-17-91
Replaced	608	9-6-91
904 KAR 2:006E	622	7-19-91
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904 KAR 2:015E	1294	9-24-91
904 KAR 2:016E	1298	9-24-91
904 KAR 2:110E	1308	9-24-91
904 KAR 2:360E	1310	9-24-91
904 KAR 3:020E	11	6-5-91
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904 KAR 3:025E	15	6-5-91
Replaced	246	8-21-91
905 KAR 2:080E	1313	10-8-91
905 KAR 8:150E	628	7-23-91
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907 KAR 1:004E	629	7-23-91
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907 KAR 1:010E	265	7-1-91
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907 KAR 1:011E	640	7-23-91
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907 KAR 1:012E	645	7-24-91
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907 KAR 1:044E	661	7-29-91
907 KAR 1:045E	662	7-29-91
907 KAR 1:340E	664	7-23-91
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907 KAR 1:480E	270	7-1-91
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907 KAR 1:485E	271	7-1-91
Replaced	596	10-6-91
907 KAR 1:490E	271	7-1-91
Replaced	598	10-6-91
907 KAR 1:495E	272	7-1-91
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907 KAR 1:505E	665	7-23-91
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907 KAR 1:510E	666	7-23-91
Replaced	601	10-6-91
907 KAR 1:515E	666	7-23-91
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907 KAR 1:520E	667	7-23-91
Replaced	603	10-6-91
907 KAR 1:525E	668	7-23-91
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907 KAR 1:530E	669	7-23-91
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