

ADMINISTRATIVE REGISTER OF KENTUCKY



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MEETING NOTICE: The Administrative Regulation Review Subcommittee is scheduled to meet on Tuesday, April 14, 1998. See <u>tentative agenda</u> beginning on page 2057 of this Register.	

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE TENTATIVE AGENDA - April 14, 1998 at 10:00 a.m. in Room 149, Capitol Annex (& E) - means that the emergency regulation has previously been reviewed by the subcommittee

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

Game

- 301 KAR 2:221 & E. Waterfowl seasons and limits.
- 301 KAR 2:222 & E. Waterfowl hunting requirements.

DEPARTMENT OF AGRICULTURE Division of Regulation and Inspection

Livestock Sanitation

- 302 KAR 20:240. Mycobacterium paratuberculosis (Johne's). (Deferred from March)

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality

Asbestos

- 401 KAR 58:001. Definitions and abbreviations of terms used in 401 KAR Chapter 58.
- 401 KAR 58:005. Accreditation of asbestos professionals.
- 401 KAR 58:025. National emission standard for asbestos.

General Standards of Performance (Public Hearing in February)

- 401 KAR 63:060. List of hazardous air pollutants, petitions process, lesser quantity designations and source category list.
- 401 KAR 63:100. General provisions.
- 401 KAR 63:104. National emission standards for oil-water separators and organic-water separators.
- 401 KAR 63:541. National emission standards for hazardous air pollutants from secondary lead smelting.
- 401 KAR 63:560. National emission standards for marine tank vessel loading operations.
- 401 KAR 63:640. National emission standards for hazardous air pollutants from petroleum refineries.
- 401 KAR 63:680. National emission standards for hazardous air pollutants from off-site waste and recovery operations.
- 401 KAR 63:741. National emission standards for aerospace manufacturing and rework facilities.
- 401 KAR 63:780. National emission standards for shipbuilding and ship repair (surface coating).
- 401 KAR 63:800. National emission standards for wood furniture manufacturing operations.
- 401 KAR 63:820. National emission standards for the printing and publishing industry.
- 401 KAR 63:900. National emission standards for tanks - Level 1.
- 401 KAR 63:920. National emission standards for containers.
- 401 KAR 63:940. National emission standards for surface impoundments.
- 401 KAR 63:960. National emission standards for individual drain systems.

Department for Surface Mining Reclamation and Enforcement

Permits (Deferred from December)

- 405 KAR 8:001. Definitions for 405 KAR Chapter 8.
- 405 KAR 8:030. Surface coal mining permits. (Amended After Hearing)
- 405 KAR 8:040. Underground coal mining permits. (Amended After Hearing)

Performance Standards for Surface Mining Activities (Deferred from December)

- 405 KAR 16:001. Definitions for 405 KAR Chapter 16.
- 405 KAR 16:060. General hydrologic requirements. (Amended After Hearing)
- 405 KAR 16:090. Sedimentation ponds.
- 405 KAR 16:100. Permanent and temporary impoundments.
- 405 KAR 16:160. Coal mine waste dams and impoundments.

Performance Standards for Underground Mining Activities (Deferred from December)

- 405 KAR 18:001. Definitions for 405 KAR Chapter 18.
- 405 KAR 18:060. General hydrologic requirements. (Amended After Hearing)
- 405 KAR 18:090. Sedimentation ponds.
- 405 KAR 18:100. Permanent and temporary impoundments.
- 405 KAR 18:160. Coal mine waste dams and impoundments.
- 405 KAR 18:210. Subsidence control.

JUSTICE CABINET

Kentucky Parole Board

- 501 KAR 1:030E. Determining parole eligibility. (Deferred from March)

Office of the Secretary

- 501 KAR 6:020E. Department of Corrections' policies and procedures. (Deferred from March)
- 501 KAR 6:080E. Department of Corrections' manuals. (Deferred from March)
- 501 KAR 6:120. Blackburn Correctional Complex.
- 501 KAR 6:999. Secured policies and procedures.

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TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Vehicle Enforcement

Division of Motor Carriers

601 KAR 1:005. Safety administrative regulations.

601 KAR 1:146. Fair market rental or lease value of vehicles operated pursuant to a U-drive-it permit. (Amended After Hearing)
(Deferred from January)

601 KAR 1:147. Auditing of U-drive-it permit holders. (Amended After Hearing) (Deferred from January)

Administration

601 KAR 2:020E. Drivers' privacy protection.

Department of Highways Permits Branch

Right-of-Way

603 KAR 4:040. TODS signs; placement on public roads other than interstates or parkways.

EDUCATION, ARTS AND HUMANITIES CABINET Kentucky Board of Education Kentucky Department of Education

Office of Instruction

704 KAR 3:303. Required program of studies.

Education Professional Standards Board

704 KAR 20:015 & E. Rank I classification.

704 KAR 20:021 & E. Planned Fifth-year Program.

704 KAR 20:022 & E. Continuing education alternative to planned fifth-year program.

704 KAR 20:045 & E. Recency and certification fees.

704 KAR 20:060 & E. Renewals.

704 KAR 20:420. Certification for school superintendent.

704 KAR 20:475. Probationary certificate for teachers of technology education.

704 KAR 20:696. Standards for accreditation of teacher education units and approval of programs.

704 KAR 20:700. Standards for admission to teacher education.

LABOR CABINET

Department of Workers' Claims

803 KAR 25:190. Utilization review and medical bill audit. (Amended After Hearing)

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

Assets and Liabilities

806 KAR 6:100E. Actuarial opinion and memorandum. (Deferred from January)

Health Insurance Contracts

806 KAR 17:110E. Establishment of the Kentucky Risk Assessment and Risk Adjustment System. (Deferred from February)
Public Service Commission

Utilities

807 KAR 5:004. Repeal of 807 KAR 5:002.

Kentucky Racing Commission

Thoroughbred Racing (Deferred from March)

810 KAR 1:018. Medication; testing procedures.

810 KAR 1:026. Racing associations.

Harness Racing (Deferred from March)

811 KAR 1:085. Conduct of racing.

811 KAR 1:220. Harness racing at county fairs.

CABINET FOR HEALTH SERVICES Office of Inspector General Division of Licensing and Regulation

Health Services and Facilities

902 KAR 20:008. License procedures and fee schedule. (Deferred from March)

902 KAR 20:058. Operation and services; primary care center.

902 KAR 20:091. Facilities specifications, operation and services; community mental health-mental retardation center. (Deferred from March)

902 KAR 20:180. Psychiatric hospitals; operation and services.

902 KAR 20:320. Psychiatric residential treatment facility operation and services.

902 KAR 20:330. Psychiatric residential treatment facilities.

Division for Public Health Protection and Safety

Milk and Milk Products (Deferred from February)

902 KAR 50:031. Standards for producer eligibility for manufacturing grade milk.

902 KAR 50:032. Standards for farm requirements for manufacturing grade milk.

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902 KAR 50:033. Standards for enforcement procedures for manufacturing grade milk.

Radiology

902 KAR 100:019. Standards for protection against radiation.

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development

Public Assistance

904 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability. (Deferred from March)
904 KAR 2:410 & E. Child support collection and distribution.

Department for Social Services

Child Welfare

905 KAR 1:360E. Private child care levels of care. (Deferred from December)

Day Care

905 KAR 2:150E. Child Day Care Assistance Program. (Deferred from December)

CABINET FOR HEALTH SERVICES Department for Medicaid Services

Medicaid Services

907 KAR 1:145 & E. Supports for community living services for individuals with mental retardation or developmental disabilities. (Public Hearing in February)

907 KAR 1:151E. Repeal of 907 KAR 1:140 and 907 KAR 1:150. (Deferred from November)

907 KAR 1:155 & E. Payments for supports for community living services for individuals with mental retardation or developmental disabilities. (Public Hearing in February)

Payment and Services

907 KAR 3:030E. Coverage and payments for Impact Plus services. (Deferred from March)

Department of Mental Health and Mental Retardation Services Division of Mental Retardation

Substance Abuse

908 KAR 1:380. Licensing procedures and standards for the operation of alcohol and other drug abuse prevention programs. (Amended After Hearing)

Mental Health

908 KAR 2:190. Supported living services.

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ADMINISTRATIVE REGULATION REVIEW PROCEDURE (See KRS Chapter 13A for specific provisions)

Notice of Intent

Administrative bodies shall file with the Regulations Compiler a Notice of Intent to promulgate an administrative regulation, including date, time and place of a public hearing on the subject matter to which the administrative regulation applies. This Notice of Intent, along with the public hearing information, shall be published in the Administrative Register. This Notice has to be filed and published in the Administrative Register, and the public hearing held or cancelled, prior to the filing of an administrative regulation.

After the scheduled hearing date, if held, the administrative body shall file with the Regulations Compiler a Statement of Consideration, setting forth a summary of the comments made at the public hearing, and the responses by the administrative body. This Statement shall not be published in the Administrative Register.

Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing information, tiering statement, regulatory impact analysis, fiscal note, and the federal mandate comparison. Those administrative regulations received by the deadline required in KRS 13A.050 shall be published in the Administrative Register.

Public Hearing

The administrative body shall schedule a public hearing on proposed administrative regulations to be held not less than twenty (20) nor more than thirty (30) days following publication. The time, date, and place of the hearing and the name and address of the agency contact person shall be included on the last page of the administrative regulation when filed with the Compiler's office.

Any person interested in attending the scheduled hearing must submit written notification of such to the administrative body at least five working (5) days before the scheduled hearing. If no written notice is received at least five (5) working days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler of the cancellation. If the hearing is held, the administrative body shall submit within fifteen (15) days following the hearing a statement of consideration summarizing the comments received at the hearing and the administrative body's responses to the comments.

No transcript of the hearing need to be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

Review Procedure

If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting following publication. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first.

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REPRINT

COMPILER'S NOTE: The following administrative regulation, 201 KAR 12:200, was amended at the Administrative Regulation Review Subcommittee on January 14, 1998. When this amendment was published in the February 1998 Administrative Register, the Regulation Compiler's office failed to include one amendment. Section 9(2)(d)4 should read: a. Social Security number; or b. License number. Therefore, we are reprinting this administrative regulation to show this omission.

GENERAL GOVERNMENT CABINET Board of Hairdressers and Cosmetologists (As Amended at ARRS, January 14, 1998)

201 KAR 12:200. Requirements for continuing education for renewal of license.

RELATES TO: KRS 317A.050(8)

STATUTORY AUTHORITY: KRS 317A.050(8)

NECESSITY, FUNCTION, AND CONFORMITY: [Beginning July 1, 1997,] KRS 317A.050(8) requires a cosmetologist [cosmetologists], cosmetology instructor or [instructors and] nail technician [technicians] to provide proof of continuing education for renewal of license as determined by the board by promulgation of an administrative regulation. This administrative regulation establishes the requirements for sponsoring a continuing education program and for providing proof of attendance at a continuing education program.

Section 1. A sponsor of a continuing education program shall submit a completed "Application for Approval of Continuing Education Program" form to request approval from the board for a program. The application form shall:

- (1) Include the:
 - (a) Title of the program;
 - (b) Name, address, and telephone number of the sponsoring organization or individual;
 - (c) Number of clock hours for which approval is requested;
 - (d) Cost of the program to the attendee;
 - (e) The program's date, location, and time;
 - (f) Objective of the program;
 - (g) Name of the instructor;
 - (h) Manner of presentation to indicate whether the program is a:
 1. Lecture;
 2. Demonstration;
 3. Panel; or
 4. Hands-on participation program; and
 - (i) Plan for program evaluation;
- (2) Be signed by the sponsor to indicate that the sponsor agrees

to:

- (a) Accurately record attendance at each presentation;
- (b) Complete a record of attendance confirming the number of clock hours actually attended for each attendee; and
- (c) Submit a list of attendees within thirty (30) days after the program to the board office; and

(3) Be accompanied by a copy of the:

- (a) Promotional advertisement for the program;
- (b) Instructor's biography and list of credentials;
- (c) Course outline; and

(d) Evaluation sheet. [(1) A sponsor of a continuing education program shall request approval of the board on an "Application for Approval of Continuing Education Program" form and shall agree to submit the information required by subsection (2) of this section. The application shall state the date, subject offered, total hours of instruction, names and qualifications of speakers, fees to be charged;

evaluation form, and other pertinent information.

(2) The sponsor shall agree to:

- (a) Accurately record attendance at each presentation;
- (b) Complete a record of attendance confirming the number of clock hours actually attended for each attendee; and
- (c) Submit a list of attendees within thirty (30) days after the program to the board office.]

Section 2. [(1)] An application for approval of a continuing education program shall be submitted to the office of the board at least sixty (60) [ninety (90)] days prior to the starting date of the program. The board shall approve or deny the request in writing within thirty (30) [sixty (60)] days of receipt of the application [review] by the board [receipt of the application].

Section 3. (1) The program shall consist of an organized program of learning which:

- (a) [(1)] Contributes directly to the competency of the licensee;
- (b) [(2)] Pertains to subjects related to the theory, management and practice of cosmetology and nail technology; and
- (c) [(3)] Pertains to the health, safety, welfare, and protection of the public including sanitation, sterilization, chemical waste disposal, safety in the work place, first aid, bloodborne pathogens, airborne pathogens, and HIV/AIDS education.

(2) A program that meets the requirements established in subsection (1) of this section shall be approved by the board if it is provided by:

[(a) Relevant programs provided by the following organizations or institutions that have been received and approved by the board include, but are not limited to the following:]

- (a) An [1:] American Red Cross Chapter [Chapters];
- (b) The [2:] American Heart Association;
- (c) The [3:] Cabinet for Health Services;
- (d) The [4:] Kentucky Labor Cabinet, Division of Education and Training; or [and]

(e) The [5:] Kentucky State Board of Nursing.

(3) [(4)] A program shall be limited to a class size appropriate to the classroom or facility.

Section 4. A program shall specify the course objectives, content, prerequisites, requirements, and the number of continuing education hours to be earned. The information shall be specified in all promotional materials.

Section 5. A program shall:

- (1) Be generic product related; and
- (2) [shall] Not be used to promote, sell or advertise a product.

Section 6. (1) A sponsor shall be:

- (a) [(1)] A private or [and] vocational technical schools of cosmetology [offering cosmetology and nail technician courses];
- (b) [(2)] An association or organization whose membership consists of licensees of the board;

(c) [(3)] A college, university, or other institution of higher education recognized by the Kentucky Council on Higher Education;

[(a) Academic coursework. Successful completion of one (1) academic semester credit or one (1) three (3) hour course will satisfy the total annual continuing education hours required for cosmetologists, nail technicians and instructors of cosmetology renewal. The course shall be completed within the license renewal period and the licensee shall provide an original transcript with the seal of the college or university affixed with their application for renewal.

(b) Relevant courses shall include, but not be limited to: biology;

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~~chemistry, psychology, health science, and business courses.]~~

(d) An individual who:

1. Holds ~~[(4) Individuals who hold]~~ an active cosmetologist license, instructor of cosmetology license or nail technicians license; and

2. Has ~~[have]~~ special education, training and experience in cosmetology;

(e) A person who has ~~[(5) Other persons who have]~~ a license, degree, special education, training ~~or [and]~~ experience relating to the subject matter of the program; or

(f) A ~~[(6)]~~ state agency program ~~[programs];~~

(2)(a) A manufacturer or distributor product show shall not be approved as a continuing education program.

(b) A manufacturer or distributor product class shall be approved if the requirements established in this administrative regulation are met.

Section 7. Academic Coursework. Successful completion of one

(1) three (3) hour course shall satisfy the continuing education requirement established by KRS 317A.050(8) if the:

(1) Course is completed within the license renewal period;

(2) Course is relevant. A course shall be considered relevant if the course:

(a) Is biology, chemistry, psychology, health science, or business; or

(b) Relates to the practice of the licensee; and

(3) Licensee submits an original transcript with the seal of the college or university affixed with the application for license renewal.

~~[(7) Manufacturers and distributor product shows shall not be approved. Manufacturers and distributor product classes shall be approved provided all provisions of 201 KAR 12:200 are met.]~~

Section 8. [7-] The board may monitor or review a ~~[any]~~ continuing education program approved by the board. Upon evidence of significant variation in the program presented from the program approved, the board may withdraw approval of the hours granted to the program.

Section 9. [8-] (1) In order to receive credit for attendance at a program, a licensee shall:

(a) Complete a "Record of Attendance for Continuing Education Credit" form at the end of the program;

(b) Submit one (1) copy of the form to the program's registration desk at the end of the program; and

(c) Submit one (1) copy of the form with the licensee's renewal application.

(2) The form shall indicate the:

(a) Program title;

(b) Name of the sponsoring organization or individual;

(c) Date, location, and number of hours of the program; and

(d) ~~[the]~~ Licensee's:

1. Name;

2. Address;

3. Phone number; and

4.a. Social Security number; or ~~[and]~~

b. License number.

Section 10. [9-] A licensee not currently working in a salon may choose to let his ~~[their]~~ license expire and may restore his ~~[said]~~ license ~~[at any time]~~ within five (5) years by obtaining six (6) hours of continuing education and paying a restoration fee of fifty (50) dollars in accordance with KRS 317A.050, Section 11.

Section 11. [10-] Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Application for Approval of Continuing Education Program" (September 13, 1996 edition), Kentucky State Board of Hairdressers

and Cosmetologists; and

(b) "Record of Attendance for Continuing Education Credit" (September 13, 1996 edition), Kentucky State Board of Hairdressers and Cosmetologists.

(2) These forms may be inspected, copied, or obtained at Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, Chairman

CHERYL LALONDE MOONEY, Board Counsel

APPROVED BY AGENCY: September 2, 1997

FILED WITH LRC: October 28, 1997 at 3 p.m.

COMPILER'S NOTE: The following administrative regulation, 201 KAR 18:150, as printed in the March 1, 1998 Administrative Register and effective on March 12, 1998, contains a typographical error in Section 8(3)(b). This paragraph should read "Not less than one-half ~~(1/2)~~ ~~[two (2)]~~ inch in diameter and eighteen (18) inches in length". Therefore, this administrative regulation is being reprinted to correct this error.

201 KAR 18:150. Standards of practice.

RELATES TO: KRS 322.290(1)(a). (2)(f)

STATUTORY AUTHORITY: KRS 322.290(2)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(1)(a) authorizes the board to administer KRS Chapter 322. KRS 322.290(2)(f) requires the board to establish standards of practice. This administrative regulation establishes standards of practice for professional land surveyors in Kentucky.

Section 1. Definitions. (1) "Boundary survey" means a survey for which the primary purpose includes the:

(a) Determining of the perimeter of a parcel or tract of land;

(b) Establishing or reestablishing of a parcel corner or monument;

(c) Describing, platting, and locating each fixed improvement on the parcel surveyed; or

(d) Dividing or consolidating the parcels surveyed.

(2) "Plat of survey" means a drawing of a parcel or tract of real property used to depict the final results of a field survey.

(3) "Corner" means a point on a land boundary that designates a change in direction.

(4) "Monument" means an artificial manmade or natural object that is used as, or presumed to occupy, a:

(a) Real property corner;

(b) Point on a boundary line; or

(c) Reference point.

(5) "Witness monument" means a monument:

(a) That does not occupy the same defined position as a corner; and

(b) Whose relationship to the corner is established.

(6) "Meander point" means a survey point or station marking a change in direction along a linear feature such as a watercourse, ridge, road, or cliff.

(7) "Reference point" means the defined position of a point that is, or can be, established in relation to the position of another defined point or points.

Section 2. The standards of practice established in this administrative regulation:

(1) Shall be the minimum standards of practice for a professional land surveyor; and

(2) Shall not limit the establishment of more stringent standards of practice for a professional land surveyor by:

(a) An agency;

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- (b) An owner;
- (b) Contract; or
- (c) The professional land surveyor.

Section 3. (1)(a) Boundary surveying in Kentucky, and a document purporting to represent a boundary survey, shall comply with the provisions of this administrative regulation.

(b) Failure to comply with this administrative regulation shall constitute misconduct, gross negligence, incompetence, or a combination of these violations in the practice of professional land surveying.

(2) A professional land surveyor shall not represent that:

- (a) A boundary survey determines land ownership;
- (b) A boundary survey provides more than evidence of rights in land; or
- (c) Land ownership can be established by a means other than an action in a Kentucky court.

Section 4. The marks on the ground of a professional land surveyor shall constitute the actual boundary survey.

Section 5. Record Research. (1) To determine the proper description of the land to be surveyed, a professional land surveyor shall conduct research to obtain record description of:

- (a) Each parcel to be surveyed; and
- (b) Each adjoining parcel.
- (2) A professional land surveyor shall evaluate:
 - (a) Historical records of the subject and each adjoining parcel;
 - (b) Records of:

- 1. Previous pertinent surveys;
- 2. Tax maps;
- 3. Topographic maps;
- 4. Aerial photographs; and
- 5. Public agency records; and

(c) Other available data pertinent to the boundary survey.

(3) A professional land surveyor shall analyze the data and make a determination of the record boundary of each parcel to be surveyed.

(4) Research required by the provisions of this administrative regulation:

- (a) Shall be used by a professional land surveyor to determine the location of the parcel boundary; and
- (b) Shall not be used by a professional land surveyor to determine title.

Section 6. Field Research. A professional land surveyor shall thoroughly:

- (1) Search for the physical monument that represents each parcel corner;
- (2) Analyze evidence of occupation;
- (3) Investigate possible parole evidence supporting the position of monuments or corners;
- (4) Compare evidence discovered by the field survey with the record research to establish the boundary of the land being surveyed.

Section 7. Measurement Specifications. (1) Every measurement made as a part of a boundary survey shall comply with:

- (a) The standards for accuracy and precision established by the provisions of this section; or
- (b) At the request of the client, standards for accuracy and precision that exceed the standards established by the provisions of this section.

(2) A professional land surveyor shall conduct measurements with instruments and equipment that are properly:

- (a) Adjusted;
 - (b) Maintained; and
 - (c) Calibrated to meet the appropriate tolerance required for the classification of survey as specified in subsection (6) of this section.
- (3) A boundary survey shall be conducted utilizing a method of

closed traverse and the measurement of angles and distances that achieve the appropriate tolerance specified in subsection (6) of this section.

(4) A boundary survey for platting or describing a land parcel shall be classified as Class A or Class B.

(a) Class A shall:

- 1. Consist of urban or suburban land; and
- 2. Include a parcel lying within, or adjacent to:
 - a. A city or town limit;
 - b. A commercial business area;
 - c. An industrial area;
 - d. A residential area; or
 - e. A developing area.

(b) Class B shall:

- 1. Consist of rural land; and
- 2. Include:
 - a. A farm;
 - b. A woodland; or
 - c. Other land not included in Class A.

(5) The accuracy and precision of a boundary survey shall not be less than the appropriate requirements established in subsection (6) of this section.

(6) Table of Specifications by Class: Classification of Surveys.

	Class A Urban & Suburban	Class B Rural	Remarks
Unadjusted Closure (Minimum)	1:10,000	1:5,000	Loop or Between Control Monuments
Angular Closure (Maximum)	15" N	30" N	N = Number of Angles in Traverse
Accuracy of Distances	0.05' +100 PPM	0.10' +200 PPM	100 PPM = 1:10,000

Section 8. Monumentation. (1) In a boundary survey, a professional land surveyor shall make a determination of the boundary and corners of the parcel being surveyed.

(2) Unless an adequate monument already exists at each parcel corner, a professional land surveyor shall set a monument or a witness monument at each corner of a parcel as provided in this section.

(3) A monument or witness monument set by a professional land surveyor shall be:

- (a) Made of, or contain, a ferrous material;
- (b) Not less than one-half (1/2) [two (2)] inch in diameter and eighteen (18) inches in length;
- (c) A minimum of schedule forty (40) weight if pipe is utilized; and
- (d) Identified with a cap bearing the registration number of the professional land surveyor responsible for and in charge of the survey.

(4) A monument or witness monument shall be required at each corner of a boundary survey.

(5) A parcel corner shall be identified by a witness monument if a monument cannot be set because the corner:

- (a) Falls upon rock, concrete, or other like material;
- (b) Is likely to be disturbed; or
- (c) Is inaccessible.

(6) A witness monument shall be set:

- (a) On the boundary line, if practicable; and
- (b) As close as practicable to the corner location.

(7) A professional land surveyor shall set each monument in a manner to avoid its destruction.

(8)(a) A tree shall not be established as a corner monument

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except on a rural boundary survey.

(b) A tree that a professional land surveyor establishes as a corner monument shall be:

1. At least ten (10) inches in diameter at breast height;
2. In sound condition;
3. Marked in a conspicuous manner; and
4. Clearly described by size, species, and method of marking on the plat, and in the written description.

(c) Trees shall not constitute more than fifty (50) percent of the established monuments for a boundary survey in a rural land classification.

(d) For an urban or suburban survey in which a tree is found to be the monument of record, the tree shall be witness-monumented.

(9) A corner monument that a professional land surveyor has determined is not of sound condition or which fails to meet the standards established in this administrative regulation shall be witness-monumented to perpetuate the corner location.

(10) Linear monuments.

(a) The following distinct physical features may be utilized as a monument:

1. A watercourse;
2. A ridge;
3. A road; or
4. A cliff.

(b) The point at which a boundary line intersects a physical feature shall be monumented or witness-monumented.

(c) A physical feature that represents a linear monument shall be witness-monumented at a minimum of every 1,000 feet.

(d) A professional land surveyor shall obtain sufficient field survey data to define the position of each physical monument in order to accurately plat, describe, and calculate the area of the land being surveyed.

Section 9. Documentation. (1) The corner monuments established or reestablished by a professional land surveyor shall constitute the actual boundary survey.

(2) A professional land surveyor shall provide a plat of survey to the client upon the completion of a boundary survey in which he has:

- (a) Retraced a previously established boundary line; or
- (b) Established a new boundary line.

(3) A professional land surveyor shall retain as permanent record the following items pertaining to a boundary survey:

- (a) Plats;
- (b) Written descriptions;
- (c) Research documents;
- (d) Field and office notes;
- (e) Electronic and magnetically stored field data; and
- (f) Documents of calculations stating the:
 1. Closure;
 2. Adjustment method;
 3. Bearing reference datum; and
 4. Determination of corners.

(4) A written description prepared by a professional land surveyor for the purpose of defining a parcel boundary shall:

- (a) Be complete;
- (b) Accurately describe the actual boundary survey; and
- (c) Contain the information specified in this paragraph:
 1. Captions sufficient to identify the:
 - a. General location of the land surveyed;
 - b. Specific location of the land in reference to a major physical feature, or primary control network; and
 - c. Reference of at least one (1) corner to a corner of the parent tract;
 2. The direction and length of each line, as follows:
 - a.(i) Each bearing shall be shown in degrees, minutes, seconds; and
 - (ii) Each distance shall be shown to hundredths of a foot; or

b. A geometrically-curved line shall be identified with a beginning point, terminus point, and sufficient curve data to define the curve;

3. A description of each monument marking or witnessing a corner, including:

- a. A notation as to whether found or set;
- b. Dimensions;
- c. Type of material; and
- d. Identification cap;
4. The names and record sources of adjoining property owners;
5. A notation describing each prominent feature of terrain which the boundary follows;
6. Calculated area of the land surveyed, computed either to the nearest hundredth of an acre or square foot;
7. Reference to the record source of the land surveyed;
8. Name and registration number of the professional land surveyor who performed the survey, and name of the land surveying firm, if any;
9. A dated signature and the seal of the professional land surveyor responsible for and in charge of the survey; and
10. Date of the field survey.

(5) A final plat of a boundary survey shall be drawn to scale on durable, dimensionally-stable media, and clearly contain the following information:

(a) Direction and length of each line as follows:

- 1.a. Each bearing shown in degrees, minutes and seconds; and
- b. Each distance shown to hundredths of a foot; or

2. A geometrically-curved line shall be identified with a beginning point, terminus point, and sufficient curve data to define the curve;

(b) Calculated area of the land surveyed computed either to the nearest hundredth of an acre or nearest square foot;

(c) A description of each monument, which marks or witnesses a corner, including:

1. A notation as to whether found or set;
2. Dimensions;
3. Type of material; and
4. Identification cap;

(d) Reference of at least one (1) corner to a:

1. Corner of the parent tract;
 2. Durable physical object; or
 3. Primary control network, such as state plane coordinates;
- (e) 1. The name of each road;
2. The name and record sources of each adjoiner; and
 3. The name and record sources of each adjoining subdivision;
- (f) An apparent encroachment discovered in the course of the survey;

(g) The reference meridian and whether its basis is:

1. True;
2. Grid;
3. Record, including the source of the record meridian;
4. State plane; or
5. Magnetic, including the date of the observation;

(h) Vicinity map of sufficient detail to locate the land being surveyed, unless the location of the property is clearly shown by the plat itself;

(i) A statement disclosing the unadjusted error of closure;

(j) A statement identifying the land classification of the parcel surveyed;

(k) A statement as to whether the directions and distances shown on the plat is based on an adjusted traverse;

(l) The location of a cemetery or grave site that is visible or discernible during the field survey or the required research;

(m) A dated signature and the seal of the professional land surveyor responsible for and in charge of the survey;

(n) A written and graphic scale; and

(o) A title block containing the following:

1. Name and address of client and parcel owner;
2. Title of the survey;

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3. Location of each parcel surveyed; and
4. Name and address of the professional land surveyor and, if applicable, the firm that performed the survey.

Section 10. Marking of Working Drawings And Unfinished Plats.

- (1) A working drawing or unfinished plat:
 - (a) Shall be marked as to its intended use; and
 - (b) Shall not be sealed.
- (2) A marking shall be made in a manner similar to:
 - (a) "PRELIMINARY - NOT FOR RECORDING OR LAND TRANSFER"; or
 - (b) "EXHIBIT".

Section 11. Partial Boundary Survey. (1) A partial boundary survey may be conducted by a professional land surveyor if:

- (a) The portion of the property being surveyed can be clearly isolated from the remainder of the property; and
 - (b) The interest of an adjoining owner is not affected.
- (2) A plat of a partial survey shall:
- (a) Comply with this administrative regulation; and
 - (b) Graphically delineate that portion of the boundary covered by the current survey from the remainder of the property. (12 Ky.R. 291; eff. 9-10-85; Am. 16 Ky.R. 592; 1157; eff. 12-6-89; 24 Ky.R. 1540; 1866; eff. 3-12-98.)

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NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

GENERAL GOVERNMENT CABINET Board of Nursing

February 26, 1998
General Government Cabinet
Board of Nursing

- (1) **201 KAR 20:056**. Advanced registered nurse practitioner registration, program requirements, recognition of national certifying organization.
- (2) The Board of Nursing intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 22, 1998 at 9 a.m. (EDT) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (4)(a) The public hearing will be held if:
 1. It is requested in writing by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
 2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing are not received at least ten (10) days prior to April 22, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (b) On a request for public hearing, a person should state:
 1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the general counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.
 - (b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing regulation.
 - (c) The necessity and function of the proposed administrative regulation is as follows: The amendment would remove the requirement of membership for recognition of certifying bodies.
 - (d) The benefits expected from the administrative regulation are: Removal of a requirement that is no longer applicable.
 - (e) The administrative regulation will be implemented as follows: Through the normal agency procedures.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

March 6, 1998
Tourism Development Cabinet
Department of Fish and Wildlife Resources

- (1) Regulation number and title: **301 KAR 1:201** Fishing limits; **301 KAR 1:155**, Commercial fishing requirements.
- (2) The Department of Fish and Wildlife Resources intends to amend the administrative regulations cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for April 21, 1998, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to April 21, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.
- (b) In a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of this administrative regulation is KRS 150.025(1) and 150.470.
 - (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 1:201 as follows:
 1. Grayson Lake: Impose a 5 fish creel limit and 15 inch size limit on white bass, striped bass, yellow bass and their hybrids.
 2. Elmer Davis Lake: Decrease maximum slot limit size on largemouth bass from 16 to 15.
 3. Upper Game Farm Lake and Leary Lake:
 - a. Change creel limits on largemouth bass to 3 daily and 6 in possession;

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- b. Change creel limits for channel catfish to 4 daily and 8 in possession.
- c. Leary Lake only, set creel limits on bluegill at 15 daily and 30 in possession.
- 4. Goose, Island and South Lakes on Peabody Wildlife Management Area (WMA):
 - a. Largemouth bass: change minimum size limits on largemouth bass from 20 to 15 inches, and change creel limits to three daily and 6 in possession;
 - b. Channel catfish: change creel limits to 4 daily and 8 in possession and remove 15-inch minimum size limit.
 - c. Crappie: Increase creel limit to 30 daily and 60 in possession.
- 5. Cyprus Amax WMA Lakes:
 - a. Largemouth bass: change creel limits to 3 daily and 6 in possession.
 - b. Channel Catfish: Remove 15-inch minimum size limit.
 - c. Bluegill: set creel limits at 15 daily and 30 in possession.
- 6. Lincoln Homestead State Park Lake:
 - a. Channel catfish: change creel limits to 4 daily and 8 in possession.
 - b. Bluegill and redear sunfish: remove size and creel limits.
- 7. Beaver Lake: Prohibit the possession or use of shad for bait.
- 8. Dale Hollow Lake: Adjust size and creel limits to conform to Tennessee's regulations as follows:
 - a. Largemouth bass: 15 inch minimum size limit;
 - b. Aggregate black bass creel limit, 5, only 2 of which may be smallmouth bass;
 - b. Crappie: 10-inch minimum size limit;
 - c. Walleye: Daily creel limit, 5.
- 9. Establish catch-and-release trout fishing with artificial lures only from October 1 through March 31 in portions of the following streams:
 - a. Bark Camp Creek, Whitley County;
 - b. Cane Creek, Laurel County;
 - c. East Fork Indian Creek, Menifee County;
 - d. Hawk Creek, Laurel County;
 - e. Rock Creek, McCreary County.
- 10. Allow the taking of catfish by bow and arrow during nighttime hours with a daily limit (noon to noon) of 5.
- (c) The administrative regulation that the department intends to promulgate will amend 301 KAR 1:155 as follows: Require commercial fishermen to submit monthly catch reports to the department.
- (d) The necessity and function of the proposed administrative regulations are:
 - 1. To adjust size and creel limits to improve fishing on specific bodies of waters, and
 - 2. To give the department an accurate record on the number and kind of fish being taken by commercial methods.
- (e) The benefits expected from the administrative regulation are better management of sport and commercial fish populations in Kentucky's waters.
- (f) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

March 6, 1998

Tourism Development Cabinet

Department of Fish and Wildlife Resources

- (1) Regulation number and title: **301 KAR 2:041**, Shooting preserves and foxhound training enclosures; **301 KAR 2:176**, Deer control tags.
 - (2) The Department of Fish and Wildlife Resources intends to amend the administrative regulations cited above.
 - (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 21, 1998 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
 - (4) (a) The public hearing will be held if:
 - 1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 - 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
 - (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to April 21, 1998, the public hearing will be canceled.
 - (5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.
 - (b) In a request for a public hearing, a person shall state:
 - 1. "I agree to attend the public hearing"; or
 - 2. "I will not attend the public hearing."
 - (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
 - (b) Persons who wish to file this request may obtain a request from the department at the address listed above.
 - (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of these administrative regulations is KRS 150.025(1).
 - (b) The administrative regulations that the department intends to promulgate will:
 - 1. Amend 301 KAR 2:041 as follows: Remove the requirement that shooting preserves band or mark pen-raised game birds prior to release;
- and
- 2. Amend 301 KAR 2:276 as follows: Increase the maximum number of deer control tags a landowner can issue to a hunter from 2 to 4.
- (c) The necessity and function of the proposed administrative regulation is:
 - 1. To remove a requirement that is no longer necessary; and
 - 2. To allow landowners better management of deer causing damage.
 - (d) The benefits expected from the administrative regulation are:

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1. Removing an unnecessary requirement that pen-raised birds on shooting preserves be banded or marked; and
 2. Increase landowner's flexibility in dealing allowing hunting to deal with deer damage.
- (e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

March 6, 1998

Tourism Development Cabinet

Department of Fish and Wildlife Resources

- (1) Regulation number and title: **301 KAR 3:010**, Depredation on wildlife areas.
- (2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 21, 1998, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4) (a) The public hearing will be held if:
 1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to April 21, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.
- (b) In a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of this administrative regulation is KRS 150.025(1) and 150.620.
 - (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 3:010 as follows: It will require a group using a wildlife management area (WMAs) to obtain a group use permit, specify the process for obtaining a permit and the procedures for appealing the denial of a permit; prohibit the discharge of firearms within 100 yards of a dwelling; allow in-water training of retrievers on WMAs; restrict horseback riding to marked trails or areas; prohibit activities potentially damaging to the WMA or not in keeping with the purposes of wildlife management or wildlife-related recreation; and incorporate WMA requirements from other administrative regulations into one place.
 - (c) The necessity and function of the proposed administrative regulation is to better define and regulate public use of wildlife management areas.
 - (d) The benefits expected from the administrative regulation are less damage to ecosystems and a decrease in user conflicts on WMAs.
 - (e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

KENTUCKY DEPARTMENT OF AGRICULTURE

March 5, 1998

Kentucky Department of Agriculture

- (1) Regulation number and title: **302 KAR 15:010**, Administration; state aid to local fairs.
- (2) The Kentucky Department of Agriculture intends to promulgate an administrative regulation governing the above subject matter.
- (3) A public hearing to receive oral and written comments has been scheduled for April 22, 1998 at 11 a.m. at the Department of Agriculture's Conference Room, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least ten days prior to April 22, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Department of Agriculture at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to administration; state aid to local fairs is KRS 247.220.
 - (b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate is amended regulation 302 KAR 15:010. It sets forth the rules by which the state aid to local fairs program shall be administered.
 - (c) The necessity and function of the proposed administrative regulation is as follows: Same as (b).
 - (d) The benefits expected from the proposed administrative regulation are: Increase in premium money allocated to all approved local fairs.

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- (e) The administrative regulation will be implemented as follows: Premium money shall be paid to all approved local fairs.

KENTUCKY JUSTICE CABINET

February 27, 1997
Kentucky Justice Cabinet
Office of the Secretary

- (1) Regulation number and title: Sex Offender Registration System, 502 KAR 31:010.
- (2) The Justice Cabinet, Office of the Secretary, has promulgated an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 28, 1998 at 10 a.m. at Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least ten (10) days prior to April 28, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to Lieutenant Danny Ball, Kentucky State Police, Data Processing Section, 1250 Louisville Road, Frankfort, Kentucky 40601.
- (b) On this request for a public hearing, the person shall state either:
1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the Department of Kentucky State Police at the address listed in (5)(a) above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of administrative regulations governing the Sex Offender Registration System is KRS 15A.760 and 17.510.
- (b) The administrative regulation that the Justice Cabinet intends to promulgate will not amend an existing administrative regulation. The administrative regulation that the cabinet intends to promulgate will establish the procedure to develop and implement a Sex Offender Registration System. This regulation contains definitions for 502 KAR Chapter 31.
- (c) The necessity and function of the proposed administrative regulation is to develop and implement a Sex Offender Registration System as statutorily required.
- (d) The benefits expected from the administrative regulation are the establishment of a uniform procedure of a Sex Offender Registration System.
- (e) The administrative regulation will be implemented as follows with an ordinary administrative regulation.

WORKFORCE DEVELOPMENT CABINET Department for Employment Services

March 9, 1998
Workforce Development Cabinet
Department for Employment Services

- (1) 787 KAR 1:210, Employer contribution rates.
- (2) The Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance, intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 21, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to April 21, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sue Simon, Acting General Counsel, Office of General Counsel, Workforce Development Cabinet, 2nd Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-6606.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Workforce Development Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 341.270.

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(b) The administrative regulation that the Workforce Development Cabinet intends to promulgate will amend 787 KAR 1:210, Employer contribution rates. It will set the unemployment insurance tax rate schedule that is in effect for calendar year 1998.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 341.270 requires the Secretary for Workforce Development to determine the rate schedule for employers' contributions. The rate schedule in effect for each calendar year shall be determined by the "trust fund balance" as of December 31 of the preceding year. This administrative regulation applies the mathematical computation required by KRS 341.270 and sets forth the applicable rates to be in effect for the calendar year.

(d) The benefit expected from this administrative regulation is: Setting of the 1998 tax rate schedule for appropriate assignment of applicable employer contribution rates for unemployment insurance.

(e) The administrative regulation will be implemented as follows: 1998 employer contribution rates for payment of unemployment insurance taxes will be calculated by the application of the mathematical computation required by KRS 341.270 using Schedule A of Table A. There will be no new impact on employers as Schedule A of Table A was previously used for determining tax rates in 1997.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction

February 26, 1998

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation number and title: **815 KAR 8:045**, Limited licenses for journeyman HVAC mechanics.

(2) The Board of Heating, Ventilation and Air Conditioning, Department of Housing, Buildings and Construction intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 21, 1998, at 10 a.m., local time, in the Department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five (5) persons or an administrative body or an association having at least five (5) members; and
2. A minimum of five (5) persons or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to April 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 198B.654.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. This administrative regulation will be new and it will establish a mechanism for the board to review and approve applicants for limited functions as journeymen mechanics.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning (HVAC) Contractors to promulgate administrative regulations to administer, coordinate and enforce the HVAC contractor's Law. This administrative regulation is a supplement to 815 KAR 8:020, and establishes a mechanism for the board to review and approve relevant experience and establish relevant examinations when an applicant seeks to become licensed to perform limited functions pursuant to the journeyman HVAC licensing law. This administrative regulation is necessary to treat qualified persons similarly by allowing applicants to be licensed according to their qualifications, and in order to meet the intention of KRS Chapter 13A as it relates to tiering of administrative regulations.

(d) The benefits expected from this administrative regulation are: That the public will be better protected by the licensing of qualified HVAC contractors.

(e) This administrative regulation will be implemented by the Department of Housing, Buildings and Construction.

CABINET FOR HEALTH SERVICES Department for Public Health Office of Radiation Control

March 15, 1998

Cabinet for Health Services

Department for Public Health

Office of Radiation Control

(1) **902 KAR 100:010**. The administrative regulation provides definitions as applicable to 902 KAR Chapters 100 and 105. These definitions provide compatibility with the U.S. Nuclear Regulatory Commission regulations.

(2) The Cabinet for Health Services, Department for Public Health, Division of Public Health Protection and Safety, intends to amend 902 KAR 100:010 governing the subject matter cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 30, 1998

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at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to April 30, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from Dee Swain, Administrative Regulation Coordinator, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) KRS 211.844 provides the statutory authority for the promulgation of administrative regulations relating to ionizing radiation by the Cabinet for Health Services.

(b) The administrative regulation that the Cabinet for Health Services, Department for Public Health intends to amend, concerns definitions as applicable to 902 KAR Chapters 100 and 105. These definitions provide the necessary compatibility with the U.S. Nuclear Regulatory Commission regulations.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The amendment is necessary to meet U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as required by Section 274 of the Atomic Energy Act, as amended. KRS 211.844(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste. 902 KAR 100:010 provides definitions as applicable to 902 KAR Chapters 100 and 105.

(d) The benefits expected from this administrative regulation are: The amended administrative regulation provides persons, licensees, registrants and other agencies with the necessary definitions as applicable to 902 KAR Chapters 100 and 105.

(e) The administrative regulation will be implemented as follows: The Division of Public Health Protection and Safety, Department for Public Health will be responsible for the implementation of the administrative regulation.

Department for Medicaid Services

March 15, 1998

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:022**, Nursing facility and intermediate facility for the mentally retarded services.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 30, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to April 30, 1998 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

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(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 907 KAR 1:022 are KRS 194.050, 205.520 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:022 as follows:

1. To amend and define Section 7 to specify requirements and standards for distinct part high intensity nursing facility ventilator services as follows:

a. Twenty (20) bed;

b. Ventilator dependent:

(i) Twelve (12) hours and twenty-four (24) hours high intensity nursing services; or

(ii) Active weaning program under physician's orders. The twelve (12) hour time frame does not apply when an individual is on active weaning program;

(iii) Seventy-two (72) hour weaning stabilization period.

2. To consider revising high intensity case mix, as it relates to ventilator care, for individuals who do not meet the requirements specified in Section 7 of this administrative regulation.

3. To incorporate revisions to comply with KRS 205.8151 through 205.8483 related to the control of fraud and abuse.

4. To revise 907 KAR 1:022 and corresponding incorporate material in accordance with provisions of KRS Chapter 13A. Revisions should provide for clarity, consistency, and nonduplications.

5. To revise 907 KAR 1:022 and corresponding incorporate material in accordance with provisions of KRS Chapter 13B and 907 KAR 1:563. Revisions should ensure that Medicaid recipients are afforded all their due process rights.

6. To revise Preadmission Screening and Resident Review Program (PASRR) procedures to be consistent with federal law.

7. To incorporate other technical or conforming changes as necessary to topical and incorporated material.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth service provisions and requirements for nursing facility services including distinct part high intensity ventilator services for the twenty (20) bed units.

(d) The benefits expected from administrative regulation are:

1. The revision to policy promotes access to care for individuals who require at least twelve (12) hour ventilator services and twenty-four (24) hour high intensity nursing services; or individuals who are in an active weaning program which requires twenty-four (24) hour high intensity nursing. The twelve (12) hour dependency requirement does not apply to active weaning.

2. Eligible Medicaid recipients will benefit by being provided access to additional facility sites offering ventilator services.

3. The revision to the appeal process will make the process consistent with KRS Chapter 13B, 907 KAR 1:563E and ensure that Medicaid reimbursement is continued for recipients during the hearing process.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

March 15, 1998

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:025**, Payments for nursing facility and intermediate care facility for the mentally retarded services.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 30, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to April 30, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to payment for certified brain injury, a nursing facility with a distinct part ventilator unit, a nursing facility designated as a mental retardation specialty, a pediatric facility or an intermediate care facility for the mentally retarded are KRS 194.050, 205.520 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:025 to:

1. Incorporate 907 KAR 1:725E which provides a Medicaid reimbursement budget cap for the state fiscal year 1998 of \$504 million for nursing

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facility reimbursement and provides a methodology for monitoring and adjusting rates;

2. Revise ventilator payment provisions to comply with a Franklin County Circuit Court order;

3. Revise distinct part requirement, twenty (20) bed nursing facility unit, fifteen (15) bed census requirements for payments purposes for ventilator rate.

4. Revise the requirements for the Preadmission Screening and Resident Review (PASRR) Program.

5. Ensure that there is no conflicting information between the regulation and the manual.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation recognizes the budget limit for state fiscal year 1998 and sets forth the method for determining amounts payable by the cabinet to reimburse nursing facilities, certified brain injury, a nursing facility with a distinct part ventilator unit, a nursing facility designated as a mental retardation specialty, a pediatric facility or an intermediate care facility for the mentally retarded.

(d) The benefits expected from administrative regulation are:

1. The enacted budget for nursing facilities will be met;

2. Compliance with KRS Chapters 13A and 13B;

3. Expanded availability and access to medically necessary nursing facility services;

4. Elimination of the requirement of annual resident reviews;

5. Elimination of duplicative and conflicting policy between this administrative regulation and 907 KAR 1:755;

6. The revision to the policy permitting reimbursement at a high intensity rate for individuals who require at least twelve (12) hour ventilator services and twenty four (24) hour nursing services; or individuals who are under physician orders and management, and are in an active weaning program which requires twenty four (24) hour high intensity nursing. The twelve (12) hour dependency requirements do not apply to active weaning.

(7) Medicaid eligibles will benefit by being provided access to and payments for additional facility sites offering ventilator services.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

March 15, 1998

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:560**, Medicaid hearings and appeal regarding eligibility.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 30, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to April 30, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to Medicaid hearings and appeals for recipients are KRS 194.025, 194.050, and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will place into topical regulations the hearing process regarding Medicaid eligibility issues and the process available to nursing facility residents, intermediate care facilities for the mentally retarded, and home and community based services recipients.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth provisions relating to the Medicaid grievance, hearing and appeal process regarding eligibility issues.

(d) The benefits expected from administrative regulation are: To separate into topical regulations the hearing process regarding Medicaid eligibility issues and the process available to nursing facility residents, intermediate care facilities for the mentally retarded, and home and community based services recipients in order to prevent conflicting policy between this regulation and 907 KAR 1:563E.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

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March 15, 1998

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:563**, Medicaid covered services hearings and appeals.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 30, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to April 30, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (VTDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 907 KAR 1:563 are 42 USC 1396, KRS 194.025, 194.050 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will comply with federal mandates under 42 USC 1396, 42 CFR 483.12, 431 Subpart E, 483 Subpart E and KRS Chapter 13B.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth The hearing and appeal process for Medicaid recipients.

(d) The benefits expected from administrative regulation are:

1. The appeal process separates the Medicaid eligibility hearing process from the hearing process for Medicaid covered services.
2. This new topical regulation clarifies the applicant's and recipient's due process appeal rights.
3. Allows for the continuation of Medicaid benefits during the cabinet level administrative hearing process consistent with 42 CFR 431 Subpart E and KRS Chapter 13B.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

March 15, 1998

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:755**, Preadmission Screening and Resident Review (PASRR) Program.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 30, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to April 30, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in

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accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to payment for nursing facility services are KRS 194.050, 205.520, and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will comply with federal mandates under 42 USC 1396r and HCFA directives and will amend the appeal process for recipients in nursing facilities so that, if requested, Medicaid reimbursement for nursing facility services continues pending a hearing decision.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the program requirements and payment provisions for preadmission screening and resident reviews (PASRR).

(d) The benefits expected from administrative regulation are:

1. Assures compliance with 42 USC 1396r(6) and sets the program and policy requirements for preadmission screening and resident review program. In addition, it clarifies that failure to perform an annual review will no longer be grounds to deny Medicaid payment.

2. The revision to the appeal process will make the process consistent with KRS Chapter 13B, 907 KAR 1:563 and ensure that Medicaid reimbursement is continued for recipients during the hearing process.

3. The defining of a "significant change" will assure that reviews are performed in compliance with federal directives.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

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EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

(NOTE: Emergency administrative regulations expire 170 days from publication or upon replacement, repeal, or withdrawal)

STATEMENT OF EMERGENCY 502 KAR 31:010E

This emergency administrative regulation establishes the proper steps to administer the Sex Offender Registration System pursuant to KRS 17.500. This administrative regulation establishes definitions, defines the processes and establishes the forms necessary for the administration of the Sex Offender Registration System. Failure to implement this administrative regulation could cause the Commonwealth to lose ten (10) percent of the Federal Byrne Formula Grant funds allocated to the Commonwealth under Section 506 of the Omnibus Crime Control and Safe Streets Act of 1968, 42 USC Section 3765. In order to continue receiving the full grant award, the Commonwealth must demonstrate its good faith efforts to comply with the registration and notification requirements of the Wetterling Act and Megan's Law, 42 USC Section 14071, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. In support of that good faith effort the Justice Cabinet has filed with the U.S. Justice Department a copy of the proposed administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent of 502 KAR 31:010 was filed with the Regulations Compiler on February 27, 1998.

PAUL E. PATTON, Governor
E. DANIEL CHERRY, Secretary

JUSTICE CABINET

502 KAR 31:010E. Sex Offender Registration System.

RELATES TO: KRS 17.500

STATUTORY AUTHORITY: KRS 15A.160, 17.080, 17.500, 17.510

EFFECTIVE: February 27, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 17.080 provide that the Secretary of the Justice Cabinet may promulgate such administrative regulations as are necessary to properly administer the cabinet. KRS 17.510 requires the Justice Cabinet to develop and implement a Sex Offender Registration System. This administrative regulation establishes the definitions, defines the processes, and establishes the forms necessary for the administration of the Sex Offender Registration System.

Section 1. Definitions. (1) "Authorizing witness" means an official identified in KRS 17.510(3), (4), and (5).

(2) "Cabinet" means the Justice Cabinet.

(3) "Department" means the Department of State Police.

(4) "SORS" means the Sex Offender Registration System.

(5) "Sex offender information" means the specific information set forth in KRS 17.500(3) and shall include:

- (a) The date of release from custody;
- (b) Maximum date of sentence or supervision, whichever is longer;
- (c) Date of registry expiration;
- (d) Name of person completing the form, if registrant is assisted;
- (e) Office phone number of the releasing entity;
- (f) Signature of the registrant;
- (g) Signature of the authorizing witness; and
- (h) The date the form is signed.

Section 2. Sex Offender Duty to Register Notification Form. (1) A person sentenced as described in KRS 17.510(4) shall provide the information required by KRS 17.500(4), 17.510(4) and this administrative regulation on the Sex Offender Duty to Register Notification Form #JC-4.

(2) Completion of Sex Offender Duty to Register Notification Form #JC-4.

(a) Probation and Parole shall complete the Notification Form #JC-4 for the sentencing court.

(b) A person defined in KRS 17.510(4) shall, in the presence of the sentencing judge, sign the Notification Form #JC-4 in the "defendant's signature" block, in ink.

(c) A copy of the completed form shall be provided to the offender.

Section 3. SORS Registration Form. A person sentenced as described in KRS 17.510(2), (3), (4) and (5) shall provide the information required by KRS 17.500(3), 17.510(2), (3), (4) and (5) and this administrative regulation on the Sex Offender Register Entry Form #P:225.

(1) Completion of Sex Offender Register Entry Registration Form #P:225.

(a) The Entry Form #P:225 shall be completed either in the presence of or by the authorizing witness.

(b) In the presence of the authorizing witness, the offender shall read the Entry Form #P:225.

(c) The offender shall sign the Entry Form #P:225 in the "signature of offender" block of the form, in ink.

(d) The authorizing witness shall sign the form Entry Form #P:225 in the "authorizing witness" block of the Entry Form #P:225.

(e) The authorizing witness shall mail one (1) copy of the completed Entry Form #P:225 to the department on day the form is completed.

(2) An Entry Form #P:225 shall not be considered complete if:

(a) It does not contain the information required by KRS 17.500(3) and this administrative regulation; or

(b) It contains erroneous or false information; or

(c) An item on the Entry Form #P:225 cannot be read or understood; or

(d) The offender or authorizing witness fails to sign the appropriate block.

(3) If the department determines that a Entry Form #P:225 is incomplete pursuant to the provisions of this administrative regulation, the department shall notify the submitting authorizing witness, without entry into the SORS, of:

(a) The reason the Entry Form #P:225 was determined to be incomplete; and

(b) The action required to complete the Entry Form #P:225 prior to inclusion to the SORS.

(4) Upon notification of the corrected deficiencies as described above, the department shall enter the record into the SORS.

Section 4. Sex Offender Register Modification Form. A person sentenced as described in KRS 17.510(2), (3), (4) and (5) shall provide any change in the information required by KRS 17.500(3), 17.510(2), (3), (4) and (5) and this administrative regulation on the Sex Offender Register Modification Form #P:226.

(1) Completion of Sex Offender Register Modification Form #P:226.

(a) The Modification Form #P:226 shall be completed either in the

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presence of or by the authorizing witness.

(b) In the presence of the authorizing witness, the offender shall read the Modification Form #P:226.

(c) The offender shall sign the Modification Form #P:226 in the "signature of offender" block of the form, in ink.

(d) The authorizing witness shall sign the form Modification Form #P:226 in the "authorizing witness" block of the Modification Form #P:226.

(e) The authorizing witness shall mail one (1) copy of the completed Modification Form #P:226 to the department on day the form is completed.

(2) A Modification Form #P:226 shall not be considered complete if:

(a) It does not contain the information required by KRS 17.500(7) and this administrative regulation; or

(b) It contains erroneous or false information; or

(c) An item on the form cannot be read or understood; or

(d) The offender or authorizing witness fails to sign in the appropriate block.

(3) If the department determines that a Modification Form #P:226 is incomplete pursuant to the provisions of this administrative regulation, the department shall notify the submitting authorizing witness of:

(a) The reason the Modification Form #P:226 was determined to be incomplete; and

(b) The action required to properly complete the Modification Form #P:226 before that information may be included in the SORS.

(4) Upon notification of the corrected deficiencies, as described above, the department shall enter the corrected information into that offender's SORS record.

Section 5. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) The Sex Offender Duty to Register Form #JC-4;

(b) The Sex Offender Register Entry Form #P:225;

(c) The Sex Offender Register Modification Form #P:226.

(2) This material may be inspected, copied, or obtained at the Department of State Police, Data Processing Section, 1250 Louisville Road, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

E. DANIEL CHERRY, Secretary

BARBARA W. JONES, General Counsel

APPROVED: February 26, 1998

FILED WITH LRC: February 27, 1998 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Lieutenant Daniel L. Ball

(1) Type and number of entities affected: 235 probation and parole officers, 5 data processing staff of the Kentucky State Police and Department of Information Systems, the Administrative Office of the Courts, all circuit clerks, the Judiciary and the existing 415 registrants that reside in the Sex Offender Registry as well as the undetermined number of sex offenders that will be registered in the future.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$75,000

2. Continuing costs or savings: \$35,000

3. Additional factors increasing or decreasing costs: Analysis, program development, and other technical tasks required by federal or state legislative mandates.

(b) Reporting and paperwork requirements: Design of the data capture form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Justice Cabinet.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994 - 1996 biennium. Agency General Fund moneys for start-up and continuation costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) 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: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the regulation applies equally to all those individuals that will be listed in the Sex Offender Registry.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate for the filing of this amendment is found at 42 USC section 14071 and by the Federal Register, 62 FR 39009, July 21, 1997. The United States Justice Department monitors compliance with this statute and the guidelines promulgated to implement Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. States were mandated to be in compliance with the federal statute no later than September 1997 unless granted a waiver as a result of having demonstrated a good faith effort to comply with the statute. A two year waiver was granted the Commonwealth by the Justice Department in September of 1997.

2. States compliance standards. The state compliance standards are found in KRS 17.500 through 17.540.

3. Minimum or uniform standards contained in the federal mandate. The proposed amendment contains no minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation imposes no

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stricter requirements, or additional or different responsibilities or requirement, that those required by the federal mandate.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. This amendment does not impose standards, responsibilities or requirements.

STATEMENT OF EMERGENCY 787 KAR 1:210E

This administrative regulation sets forth the schedule by which Kentucky employers' unemployment tax contribution rates will be calculated for calendar year 1998. The scale has been determined as Schedule A of Table A. An emergency administrative regulation is necessary in order to serve notice of tax rate information to employers in sufficient time to file their first quarter 1998 unemployment insurance wage and tax reports which are due May 1, 1998. An ordinary administrative regulation is not sufficient due to the exigencies of the situation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation shall be filed with the Regulations Compiler along with the emergency administrative regulation.

PAUL E. PATTON, Governor
RODNEY S. CAIN, Secretary

WORKFORCE DEVELOPMENT CABINET Department for Employment Services Division of Unemployment Insurance

787 KAR 1:210E. Employer contribution rates.

RELATES TO: KRS 341.270

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: March 10, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.270 requires the Secretary for Workforce Development to determine the rate schedule for employer's contributions. The rate schedule in effect for each calendar year is determined by the "trust fund balance" as of December 31 of the preceding year. This administrative regulation applies the mathematical computation required by KRS 341.270 and sets forth the applicable rates to be in effect for the calendar year.

Section 1. Trust Fund Balance. The secretary finds the following to exist:

(1) The "trust fund balance" as of December 31, 1997 [1996] was \$571,366,293.68 [501,303,542.69].

(2) There was no outstanding loan from the Federal Unemployment Trust Fund as of December 31, 1997 [1996].

Section 2. Rate Schedule. On the basis of the findings in Section 1, and in accordance with KRS 341.270, Schedule A of Table A shall be in effect for calendar year 1998 [1997], because the "trust fund balance" equals or exceeds \$350,000,000 on December 31, 1997 [1996]. Rates listed in Schedule A of Table A are listed below.

Employer Reserve Ratio	Rate Schedule
8.0% and over	0.30%
7.0% but under 8.0%	0.40%
6.0% but under 7.0%	0.50%
5.0% but under 6.0%	0.70%
4.6% but under 5.0%	1.00%
4.2% but under 4.6%	1.30%
3.9% but under 4.2%	1.50%
3.6% but under 3.9%	1.80%

3.2% but under 3.6%	2.00%
2.7% but under 3.2%	2.10%
2.0% but under 2.7%	2.20%
1.3% but under 2.0%	2.30%
0.0% but under 1.3%	2.40%
-0.5% but under -0.0%	6.50%
-1.0% but under -0.5%	6.75%
-1.5% but under -1.0%	7.00%
-2.0% but under -1.5%	7.25%
-3.0% but under -2.0%	7.50%
-4.0% but under -3.0%	7.75%
-6.0% but under -4.0%	8.25%
-8.0% but under -6.0%	8.50%
Less than -8.0%	9.00%

RODNEY S. CAIN, Secretary
MARGARET WHITTET, Commissioner
SUE SIMON, Acting General Counsel
APPROVED BY AGENCY: March 6, 1998
FILED WITH LRC: March 10, 1998 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Sue Simon

(1) Type and number of entities affected: 79,000 Kentucky employers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None resulting from this administrative regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Possible increase in unemployment insurance trust fund receipts due only to natural wage increases and increased number of employers.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: U.S. Department of Labor administrative funding.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits: Not applicable.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government

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policy which may be in conflict, overlapping, or duplication: None
(a) Necessity or proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(10) Any additional information or comments: None
(11) TIERING: Is tiering applied? Tiering was not applied because all taxpaying employers are treated equally.

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

2. State what unit, part or division of local government this administrative regulation will affect. Either all or part of a local government could be affected. Entities such as county health departments, water districts, libraries, etc., could be affected based upon their independent exercise of unemployment reporting options.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation affects the unemployment tax assessed based on the payroll of those local governments which have elected to make quarterly unemployment tax payments.

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 great majority of local governments have elected to reimburse any unemployment benefits attributable to their employment. However, approximately 700 governmental entities have elected to pay quarterly unemployment taxes. By specifying the tax rate schedule in effect for 1998, this regulation determines in part the amount of tax which will be due from these tax paying entities. The tax rate schedule set forth in this regulation remains the same as the previous year.

STATEMENT OF EMERGENCY 815 KAR 8:045E

This administrative regulation establishes the procedures and standards for approving the experience credentials of applicants for two (2) subcategories of journeyman HVAC mechanic, pursuant to the authority of KRS 198B.650-689. This administrative regulation establishes two (2) categories of "limited" licenses: journeyman HVAC duct mechanic and journeyman HVAC installer mechanic. Persons who have apprenticed in the heating, ventilation and air conditioning business but are experienced only or desire only to engage in certain limited functions such as preparation and installation of duct work or repair and new installation can be licensed by a separate qualifying examination. Under this administrative regulation, an applicant could apply for limited licenses and be tested only on the limited functions in lieu of being qualified for all functions of HVAC systems (including diagnostic and equipment servicing) as required under the current journeyman HVAC mechanic license (815 KAR 8:020). This is an emergency and an ordinary administrative regulation will not suffice because the board is concerned that the number of qualified persons experienced and capable of performing all the functions required under present law will fail to meet the industry needs and there are many persons who are fully qualified for certain functions which are requesting an examination and license appropriate to their functions. It would still be true that at least one (1) active Kentucky journeyman HVAC mechanic with an unlimited license shall be on staff of every contractor. It has come to the attention of the Board of Heating,

Ventilation and Air-Conditioning Contractors that the existing administrative regulations (815 KAR Chapter 8) need to be supplemented immediately to resolve these two (2) problem areas which could result in unnecessary restrictions. Specifically, this administrative regulation allows the board to review applications for licensure on the basis of experience and testing which is substantially equivalent to the level of the license issued. This emergency administrative regulation will be replaced by an ordinary administrative regulation. Under this new administrative regulation, the HVAC Board can approve relevant experience using the criteria listed in Section 2 of this administrative regulation, and this should generate an increase in competent mechanics. It creates more flexibility as to the type of activities that HVAC mechanics can engage in and offers an opportunity for advancement with the industry. The intention of the licensing law will be fulfilled by assuring technical expertise and understanding of the principles involved in heating, ventilation and air conditioning systems through experience and formal examination. No person shall be entitled to become a master HVAC contractor unless that person has first had two (2) years experience and achieved full unlimited status as a journeyman HVAC mechanic.

PAUL E. PATTON, Governor
CHARLES A. COTTON, Commissioner
LAURA M. DOUGLAS, Secretary

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction

815 KAR 8:045E. "Limited" licenses for journeyman HVAC mechanics.

RELATES TO: KRS 198B.658, 198B.666

STATUTORY AUTHORITY: KRS 198B.658

EFFECTIVE: February 27, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning (HVAC) Contractors to promulgate administrative regulations to administer, coordinate and enforce the HVAC contractor's law. This administrative regulation is a supplement to 815 KAR 8:020, and establishes a mechanism for the board to review and approve relevant experience and establish relevant examinations when an applicant seeks to become licensed to perform limited functions pursuant to the journeyman HVAC licensing law. This administrative regulation is necessary to treat qualified persons similarly by allowing applicants to be licensed according to their qualifications, and in order to meet the intention of KRS Chapter 13A as it relates to tiering of administrative regulations.

Section 1. Application for Limited Licenses. Applicants seeking to be licensed as a journeyman mechanic under 815 KAR 8:020, but who chooses to use their experience and career goals to function in a limited capacity, shall comply with the application requirements of 815 KAR 8:020, except that they may request, in writing, and shall be granted a limited license upon proof of experience and examination, as follows:

(1) "Limited" journeyman HVAC duct mechanic - the applicant shall apply for, provide proof of relevant experience of duct work and successfully pass the examination given by Block and Associates known as "Journeyman HVAC Duct Mechanic - KY01".

(2) "Limited" journeyman HVAC installer mechanic - the applicant shall apply for, provide proof of relevant experience of altering and installing and successfully pass the examination given by Block and Associates known as "Journeyman HVAC Installer Mechanic - KY01".

Section 2. Limited Licenses and Responsibilities. (1) A person licensed under the alternative limited licensing provisions of this administrative regulation may work independently within the range of

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the limited license authorization while under the general supervision of a master HVAC contractor.

(2) A person holding a limited license shall not hold himself out as complying with all the journeyman HVAC mechanic experience and examination requirements of 815 KAR 8:020, and a limited license under this administrative regulation shall not replace the requirement that each master HVAC contractor shall have in his employ at least one (1) journeyman HVAC mechanic whose license is not limited.

(3) A person holding a "limited" license, pursuant to Section 1(1) or (2) of this administrative regulation, shall serve under the general supervision of the master HVAC contractor.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: February 27, 1998

FILED WITH LRC: February 27, 1998 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: Scope of administrative regulation is limited. Impact indeterminate and estimated to be approximately 20 potential applicants.

(2) Direct and indirect costs or savings on the: This will not alter the cost of living.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None beyond companion regulations, 815 KAR 8:010 and 815 KAR 8:020.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Negligible cost due to limited scope.

2. Continuing costs or savings: Negligible cost due to limited scope.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None, administrative and records maintenance procedures already in place.

(4) Assessment of anticipated effect on state and local revenues: Insignificant revenue increase from the few extra persons who may qualify each year. No local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Business fees of \$50 20 HVAC journeyman mechanics.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Statewide

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is a new program and this administrative regulation is necessary to treat qualified persons similarly and not to open up the industry to more qualified persons.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will slightly increase pool of persons licensed to perform HVAC work throughout the state.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Although limited, the detrimental impact would be limited to the number of persons that would not

otherwise be licensed.

(c) If detrimental effect would result, explain detrimental effect: Fewer persons licensed to perform HVAC work sharply reduces consumer protection.

(9) 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:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering is the essence of this regulation because two new categories are created, with different requirements for each.

STATEMENT OF EMERGENCY

907 KAR 1:022E

This administrative regulation is promulgated as an emergency in order to implement policy changes to comply with a Franklin Circuit Court order regarding high intensity ventilator services. Failure to enact this administrative regulation would place the department in violation of the Franklin Circuit Court order regarding high intensity ventilator services and pose an imminent threat to the health and welfare of individuals in need of high intensity ventilator services by limiting access and services to this life saving medical service. This administrative regulation also revises policy to be in compliance with federal statutes concerning Preadmission Screening and Resident Review (PASRR). This emergency administrative language differs from the emergency administrative regulation on the same subject matter that was filed on January 17, 1997 as follows: the administrative regulation contains revisions to PASRR policy to comply with federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor

JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES

Department for Medicaid Services

907 KAR 1:022E. Nursing facility and intermediate care facility for the mentally retarded services.

RELATES TO: KRS 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 USC 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s [205:520]

STATUTORY AUTHORITY: KRS 194.050, 205.520, 205.558 [42 GFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 USC 1396, 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s], EO 96-862

EFFECTIVE: February 18, 1998

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, [Human Resources] has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with a [any] requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the provisions relating to nursing facility and intermediate care facility for the mentally retarded services for which payment shall be made by the Medicaid Program on [in] behalf of both the categorically needy and medically needy recipients.

Section 1. Definitions. The following definitions shall be applicable:

(1) "Department" means the Department for Medicaid Services or its designee.

(2) "High intensity nursing care services" means care provided to Medicaid eligible individuals who meet high intensity patient status criteria by nursing facilities (NFs) and nursing facilities with waiver participating in the Medicaid Program with the care provided in beds also participating in the Medicare Program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards under Medicare.

(3) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.

(4) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to Medicaid eligible individuals who meet ICF-MR patient status criteria by ICF-MRs participating in the Medicaid Program.

(5) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty-four (24) hour per day basis.

(6) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid Program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards.

(7) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting nursing facility standards. Hospital swing beds providing services in accordance with 42 USC 1395tt and 1396l shall also be considered nursing facilities if the swing beds are certified to the department as meeting requirements for the provision of swing bed services under federal laws and regulations.

(8) "Nursing facility with waiver" (NF-W) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a Medicaid waiver has been granted by the survey agency. Some nursing facilities with waiver do not meet Medicare participation requirements.

(9) "Patient status" means that the individual has care needs meeting the criteria set forth in this administrative regulation for treatment in the institutional setting.

(10) "Stable medical condition" means one (1) which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen. "Patient status" means that the individual has care needs meeting the criteria set forth in this administrative regulation for treatment in the institutional setting.

(2) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty-four (24) hour per day basis.

(3) "Stable medical condition" means one which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen.

(4) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting nursing facility standards. A facility which is certified to the department as meeting skilled nursing facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility until the first survey agency

survey of the facility which occurs on or after October 1, 1990. Hospital swing beds providing services in accordance with 42 USC 1395tt and 42 USC 1396l shall also be considered nursing facilities if the swing beds are certified to the department as meeting requirements for the provision of swing bed services under federal laws and regulations. Each nursing facility shall have Medicare participatory status in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds); if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program).

(5) "Nursing facility with waiver" (NF-W) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a Medicaid waiver has been granted by the survey agency; some nursing facilities with waiver do not meet Medicare participation requirements. A facility which is certified to the department as meeting intermediate care facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility with waiver until the first survey agency survey of the facility which occurs on or after October 1, 1990. If a facility which has a Medicaid waiver chooses to participate in the Medicare Program, the facility shall be required to have Medicare participatory status in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds); if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program).

(6) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.

(7) "High intensity nursing care services" means care provided to Medicaid eligible individuals who meet high intensity patient status criteria by nursing facilities (NFs) and nursing facilities with waiver participating in the Medicaid Program with the care provided in beds also participating in the Medicare Program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards under Medicare.

(8) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid Program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards.

(9) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to Medicaid eligible individuals who meet ICF-MR patient status criteria by ICF-MRs participating in the Medicaid Program.]

Section 2. Participation Requirements. Each facility desiring to participate as a nursing facility, nursing facility with waiver, or ICF-MR shall 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[, Cabinet for Human Resources]. A vendor number shall be assigned to the facility by the department [cabinet] when enrollment is completed [participation status is achieved].

(2) Each nursing facility shall be required to have participatory status in the program of health care known as Medicare in at least twenty (20) percent of the facility's Medicaid participating beds [(but not less than ten (10) beds, ;)] If the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program[] before the conditions of participation for Medicaid shall be deemed met].

(3) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall meet Medicare participation

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requirements in at least twenty (20) percent of the facility's Medicaid participating beds [(but not less than ten (10) beds. [: If the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program.])]

(4) Each nursing facility and nursing facility with waiver shall be required to comply with the preadmission screening and [annual] resident review requirements specified in 42 USC 1396r and 907 KAR 1:755E [effective with regard to admissions and resident stays occurring on or after January 1, 1989]. Facilities failing to comply with these [this] requirement shall be subject to disenrollment, with exclusion from participation to be accomplished in accordance with 907 KAR 1:671, [1:220, Terms and conditions of provider participation; provider appeals, and federal regulations at] 42 CFR 431.153, and 431.154.

(5) A facility shall be required to be certified by the state survey agency as meeting NF, NF-W, or ICF-MR status[; a facility not appropriately certified shall not participate in the Medicaid Program except for appropriately certified SNFs or ICFs during the grandfathered period which ends upon the facility's first survey by the state survey agency on or after October 1, 1990].

(6) A facility shall have appropriate accreditation to provide specialized rehabilitation services [as approved by the state]. A facility shall be considered accredited if [Appropriate accreditation shall have occurred when] the facility has been accredited by: [a nationally recognized accrediting agency or organization]

(a) [such as] The Commission on Accreditation of Rehabilitation Facilities (CARF); or

(b) The Joint Commission on Accreditation of Health care Organizations (JCAHO).

Section 3. Provision of Service. (1) Payment for high intensity, low intensity and ICF-MR services shall be limited to those services meeting the care definitions shown in Section 1 of this administrative regulation.

(a) A nursing facility or nursing facility with waiver shall [may] provide and receive payments for high intensity services provided to Medicaid eligible individuals meeting high intensity patient status criteria if the services are provided in beds also participating in the Medicare Program, [and]

(b) A nursing facility or nursing facility with waiver shall [may] provide and receive payments for low intensity services provided to Medicaid eligible individuals meeting low intensity patient status criteria if [when] the services are provided in any Medicaid participating beds. [:]

(c) An ICF-MR shall [may] provide and receive payments for ICF-MR services only.

(2) A participating nursing facility may be certified in accordance with standards and conditions specified in the [907 KAR 1:545; Incorporation by reference of the] nursing facility services manual to operate a unit providing preauthorized specialized rehabilitation services for persons with brain injuries.

(3) A participating nursing facility may be certified in accordance with standards and conditions specified in the nursing facility services manual to operate a unit providing care for persons who are ventilator dependent.

Section 4. Determining Patient Status. The department [Professional staff of the cabinet, or a peer review organization operating under its lawful authority pursuant to the terms of its agreement with the cabinet,] shall review and evaluate the health status and care needs of the individual [recipient] in need of institutional care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or noninstitutional services.

(1) An individual [A-patient] shall not qualify for Medicaid patient status unless the individual [person] is qualified for admission, and continued stay as appropriate, under the preadmission screening and

[annual] resident review criteria specified in 42 USC 1396r and 907 KAR 1:755E [with regard to admissions and resident stays occurring on or after January 1, 1989].

(2) Individuals [Patients] qualify for high intensity nursing care if [when] their needs mandate high intensity nursing or high intensity rehabilitation services on a daily basis and if [when, as a practical matter,] the care can only be provided on an inpatient basis. If [Where] the inherent complexity of a service prescribed for an individual [a-patient] exists to the extent that it can be safely or effectively performed only by or under the supervision of technical or professional personnel, the individual shall [patient would] qualify for high intensity nursing care. An individual [A-patient] with an unstable medical condition manifesting a combination of care needs in the following areas shall qualify for high intensity nursing care:

(a) Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;

(b) Nasogastric or gastrostomy tube feedings;

(c) Nasopharyngeal and tracheotomy aspiration;

(d) Recent or complicated ostomy requiring extensive care and self-help training;

(e) In-dwelling catheter for therapeutic management of a urinary tract condition;

(f) Bladder irrigations in relation to previously indicated stipulation;

(g) Special vital signs evaluation necessary in the management of related conditions;

(h) Sterile dressings;

(i) Changes in bed position to maintain proper body alignment;

(j) Treatment of extensive decubitus ulcers or other widespread skin disorders;

(k) Receiving medication recently initiated, which requires high intensity observation to determine desired or adverse effects or frequent adjustment of dosage;

(l) Initial phases of a regimen involving administration of medical gases; or

(m) Receiving services which would qualify as high intensity rehabilitation services if [when] provided by or under the supervision of a qualified therapist(s), for example: ongoing assessment of rehabilitation needs and potential; therapeutic exercises which must be performed by or under the supervision of a qualified physical therapist; gait evaluation and training; range of motion exercises which are part of the active treatment of a specific disease state which has resulted in a loss of, or restriction of, mobility; maintenance therapy when the specialized knowledge and judgment of a qualified therapist is required to design and establish a maintenance program based on an initial evaluation and periodic reassessment of the patient's needs, and consistent with the patient's capacity and tolerance; ultrasound, short wave, and microwave therapy treatments; hot pack, hydrocollator infrared treatments, paraffin baths, and whirlpool (in cases where the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures or other complications, and the skills, knowledge, and judgment of a qualified physical therapist are required); and services by or under the supervision of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing.

(3) An individual shall be determined to meet low intensity patient status if [when] the individual requires intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting. In making the decision as to patient status, the following criteria shall be applicable:

(a) An individual with a stable medical condition requiring intermittent high intensity services not provided in a personal care home shall be considered to meet patient status.

(b) An individual with a stable medical condition, who has a complicating problem which prevents the individual from caring for himself in an ordinary manner outside the institution shall be considered to meet patient status. For example, ambulatory cardiac and hypertensive patients may be reasonably stable on appropriate

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medication, but have intellectual deficiencies preventing safe use of self-medication, or other problems requiring frequent nursing appraisal, and thus be considered to meet patient status.

(c) An individual with a stable medical condition manifesting a significant combination of the following care needs shall be determined to meet low intensity patient status if [when] the professional staff determines that the combination of needs can be met satisfactorily only by provision of intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting:

1. Assistance with wheelchair;
2. Physical or environmental management for confusion and mild agitation;
3. Must be fed;
4. Assistance with going to bathroom or using bedpan for elimination;
5. Old colostomy care;
6. In-dwelling catheter for dry care;
7. Changes in bed position;
8. Administration of stabilized dosages of medication;
9. Restorative and supportive nursing care to maintain the individual [patient] and prevent deterioration of his condition;
10. Administration of injections during time licensed personnel is available;
11. Services that could ordinarily be provided or administered by the individual but due to physical or mental condition is not capable of self-care; or
12. Routine administration of medical gases after a regimen of therapy has been established.

(d) An individual shall not generally be considered to meet patient status criteria if [when] care needs are limited to the following:

1. Minimal assistance with activities of daily living;
2. Independent use of mechanical devices, for example, assistance in mobility by means of a wheelchair, walker, crutch(es) or cane;
3. Limited diets such as low salt, low residue, reducing and other minor restrictive diets;
4. Medications that can be self-administered or the individual requires minimal supervision.

(4) ~~An individual [Evaluation of patient status for persons with mental disorders or mental retardation. A person]~~ with a mental disorder or mental retardation meeting the health status and care needs specified in subsections (2) and (3) of this section shall generally be considered to meet patient status. However, these individuals shall be specifically excluded from coverage in the following situations:

(a) If [When] the department [cabinet] determines that in the individual case the combination of care needs are beyond the capability of the facility, and that placement in the facility is inappropriate due to potential danger to the health and welfare of the individual [patient], other patients in the facility, or staff of the facility; and

(b) If [When] the nursing care needs result directly and specifically from a mental disorder; i.e., are essentially symptoms of the mental disorder; and

(c) If [When] the individual [patient] does not meet the preadmission screening and ~~[annual]~~ resident review criteria specified in 42 USC 1396r and 907 KAR 1:755E for entering or remaining in a facility.

(5) An individual shall be determined to meet patient status for an intermediate care facility for the mentally retarded and individuals [persons] with related conditions when the individual requires physical or environmental management or rehabilitation for moderate to severe retardation. In making the decision as to patient status the following criteria shall be applicable:

(a) An individual with significant developmental disabilities and significantly subaverage intellectual functioning who requires a planned program of active treatment to attain or maintain the

individual's optimal level of functioning, but does not necessarily require nursing facility or nursing facility with waiver services, shall be considered to meet patient status.

(b) An individual requiring a protected environment while overcoming the effects of developmental disabilities and subaverage intellectual functioning shall be considered to meet patient status while:

1. Learning fundamental living skills;
2. Learning to live happily and safely within his own limitations;
3. Obtaining educational experiences that will be useful in self-supporting activities; or
4. Increasing his awareness of his environment.

(c) An individual with a psychiatric primary diagnosis or needs shall be considered to meet patient status criteria only if:

1. [when] The individual also has care needs as shown in paragraph (a) or (b) of this subsection;
2. The mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility for the mentally retarded); and

3. The individual does not require psychiatric inpatient treatment.

(d) An individual that does not require a planned program of active treatment to attain or maintain the individual's optimal level of functioning shall not be considered to meet patient status.

(e) ~~An [It shall be the policy of the cabinet that no]~~ individual shall not be denied patient status solely due to advanced age, or length of stay in an institution, or history of previous institutionalization, if the individual qualifies for patient status on the basis of all other factors.

(f) With regard to an individual with a "related condition" (not mental retardation) the illness or ailment shall have manifested itself prior to the individual's 22nd birthday.

Section 5. Reevaluation of Need for Service. Nursing facility, nursing facility with waiver, and ICF-MR services shall be provided if the health status and care needs are within the scope of program benefits as described in Sections 3 and 4 of this administrative regulation. Patient status shall be reevaluated at least once every six (6) months. If a reevaluation of care needs reveals that the individual [patient] no longer requires high intensity, low intensity, or intermediate care for the mentally retarded services and payment is no longer appropriate in the facility, payment shall continue for ten (10) days to permit orderly discharge or transfer to an appropriate level of care.

Section 6. Preauthorization of Provision of Specialized Rehabilitation Services for Individuals [Persons] with Brain Injuries. Individuals [Patients] who are brain injured and meet usual high intensity nursing facility patient status criteria or as qualified under subsection (5) of this section may be provided care in a certified unit providing specialized rehabilitation services for persons with brain injuries (i.e., brain injury unit) if [when] the care is preauthorized by ~~[staff of]~~ the department ~~[for Medicaid Services]~~ using criteria specified in this section. For coverage to occur, authorization of coverage shall be granted prior to admission of the individual with the brain [head] injury into the certified brain [head] injury unit, or if previously admitted to the unit with other third party coverage, authorization shall be granted prior to exhaustion of those benefits.

(1) Injuries within the scope of benefits shall be:

- (a) Central nervous system injury from physical trauma;
- (b) Central nervous system damage from anoxia or hypoxic episodes; and

(c) Central nervous system damage from allergic conditions, toxic substances and other acute medical/clinical incidents.

(2) The following is a list of indicators for admission and continued stay:

- (a) The individual sustained a traumatic brain injury with structural, nondegenerative brain damage and is medically stable;
- (b) The individual shall not be in a persistent vegetative state;

(c) The individual demonstrates physical, behavioral, and cognitive rehabilitation potential;

(d) The individual requires coma management; and

(e) The individual has sustained diffuse brain damage caused by anoxia, toxic poisoning, or encephalitis.

(3) The determination as to whether preauthorization is appropriate shall be made taking into consideration the following:

(a) The presenting problem;

(b) The goals and expected benefits of the admission;

(c) The initial estimated time frames for goal accomplishment; and

(d) The services needed.

(4) The following is a list of conditions which shall [are] not be considered brain injuries requiring specialized rehabilitation under this section:

(a) Strokes treatable in nursing facilities providing routine rehabilitation services;

(b) Spinal cord injuries in which there are no known or obvious injuries to the intracranial central nervous system;

(c) Progressive dementias and other mentally impairing conditions;

(d) Depression and psychiatric disorders in which there is no known or obvious central nervous system damage;

(e) Mental retardation and birth defect related disorders of long standing; and

(f) Neurological degenerative, metabolic and other medical conditions of a chronic, degenerative nature.

(5) An individual [A-patient] may qualify for coverage under the brain injury program if the patient meets low-intensity level of care and has sufficient neurobehavioral sequelae resulting from the brain injury which when taken in combination require an intensity of care which is equal to high intensity nursing care, if the following criteria are met:

(a) The individual [patient] shall not have previously received specialized rehabilitation services (individuals [persons] discharged for the purpose of transfer to another brain injury facility are not considered to have "previously received specialized rehabilitation services") as provided for in this section;

(b) The individual [patient] shall have the potential for rehabilitation;

(c) The care shall be prior authorized on an individual basis by the Department for Medicaid Services; and

(d) The care shall be authorized for no more than six (6) months at any one (1) time.

Section 7. Requirements, Standards and Preauthorization of Certified Distinct Part Nursing Facility Ventilator Services. Individuals who are ventilator dependent and meet usual high intensity nursing facility patient status criteria may be provided care in a certified distinct part ventilator nursing facility unit providing specialized ventilator services if the care is preauthorized using criteria specified in this section and the Nursing Facilities Services Manual.

(1) Facility participation criteria.

(a) The nursing facility shall operate a program of ventilator care within a certified distinct part nursing facility unit which meets the needs of all ventilator patients admitted to the unit.

(b) The unit shall have not less than twenty (20) beds certified for the provision of ventilator care.

(c) The unit shall be required to have an average patient census of not less than fifteen (15) patients during the calendar quarter preceding the beginning of the facility's rate year or the quarter for which certification is being granted in order to qualify as a distinct part ventilator nursing facility unit.

(d) The unit shall have a ventilator machine owned by the facility for each certified bed with an additional back up ventilator machine required for every ten (10) beds.

(e) The facility shall have an appropriate program for discharge planning and weaning from the ventilator.

(2) Patient criteria and service characteristics. The following describe patient criteria and treatment characteristics for distinct part ventilator nursing facilities:

(a) The individual shall be considered ventilator (or respiration stimulating mechanism) dependent if the individual requires such mechanical support for twelve (12) or more hours per day and requires twenty-four (24) hours per day high intensity specialty nursing care; or

(b) The individual shall be considered ventilator (or respiration stimulating mechanism) dependent if the individual is in an active weaning program ordered by and under the management of a physician and reviewed and approved by the department; and

1. The goal of the active weaning program is to attain the least mechanical support in the least invasive manner that is consistent with the maximal function of the individual and ultimately no mechanical respiratory support;

2. The individual demonstrates steady progress in decreasing the number of hours and dependence upon the ventilator (or respiration stimulating mechanism) as documented in the individual's physician and nursing progress notes; and

3. The individual requires twenty-four (24) hours per day high intensity specialty nursing care.

(c) An individual shall not be considered ventilator dependent due to being in an active weaning program if:

1. The individual is no longer demonstrating steady progress in decreasing the number of hours and dependence upon the ventilator (or respiration stimulating mechanism); or

2. The individual has been off the ventilator (or respiration stimulating mechanism) for seventy-two (72) consecutive hours.

(d) Admissions from hospitalization or other location shall demonstrate two (2) weeks clinical and physiologic stability including applicable weaning attempts prior to transfer; and

(e) A physician's order specifies that the services shall not be provided in an alternative setting due to the medical stability and safety needs of the individual.

(3) Patient status determinations shall be made taking into consideration the following factors and those defined in the Nursing Facility Services Manual, Section IV-B, C and D:

(a) Alternative care possibilities;

(b) Goals for patient care;

(c) Primary hypoventilation, restrictive lung, ventilatory muscular dysfunction, and obstructive airway disorders needs which may necessitate mechanical ventilator and related care;

(d) Nonhospital management factors and needs;

(e) Patient treatment characteristics;

(f) Home care potential;

(g) Suitability of transfer to the ventilator care unit;

(h) Provision of an appropriate place of care; and

(i) Other facility admission indicators as shown in the Nursing Facility Services Manual.

Section 8. Denial of Patient Status. If an individual does not meet Medicaid criteria for admission or continued stay in a nursing facility the individual may appeal the denial in accordance with 907 KAR 1:563.

Section 9. Reserved Bed Days. The department [cabinet] shall cover reserved bed days in accordance with the following specified upper limits and criteria.

(1) Reserved bed days for nursing facilities and nursing facilities with wavier shall be covered for a maximum of fourteen (14) days per absence for a hospital stay with an overall maximum of forty-five (45) days per provider during the calendar year. Reserved bed days shall be covered for a maximum of fifteen (15) days per provider during the calendar year for leaves of absence other than for hospitalization.

(2) For intermediate facilities for the mentally retarded and individuals [persons] with related conditions, reserved bed days shall

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be covered for a maximum of forty-five (45) days per provider within a calendar quarter. Reserved bed days for hospital stays shall not exceed fifteen (15) days per stay. No more than thirty (30) consecutive reserved bed days (for hospital stay(s) plus leave(s) of absence, or leave of absence only) shall be approved for coverage.

(3) Coverage during an individual's [a-recipient's] absence for hospitalization or leave of absence shall be contingent on the following conditions being met:

(a) The individual [person] shall be in Medicaid payment status in the level of care he/she is authorized to receive and shall have been a resident of the facility at least overnight. Individuals [Persons] for whom Medicaid is making Medicare coinsurance payments shall not be considered to be in Medicaid payment status for purposes of this policy;

(b) The individual may [person-can] be reasonably expected to return to the same level of care;

(c) Due to demand at the facility for beds at that level, there is a likelihood that the bed would be occupied by some other patient were it not reserved;

(d) The hospitalization shall be for treatment of an acute condition, and not for testing, brace-fitting, etc., and

(e) For leaves of absence other than for hospitalization, the individual's [patient's] physician orders and plan of care provide for such leaves. Leaves of absence include visits with relatives and friends, and leaves to participate in state-approved therapeutic or rehabilitative programs.

[Section 8. The provisions of this administrative regulation shall apply to covered services provided on or after July 15, 1994.]

Section 10. Preadmission Screening and Resident Review. (1) Prior to admission of an individual, an NF shall conduct a level I PASRR in accordance with 907 KAR 1:755E, Section 4.

(2) Compliance with 907 KAR 1:755E is required in order for an individual to be admitted to an NF.

Section 11. Incorporation by Reference. (1) "Medicaid Nursing Facility Services Manual", Department for Medicaid Services, July 1997 edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY A. MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: February 17, 1998

FILED WITH LRC: February 18, 1998 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Nursing facilities participating in the Medicaid Program and approximately twenty (20) Medicaid recipients who are ventilator dependent.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon

competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: See companion regulation 907 KAR 1:025E.

2. Continuing costs or savings: See companion regulation 907

KAR 1:025E.

3. Additional factors increasing or decreasing costs: See companion regulation 907 KAR 1:025E.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will assure adequate access to medically necessary ventilator nursing facility beds for Medicaid recipients.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients.

(9) 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:

(10) Any additional information or comments: *See companion regulation 907 KAR 1:025E.

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those

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required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

STATEMENT OF EMERGENCY 907 KAR 1:025E

This emergency administrative regulation is being promulgated to:

- (a) incorporate 907 KAR 1:725E which provides a \$504 million Medicaid reimbursement budget cap for nursing facilities for fiscal year end 1998;
- (b) revise the appeal process to ensure compliance with KRS Chapter 13B;
- (c) implement policy changes to comply with a Franklin Circuit Court Order regarding high intensity ventilator services;
- (d) include requirements for distinct part twenty (20) bed nursing facility unit that includes a fifteen (15) bed census requirement for payment purposes;
- (e) revise language in Section 4(2)(b)1;
- (f) delete references to dual licensed beds which were converted to nursing facility beds by December 31, 1996, in accordance with KRS 216B.020;
- (g) incorporate changes in federal law with respect to Preadmission Screening and Resident Review (PASRR); and
- (h) failure to enact this administrative regulation on an emergency basis would place the department in violation of the Franklin Circuit Court Order relating to high intensity ventilator services, would not implement state statutory mandate of removing the category of dual licensure beds effective December 31, 1996 and would not comply with federal law. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on August 14, 1997 as follows: incorporates 907 KAR 1:725E, which provides a Medicaid reimbursement budget cap for nursing facilities FYE 1998 and revises the appeal process to ensure compliance with KRS Chapter 13B and 907 KAR 1:563E. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development

907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services.

RELATES TO: KRS 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 456, 42 USC 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s [205.520]

STATUTORY AUTHORITY: KRS 194.050, 205.520, [42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456; 42 USC 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s.] EO 96-862

EFFECTIVE: February 18, 1998

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the Medicaid Program [cabinet] for nursing care facility services and intermediate care facility for the mentally retarded services.

Section 1. Definitions. (1) "All other costs" means other care-related costs, other operating costs, capital costs, and indirect ancillary costs.

(2) "Allowable cost" means that portion of the facility's cost which may be allowed by the department [cabinet] in establishing the reimbursement rate. Cost shall be considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the department [cabinet], i.e., the allowable cost is "reasonable."

(3) "Ancillary services" means those direct services for which a separate charge is customarily made, and which, except for ventilator therapy services, and brain injury unit services are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services shall be limited to the following:

- (a) Physical, occupational and speech therapy;
- (b) Laboratory procedures;
- (c) X-ray;
- (d) Oxygen and other related oxygen supplies;
- (e) Respiratory therapy (excluding the routine administration of oxygen);

(f) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only); and

(g) Ventilator therapy services, subject to the coverage limitations shown in the Nursing Facility Reimbursement Manual.

(4) "Basic per diem cost" means for each major cost category (nursing services costs and all other costs) shall be the computed rate arrived at if [when] otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Department" means the Department for Medicaid Services or its designee.

(6) "Hospital based nursing facilities" means those nursing facilities in the same building with or attached to an acute care hospital and which share common administration, nursing staff, and ancillary services with the hospital; however, those facilities classified as hospital based skilled nursing facilities on June 30, 1989 shall remain classified as hospital based nursing facilities.

(7) [(6)] "Incentive factor" means the comparison of the basic per diem cost (for facilities qualifying for a cost savings incentive) with the upper limit for the appropriate cost arrays using the cost savings incentive (CSI) percentage (and taking into consideration the maximum allowable CSI amount for each cost array) to arrive at the actual dollar amount of cost savings incentive return to be added to the basic per diem cost.

(8) [(7)] "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs.

(9) [(8)] "ICF-MRs" means intermediate care facilities for the mentally retarded.

(10) [(9)] "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(11) [(10)] "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service.

(12) [(11)] "Nursing facilities with waiver (NFs-W)" means facilities certified to the Medicaid Program by the state survey agency as meeting all NF requirements except the nurse staffing requirement for which an NF waiver has been granted by the survey agency.

(13) [(12)] "Nursing facility (NFs)" means a facility certified to the Medicaid Program by the state survey agency as meeting all nursing facility requirements, and in at least twenty (20) percent of the

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facility's Medicaid participating beds (but not less than ten (1) beds meeting all conditions of participation in the Medicare Program. The phrase "nursing facility" also includes a nursing facility with waiver, as provided for in 42 USC 1396r(b)

(4)(C)(ii), unless the context specifies otherwise.

(14) [(13)] "Nursing facility with a mental retardation specialty" (NF-MRS) means a nursing facility in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

(15) [(14)] "Nursing services costs" means the direct costs associated with nursing services.

(16) [(15)] "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(17) [(16)] "PRO" means peer review organization.

(18) [(17)] "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified the prospective rate shall not be retroactively adjusted, either in favor of the facility or the department [cabinet].

(19) "Quarterly rate sheet" means the notice sent to each nursing facility each calendar quarter which provides information pertaining to the quarterly case mix and resultant prospective payment rate adjustment for a facility.

(20) [(18)] "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services shall include the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services;

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes shall be allowable as routine services if generally furnished to all patients;

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depressors;

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a nursing facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment;

(e) Laundry services including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs; and

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

(21) [(19)] "Upper limit" means the maximum level at which the department [cabinet] shall reimburse, on a facility by facility basis, for routine services.

Section 2. Reimbursement for Nursing Facilities, [(NFs)] (including Nursing Facilities with Waiver[]) and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). (1) All nursing facilities, [(NFs)] (including nursing facilities with waiver[]) or intermediate care facilities for the mentally retarded (ICF-MRs) participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation.

(2) Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280 and the coverage requirements specified in 907 KAR 1:022[- Nursing facility and intermediate care facility for the mentally retarded services].

(3)(a) A nursing facility desiring to participate in Medicaid shall be required to have at least twenty (20) percent of its Medicaid participating beds [(but not less than ten (10) beds, [-for] A facility with less than ten (10) beds, shall have all beds)] participate in the Medicare Program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, cannot participate in Medicare.

(b) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall be required to have at least twenty (20) percent of its Medicaid participating beds [(but not less than ten (10) beds, [-] If the facility has less than ten (10) beds, all beds shall [])] participate in the Medicare Program.

(4) The Medicaid Program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (including nursing facilities with waiver but not including ICF-MRs) shall be reimbursed at the same rate established for the entire facility.

Section 3. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which have been determined by the department [cabinet] to be reasonable and adequate to meet the costs which are required to 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, in accordance with the requirements set forth in 42 USC 1396(a)(13)(A).

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the department [cabinet] and contained in the [Kentucky Medicaid Program] Nursing Facility Reimbursement Manual[- revised July 1, 1995 which is incorporated by reference in this administrative regulation and supplemented by the use of the Medicare reimbursement principles. The Kentucky Medicaid Program Nursing Facility Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) 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 upon payment of the appropriate fee allowed by 200 KAR 1:020].

Section 4. Implementation of the Payment System. The department's [cabinet's] reimbursement system shall be supported by the Medicare Principles of Reimbursement, with the system utilizing the principles as guidelines in unaddressed policy areas. The [cabinet's] reimbursement system shall include the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the department [cabinet] on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section of the administrative regulation, including the provisions contained in subsections (13) and (14) of this section.

(a) Prospective rates shall be cost based annually, and may be revised on an interim basis in accordance with procedures set by the department [cabinet].

(b) An adjustment to the prospective rate (subject to the maximum payment for that type of facility) shall be considered only if a facility's increased costs are attributable to one (1) of the following reasons:

1. Governmentally imposed minimum wage increases;

2. The direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in administrative regulation or written policy which affects all facilities within the class; or

3. Other governmental actions that result in an unforeseen cost increase.

(c) 1. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination,

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costs shall be classified into two (2) general areas, salaries and other.

2. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2)(a) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility as applicable (except that ICF-MRs shall have no administratively set upper limit).

(b)1. The state shall set a uniform rate year for NFs and ICF-MRs (July 1 - June 30) by taking the latest available cost data which are [is] available as of May 16 of each year and trending the facility costs to July 1 of the rate year. If the latest available cost report period cost data have not been audited or desk reviewed prior to rate setting for the universal year beginning July 1, the [with] prospective rates based on cost reports which are not audited or desk reviewed shall be subject to adjustment when the audit or desk review is completed.

2. ~~[Appropriate cost report adjustments shall be made for the period between July 1, 1990 and October 1, 1990 to account for the fact a nursing facility rate adjustment related to nursing home reform shall be made effective October 1, 1990.]~~

3. Partial year, or budgeted cost data may be used if a full year's data is unavailable. Unaudited reports shall be subject to adjustment to the audited amount.

(c) Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied.

(d) Facilities whose rates are subject to settlement back to cost will not be included in the arrays until the facilities are no longer subject to cost settlement.

(e) The following specific policies shall be used with regard to determination, application, and exclusion from upper limits.

1. Nursing facility arrays. For purposes of setting upper limits the freestanding NFs (exclusive of the NF-MRs, NF-institutions for mental disease, and NF-pediatric facilities) shall be divided into urban and rural arrays.

a. The urban array shall include all facilities within a standard metropolitan statistical area.

b. The rural array shall include all facilities in nonstandard metropolitan statistical area counties.

c. For purposes of arraying, current multilevel facilities (i.e., NF and ICF) shall be considered as one (1) facility, and the composite or overall rate for the facility shall be paid for services rendered in either level during the period of time preceding the first survey agency occurring on or after October 1, 1990 (with separate levels ceasing to exist for Medicaid purposes at the time of the first survey).

d. The urban and rural arrays shall be further broken down into a nursing cost center array and an "other cost center" array for each.

2. Nursing facility upper limits. The following NF upper limits shall be applied:

a. The upper limit for nursing costs for freestanding NFs shall be set at 115 percent of the median of the array of each facility's cost per case mix unit (urban or rural as applicable). The upper limit for "other costs" for freestanding NFs shall be set at 115 percent of the median of the allowable per diem cost array for the facilities (urban or rural as applicable);

b. The upper limit for hospital based nursing facilities shall be set at 125 percent of the appropriate upper limit for freestanding facilities; and

c. The upper limit for NF-MRs shall be set at 120 percent of the appropriate upper limit for freestanding facilities.

3. Exclusions from nursing facility upper limits. The following exclusions from usual NF payment methodology and upper limits shall be applied.

a. Nursing facilities designated as institutions for mental diseases or as pediatric facilities shall be reimbursed at full reasonable and allowable prospective cost;

b. Hospital swing beds shall be paid at the average of NF

payments for the preceding calendar year. The swing bed rates shall change effective January 1, 1991 and each January 1 thereafter;

c. ~~[Hospital dual licensed beds shall be paid at the hospital based facility upper limits;~~

d. ~~[Facilities recognized as providing distinct part ventilator dependent care shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate. A distinct part ventilator unit of not less than twenty (20) beds shall be required with a requirement that the facility have a ventilator patient census of at least fifteen (15) patients. The patient census shall be based upon the quarter preceding the beginning of the rate year, or upon the quarter preceding the quarter for which certification is requested if the facility did not qualify for participation as a distinct part ventilator care unit at the beginning of the rate year. The fixed rate for hospital-based facilities shall be \$460 per day, and the fixed rate for freestanding facilities shall be \$250 per day. The rates shall be increased or decreased based on the Data Resources, Inc. rate of inflation indicator for the nursing facility services for each rate year beginning with the July 1, 1997 rate year. Costs of distinct part ventilator nursing facility units shall be excluded from allowable cost for purposes of rate setting and settlement of nursing facility cost reports; and~~

d. ~~[which shall be equal to projected costs; and~~

e. ~~[Facilities which are Medicaid certified head injury units providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be set at \$360 per diem. Facilities providing preauthorized specialized rehabilitation services for persons with brain injuries with rehabilitation complicated by neurobehavioral sequelae shall be paid an all-inclusive (excluding drugs) negotiated rate which shall not exceed the facilities' usual and customary charges.~~

4. Other factors relating to costs and upper limit determination shall be:

a. If the department [cabinet] has made a separate rate adjustment as compensation to the facilities for minimum wage updates, the department [cabinet] shall then adjust downward trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment. The purpose of the adjustment to the factors shall be to avoid paying the facilities twice for the same costs. If the trending and indexing factors include costs related to a minimum wage increase, the department [cabinet] shall not make a separate rate adjustment, and the minimum wage costs shall not be deleted from the trending and indexing factors.

b. The allowable per diem cost for NFs (excluding swing beds, dual licensed hospital beds, and facilities with all inclusive rates) shall include (through June 30, 1991) thirty-eight (38) cents for nurse aide training; and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control; and four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement.

c. A special access and treatment fee shall be added to the facility per diem (without regard to upper limits) for each individual identified as having care needs associated with high infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphylococcus aureus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immunodeficiency virus (HIV).

d. The maximum payment amounts for the prospective uniform rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

e. For purposes of administrative ease in computations, normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data except as specified in this

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subsection.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy and brain injury unit services which shall be paid on the basis of all-inclusive rates.

(a) Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement.

(b) Ancillary costs may be subject to maximum allowable cost limits under federal regulations.

(c) Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except:

1. In the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the department [cabinet] exceeding twenty-five (25) percent of billed charges; or

2. Where an evaluation by the department [cabinet] of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate shall be an allowable cost if permitted under Medicare principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relate to providing patient care. The form of the indebtedness may include notes, advances and various types of receivable financing;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(5) Compensation to owner/administrators shall be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function.

(a) Compensation shall include the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator.

(b) Payment for services requiring a licensed or certified professional performed on an intermittent basis shall not be considered a part of compensation. Reasonableness of compensation shall be based on total licensed beds (all levels).

(c) Compensation for owners and nonowner administrators (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Nursing Facility Reimbursement Manual.

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except if [when] it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship shall be considered to exist if [when] an individual (or individuals) possesses five (5) percent or more of ownership or equity in the facility and the supplying business. However, an exception to the relationship shall be determined to exist if [when] fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for nursing facilities entering into lease/rent arrangements as intermediate care facilities prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and nursing facilities entering into lease/rent arrangements as skilled nursing facilities prior to December 1, 1979, the department [cabinet] shall determine the allowable costs of these arrangements based on the general reasonableness of the costs.

(8) Certain costs not directly associated with patient care shall not be considered allowable costs. Costs which shall not be allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the [Kentucky-Medicaid-Program] Nursing Facility Reimbursement Manual, and legal fees for unsuccessful lawsuits against the department [cabinet]. However, costs (excluding transportation costs) for training or educational purposes outside the state shall be [are] allowable costs unless the costs are incurred by administrators or owners.

(9) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods shall be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain shall be defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale shall be any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which shall usually be fair market value. Lease-purchase agreements or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner shall not be considered sales until legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(10) Valuation of capital assets.

(a) [No] Increase in valuation in relation to depreciation and interest costs shall not be allowed for changes of ownership occurring after July 18, 1984 and before October 1, 1985 except as shown in subsection (9)(e) of this section with regard to enforceable agreements for a change of ownership entered into prior to July 1, 1984.

(b) For bona fide changes of ownership entered into on or after October 1, 1985 the depreciation and interest costs shall be increased in valuation in accordance with 42 USC 1396a(a) (13)(C) and the Reimbursement Manual at pages 350.03 - 350.10 and 352.08-352.09 effective for services provided on or after July 1, 1985.

1. The payment increases resulting from the increases in valuation shall be limited to a projected annual amount of \$3,000,000, taking into account Medicaid occupancy from the prior year Medicaid cost report, with the payments made as an add-on to the usual payment rates and not subject to the usual upper limits. If projected add-on payments would otherwise exceed \$3,000,000 on an annual basis the add-on amounts shall be reduced proportionately for each facility, i.e., the same percentage reduction shall be applied to all facilities qualifying for the rate add-on.

2. Facilities qualifying for the rate add-on shall be those facilities with a bona fide change of ownership on or after October 1, 1985 and before the beginning of the rate year for which the add-on is ap-

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plicable. For the rate year beginning July 1, 1995, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by not later than September 30, 1995. For subsequent rate years, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by July 31 of the affected rate year.

(11) Each facility shall maintain and make available any records (in a form acceptable to the department [cabinet]) which the department [cabinet] may require to justify and document all costs to and services performed by the facility. The department [cabinet] shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates and setting ancillary reimbursement amounts;

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program shall be so indicated with a description and rationale as a supplement to the cost report;

(c) Department [Cabinet] approval or rejection of projections or expansions shall be made on a prospective basis in the context that if expansions and related costs are approved they shall be considered when actually incurred as an allowable cost. Rejection of items or costs shall represent notice that the costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection; and

(d) If [When] a request for prior approval of projections or expansions is made, absence of a response by the department [cabinet] shall not be construed as approval of the item or expansion.

(13) The department [cabinet] shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of a field audit in relation to routine and ancillary service cost. If a field audit is not necessary, the report shall be settled without a field audit. Field audits shall be conducted when determined necessary. A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost shall be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement shall be made if:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) The department [cabinet] may develop and utilize methodology to assure an adequate level of care. Facilities determined by the department [cabinet] to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(16) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the department's [cabinet's]

concurrence).

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the department [cabinet].

(a) The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates).

(b) The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy.

1. The department [cabinet] may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area.

2. The department [cabinet] may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing nursing facility participates in the program under this payment system.

(18) Qualifying nursing facilities (but not including swing beds, [dual licensed hospital beds,] institutions for mental diseases, pediatric facilities, and facilities with all-inclusive rates) shall earn a cost savings incentive.

(a) Facilities qualifying for the cost savings incentive (except for NF-MRSs) shall be those facilities whose rate within the applicable cost array is not in excess of 110 percent of the median of the array.

(b) The cost savings incentive shall be computed at ten (10) percent of the difference between the facility's cost and the upper limit for the array with the cost savings incentive amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(c) NF-MRSs shall qualify for the cost savings incentive if the NF-MRS has costs less than the NF-MRS upper limit, and the cost savings incentive shall be ten (10) percent of the difference between the facility rate and the upper limit for the class of facility with the cost savings incentive amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(19) Intermediate care facilities for the mentally retarded may qualify for a cost incentive and investment factor (CIIF) allowance based on a comparison of the facility rate with the CIIF schedule shown in this subsection. [No] Return for investment risk shall not be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the incentive or investment return. Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 10-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
\$ 96.99 & below	\$1.38	\$.87
97.00 -102.99	1.29	\$.75
103.00 -108.99	1.18	\$.62
109.00 -114.99	1.06	\$.47
115.00 -120.99	.92	\$.31
121.00 -126.99	.76	\$.13
127.00 -133.49	*.53	----

*There is no maximum payment limit for intermediate care facilities for the mentally retarded.

(20) Hold harmless. The NFs (but not including swing beds or dual licensed hospital beds) shall be entitled to a "hold harmless" amount for the period from October 1, 1990 through June 30, 1992.

(a) This hold harmless amount shall be the amount, if any, by

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which the July 1, 1990 allowable facility rate plus an adjustment for ancillary costs shifted to routine costs (less a nurse aide training per diem allowance of one (1) dollar and twenty (20) cents) exceeds the allowable facility rate as computed on October 1, 1990 and July 1, 1991 (excluding the revised nurse aide training per diem allowance and other per diem add-ons in recognition of OBRA 87 requirements) under the revised reimbursement system.

(b) For hold harmless purposes, the July 1, 1990 rate shall be increased by an inflation allowance using the appropriate data resources, incorporated index for inflation.

(21) An adjustment shall be made to the usual rate for ICF-MRs, institutions for mental diseases, and pediatric facilities to account for those medical supplies, catheters, syringes, and diapers not payable under the pharmacy program (and no longer payable as ancillaries under the nursing facility payment system) which are thus included under the routine cost category.

(22) Case-mix. The nursing costs for each facility shall be divided by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost.

(a) [1. The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high-intensity, low-intensity, or neither. For patients meeting patient status (high or low-intensity), the PRO will then determine the case weight).]

2.] The average case weight [thereafter] shall be based on all level of care determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report is not available).

(b) The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the cost savings incentive adjustment as appropriate) times the average case weight for the prior quarter (as determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs.

(a) Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs.

1. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost.

2. Upon authorization by the Medicaid agency, the cost shall be allowable.

3. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred.

4. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the cost savings incentive factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost).

(b) Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment.

(c) Facilities may request multiple preauthorizations and rate

adjustments (add-ons) as necessary for implementation of nursing home reform.

(d) Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs.

(e) The special nursing home reform rate adjustment shall be requested using forms and methods specified by the department [agency].

(f) A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed.

(g) Interim rate adjustments for nursing home reform shall not be allowed for periods after June 30, 1993.

(24) The provider tax on nursing facilities shall be considered allowable cost; for the period of July 1, 1993 through June 30, 1994 appropriate rate adjustment shall be made as a rate add-on, with no offset against the inflation allowance. For subsequent rate periods, the cost basis shall be adjusted as appropriate to reflect the cost of the provider tax.

Section 5. Prospective Rate Computation. The prospective rate for each facility (taking into account the factors described in this administrative regulation and the case mix methodology shown in the Nursing Facility Reimbursement Manual) shall reflect the following:

(1) The adjusted allowable cost for the facility;

(2) Adjustments to allowable cost related to occupancy;

(3) Adjustments to allowable cost related to application of upper limits;

(4) Adjustments to allowable cost related to application of the cost savings incentive factor, or for ICF-MRs, the cost incentive and investment schedule;

(5) Rates shall be recomputed quarterly based on revisions in the case mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbursement Manual. [; however,] The cost basis and the upper limits shall be revised annually using the latest available cost reports and assessments from each provider;

(6) Adjustments as appropriate for costs shifted from ancillary to routine;

(7) Nursing home reform adjustments; and

(8) Hold harmless adjustments.

Section 6. Reimbursement Review and Appeal. Participating facilities may appeal department [cabinet] decisions as to application of the general policies and procedures in accordance with 907 KAR 1:671[; Conditions of Medicaid provider participation; enrollment; documentation of services; disclosure; claims processing; withholding overpayments; appeals process; and sanctions].

Section 7. Reimbursement for Required Services under PASRR.

(1) Prior to an admission of any individual, the NF shall conduct a level I and PASRR in accordance with 907 KAR 1:755E, Section 4.

(2) The department shall reimburse an NF for service delivered to an individual only if the NF complies with the requirements of 907 KAR 1:755E.

(3) Failure to comply with 907 KAR 1:755E shall be grounds for termination of the NF's participation in Medicaid.

Section 8. Reimbursement Provisions. (1) With the exceptions of a nursing facility with a certified brain injury unit, a nursing facility with a distinct part ventilator unit, a nursing facility designated as an institution for mental diseases, a nursing facility designated as a mental retardation specialty, a pediatric nursing facility or an intermediate care facility for the mentally retarded, a nursing facility, including a nursing facility with waiver, participating in the Medicaid Program shall be reimbursed in accordance with this administrative

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regulation.

(2) Payment shall be in accordance with coverage requirements established in 907 KAR 1:022E.

Section 9. Prospective Rate Methodology. Nursing facility Medicaid expenditures during the rate year beginning July 1, 1997 and ending June 30, 1998 shall not exceed \$504 million, including appeal and ancillary settlements. In order to ensure that expenditures do not exceed this amount, the department shall:

(1) On a monthly basis, compile a spreadsheet which contains actual data by facility, for each month and year beginning with July 1, 1997 and includes the following items:

- (a) Patient days paid;
- (b) Routine costs paid;
- (c) Ancillary costs paid;
- (d) Medicare crossovers paid;
- (e) Patient liability collected;
- (f) Third-party liability collected;
- (g) Appeal settlements; and
- (h) Year-end ancillary settlements.

(2) Compile a detailed listing of licensed nursing facility beds and current approved certificates of need that shall be included in the projected \$504 million budgeted limit.

(3) Distribute monthly the Medicaid spreadsheets containing the data identified in subsection (1) of this section to the Technical Advisory Committee on Nursing Home Care, Advisory Council for Medical Assistance, and Budget Review Subcommittee on Human Resources and, upon request, to other interested parties.

(4) Determine any necessary adjustments to the prospective rate of a nursing facility based upon information made available pursuant to the provisions of this administrative regulation and after an analysis by an independent accounting firm on or after August 1, 1998 if determined necessary by DMS and the Technical Advisory Committee on Nursing Homes.

(a) If nursing facility Medicaid net expenditures during the state fiscal year beginning July 1, 1997 and ending June 30, 1998 exceed the \$504 million budget limit, the ratio of \$504 million to net expenditures shall be applied to proportionately reduce the payments for a nursing facility for the 1998 state fiscal year based upon the total net expenditures for all nursing facilities according to the following formula: \$504 million divided by the total net expenditures for all nursing facilities shall be the proportionate rate adjustment factor. The proportionate rate adjustment factor shall be weighted based upon the number of Medicaid payment cycles which remain through June 30, 1998. The nursing facility's prospective rate multiplied by the proportionate rate adjustment factor shall be the reduced prospective rate for the nursing facility.

(b) The actual reduction shall be reflected as a separate line item on the quarterly rate sheet for a nursing facility, subsequent to the quarterly case-mix adjustment and any applicable rate add-ons.

(c) The reduced prospective rate adjustment shall not be applied to claims with dates of service earlier than January 1, 1998 or later than May 31, 1998.

(5) Determine on or after August 1, 1998 of 1998 state fiscal year end actual Medicaid nursing facility expenditures. If after the August 1, 1998 analysis of year end actual expenditures the \$504 million budget limit was exceeded, a recoupment based on an adjustment of each nursing facility's state fiscal year 1998 payments will be made by the department in the proportion that \$504 million is to the total expenditures for all nursing facilities for state fiscal year 1998.

Section 10. Litigation, collection and appeals shall be pursued by the cabinet with vigor. The final court order in West View Nursing Home, Inc. et al v. Commonwealth of Kentucky, Cabinet for Health Services and Cabinet for Human Resources, Franklin Circuit Court, No. 97-CI-00418, or extraordinary changes related to nursing facility beds in new or existing certificate of need administrative regulations

or interpretations thereof shall be excluded from the \$504 million budget target.

Section 11. The provisions of this administrative regulation shall be applicable to payments made for the state fiscal year 1998 and shall be applicable to payments made in the subsequent state fiscal year for claims with dates of service between January 1, 1998 and May 31, 1998.

Section 12. Incorporation by Reference. (1) "Nursing Facility Reimbursement Manual", Department for Medicaid Services, February, 1998, edition is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

[Section 7. Implementation Date. The provisions of this administrative regulation shall be effective with regard to payments for services provided on or after July 1, 1995.]

LARRY A. MCCARTHY, Deputy Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: February 17, 1998

FILED WITH LRC: February 18, 1998 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Nursing facilities participating in the Medical Program, approximately 20 Medicaid recipients who are ventilator dependent, all Medicaid recipients entering into a nursing facility who must be screened by the Preadmission Screening and Resident review (PASRR).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$3,608,000 (Costs)

2. Continuing costs or savings: \$3,358,000 (Costs)

3. Additional factors increasing or decreasing costs: At this time the cabinet is not aware of additional factors that may increase or decrease costs. However, costs will be monitored on a monthly basis to determine anticipated costs to Kentucky Medicaid Program.

(b) Reporting and paperwork requirements:

1. On a monthly basis compile a spreadsheet which contains actual and budgeted data, by facility, for each month and year beginning with July 1, 1997 and distribute them to the Technical Advisory Committee on Nursing Home Care, Advisory Council for Medical Assistance, and Budget Review Subcommittee on Human Resources and other interested parties;

2. Compile a detailed listing of licensed nursing facility beds and current approved certificates of need that shall be included in the projected \$504 million budgeted limit;

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3. Send a survey to nursing facilities with licensed beds and certificate of need holders with unlicensed beds which will be used to project additional Medicaid nursing facility patient days and corresponding expenditures during the rate year beginning July 1, 1997;

4. Distribute the surveys to the Technical Advisory Committee on Nursing Home Care, Advisory Council for Medical Assistance, and Budget Review Subcommittee on Human Resources;

5. Determine any necessary adjustments to the prospective rate of a nursing facility; and

6. Conduct a comparison no later than August 1, 1998 of 1998 state fiscal year end actual and budgeted expenditures.

Existing staff will assume the aforementioned responsibilities.

(4) Assessment of anticipated effect on state and local revenues: None, unless the regulated facilities exceed the \$504 million at which time those local governments operating nursing facilities will be affected by a reduction in rates.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. *Federal matching funds of 70.37% equaling \$2,363,024.60 and state matching funds of 29.63% equaling \$994,975.40 for a total of \$3,358,000.00. The remaining administrative costs in the amount of \$250,000.00: Federal matching funds of 50% equaling 125,000.00 and state matching funds of 50% equaling 125,000.00. State revenues will come from the collection of provider taxes in excess of the budgeted amount.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will ensure adequate access to medically necessary ventilator nursing facility beds for Medicaid recipients, ensure that facilities are reimbursed for services and ensure that Medicaid recipients throughout the state have continued uninterrupted care.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, and welfare of Medicaid recipients by not allowing a Medicaid recipient to remain in a facility pending an agency's hearing decision.

(9) 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect those counties operating nursing facilities.

3. State the aspect or service of local government to which this administrative regulation relates. Nursing facility.

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. There is no impact unless there's a reduction in rates due to over-expenditures in which case those facilities operated by local governments may experience a reduction in reimbursement.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

STATEMENT OF EMERGENCY 907 KAR 1:560E

This emergency administrative regulation is being promulgated to separate this administrative regulation from 907 KAR 1:563E in order to comply with federal mandates under 42 USC 1396, 42 CFR 483.12, 431 Subpart E, and 483 Subpart E in order to revise the appeal process to be consistent with KRS Chapter 13B. This action must be taken on an emergency basis to ensure that the Medicaid Program is administered consistent with federal mandates, the requirements of KRS Chapter 13B and that eligible Medicaid recipients receive vendor payments pending an agency hearing decision. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety and welfare of Medicaid recipients. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

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CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development

907 KAR 1:560E. Medicaid hearings and appeals regarding eligibility [for recipients].

RELATES TO: KRS Chapter 13B, 205.231, 205.237, 205.520, 42 CFR 431 subpart E, 42 USC 1396

STATUTORY AUTHORITY: KRS 194.025, 194.050, EO 96-862

EFFECTIVE: February 18, 1998

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes provisions relating to the Medicaid grievance, hearing and appeal process regarding Medicaid eligibility issues. [for recipients:]

Section 1. Definitions. (1) "Applicant" means an individual applying for Medicaid.

(2) "Authorized representative" means an individual acting on behalf of an applicant or recipient.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Designated hearing agency" means the Department for Social Insurance.

(5) [~~"Medicaid coverage" means items or services a Medicaid recipient may receive through the Medicaid Program.~~]

(6) [~~"Member" means a Medicaid recipient who is enrolled in a partnership or a managed behavioral health care organization.~~]

(7) "Recipient" means an individual who receives Medicaid.

Section 2. Informing the Applicant or Recipient of His Rights. (1) An applicant or recipient shall be informed of his right to a hearing:

(a) Verbally and in writing when application is made; and

(b) In writing if an action is taken affecting his eligibility in accordance with KRS 13B.050.

(2) An applicant or recipient shall be informed of the method by which he may obtain a hearing and that he may be represented by:

(a) Legal counsel;

(b) A relative;

(c) A friend;

(d) Other spokesperson; or

(e) Himself.

Section 3. Request for a Hearing. (1) An applicant, recipient or an authorized representative may request a hearing by filing a request with the designated hearing agency at the local office or central office.

(2) The applicant, recipient or authorized representative shall clearly indicate a desire for a hearing by submitting a statement:

(a) In written form; or

(b) Verbally and followed up in writing.

(3) An applicant, recipient or authorized representative may use Form PAFS-78, Request for Hearing, Appeal, or Withdrawal, to submit the written request.

Section 4. Time Limitation for Request. (1) To be considered timely, a written or verbal (with appropriate follow-up in writing) request from an applicant, recipient or authorized representative with regard to an action or a delay in taking a timely action by the Department for Medicaid Services or its designee regarding Medicaid

eligibility [or coverage] shall be received by the designated hearing agency within:

(a) Forty (40) days of the date of the advance notice of adverse action;

(b) Thirty (30) days of the notice of:

1. Denial of an application;

2. Discontinuance of an active case;

3. Increase in patient liability; or

[~~4. Reduction of Medicaid coverage; or~~]

(c) A time period equal to the delay in action by the agency.

(2) An additional thirty (30) days for requesting a hearing may be granted if it is determined by the hearing officer that the delay was for good cause in accordance with the following criteria:

(a) The applicant or recipient was away from home during the entire filing period;

(b) The applicant or recipient is unable to read or to comprehend the right to request a hearing on the notice of:

1. Adverse action;

2. [~~or the notice of~~] Discontinuance of Medicaid eligibility; or

3. [~~;~~] Increase in patient liability; [~~or reduction of Medicaid coverage;~~]

(c) The applicant or recipient moved resulting in a delay in receiving or failure to receive the notice of:

1. Adverse action;

2. [~~or the notice of~~] Discontinuance of the Medicaid eligibility;

3. [~~;~~] Increase in patient liability; [~~or reduction of Medicaid coverage;~~]

(d) Serious illness of the applicant or recipient; or

(e) The delay was no fault of the applicant or recipient.

Section 5. Continuation of Medicaid. (1) Medicaid eligibility [coverage] shall be continued at the level prior to the adverse action through the month in which the hearing officer's decision is:

(a) Rendered if the request results from dissatisfaction regarding a:

1. Proposed discontinuance;

2. Proposed increase in patient liability; [or

~~3. Proposed reduction of Medicaid coverage;]~~ and

(b) Received within ten (10) days of the date of the:

1. Advance notice of adverse action; or

2. Notice of decrease or discontinuance from the Department for Medicaid Services or its designee.

(2) Medicaid shall be reinstated and continued through the month in which the hearing officer's decision is rendered if:

(a) The request is received within twenty (20) days of the date of the advance notice of:

1. Adverse action;

2. [~~or notice of~~] Discontinuance of Medicaid eligibility; or

3. [~~;~~] Increase in patient liability [~~or reduction of Medicaid coverage;~~]; and

(b) The reason for delay meets the good cause criteria established in Section 4(2) of this administrative regulation.

(3) Subsection (1) of this section shall not apply if the applicant, recipient or authorized representative requests the discontinuance, increase in patient liability or reduction of Medicaid coverage to be in effect pending the hearing decision.

(4) Subsections (1) and (2) of this section shall not apply if the program benefit has been reduced or discontinued as a result of a change in law or administrative regulation.

(5) A continued or reinstated benefit shall be considered an overpayment if the agency decision is upheld.

(6) A time limited benefit shall not be extended based on a request for an appeal or hearing.

Section 6. Acknowledgement of the Request. (1) A hearing request shall be acknowledged by the designated hearing agency.

(a) The acknowledgement letter shall contain information

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regarding:

1. The hearing process;
2. ~~including~~ The right to case record review prior to the hearing;
3. The right to representation; and
4. A statement that the local office can provide information regarding the availability of free representation by legal aid or a welfare rights organization within the community.

(b) Subsequent notification shall comply with the requirements of KRS 13B.050.

(2) A party to the hearing shall be provided at least twenty (20) days timely notice of the hearing to permit adequate preparation of the case. Less timely notice may be requested by the applicant, recipient or authorized representative to expedite the scheduling of the hearing.

(3) A hearing complying with the requirements of KRS Chapter 13B shall be scheduled on a timely basis to assure no more than ninety (90) days shall elapse from the date of the request to the date of the decision, with the exception that a hearing determination regarding a community spouse income or resource allowance shall be held within thirty (30) days of the hearing request date.

Section 7. Withdrawal or Abandonment of Request. (1) The applicant, recipient or authorized representative:

(a) May withdraw his request for a hearing prior to release of the hearing officer's decision; and

(b) Shall be granted the opportunity to discuss withdrawal with his legal counsel or representative prior to finalizing the action.

(2) Abandonment of request.

(a) A hearing request shall be considered abandoned if the applicant, recipient or authorized representative fails without prior notification to report for the hearing.

(b) A hearing request shall not be considered as abandoned without extending to the applicant or recipient, and, if applicable, his legal counsel or representative, a period of ten (10) days to establish that the failure was for good cause in accordance with the good cause criteria established in Section 4(2) of this administrative regulation.

Section 8. Applicant's or Recipient's Rights Prior to a Hearing. (1) An applicant or recipient shall receive notice consistent with KRS 13B.050 including the right to:

- (a) Legal counsel or other representation;
- (b) Review the case record relating to the issue; and
- (c) Submit additional information in support of his claim.

(2) If the hearing involves medical issues:

(a) A medical assessment by other than a person involved in the original decision shall be obtained at the department's expense if the hearing officer considers it necessary; and

(b) If a medical assessment at the department's expense is requested by the applicant, recipient or authorized representative and denied by the hearing officer, the reason for denial shall be set forth in writing.

Section 9. Postponement of a Hearing. (1) The applicant, recipient or authorized representative may request and shall be entitled to a postponement of a hearing if the request is made:

- (a) Before the hearing; and
- (b) In accordance with the good cause criteria established in Section 4(2) of this administrative regulation.

(2) The decision to grant the postponement shall be made by the hearing officer.

(a) The postponement of the hearing shall not exceed thirty (30) days from the date of the request.

(b) The time limit for action on the decision shall be extended for as many days as the hearing is postponed.

Section 10. Corrective Action for Medicaid. (1) The department may determine that corrective action to provide or restore eligibility

~~[services or coverage]~~ is appropriate if:

- (a) A hearing has been requested;
- (b) A hearing decision has not been rendered; and
- (c) The department's action or proposed action made the applicant or recipient ineligible for benefits ~~[a service or coverage]~~ to which he was entitled.

(2) After corrective action has been taken:

(a) The applicant, recipient or authorized representative shall be given the opportunity to withdraw the hearing request; and

(b) The hearing process shall continue if the applicant, recipient or authorized representative wishes to pursue the request.

Section 11. Conduct of a Hearing. (1) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

(2) Impartiality. The hearing officer shall be impartial and shall disqualify himself as required by KRS 13B.040.

(3) The hearing shall be conducted in-state where the applicant, recipient or authorized representative may attend without undue inconvenience.

(4) If necessary to receive full information on the issue, the hearing officer may examine each party who appears and his witnesses.

(5) The hearing officer may schedule a hearing and take additional evidence as is deemed necessary. Evidence shall be taken in accordance with the provisions of KRS 13B.080 and 13B.090.

Section 12. The Decision. (1) After the hearing is concluded, the hearing officer shall issue a decision in accordance with the requirements of KRS 13B.110.

(2) A decision with regard to a community spouse's income allowance shall be subject to a downward adjustment as deemed necessary by the agency as circumstances causing financial duress change or no longer exist.

(a) The resource allowance shall be subject to this adjustment with regard to a resource that is:

1. Attributed to the community spouse; and
2. Not transferred within six (6) months of the Medicaid approval date.

(b) This adjustment shall be appealable pursuant to Section 5 of this administrative regulation.

(3) A copy of the decision shall be mailed to the applicant or recipient and his representative.

(4) The decision, with respect to the issue considered, shall be final unless further appeal is initiated within twenty (20) days from the date of mailing of the decision.

Section 13. Appeal from Decision of Hearing Officer for an Applicant and Recipient. (1) An applicant, recipient or his authorized representative wishing to appeal the decision of a hearing officer shall file an appeal to an appointed appeal board.

(2) The appeal request shall be considered timely if it is received in a local office or the central office of the designated hearing agency within twenty (20) days of the date on which the hearing officer's decision was mailed.

(3) If the good cause criteria established in Section 4(2) of this administrative regulation is met, an appeal request received within thirty (30) days of the hearing officer's decision shall be considered timely.

(4) The request shall be:

- (a) Filed:
 1. In writing; or
 2. Verbally, if a written request is subsequently sent; and
- (b) Considered filed on the day the request is received.

(5) An applicant, recipient or authorized representative may use Form PAFS-78, Request for Hearing, Appeal or Withdrawal, to submit the written request.

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(6) Medicaid eligibility shall continue to be denied, discontinued, patient liability increased, or Medicaid coverage reduced if the department's action is upheld by the hearing officer.

Section 14. Applicant's or Recipient's Rights Prior to an Appeal Board Consideration. (1) An appeal shall be acknowledged in writing to the applicant or recipient and his authorized representative.

(2) The acknowledgment shall offer the opportunity to file a brief or submit new and additional proof and state the tentative date on which the board shall consider the appeal.

Section 15. Appeal Board Review. (1) An appeal to the appeal board shall be considered upon the records of the department and the evidence or exhibits introduced before the hearing officer unless the applicant, recipient or authorized representative specifically requests permission to file additional proof.

(2) If an appeal is being considered on the record, a party may present a written argument and at the appeal board's discretion, be allowed to present an oral argument.

(3) If needed, the appeal board may direct the taking of additional evidence to resolve the appeal.

(4) Evidence shall be taken by the appeal board after seven (7) days notice to the parties, giving them the opportunity to object to the introduction of additional evidence or to rebut or refute the additional evidence.

Section 16. The Appeal Board Decision. The decision of the appeal board, duly signed by members of the appeal board, shall set forth in writing the facts on which the decision is based and unless set aside through the judicial review process pursuant to KRS 13B.140 and 13B.150, shall be irrevocable in respect to the issue in the individual case.

Section 17. Medicaid Case Actions Following a Decision. (1) A Medicaid case action following a decision of a hearing officer or the appeal board shall be made promptly and shall include:

(a) The month of application; or

(b) If it is established that the applicant or recipient was eligible during an entire period, the month in which the incorrect action of the department adversely affected the applicant or recipient.

(2) For a reversal involving [a reduction of Medicaid coverage or] an increase in patient liability, action shall be taken to reduce the patient liability [restore benefits] within ten (10) days of the receipt of the hearing or appeal board decision.

Section 18. [Special Procedures Relating to Nursing Facility, Hospital and Psychiatric Residential Treatment Facility Level of Care Determination. The department shall contract with a peer review organization to provide a level of care determination for an individual in a nursing facility. For an individual appealing a peer review organization's determination, the following special provisions shall be applicable:

(1) If the peer review organization's decision is adverse to the recipient, a written notice of the decision shall be given to the recipient, the physician of record, the facility (if any) and the department. The notice shall comply with the requirements of Section 2 of this administrative regulation.

(2) The recipient may appeal the determination of the peer review organization by filing a written request for reconsideration with the utilization review agency:

(a) The request for reconsideration shall be made within thirty (30) days of the date on the notice of the adverse decision.

(b) If the request for reconsideration is made within ten (10) days, benefits shall continue as appropriate until the reconsideration decision has been made.

(c) A reconsideration hearing shall be held within:

1. Ten (10) working days of the request if the recipient is in the

facility; and

2. Thirty (30) days of the request if the request for reconsideration is received after the recipient has left the facility.

(3) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

(4) Impartiality. The hearing officer shall be impartial and shall disqualify himself as required by KRS 13B.040.

(5) After the hearing is concluded, the hearing officer shall issue a decision in accordance with the requirements of KRS 13B.110. A copy of the decision shall be mailed to the recipient and his representative.

(6) If the reconsideration decision is adverse to the recipient, he may appeal to the department for a hearing in accordance with this administrative regulation.

(a) The appeal shall be filed within fifteen (15) days of the date the recipient is notified of the reconsideration decision. A request may be filed with the utilization review agency or directly with the department.

(b) If filed with the utilization review agency, the agency shall forward the request with appropriate medical records and other necessary documentation to the department.

(7) If a negative decision has been appealed to the department, the appeal shall be processed as established in Sections 3, 4, 5, and 6 of this administrative regulation.

Section 19. Special Procedures Relating to a Managed Care Participant. Special procedures relating to a managed care participant are located in 907 KAR 1:563E. [(1) A Medicaid recipient shall be informed in writing of the requirements for making a complaint, filing a grievance and requesting a hearing:

(a) By the partnership in which a member is enrolled in accordance with 907 KAR 1:705; and

(b) By the managed behavioral health care organization in which a member is enrolled in accordance with 907 KAR 1:710.

(2) If the of the partnership or the managed behavioral health care organization decision is adverse to the member, the member or his authorized representative:

(a) May request a hearing regarding the action or inaction on the part of the partnership, the managed behavioral health care organization or its subcontracted provider to the department in accordance with Sections 3 through 12 of this administrative regulation; and

(b) Shall not be required to employ or exhaust the other complaint or grievance resolution processes contained within the partnership or managed behavioral health care organization plan.

(3) A member or his authorized representative wishing to appeal the decision of a hearing officer shall file an appeal to an appointed appeal board.

(4) An appeal shall be processed as established in Sections 14, 15 and 16 of this administrative regulation.]

Section 19. [20.] Limitation of Fees. (1) Pursuant to KRS 205.237, the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid shall be:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation (brief included) of an appeal to the appeal board;

(c) \$175 for preparation and presentation, including a pleading and appearance in court, of an appeal to the circuit court;

(d) \$300 for preparatory work and briefs and all other matters incident to an appeal to the Court of Appeals.

(2) Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the recipient. The fee shall not be deducted from a public assistance payment otherwise due and payable to the recipient.

[Section 21. A hearing or an appeal relating to a decision to

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~~reclassify or transfer a person with mental retardation in a state institution shall be in accordance with the requirement of KRS 210.270.]~~

Section 20. [22:] Burden of Proof. In accordance with KRS 13B.090(7), in a proceeding conducted pursuant to this administrative regulation, the burden of proving eligibility [or coverage] shall be borne by the applicant or recipient.

Section 21. [23:] Incorporation by Reference. (1) Form PAFS-78, May 1996 edition, Department of Medicaid Services, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY A. MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: February 17, 1998

FILED WITH LRC: February 18, 1998 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Potentially it may affect any of the approximately 21,646 current nursing facility residents who are Medicaid recipients.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$0

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, and welfare of Medicaid recipients if there is conflicting policy between this administrative regulation and 907 KAR 1:563E.

(9) 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

STATEMENT OF EMERGENCY 907 KAR 1:563E

This emergency administrative regulation is being promulgated to comply with federal mandates under 42 USC 1396, 42 CFR 483.12, 431 Subpart E, and 483 Subpart E and to revise the appeal process to be consistent with KRS Chapter 13B. This action must be taken on an emergency basis to ensure that the Medicaid Program is administered consistent with federal mandates, the requirements of KRS Chapter 13B and that eligible Medicaid recipients receive vendor payments pending an agency hearing decision. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety and welfare of Medicaid recipients. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

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CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development

907 KAR 1:563E. Medicaid covered services hearings and appeals.

RELATES TO: KRS Chapter 13B, 205.237, 205.520, 42 CFR 483.12, 431 Subpart E, 483 Subpart E, 42 USC 1396

STATUTORY AUTHORITY: KRS 194.025, 194.050, EO 96-862
EFFECTIVE: February 18, 1998

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes provisions relating to the Medicaid covered services hearing and appeal process for applicants and recipients.

Section 1. Definitions. (1) "Applicant" means an individual who has applied for covered services.

(2) "Authorized representative" means an individual or guardian acting on behalf of a recipient.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Medicaid covered services" means items or services a Medicaid recipient may receive through the Medicaid Program.

(5) "Member" means a Medicaid recipient who is enrolled in a partnership or a managed behavioral healthcare organization.

(6) "Peer review organization" means a federally-designated organization that is performing the utilization review functions for the department.

(7) "Recipient" means an individual who receives Medicaid.

(8) "Secretary" means the Secretary of the Cabinet for Health Services.

(9) "Time-limited benefits" means Medicaid coverage which is restricted to a specified period in time.

Section 2. Informing the Recipient of Medicaid Coverage Hearing Rights. (1) An applicant, recipient or guardian shall be informed of his right to a cabinet level administrative hearing in writing if an adverse action is taken affecting covered services.

(2) An applicant, recipient or guardian shall be informed of the method by which he may obtain a hearing and that he may be represented by:

- (a) Legal counsel;
- (b) A relative;
- (c) A friend;
- (d) Other spokesperson;
- (e) Authorized representative; or
- (f) Himself.

(3) The notice shall contain a statement of:

- (a) The Medicaid adverse action;
- (b) The reason for the action;
- (c) The specific administrative regulation that supports the action;

and

(d) An explanation of the circumstances under which payment for services is continued when a hearing is requested timely in accordance with Section 5 of this administrative regulation.

Section 3. Notification Process. (1) Adverse notices shall be mailed to an applicant or a recipient using the United States Postal Service.

(2) Adverse notices to an applicant, recipient and responsible party covered under Section 5(1) of this administrative regulation shall be sent using a return receipt requested format.

Section 4. Request for a Hearing. (1) An applicant, recipient or an authorized representative may request a hearing by filing a written request with the department.

(2) If an applicant, recipient or authorized representative requests a hearing it shall:

- (a) Be in writing and clearly specify the reason for the request;
- (b) Indicate the date of service or type of service for which payments may be denied; and
- (c) Be postmarked within thirty (30) calendar days from the date of the department's written adverse action notice.

Section 5. Continuation of Medicaid Covered Services. (1) If the request for a cabinet level administrative hearing is postmarked or received within ten (10) days of the advance notice date of denial specified on the notice for denial of level of care, Medicaid vendor payments for nursing facility, intermediate care facility for the mentally retarded and developmentally disabled, and home and community-based waivers services shall continue until the date the final cabinet level hearing decision order is rendered in accordance with Section 9 of this administrative regulation.

(2) Subsection (1) of this section shall not apply to any Medicaid Program service not stated in subsection (1) of this section.

(3) Subsection (1) of this section shall not apply if the Medicaid Program service has been reduced or discontinued as a result of a change in law or administrative regulation.

(4) Time-limited benefits shall not be extended based on a request for a hearing.

(5) If the request for a cabinet level administrative hearing is postmarked or received from a recipient within ten (10) days of the advance notice of an adverse PASRR determination made in the context of a resident review, Medicaid vendor payments for nursing facility services shall continue until the date the cabinet level administrative hearing decision is rendered.

Section 6. Notice of Scheduled Hearing. (1) The scheduled hearing notice shall contain:

- (a) The date, time and place of the scheduled hearing;
- (b) A statement that the local Department for Social Insurance office provides information regarding the availability of free representation by legal aid or a welfare rights organization within the community.

(2) A cabinet level administrative hearing shall be conducted within thirty (30) days of the date of the request for a hearing and a decision shall be issued within thirty (30) days of the hearing date, except that hearing decision regarding vendor payments to nursing facilities, intermediate care facility for the mentally retarded and developmentally disabled, and community-based waiver services, shall be issued within fifteen (15) days.

(3) An applicant or recipient shall receive notice consistent with KRS 13B.050 including the right to:

- (a) Legal counsel or other representation;
 - (b) Review the case record relating to the issue; and
 - (c) Submit additional information in support of his claim.
- (4) If the hearing involves medical issues:

(a) A medical assessment by an independent physician shall be obtained at the department's expense if the hearing officer considers it necessary based on case record review;

(b) If an independent physician assessment at the department's expense is requested by the recipient or authorized representative and is denied by the hearing officer, notification of the reason for denial shall be set forth in writing.

Section 7. Conduct of a Hearing. (1) The cabinet level administra-

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tive hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

(2) Impartiality. The cabinet level hearing officer shall be impartial and shall disqualify himself as required by KRS 13B.040.

(3) The cabinet level administrative hearing shall be conducted in-state where the recipient or authorized representative may attend without undue inconvenience.

(4) The hearing officer shall offer to transmit the hearing decision by electronic format.

(5) If necessary to receive full information on the issue, the administrative hearing officer may examine each party who appears and his witnesses.

(6) The administrative hearing officer may reopen the hearing and take additional evidence as is deemed necessary. Evidence shall be taken in accordance with the provisions of KRS 13B.080 and 13B.090.

Section 8. Withdrawal or Abandonment of Request. (1) The recipient or authorized representative:

(a) May withdraw the appeal for a hearing prior to the release of the hearing officer's decision; and

(b) Shall be granted the opportunity to discuss withdrawal with his legal counsel or representative prior to finalizing the action.

(2) Abandonment of request. A hearing request shall be considered abandoned if the recipient or authorized representative fails without prior notification to report for the hearing.

Section 9. The Cabinet Level Decision. (1) After the hearing is concluded, the hearing officer shall issue a recommended decision.

(2) Exceptions shall be filed with the cabinet within fifteen (15) days from the recommended decision.

(3) A final order shall be issued within ninety (90) days from the date of the request for a hearing.

(4) A copy of the recommended decision and a copy of the final order shall be mailed to the recipient and his representative.

(5) If requested during the hearing, a copy of the recommended decision and the final order shall be electronically transmitted on the dates the recommended decision is rendered and the date the final order is rendered to a site specified by the applicant or recipient.

Section 10. Appeal of Cabinet Level Hearing Decision. (1) The final order, with respect to the issue considered, shall be final regarding continuation of vendor payments.

(2) Further appeal at the circuit court level may be initiated within thirty (30) days from the date of mailing of the decision in accordance with KRS 13B.140 and 13B.150.

(3) Information regarding free legal aid and/or welfare rights organizations may be obtained in accordance with Section 6(1) of this administrative regulation.

Section 11. Medicaid Case Actions Following Circuit Court Level Appeal Decision. (1) For a reversal involving a reduction of Medicaid coverage, action shall be taken to restore services within ten (10) days of the receipt of the circuit court decision.

(2) If a recipient continues to remain in or continue to receive services from a nursing facility, intermediate care facility for the mentally retarded and developmentally disabled, or community-based waiver services, vendor payments shall be authorized to reimburse the provider for services rendered during the circuit court appeal process.

Section 12. Special Procedures Relating to a Managed Care Participant. (1) A Medicaid recipient shall be informed in writing of the requirements for making a complaint, filing a grievance and requesting a hearing:

(a) By the partnership in which a member is enrolled in accordance with 907 KAR 1:705; and

(b) By the managed behavioral healthcare organization in which a member is enrolled in accordance with 907 KAR 1:710.

(2) If the decision of the partnership or the managed behavioral healthcare organization is adverse to the member, the member or his authorized representative:

(a) May request a hearing regarding the action or inaction on the part of the partnership, the managed behavioral healthcare organization or its subcontracted provider to the department in accordance with Section 3 of this administrative regulation; and

(b) Shall not be required to employ or exhaust the other complaint or grievance resolution processes contained within the partnership or managed behavioral healthcare organization plan.

(3) A cabinet level appeal shall be processed as established in Sections 3, 4, 6, 7, 8, and 9 of this administrative regulation.

Section 13. Limitation of Fees. (1) Pursuant to KRS 205.237, the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid shall be:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) \$175 for preparation and presentation, including a pleading and appearance in court, of an appeal to the circuit court;

(c) \$300 for preparatory work and briefs and all other matters incident to an appeal to the Court of Appeals.

(2) Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the recipient. The fee shall not be deducted from a public assistance payment otherwise due and payable to the recipient.

Section 14. A hearing or an appeal relating to a decision to reclassify or transfer a person with mental retardation in a state institution shall be in accordance with the requirement of KRS 210.270.

Section 15. Burden of Proof. In accordance with KRS 13B.090(7), in a proceeding conducted pursuant to this administrative regulation, the burden of proving coverage shall be borne by the applicant or recipient.

LARRY A. MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: February 17, 1998

FILED WITH LRC: February 18, 1998 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Approximately 17,000 Medicaid recipients residing in nursing facilities.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received. However, no effect should be experienced.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received. However, no effect should be experienced.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Budget neutral.

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2. Continuing costs or savings: Budget neutral.

3. Additional factors increasing or decreasing costs: This regulation removes the reconsideration step provided by the PRO and thus the savings from not performing reconsiderations should offset any additional administrative costs related to cabinet level administrative hearings.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: To ensure that Medicaid recipients throughout the state have continued and uninterrupted care until a hearing decision is rendered.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, and welfare of Medicaid recipients.

(9) 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. None

3. State the aspect or service of local government to which this administrative regulation relates. None

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 (+/-): None

Expenditures (+/-): None

Other Explanation: Budget neutral.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

STATEMENT OF EMERGENCY 907 KAR 1:755E

This emergency administrative regulation is being promulgated to comply with 42 USC 1396r(b) and Health Care Financing Administration (HCFA) directives concerning the preadmission screening and resident review process, be consistent with KRS Chapter 13B and 907 KAR 1:563 and clarify the definition of a "significant change". Failure to revise the annual review requirements could result in the denial of Medicaid payments to nursing facilities. Denial of Medicaid payment could result in an individual losing a bed in a nursing facility. As a result, the loss of payments for medical care could place the health and welfare of an individual in jeopardy. This emergency administrative regulation clarifies that failure to perform an annual review is no longer, in and of itself, grounds to deny Medicaid payment. This emergency administrative regulation also revises the hearing process by allowing, at the recipient's request, a continuation of Medicaid reimbursement benefits for nursing facility services pending an agency hearing decision. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on August 14, 1997 as follows: defines a "significant change" and revises the appeal process to be consistent with KRS Chapter 13B and 907 KAR 1:563 which allows, at the client's request, a continuation of Medicaid benefits for nursing facility services during the appeal process. This new emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development

907 KAR 1:755E. Preadmission Screening and Resident Review Program.

RELATES TO: 42 CFR 483.100-483.138, 42 USC 1396r

STATUTORY AUTHORITY: KRS 194.050, 205.520, EO 96-862

EFFECTIVE: February 18, 1998

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources

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(CHR) and placed the Department for Medicaid Services (DMS) and the Medicaid Program under the Cabinet for Health Services (CHS). KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the program requirements and payment provisions for preadmission screening and resident review (PASRR).

Section 1. Definitions. The following definitions shall be applicable:

(1) "Appropriate placement" means the admission to a nursing facility of an individual with mental illness, mental retardation, or a related condition only when:

(a) The individual's needs are such that he meets the level of care standards for nursing facility admission as established in 907 KAR 1:022E; and

(b) The individual's needs for treatment can be met by the level of services delivered in the nursing facility alone or, when necessary, through nursing facility services supplemented by specialized services provided by or arranged for through the Department for Mental Health and Mental Retardation Services as established in Section 5 of this administrative regulation.

(2) "Department for Mental Health and Mental Retardation Services" (DMHMRS) means the state agency or its designee with the responsibility for both the evaluation and determination functions for individuals with serious mental illness, mental retardation, or a related condition as defined in 42 CFR 483.106(d) and (e).

(3) "Exempted hospital discharge" is defined in 42 CFR 483.106 as an individual:

(a) Who is admitted to any nursing facility directly from a hospital after receiving acute inpatient care at the hospital;

(b) Who requires nursing facility services for the condition for which he received care in the hospital; and

(c) Whose attending physician has certified, prior to admission to the nursing facility, that the individual is likely to require less than thirty (30) days nursing facility services.

(4) "Interfacility transfer" means an individual who is transferred from one (1) nursing facility to another nursing facility, with or without an intervening hospital stay.

(5) "Level of care of nursing facility services" means those standards as defined in 907 KAR 1:022E, Section 4, and in 907 KAR 1:025E.

(6) "Mental retardation" means an individual's condition which has been determined to have a level of retardation (mild, moderate, severe or profound) as defined in 42 CFR 483.102.

(7) "New admission" means an individual who is admitted to a nursing facility (NF) for the first time or who is not a readmission or an exempted hospital discharge.

(8) "Nursing facility" (NF) means a facility as defined in 907 KAR 1:022E.

(9) "Preadmission screening and resident review" (PASRR) means the process which:

(a) Screens and identifies an individual with a serious mental illness, mental retardation, or a related condition prior to admission to an NF;

(b) Results in a determination, based on a physical and mental evaluation of each individual with mental illness, mental retardation, or a related condition of the appropriateness of the individual's admission to an NF; and

(c) Identifies appropriate services if the individual is admitted to an NF.

(10) "PRO" means a peer review organization which is under contract with the department.

(11) "Provisional admission" means an individual is admitted to an NF for fourteen (14) days or less before a PASRR level II is required; and:

(a) Meets the NF's level of care as established in 907 KAR 1:022E; and

(b) Who has been diagnosed with delirium, as defined in 42 CFR 483.130, which precludes an accurate diagnosis and assessment until the delirium clears; or

(c) Who is in need of respite for in-home care givers and to whom the individual with serious mental illness, mental retardation, or a related condition is expected to return after fourteen (14) days.

(12) "Readmission" means an individual who is readmitted to an NF from a hospital to which he was transferred for the purpose of receiving acute inpatient care.

(13) "Related condition" is defined in 42 CFR 435.1009 as a severe, chronic disability that shall meet the following conditions:

(a) Cerebral palsy or epilepsy; or

(b) Any other condition, other than mental illness, found to be closely related to mental retardation because it results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons; and

(c) Is manifested before the person reaches age twenty-two (22);

(d) Is likely to continue indefinitely; and

(e) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

1. Self-care;

2. Understanding and use of language;

3. Learning;

4. Mobility;

5. Self-direction; and

6. Capacity for independent living.

(14) "Serious mental illness" means an individual's condition which meets the definition in 42 CFR 483.102.

(15) "Significant change" means that the individual's condition has immediate treatment needs requiring a comprehensive reassessment and material change in plan of care established by the Long Term Care Resident Assessment Instrument User's Manual.

(16) "Specialized services for mental illness" is defined in 42 CFR 483.120 as the implementation of an individualized plan of care:

(a) Developed and supervised by a physician;

(b) Provided by an interdisciplinary team of qualified mental health professionals;

(c) Prescribes specific therapies and activities for the treatment of persons who are experiencing an acute episode of serious mental illness which necessitates continuous supervision by trained mental health personnel; and

(d) Requires the level of intensity provided in a psychiatric inpatient hospital.

(17) "Specialized services for mental retardation or a related condition" is defined in 42 CFR 483.120 and 483.440(a)(1) as the continuous, aggressive and consistent implementation of a program of specialized and generic training, treatment, health and related services, which are comparable to services an individual receives in an intermediate care facility for the mentally retarded-developmentally disabled (ICFMR), or in a community-based waiver program which provides services to persons with the mental retardation or a related condition in which twenty-four (24) hour supervision is available that is directed toward:

(a) The acquisition of the skills necessary for the person to function with as much self-determination and independence as possible;

(b) The prevention or deceleration of regression or loss of current optimal functional status; and

(c) The coordination and interaction, at all times and in all settings, of all staff and the individual served, in the implementation of the specified Individual Program Plan (IPP) objectives for the individual.

Section 2. General Applicability. (1) The provisions of this

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administrative regulation shall be applicable to an individual applying for admission to, or continued stay in, a nursing facility (NF) participating in the Kentucky Medicaid Program.

(2) Pursuant to 42 CFR 483.106(d) and (e), DMHMRS shall be responsible for PASRR determination and evaluation functions.

(a) The Division of Mental Retardation of DMHMRS shall be responsible for determining and evaluating whether an individual applying for admission to an NF needs NF services and specialized services for mental retardation.

(b) The Division of Mental Health of DMHMRS shall be responsible for determining whether an individual applying for admission to an NF needs NF services and specialized services for mental illness.

(c) The department may delegate the authority to evaluate whether an individual who is applying for admission to an NF needs NF services and specialized services for mental illness to the Division of Mental Health.

(d) The Division of Mental Health may delegate the evaluation and determination functions for which they are responsible except that the designee shall not be an NF or an entity that has a direct relationship or indirect affiliation or relationship with an NF.

(3) For nursing facility reimbursement of services by the Medicaid Program, an individual shall be Medicaid eligible and meet the usual patient care criteria specified in 907 KAR 1:022E and 907 KAR 1:025E.

Section 3. Deemed Consent for PASRR. An individual applying for admission to, or requesting a continued stay in, a nursing facility participating in Medicaid shall be deemed to have given consent for the department to make the determination of appropriateness for the individual to enter or remain in the facility using the standards specified 42 USC 1396r.

Section 4. Responsibility for Performing the Level I PASRR. (1) A nursing facility, prior to admitting an individual, except a readmission or an interfacility transfer, shall conduct a Level I PASRR. The Level I PASRR is an identification function. The Level I PASRR process shall comply with the requirements of 42 CFR 483.128.

(2) If a positive response is noted in the Level I PASRR, a Level II PASRR shall be performed prior to the individual's admission to an NF unless he is a provisional admission, readmission, interfacility transfer or exempt hospital discharge.

(a) The Level II PASRR is the evaluation and determination if an individual needs NF and specialized services.

(b) The individual or legal guardian of an individual who is identified in the Level I PASRR as suspected of having a mental illness, mental retardation, or a related condition shall be notified by the NF of a referral to DMHMRS for Level II PASRR.

(3) If a Level II PASRR is required, it shall be the responsibility of the nursing facility to contact DMHMRS to perform the Level II PASRR as follows:

(a) For a new admission, an NF shall first conduct a Level I PASRR prior to admission, notify DMHMRS if a Level II PASRR is necessary, and complete the Level II PASRR prior to admission.

(b) For an exempt hospital discharge, an NF shall first conduct a Level I PASRR prior to admission and shall notify DMHMRS prior to the end of the exempt thirty (30) days if the individual is found to require more than thirty (30) days of NF care. DMHMRS shall conduct a Level II PASRR evaluation and complete the determination within forty (40) calendar days of the date of admission to the NF.

(c) For a provisional admission pending clearing of delirium, DMHMRS shall conduct a Level II PASRR and make an evaluation and determination of the need for specialized services within nine (9) working days of the referral to DMHMRS and the referral to DMHMRS shall be made within the fourteen (14) day provisional admission.

(d) If a significant change in the individual's condition occurs, the NF shall notify DMHMRS within twenty-one (21) days and DMHMRS shall complete the Level II PASRR within nine (9) working days.

(e) The Level II PASRR process shall comply with the requirements of 42 CFR 483.128 through 483.136.

(4) An NF shall transmit to the PRO a completed copy of an individual's PASRR prior to or simultaneously with a request for certification of level of care for an individual's admission to an NF.

Section 5. Responsibility for Performing the Level II PASRR. DMHMRS shall be responsible for:

(1) Determining whether an individual entering or remaining in an NF is mentally ill, mentally retarded or has a related condition;

(2) Determining whether the individual requires the level of services provided by an NF in accordance with 42 CFR 483.132;

(3) If the nursing facility level of service is required, determining if the individual requires specialized services or services of a lesser intensity than specialized services for mental illness, mental retardation, or a related condition in accordance with 42 CFR 483.134 and 483.136;

(4) Contracting with mental health-mental retardation centers for evaluations and determinations if the individual is mentally ill, mentally retarded, has a related condition or requires specialized services;

(5) Contracting with other agencies, organizations or entities, if necessary, to fulfill DMHMRS' requirements with regard to the PASRR function so long as it retains ultimate control and responsibility for the performance of its obligations under 42 CFR 483.100 - 138 and this administrative regulation; and

(6) Notifying the individual or his legal guardian of the written findings of the Level II report and explaining the meaning of the report.

Section 6. Payments for PASRR Evaluations and Determinations.

(1) The department shall reimburse DMHMRS for the cost of providing PASRR services under this administrative regulation.

(2) The department's reimbursement to DMHMRS for this purpose shall not exceed the actual cost to DMHMRS, including contract costs, of implementing and operating the PASRR program.

(3) The department shall reimburse an NF only if:

(a) The Level I and, if required, Level II PASRR are completed prior to a new admission and in a timely fashion as established in Sections 4 and 5 of this administrative regulation; or

(b) A review is required because of a significant change in the individual's condition, and it is performed in a timely fashion in accordance with Sections 4 and 5 of this administrative regulation.

(c) When a Level I and, if required, a Level II PASRR is not timely completed prior to admission or a subsequent review is required but not timely performed in accordance with Section 8 of this administrative regulation, but the required PASRR is performed at a later date, reimbursement shall be made for NF services provided after the PASRR is completed if the individual is determined to need NF level of care.

(4) The department shall not reimburse an NF for specialized services provided to an individual who is mentally ill, mentally retarded, or has a related condition and is in an NF. However, services of a lesser intensity than specialized services shall be provided by an NF to an individual so identified in a Level II PASRR.

Section 7. Admissions Criteria Under PASRR. (1) An admission to a Medicaid participating NF shall be in accordance with 42 USC 1396r.

(2) An individual who is mentally ill, mentally retarded, or has a related condition may be admitted to an NF when:

(a) The PASRR determines that he requires NF level of care; and

(b) A determination of the need for specialized services for mental illness, mental retardation, or a related condition is made.

(3) An individual who is mentally ill, mentally retarded, or has a related condition and who does not require NF level of care shall not be admitted to an NF regardless of whether he requires specialized services for mental illness or mental retardation.

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Section 8. Criteria for Subsequent Reviews. (1) An individual in a Medicaid participating NF shall not be subject to mandatory annual resident review in accordance with 42 USC 1396r. However, if an individual experiences a significant change in condition, a PASRR is required as established in Sections 4 and 5 of this administrative regulation.

(2) An individual who is determined not to be mentally ill, mentally retarded, or have a related condition shall not be subject to further PASRR activity.

(3) An individual who is determined to be mentally ill, mentally retarded, or has a related condition but who requires the level of care provided by an NF may remain in the facility. A determination as specified in Section 5 of this administrative regulation, shall be made as to whether specialized services for mental illness, mental retardation, or a related condition are required.

(4) An individual who is mentally ill, mentally retarded, or has a related condition but who is determined not to require the level of care provided by an NF may remain in the facility if he has continuously resided in an NF for thirty (30) months or more before the date of the determination. If he requires specialized services for mental illness, mental retardation, or a related condition, DMHMRS shall be responsible for the cost of such services.

(5) An individual who is mentally ill, mentally retarded, or has a related condition and who is determined not to require the level of care provided by an NF but does require specialized services and who has resided in an NF for less than thirty (30) consecutive months shall be discharged from the NF to an appropriate setting where specialized services shall be provided or arranged. The individual shall be advised by DMHMRS of his discharge rights in accordance with 42 CFR 431.200 through 431.260 and 483.12.

(6) An individual who is mentally ill, mentally retarded, or has a related condition and who is determined not to require the level of care provided by an NF and does not require specialized services, regardless of length of stay, shall be discharged. The individual shall be advised by DMHMRS of his discharge rights in accordance with 42 CFR 431.200 through 431.250 and 483.12.

Section 9. Responsibility of the Department for Inappropriately Placed Persons. (1) The department shall be responsible for the orderly discharge of an individual determined through the PASRR process to be inappropriately placed.

(2) DMHMRS shall be responsible for providing, or arranging for the provision of, specialized services to an individual for whom such a need has been determined.

Section 10. Appeals. An individual who is determined not to require NF services or specialized services as a result of a PASRR determination by DMHMRS may appeal the denial in accordance with 907 KAR 1:563.

Section 11. Incorporation by Reference. (1) The manual, Long-Term Care Resident Assessment Instrument User's Manual Version 2.0, October 1995, for use with version 2.0 of the Health Care Financing Administration's Minimum Data Set, Resident Assessment Protocols and Utilization Guidelines shall be incorporated by reference in this administrative regulation.

(2) It may be inspected, copied or obtained at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY A. MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: February 17, 1998

FILED WITH LRC: February 18, 1998 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Approximately 17,000 Medicaid recipients residing in nursing facilities.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Any savings obtained from removal of mandatory annual reviews are expected to be utilized in the other required reviews:

1. First year: Budget neutral.

2. Continuing costs or savings: Budget neutral.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The implementation of this administrative regulation should improve availability and access of medically necessary nursing facility services for medically needy Medicaid recipients.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Failure to implement this regulation could possibly result in denial of Medicaid payments to nursing facilities for failure to comply with mandatory review requirement. Loss of payments for medical care could place the health and welfare of an individual in jeopardy.

(9) 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:

(10) Any additional information or comments: This administrative regulation will ensure that Medicaid recipients receive all their due process rights as required by KRS Chapter 13B and 907 KAR 1:563.

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation

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applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government.

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 dollars estimates cannot be determined, provided a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate regarding preadmission screening and resident reviews. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

ADMINISTRATIVE REGISTER - 2105

ADMINISTRATIVE REGULATIONS AS AMENDED BY THE PROMULGATING AGENCY AND THE REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee

PERSONNEL BOARD (As Amended at ARRS, March 11, 1998)

101 KAR 1:325. Probationary periods.

RELATES TO: KRS 18A.075(1), 18A.0751(1)(e), (4)(e), 18A.111
STATUTORY AUTHORITY: KRS 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 requires [specifies that] the Personnel Board to promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.111 establishes requirements governing initial and promotional probationary periods for classified service. This administrative regulation establishes the requirements relating to probationary periods. [relates specifically to probationary periods.]

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or 12th month, depending upon the length of initial probationary period, except as provided in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
2001	Fish and Wildlife Conservation Officer Trainee	12 months
2112	DES Duty Officer	12 months
2113	DES Duty Officer Senior	12 months
2306	Park Ranger	12 months
2308	Facility Security Sergeant	12 months
2309	Facility Security Lieutenant	12 months
2311	Facility Security Officer	12 months
2312	Park Ranger Captain	12 months
2322	Facility Security Officer II	12 months
2401	Police Communications Dispatcher	12 months
2403	Police Communications Dispatcher Senior	12 months
2404	Police Communications Dispatcher Coordinator	12 months
2405	Police Communications Dispatcher Supervisor	12 months
2408	MVE Trainee	12 months
2480	Water Patrol Officer	12 months
2493	Mounted Security Officer	12 months
2494	Mounted Security Sergeant	12 months
2495	Mounted Security Captain	12 months
2496	Mounted Security Officer Trainee	12 months
3254	Boiler Inspector Trainee	12 months
3416	Financial Institution Examiner Trainee	12 months
3601	Alcoholic Beverage Enforcement Officer	12 months
3734	Assessment Conference Officer	12 months

5120	Student Development Trainee	12 months
5141	Vocational Rehabilitation Teacher Rank III	12 months
5142	Vocational Rehabilitation Teacher Rank II	12 months
5143	Vocational Rehabilitation Teacher Rank I	12 months
6248	Residential Facility Superintendent I	12 months
6250	Residential Facility Superintendent III	12 months
6252	Residential Facility Superintendent II	12 months
7213	Forestry District Equipment Supervisor	12 months
7215	Nursery Foreman	12 months
7217	Nursery Superintendent	12 months
7221	Forester	12 months
7222	Forester Senior	12 months
7224	Forester Chief	12 months
7226	Forester District	12 months
7228	Forester Regional	12 months
7231	Rural Fire Suppression Technical Advisor	12 months
7232	Forestry Program Specialist	12 months
7233	Forestry Program Coordinator	12 months
7235	Forestry Program Manager	12 months
7250	Forest Ranger Technician	12 months
7251	Forest Ranger Technician Senior	12 months
7252	Forest Ranger Technician Chief	12 months
7253	Forest Ranger Technician District	12 months
7255	Forest Resource Advisor	12 months
7257	Forestry Fire Management Program Coordinator	12 months
7259	Forestry Resource Education Program Coordinator	12 months
9175	Public Accounts Auditor Trainee	12 months
9859	Environmental Administrative Hearing Officer	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. When the employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

(4) If [When] an applicant [employee] is appointed to a position from a competitive register, the [such] appointment shall be considered [as] an initial appointment.

(5) Effective July 1, 1991, the following job classifications in the Department of Education shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
5303	Exceptional Children Consultant I	12 months

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5304	Exceptional Children Consultant II	12 months
5305	Exceptional Children Program Manager I	12 months
5306	Exceptional Children Program Manager II	12 months
5309	Education Academic Program Consultant I	12 months
5310	Education Academic Program Consultant II	12 months
5311	Education Academic Program Manager I	12 months
5312	Education Academic Program Manager II	12 months
5313	Education Administration Program Consultant I	12 months
5314	Education Administration Program Consultant II	12 months
5315	Education Administration Program Manager I	12 months
5316	Education Administration Program Manager II	12 months
5321	Education Facilities Program Consultant	12 months
5323	Education Facilities Program Manager	12 months
5324	Education Instructional Services Advisor	12 months
5325	School Accreditation Evaluator	12 months
5327	School Accreditation Evaluation Manager	12 months
5329	School Food Services Program Consultant	12 months
5330	School Food Services Program Coordinator	12 months
5331	School Food Services Program Manager	12 months
5337	Education Financial Analyst	12 months
5341	Education Health/P.E. Program Consultant I	12 months
5342	Education Health/P.E. Program Consultant II	12 months
5343	Education Reading Program Consultant I	12 months
5344	Education Reading Program Consultant II	12 months
5345	Education Social Studies Program Consultant I	12 months
5346	Education Social Studies Program Consultant II	12 months
5347	Education Science Program Consultant I	12 months
5348	Education Science Program Consultant II	12 months
5349	Education Language Arts Program Consultant I	12 months
5350	Education Language Arts Program Consultant II	12 months
5351	Education Math Program Consultant I	12 months
5352	Education Math Program Consultant II	12 months
5353	Education Primary Program Consultant I	12 months
5354	Education Primary Program Consultant II	12 months

5355	Education Vocational Program Consultant I	12 months
5356	Education Vocational Program Consultant II	12 months

Section 2. Promotional Probationary Period. (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. If an employee fails to satisfactorily complete a promotional probationary period, he shall be notified in writing at least ten (10) working days prior to the effective date of his reversion. The notification shall advise the employee of the effective date of reversion. When the employee is notified, a copy [copies] of the notice of reversion shall be forwarded to the Secretary of Personnel on the same date notice is delivered to the employee.

(3) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the sixth month following promotion, except as provided in KRS 18A.111.

Section 3. Probationary Period Upon Reinstatement. (1) An employee who is reinstated, except an employee ordered reinstated pursuant to KRS 18A.111(3), to a position in the classified service no later than twelve (12) months after the beginning of a break in the classified service shall be reinstated with status.

(2) An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period.

MICHELLE M. KELLER, Chairperson

ROBERT A. BOWMAN, General Counsel

APPROVED BY AGENCY: January 9, 1998

FILED WITH LRC: January 15, 1998 at 8 a.m.

PERSONNEL BOARD (As Amended at ARRS, March 11, 1998)

101 KAR 1:335. Employee actions.

RELATES TO: KRS 18A.075(1), 18A.0751(1), (4), 18A.115(4)
STATUTORY AUTHORITY: KRS 18A.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751(1) and (4) require the Personnel Board to promulgate administrative regulations [directs that comprehensive administrative regulations be promulgated by the Personnel Board] for the classified service governing demotion, transfer, reinstatement and reemployment. KRS 18A.115(4) establishes requirements governing the promotion of a career employee to a position exempted from classified service. This administrative regulation establishes the method for determining an employee's work station and the requirements governing a demotion, transfer, or reinstatement of an employee. [relates to promotion of career employees.]

Section 1. Definitions. "Class series" means a group of positions that are similar as to the duties performed and have:

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- (1) Varying levels of:
 - (a) Discretion;
 - (b) Responsibility;
 - (c) Minimum requirements of training, experience, or skill; and
- (2) Schedules of compensation that are commensurate with minimum requirements.

Section 2. Work Station. (1) The official work station of an employee [employees] assigned to an office shall be the street address where the office is located.

(2) The official work station of a field employee shall be that address to which the employee is assigned at the time of appointment to the employee's current position.

(3) Except as provided by Sections 3, 4, and 5 of this administrative regulation, an appointing authority may assign an employee to work at a site other than his work station if the:

- (a) Site is within his county of employment; and
 - (b) Assignment is not a transfer, demotion, or reinstatement.
- [Nothing within this administrative regulation shall be construed as prohibiting an appointing authority from assigning an employee to work in a different site within the county of employment.]

Section 3. Demotion. (1) A demotion [Demotions] for cause shall be intra-agency [only].

(2) Voluntary demotion.

(a) A voluntary demotion shall be made [only] if an employee with status requests a voluntary demotion on the Voluntary Transfer or Voluntary Demotion Form prescribed by the Personnel Cabinet. [a written form prescribed by the Department of Personnel.]

(b) The form shall include:

1. A statement of the reason for the request;
2. The effective date of the demotion;
3. The position from which he requests demotion;
4. The position to which he will be demoted; and
5. A statement that the employee waives his right to appeal the demotion.

(c) The employee shall forward a copy of the request to the Commissioner of Personnel.

(3) A voluntary demotion shall [Voluntary demotions may] be interagency or intra-agency.

Section 4. Transfers. (1) The transfer of an employee with status shall conform to the requirements established in this section. [An employee with status may be transferred pursuant to the provisions of this administrative regulation.]

(2)(a) A transfer shall [Transfers may] be on a voluntary or involuntary basis.

(b) An appointing authority shall establish a reasonable basis for selecting an employee for involuntary transfer.

(c) If an employee has not requested a transfer in writing, a transfer shall be deemed involuntary.

(3) Involuntary transfer, same county.

(a) Prior to the effective date of an involuntary transfer to a position with a work station in the same county, an employee shall receive a written notice of involuntary transfer.

(b) The notice shall state the:

1. Employee has been selected for transfer;
2. New work station;
3. Reason for the transfer;
4. Employee is required to report to the new work station;
5. Effective date of the transfer; and
6. Right of the employee to appeal the transfer to the board within sixty (60) days of receipt of the notice of involuntary transfer, excluding the date the notice is received.

(c) A copy of the notice shall be forwarded to the Commissioner of Personnel.

(d) An employee shall report to the new work station upon the

date specified in the notice.

(4) Involuntary transfer, out of county. If an involuntary transfer is to a position with a work station in a different county:

(a) An employee shall be [is] entitled to travel and moving expenses as provided by 200 KAR 2:006 [administrative regulations promulgated by the Finance and Administration Cabinet];

(b) An employee shall receive a written [the] notice of involuntary transfer [established in subsection (3)(a) and (b) of this section] at least thirty (30) days prior to the effective date of the transfer;

(c) The notice shall contain:

1. The information specified in subsection (3)(b) of this section; and

2. A statement that the employee is entitled to:

- a. Reimbursement of travel expenses incurred within thirty (30) days of the effective date of the notice; and
- b. Moving expenses, if any.

(5) An involuntary transfer [Involuntary transfers] shall be intra-agency [only].

(6) Voluntary transfer.

(a) Prior to a voluntary transfer, an employee with status shall request a voluntary transfer on the Voluntary Transfer or Voluntary Demotion Form prescribed by the Personnel Cabinet. [a written form prescribed by the Department of Personnel.]

(b) The form shall include:

1. A statement of the reason for the request;
2. The effective date of the transfer;
3. The position, including identifying number, from which he requests a transfer;
4. The position, including identifying number, to which he requests a transfer; and
5. A statement that the employee waives his right to appeal the transfer.

(c) The employee shall forward a copy of the request to the Commissioner of Personnel.

(7) A voluntary transfer shall [Voluntary transfers may] be inter-agency or intra-agency.

Section 5. Reinstatement. (1) A request for reinstatement shall [may] be approved if it has been:

(a) Made at the request of the appointing authority; and

(b) Approved by the Commissioner of Personnel.

(2) Approval shall include a finding that the candidate for reinstatement:

(a) [The candidate for reinstatement] Meets the current qualifications for the job classification to which he is being reinstated; and

(b) Has previously held status at that grade level or higher.

(3) If the reinstatement is to a classification outside of the classification series where the employee has previously held status, the candidate shall pass the appropriate examination prior to reinstatement.

Section 6. Incorporation by Reference. (1) "Voluntary Transfer or Voluntary Demotion" form, 04-15-94, Personnel Cabinet, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Personnel Cabinet, Room 531, 5th Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

MICHELLE M. KELLER, Chairperson

ROBERT A. BOWMAN, General Counsel

APPROVED BY AGENCY: January 9, 1998

FILED WITH LRC: January 15, 1998 at 8 a.m.

ADMINISTRATIVE REGISTER - 2108

KENTUCKY REAL ESTATE COMMISSION (As Amended at ARRS, March 11, 1998)

201 KAR 11:011. Definitions for 201 KAR Chapter 11.

RELATES TO: KRS 324.010(1)(a), 324.046, 324.111, 324.160(1)(j), (r), 324.410, 324.420

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation defines terms used in the implementation of KRS Chapter 324. [To inform and set certain standards for the licensees and to protect the public.]

Section 1. Definitions. (1) "Academic credit hour" means:

(a) One (1) college semester hour; or

(b) Sixteen (16) fifty (50) minute hours of actual classroom attendance.

(2) "Broker" is defined in KRS 324.010(1)(a) and shall not include an individual who:

(a) Is an office or clerical employee of a broker; and

(b) Is limited to the duties normally assigned to an office or clerical employee, which means that the employee shall not:

1. Solicit or accept a listing or offer;

2. Show property;

3. Negotiate a real estate transaction;

4. Disclose information that is:

a. Available to the broker; and

b. Not available to the public; or

5. Hold himself out to the public as engaged in the business of brokering real estate.

(3) "Contract deposit" means money delivered to a licensed agent as part of an offer to enter a contract for the sale of real property after:

(a) The offer or counteroffer is accepted; and

(b) An executory contract exists.

(4) "Fraud" or "fraudulent dealing" means a material misrepresentation that:

(a) Is:

1. Known to be false; or

2. Made recklessly;

(b) Is made to induce an act;

(c) Induces an act in reliance on the misrepresentation; and

(d) Causes injury.

(5) "Prize" means an item of value that is:

(a) Offered to a prospective purchaser on a condition set forth in the offer to the prospective purchaser; and

(b) Not a complimentary;

1. Refreshment, including a soft drink or snack, that is offered to the general public; or

2. Gift that:

a. Has a value less than fifty (50) dollars;

b. Is given to the purchaser at or after the closing at which the purchaser's purchase of the real estate was consummated; and

c. Was not offered prior to closing.

(6) "Regular employee" means an employee who:

(a) Is compensated at a rate that is fixed in advance in writing;

(b) Does not receive a commission;

(c) Works exclusively for the owner; and

(d) Has his total compensation subject to withholding and FICA taxes.

(7) "Without unreasonable delay" means within two (2) working days of the creation of an executory contract for the sale of real property. ["Regular employee" shall mean an employee

whose compensation is fixed in advance in writing, who does not receive commission who works exclusively for the owner, and whose total compensation is subject to withholding and FICA taxes.

Section 2. As used in KRS 324.010(1)(a), the term "broker" shall not include office or clerical employees of a broker, so long as such employees are limited to the duties normally attributed to such positions, and such employees do not solicit or accept listings or offers, do not show property, do not negotiate real estate transactions, do not disclose information which is available only to the broker and not to the public, and do not otherwise hold themselves out to the public as engaged in the business of brokering real estate.

Section 3. As used in KRS 324.160(1)(j), the term "prizes" shall mean any thing of value which is offered to a prospective purchaser on a condition set forth in the offer to said prospective purchaser. However, this section, KRS 324(1)(j) shall not prohibit a licensee from giving or offering complimentary refreshments, i.e., snacks, sodas, etc., to the general public or giving a complimentary gift whose value is less than fifty (50) dollars to a purchaser at or after a closing where the purchaser's purchase of real estate is consummated and where said gift was not offered at any time prior to said closing.

Section 4. As used in KRS 324.046 and in these administrative regulations, the term "academic credit hour" shall mean one (1) college semester hour or sixteen (16), fifty (50) minute hours of actual classroom attendance.

Section 5. "Contract deposits" means money delivered to a licensed agent as part of an offer to enter a contract for the sale of real property, once the offer or any counteroffer is accepted and an executory contract exists.

Section 6. "Without unreasonable delay" as used in KRS 324.111(1) means within two (2) working days of the creation of the executory contract for the sale of real property.

Section 7. "Fraud" or "fraudulent dealing" as used in KRS 324.160(1)(r), 324.400, 324.410, and 324.420 means:

(1) A material misrepresentation;

(2) Which is false;

(3) Known to be false or made recklessly;

(4) Made with inducement to be acted upon;

(5) Acted in reliance thereon; and

(6) Causing injury.]

ROBERT D. MASSEY, Chairman

JEFFREY C. BLAIR, General Counsel

APPROVED BY AGENCY: November 19, 1997

FILED WITH LRC: December 3, 1997 at 2 p.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(As Amended at ARRS, March 11, 1998)

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 314.041(1), (2), (5), 314.051(2), (3)

STATUTORY AUTHORITY: KRS 314.041(1), (2), 314.051(2), (3), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. KRS 314.041(5) requires an applicant for licensure as a registered nurse to pay applicable examination fees. KRS 314.051(2) requires an applicant for licensure as a licensed practical nurse to pay applicable examination fees. KRS

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314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement the provisions of KRS Chapter 314. This administrative regulation establishes the requirements [criteria and fees] for the licensure of nurses by examination.

Section 1. Eligibility for Licensure by Examination. (1) To be eligible for licensure by examination for a graduate of a Kentucky program or [graduates of Kentucky programs and] other state or territorial nursing program, an applicant [programs, applicants] shall:

(a) For a graduate of a [graduates of] Kentucky program [programs] of nursing, have the nursing program submit verification on "Certified List of Program of Nursing Graduates" that the applicant has:

1. Completed the program of nursing; and
2. Successfully completed all requirements for a degree, diploma or certificate;

(b) For a graduate of a program [graduates of the programs] of nursing outside Kentucky, submit an official transcript of the nursing program;

(c) Submit:

1. A properly executed application for licensure, as required by 201 KAR 20:370, Section 1(1);

2. The application for licensure fee as established in 201 KAR 20:240; and

3. One (1) passport type photograph that:

a. Is two (2) inches by three (3) inches;

b. Was taken within the past six (6) months;

c. Is signed and dated by:

(i) The applicant on the front under the facial features; and

(ii) The nurse administrator of the U.S. nursing program, if the applicant graduated from a U.S. nursing program; and

d. Is not a snapshot; [One (1) passport type photograph (two (2) x three (3) inches) taken within the past six (6) months, with the photograph signed and dated by the applicant on the front under the facial features and by the nurse administrator of U.S. nursing program, if graduated therefrom, on the back of the photograph. A snapshot shall not be submitted.]

(d) Submit a certified copy of the [copies of] court record of each [records of any] misdemeanor or felony conviction [convictions] with a letter of explanation;

(e) Notify the board in writing as soon as a new address is established after submitting the application;

(f) Submit a copy of a marriage certificate or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;

(g) Abide by and cooperate with security procedures established by the board, when taking the examination;

(h) Apply to take and pass the national council licensure examination or its equivalent as required by [specified in] Section 3 of this administrative regulation;

(i) Pay the fees for application for licensure established by [this administrative regulation and] 201 KAR 20:240; and

(j) Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615 and 902 KAR 2:150. [Meet the requirement of 902 KAR 2:150, Human immunodeficiency virus education, initial professional licensure.]

(2) An application for licensure shall be valid for a period of one (1) year from the date the applicant is declared eligible to take the examination.

Section 2. Graduates of Foreign Nursing Schools. To be eligible for application for licensure by examination, a graduate of a foreign nursing school shall comply with the provisions of this section.

(1) [A registered nurse applicant shall submit a certificate of

successful completion of the Commission on Graduates of Foreign Nursing Schools examinations, unless the applicant:

(a) Is licensed as a registered nurse in a jurisdiction or territory governed by the United States;

(b) Has received a graduate degree in nursing from a university or college in the United States; or

(c) Is a graduate of a program of nursing in Canada.

(2) If licensed in another country, or in a jurisdiction or territory governed by the United States, the applicant shall submit a statement from the licensing authority that the:

(a) Applicant is a licensee in good standing;

(b) License has not been revoked, suspended, or probated; and

(c) Licensee has not been suspended or otherwise disciplined in the licensing country.

(2) [(3)] An applicant shall submit proof of legal permanent or temporary residency under the laws and regulations of the United States.

(3) [(4)] An applicant shall meet the requirements of Section 1 of this administrative regulation.

(4) [(5)] Credentials in a foreign language shall be translated at the applicant's expense by an official translation agency or approved college or university.

Section 3. Licensing Examination Standards. (1) An applicant shall pass the national council licensure examination or an examination that meets the criteria established by subsection (2) of this section.

(2) An applicant who has taken an examination other than the state board test pool examination or national council licensure examination subsequent to 1953 shall provide evidence to the board that the examination met the following standards of equivalency:

(a) Accepted psychometric procedures are used in the development of the examination;

(b) The examination is available to the board in the English language;

(c) The examination test plan blueprint is available for board review and adequately identifies test content and content weighting;

(d) Test items are available for board review and demonstrate the testing of competency necessary for safe practice;

(e) At least one (1) of the reliability estimations for the examination is 0.80 or higher;

(f) The examination is revised after each administration to insure currency and security of content; and

(g) The examination is given under strict security measures;

Section 4. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may retake the examination after [meeting]:

(a) Meeting the requirements of Section 1 of this administrative regulation and, if applicable, Section 2 of this administrative regulation; and

(b) Submission of:

1. The [retake] application, as required by 201 KAR 20:370, Section 1(1); and

2. The applicable fee.

(2) The applicant shall not take the examination more than one (1) time during a three (3) month period. [The examination may be retaken no more often than once every three (3) months from the date the last examination was taken by the applicant.]

Section 5. Release of Examination Scores. The board shall release examination numerical results to:

(1) The candidate;

(2) Other state boards of nursing;

(3) The National Council of State Boards of Nursing, Inc.; and

(4) An individual or agency who submits an applicant's or licensee's written authorization for their release.

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Section 6. Incorporation By Reference. (1) "Certified List of Program of Nursing Graduates", (2/96), Kentucky Board of Nursing, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, Monday through Friday, 8:30 a.m. to 4:30 p.m.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: December 12, 1997

FILED WITH LRC: January 14, 1998 at 9 a.m.

GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (As Amended at ARRS, March 11, 1998)

201 KAR 20:110. Licensure by endorsement.

RELATES TO: KRS 314.041(4), 314.051(5)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(4) and 314.051(5) authorize the board to issue a license to practice nursing as a registered nurse or a licensed practical nurse to an applicant who has passed the required examination or its equivalent and who was licensed to practice nursing in another jurisdiction. This administrative regulation establishes the requirements for licensure by endorsement. [To assure that licensed nurses applying for licensure in Kentucky have met equivalent standards required of graduates of Kentucky programs of nursing. To provide some security in the endorsement process.]

Section 1. Eligibility for Licensure by Endorsement. (1) To be eligible for licensure by endorsement, an applicant [applicants] shall:

(a) Hold a high school diploma or equivalent;

(b) Have completed a state approved program of practical nursing for licensed practical nurse licensure or a state approved program of registered nursing for registered nurse licensure equivalent to Kentucky requirements;

(c) Have taken a licensure examination acceptable to the board and shall have achieved a passing score equivalent to the [Kentucky] requirements established [as-stated] in 201 KAR 20:070 or as determined by the board for an applicant [applicants] licensed prior to 1953;

(d) Have and submit a copy of a current active license to practice nursing in another U.S. jurisdiction or Canada;

(e) Accurately complete and submit the application form, as required by 201 KAR 20:370, Section 1(1), and necessary information for licensure in Kentucky;

(f) Submit one (1) passport type photograph that:

1. Is two (2) inches by three (3) inches;

2. Was taken within the past six (6) months;

3. Is signed and dated by the applicant on the front under the facial features; and

4. Is not a snapshot; [Submit a recent (within past six (6) months) two (2) x three (3) inches photograph which shall be signed and dated on the front under the facial features. Snapshots are not acceptable.]

(g) Submit the current fee for a licensure application, as established by 201 KAR 20:240;

(h) Have submitted by the licensing authority verification of licensure as a nurse in the United States jurisdiction of original licensure or the country of original licensure (if not licensed in the United States), including a statement that the license is in good standing and has not been revoked, suspended, limited, probated or otherwise disciplined by the licensing authority and is not subject to any pending disciplinary action;

(i) Report each [any] disciplinary action[~~s~~] taken or pending on a license by another jurisdiction [licenses by other jurisdictions];

(j) Submit official copies of court records of any misdemeanor and felony convictions with a letter of explanation; and

(k) Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615 and 902 KAR 2:150. [Meet the requirement of 902 KAR 2:150.]

(2) An application is valid for a period of one (1) year from date of submission to board. The applicant shall:

(a) Submit a copy of a marriage certificate or court order to change the applicant's name after the original application is filed; and

(b) Notify the board in writing as soon as a [any] new address is established after submitting the application.

(3) After one (1) year from the date of receipt of application, the applicant shall:

(a) Submit a new application;

(b) Submit the current licensure application fee; and

(c) Meet the requirements established [as-stated] in this section.

Section 2. Graduates of Foreign Nursing Schools. (1) A graduate of a [All graduates of] foreign nursing school [schools] shall:

(a) Meet the requirements established in [of] Section 1 of this administrative regulation; and

(b) Submit an official transcript of the nursing program.

(2) A graduate of a [Graduates of] foreign nursing school who is not a citizen [schools who are not citizens] of the United States shall submit evidence of legal permanent or temporary residency in the United States [according to the laws and regulations of the U.S. Department of Justice, Immigration and Naturalization Services and the U.S. Department of Labor].

(3) Credentials in a foreign language shall be translated at the applicant's expense by an official translation agency or approved college or university.

~~Section 3. [Graduates of Canadian Nursing Schools. (1) All graduates of Canadian nursing schools shall meet requirements in Sections 1 and 2 of this administrative regulation.~~

~~(2) Applicants who took the Canadian nurses association test service examination shall have:~~

~~(a) Successfully completed an examination that meets the criteria of 201 KAR 20:070, Section 3; and~~

~~(b) Achieved a standard score of 350 on the five (5) part examination given prior to August, 1980, or 400 on the comprehensive examination given after August, 1980.~~

Section 4. Nursing Practice and Continuing Education Requirements. (1) Except as provided in subsection (2) of this section, an applicant shall complete fifteen (15) contact hours in continuing education for each year since the last year in which the applicant can demonstrate at least 100 hours of practice.

(2) The requirement established in subsection (1) of this section shall not apply to an applicant who:

(a) Has been licensed for less than five (5) years from the date of initial licensure; or

(b) 1. Has been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years; and

2. Submits evidence that verifies this practice. [The applicant who has been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years shall submit evidence to verify such active practice.

~~(2) The applicant who has not been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years shall complete fifteen (15) contact hours in continuing education, for each year since the last year in which the~~

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applicant can demonstrate at least 100 hours of active practice. This provision does not apply to applicants who have been licensed for less than five (5) years from the date of initial licensure.]

(3) ~~An [No]~~ applicant shall ~~not~~ be required to complete more than 150 contact hours in continuing education, ~~if [provided that]~~ at least thirty (30) contact hours ~~were [shall have been]~~ earned within the twenty-four (24) months preceding the date of application for active Kentucky licensure status.

(4) Continuing education earned more than ten (10) years preceding the date of application shall not be counted toward meeting the requirements established [stated] in subsections (1) [subsection (2)] and (3) of this section.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: December 12, 1997

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GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (As Amended at ARRS, March 11, 1998)

201 KAR 20:162. Procedures for disciplinary hearings pursuant to KRS 314.091.

RELATES TO: KRS Chapter 13B, 314.011, 314.031, 314.071(4), 314.091, 314.161, 314.991

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.091(2) requires that an administrative hearing for the denial, limitation, probation, suspension, or revocation of the license of a registered or practical nurse be conducted in accordance with KRS Chapter 13B. This administrative regulation establishes procedures for conducting an administrative hearing. [To provide for the orderly conduct of hearings and to protect the due process rights of nurses and applicants:]

Section 1. An administrative hearing shall be conducted in accordance with KRS Chapter 13B. [Purpose and Rule of Construction. The purpose of this administrative regulation is to enable the board to conduct an orderly and reasonably expeditious search for the truth while ensuring that due process is afforded to the licensee or applicant. Accordingly, this administrative regulation shall be liberally construed so as to aid that process.]

Section 2. Composition of the Hearing Panel. (1) (a) Except as provided in subsection (b) of this section, a disciplinary action [actions] shall be heard by a hearing panel consisting of two (2) members of the board and a hearing officer, who shall be:

1. [may be] An assistant attorney general; or
2. Other attorney designated by the board.

(b) [(2)] A hearing officer and one (1) member of the board may conduct a hearing for consideration of:

1. Reinstatement of a revoked or suspended license; or
2. [and consideration of] Removal of a license from probationary status.

(2) A board member shall not sit on a panel or participate in the adjudication of a matter in which the member has:

- (a) Discussed the merits of the action with agency staff;
- (b) Personal knowledge of the facts giving rise to the disciplinary action; or

(c) Participated in the investigation of a disciplinary action.

(3) [A board member who has participated in the investigation of a disciplinary action or who has discussed the merits of an action with the agency staff or who has personal knowledge of the facts giving rise to a disciplinary action shall not sit on a panel hearing that

particular action nor participate in the adjudication of the matter.

(4)] The hearing shall be transcribed by a court stenographer.

Section 3. Response to Charges. [Rights of the Licensee or Applicant. The licensee or applicant shall have the right to be present and to be heard by the hearing panel, to be represented by legal counsel, to present evidence, to cross examine witnesses presented by the board, and to make both opening and closing statements. The licensee or applicant shall also have the right to have subpoenas issued. The licensee or applicant shall bear the cost of serving the subpoenas.

Section 4. Prehearing Disclosure of Evidence. (1) By the board. The names, addresses and telephone numbers of witnesses expected to be called by the board and copies of documents to be introduced at the hearing shall be made available upon request of the licensee or applicant. The licensee or applicant shall also be permitted to examine any items of tangible evidence in the possession of the board, upon request.

(2) By the licensee or applicant. At least ten (10) days prior to the scheduled hearing date the licensee or applicant shall furnish to the legal counsel for the board copies of any documents which the licensee or applicant intends to introduce at the hearing, and a list of the names, addresses, and telephone numbers of any witnesses to be presented to the hearing panel by the licensee or applicant. The licensee or applicant shall also produce for inspection any items of tangible evidence within its possession or control which it intends to introduce at the hearing.

(3)] At least ten (10) days prior to the scheduled hearing date, the licensee or applicant shall [also] file with the board written response to the specific allegations contained in the notice of charges. An allegation [Allegations] not properly answered shall [will] be deemed admitted. The panel shall [may] for good cause permit the late filing of an answer.

[(4) Sanctions for failure to comply with prehearing disclosure. If a party fails to comply with this section the panel hearing the disciplinary action may refuse to allow into evidence such items or testimony as have not been disclosed, may continue the action to allow the opposing party a fair opportunity to meet the new evidence, or may make such other order as it deems appropriate. Sanctions shall be applied by the hearing officer but may be overridden by the unanimous vote of the board members of the panel.

(5) Continuing duty to disclose. After disclosure has been completed each party shall remain under an obligation to disclose any new or additional items of evidence or witnesses which may come to its attention. Such additional disclosure shall take place as soon as practicable. Failure to disclose may result in the exclusion of the new evidence or testimony from the hearing.

Section 5. Order of Proceeding. (1) The hearing officer shall call the meeting to order and shall identify the parties to the action and the persons present. The hearing officer shall ask the parties to state for the record any objections or motions. The hearing officer shall rule upon any objections or motions, subject to be overridden by the unanimous vote of the board members of the panel. Opening statements shall then be made, with the attorney for the board proceeding first. Either side may waive its opening statement, but opening statements may not be reserved.

(2) The taking of proof shall commence with the calling of witnesses on behalf of the board. Such witnesses shall be examined first by the attorney for the board, then by the licensee or applicant or that person's attorney, and finally by members of the hearing panel. Rebuttal examination of witnesses shall proceed in the same order. Documents or other items may be introduced into evidence as appropriate.

(3) Upon conclusion of the case for the board the licensee or applicant shall call its witnesses. Such witnesses shall be examined

first by the licensee or applicant or that person's attorney, then by the attorney for the board, and finally by the members of the hearing panel. Rebuttal examination of those witnesses shall proceed in the same order. Documents or other evidence may be introduced as appropriate.

(4) At the conclusion of the proof the parties shall be afforded the opportunity to make a closing statement, with the attorney for the board always proceeding last. The hearing officer may impose reasonable limitations upon the time allowed for opening and closing statements.

(5) The hearing officer shall also be responsible for enforcing the general rules of conduct and decorum and expediting the hearing by keeping the testimony and exhibits relevant to the case.

Section 6. Rules of Evidence. (1) The hearing panel shall not be bound by the technical rules of evidence. The hearing panel may receive any evidence which it considers to be reliable, including testimony which would be hearsay if presented in a court of law. Documentary evidence may be admitted in the form of copies or excerpts, and need be authenticated only to the extent that the panel is satisfied of its genuineness and accuracy. Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the hearing panel is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.

(2) The hearing panel retains the discretion to exclude any evidence which it considers to be unreliable, incompetent, irrelevant, immaterial or unduly repetitious. Rulings on objections to evidence shall be made by the hearing officer but may be overridden by the unanimous vote of the board members of the panel.]

Section 4. Rulings by a Hearing Officer. (1) The hearing officer shall rule upon each objection or motion, including an objection to evidence.

(2) A decision of the hearing officer may be overridden by a unanimous vote of the board members of the hearing panel.

Section 5. [7:] Recommendation by the Hearing Panel. (1) Upon the conclusion of the hearing, the panel shall retire into closed session for purpose of deliberations. Each board member of the panel shall have one (1) vote. In case of a tie vote, the tie shall be broken by the hearing officer.

(2) At the conclusion of the panel's deliberations, it shall propose an order based upon the evidence presented. The hearing officer shall draft a recommended order, as required by KRS 13B.110(1), that shall be:

(a) Consistent with the panel's deliberations; and

(b) Submitted to the full board. [proposed decision including findings of fact and conclusions of law consistent with the panel's deliberations as well as a recommended order to be submitted to the full board.] [A copy of the proposed decision shall be sent to the licensee or applicant by certified mail and to all members of the board as well as the attorney for the board.]

[Section 8. (Written Arguments or Exceptions to a Proposed Decision. The licensee or applicant shall have twenty (20) days from the date the proposed decision is mailed to file with the board written arguments or exceptions to any portion of the proposed decision. The twenty (20) day period may be extended at the discretion of the board president. The attorney for the board shall have ten (10) days from the expiration of the period allowed to the licensee or applicant to file responses on behalf of the board, which period may be extended at the discretion of the board president.

Section 9.] Decision by the Board. The full board shall review the proposed decision and consider the evidence presented and, after

consideration of any written arguments or exceptions which have been presented, shall make a final determination as follows:

(1) Adopt the proposed decision as submitted; or

(2) Modify the proposed decision as deemed necessary; or

(3) Remand the case to the hearing panel for further evidence.

The hearing panel shall then schedule another hearing to obtain additional evidence. The board shall then consider the findings of fact and recommendations from the original hearing and any additional hearing as well as additional written arguments or exceptions as the parties have presented and shall render its final decision in the case.

Section 9. [10:] Record to be Maintained. A transcript of the testimony taken during the hearing shall be kept by the board. A copy of that transcript shall be available to the licensee or applicant from the court stenographer or, if the stenographer is unable to furnish a copy, from the board upon request and payment of the appropriate fee. A copy of the transcript of the hearing shall be available to all board members. Any documents or exhibits introduced into evidence shall be kept with the transcript or as ordered by the hearing officer.]

Section 6. [10:] [11:] Continuances; Proceedings in Absentia. The board shall not postpone a case which has been scheduled for a hearing [it shall be the policy of the board not to postpone cases which have been scheduled for hearings] absent good cause. A request by a licensee or applicant for a continuance shall [may] be considered if communicated to the board reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the hearing officer. The burden shall be [However, the burden is] upon the licensee or applicant to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

Section 7. [11:] [12:] Hearing Fee. If the order of the board is adverse to a licensee or applicant, or if the hearing is scheduled at the request of a licensee or applicant, a hearing fee in an amount equal to the cost of stenographic services and the cost of the hearing officer shall be assessed against the licensee or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 314. In a case [cases] of financial hardship, the board may waive all or part of the fee.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: December 12, 1997

FILED WITH LRC: January 14, 1998 at 9 a.m.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(As Amended at ARRS, March 11, 1998)**

201 KAR 20:370. Applications for licensure and registration.

RELATES TO: KRS 314.041, 314.051, 314.071

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041, 314.051, and 314.071 require the board to review an application [applications] for licensure and a licensee [licensees] for conformity with KRS Chapter 314. KRS 314.091 requires the board to deny limit, revoke, probate, suspend, or take other action against an applicant or licensee who is guilty of the offenses or conduct specified in KRS 314.091. This administrative regulation establishes requirements and procedures for licensure and registration.

Section 1. To be eligible for licensure by examination, endorse-

ment, renewal, reinstatement, or change of status, or for advanced registered nurse practitioner registration, renewal or reinstatement, an applicant shall:

(1) Submit the appropriate completed application to the board office, as follows:

(a) For RN or LPN licensure by examination or endorsement, "Application for Licensure";

(b) For RN Renewal, "RN Biennial Licensure Renewal Application";

(c) For LPN Renewal, "LPN Biennial Licensure Renewal Application";

(d) For RN or LPN reinstatement, "Application for Reinstatement";

(e) For RN or LPN change of status:
1. "Application for Change of Licensure Status (Inactive to Active)"; or

2. "Application for Change of Licensure Status (Active to Inactive)";

(f) For registration as an advanced registered nurse practitioner, "Application for Registration as an Advanced Registered Nurse Practitioner in Kentucky";

(g) For renewal as an advanced registered nurse practitioner, "ARNP Registration Renewal Application"; or

(h) For reinstatement as an advanced registered nurse practitioner, "Reinstatement Application for Registration as an Advanced Registered Nurse Practitioner"; [Submit completed application to board office on original form supplied by the board;]

(2) Submit the current application fee, as required by 201 KAR 20:240 [as applicable];

(3) Submit an official copy of each court record of each [records of any] misdemeanor and/or felony conviction with a letter of explanation;

(4) Submit a certified copy of a [certified copies of any] disciplinary action taken in another jurisdiction [other jurisdictions] with a letter of explanation or report a [any] disciplinary action pending on a nurse licensure application [applications] or license in another jurisdiction [other jurisdictions];

(5) Not have a [Have no] disciplinary action pending by the board or an agreed order or decision presently in effect for a violation of KRS Chapter 314;

(6) Have paid all monies due to the board;

(7) Submit a copy of an official name change document (court order, marriage certificate, divorce decree), if applicable;

(8) Submit additional information as required [requested] by the board in an administrative regulation; [and]

(9) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Inactive licensure status established by 201 KAR 20:095; or

(f) Advanced registered nurse practitioner registration, renewal or reinstatement established by 201 KAR 20:056; and

(10) If not a citizen of the United States, submit proof of legal permanent or temporary residency under the laws and regulations of the United States.

Section 2. A completed application form and all information needed to determine that an applicant meets the requirements for licensure or registration shall be postmarked or received by the board no later than the last day for renewal of license or registration.

Section 3. Except as provided in 201 KAR 20:070, Section 1(2), if an application is not completed within one (1) year from the date the application form is filed:

(1) The application filed with the board shall lapse; and

(2) The application fee shall be forfeited. [Except as provided

in 201 KAR 20:070, Section 1(12), an application which is not completed within one (1) year from the date the application form is filed with the board office shall lapse and the fee shall be forfeited.]

Section 4. (1) Pursuant to KRS 314.091(1)(b), a conviction of a felony shall be considered as bearing directly on the qualifications or ability of an applicant to practice nursing if the licensee:

(a) Committed the felony within five (5) years of the date of filing the application; and

(b) Was convicted of a felony under:

1. One (1) of the following KRS Chapters:

a. KRS Chapter 189A (driving under the influence);

b. KRS Chapter 218A (controlled substances);

c. KRS Chapter 507 (criminal homicide);

d. KRS Chapter 508 (assault and related offenses);

e. KRS Chapter 509 (kidnapping and related offenses);

f. KRS Chapter 510 (sexual offenses);

g. KRS Chapter 511 (burglary and related offenses);

h. KRS Chapter 512 (criminal damage to property);

i. KRS Chapter 513 (arson and related offenses);

j. KRS Chapter 514 (theft and related offenses);

k. KRS Chapter 515 (robbery);

l. KRS Chapter 516 (forgery and related offenses);

m. KRS Chapter 521 (bribery and corrupt influences);

n. KRS Chapter 523 (perjury and related offenses);

o. KRS Chapter 525 (riot, disorderly conduct and related offenses);

p. KRS Chapter 527 (offenses related to firearms and weapons);

q. KRS Chapter 528 (gambling);

r. KRS Chapter 529 (prostitution offenses);

s. KRS Chapter 531 (pornography); or

t. KRS Chapter 506 (offenses of attempt, conspiracy, or complicity to commit an offense specified in this paragraph); or

2. A comparable law in another jurisdiction.

(2) A notice to deny licensure shall be issued to an applicant who has been convicted of a felony specified in subsection (1) of this section.

(3) An applicant who has been issued a notice to deny licensure may request a hearing before a hearing panel to determine if the requirements of KRS 314.091 are met. The request shall be:

(a) In writing; and

(b) Postmarked within thirty (30) days of receipt of the notice.

(4)(a) An applicant for licensure by examination or endorsement shall report a conviction for a crime that is:

1. Specified in subsection (1) of this section for which the applicant was convicted prior to the time period specified in subsection (1) of this section; or

2. Not specified in subsection (1) of this section.

(b) The board shall review a conviction reported pursuant to paragraph (a) of this subsection on an individual basis to see if the requirements of KRS 314.091 are met.

Section 5. Incorporation by Reference. (1) The following items are incorporated by reference:

(a) "Application for Licensure", 3/98, Kentucky Board of Nursing;

(b) "RN Biennial Licensure Renewal Application", , 3/98, Kentucky Board of Nursing;

(c) "LPN Biennial Licensure Renewal Application", 3/98, Kentucky Board of Nursing;

(d) "Application for Reinstatement", 1/97, Kentucky Board of Nursing;

(e) "Application for Change of Licensure Status (Inactive to Active)", 3/97, Kentucky Board of Nursing;

(f) "Application for Change of Licensure Status (Active to

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Inactive)", 2/97, Kentucky Board of Nursing;

(g) "Application for Registration as an Advanced Registered Nurse Practitioner in Kentucky", 6/93, Kentucky Board of Nursing;

(h) "ARNP Registration Renewal Application", 3/98, Kentucky Board of Nursing; and

(i) "Reinstatement Application for Registration as an Advanced Registered Nurse Practitioner", 3/98, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. [Beginning January 1, 1998, in addition to the requirements imposed by Section 1 of this administrative regulation, an applicant for licensure by examination or endorsement shall comply with the requirements of this section:

(1) An applicant shall not be eligible for the NCLEX examination or licensure, if the applicant has been convicted:

(a) Of a felony under one (1) of the KRS chapters specified in subsection (2) of this section, within five (5) years of the date of filing an application; or

(b) Of a misdemeanor under one (1) of the KRS chapters specified in subsection (2) of this section, within two (2) years of the date of filing an application; or

(c) For violation of a comparable law in another jurisdiction.

(2)(a) KRS Chapter 189A (driving under the influence);

(b) KRS Chapter 218A (controlled substances);

(c) KRS Chapter 507 (criminal homicide);

(d) KRS Chapter 508 (assault and related offenses);

(e) KRS Chapter 509 (kidnapping and related offenses);

(f) KRS Chapter 510 (sexual offenses);

(g) KRS Chapter 511 (burglary and related offenses);

(h) KRS Chapter 512 (criminal damage to property);

(i) KRS Chapter 513 (arson and related offenses);

(j) KRS Chapter 514 (theft and related offenses);

(k) KRS Chapter 515 (robbery);

(l) KRS Chapter 516 (forgery and related offenses);

(m) KRS Chapter 521 (bribery and corrupt influences);

(n) KRS Chapter 523 (perjury and related offenses);

(o) KRS Chapter 525 (riot, disorderly conduct and related offenses);

(p) KRS Chapter 527 (offenses related to firearms and weapons);

(q) KRS Chapter 528 (gambling);

(r) KRS Chapter 529 (prostitution offenses);

(s) KRS Chapter 531 (pornography); and

(t) KRS Chapter 506 (offenses of attempts, conspiracy, or complicity to commit the offenses specified in this section).

(3)(a) A notice to deny licensure shall be issued to an applicant for licensure who has been convicted of an offense specified by subsection (1) or (2) of this section.

(b) An applicant who has been issued a notice to deny licensure may request a hearing before a hearing panel. The request shall be postmarked within thirty (30) days of receipt of the notice.

(4)(a) An applicant for licensure by examination or endorsement shall report:

1. Convictions for crimes specified in subsections (1) and (2) of this section for which the applicant was convicted prior to the time periods specified in subsection (1) of this section; and

2. Convictions for crimes that are not specified in subsection (1) or (2) of this section.

(b) The board shall review convictions reported pursuant to paragraph (a) of this subsection on an individual basis.]

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: October 10, 1997

FILED WITH LRC: January 14, 1998 at 9 a.m.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (As Amended at ARRS, March 11, 1998)

301 KAR 2:240. Special bobcat harvest season.

RELATES TO: KRS [150.010;] 150.025, 150.170, [150.180; 150.183; 150.300; 150.305; 150.330; 150.340;] 150.360, [150.365;] 150.370, [150.390;] 150.399, 150.400, 150.410, 150.411 [150.415; 150.416; 150.417]

STATUTORY AUTHORITY: KRS [13A.350;] 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes [gives] the department [the authority] to open and close seasons, make seasons conditional, apply seasons to portions of the state, and promulgate other administrative regulations reasonably necessary to carry out the provisions of KRS Chapter 150. This administrative regulation opens a bobcat taking season in portions of Kentucky, establishes harvest quotas and stipulates tagging requirements. [This administrative regulation is necessary to reinstitute a bobcat harvest season in Kentucky for the continued protection of bobcats while insuring a permanent and continued supply of this wildlife resource for present and future residents of the state. The function of this administrative regulation is to provide for the prudent taking of bobcats within reasonable limits based upon an adequate supply.]

Section 1. Definitions. (1) "Eastern bobcat zone" means the portion of Kentucky east of a line formed by and including Lewis, Rowan, Menifee, Powell, Estill, Jackson, Rockcastle, Pulaski and Wayne Counties.

(2) "Processed" is defined by KRS 150.010(23).

(3) "Raw fur" is defined by KRS 150.010(28).

(4) "Tagging agent" means a conservation officer, wildlife biologist or other department employee authorized to inspect and tag bobcat carcasses.

(5) "Western bobcat zone" means the portion of Kentucky west of a line formed by and including Hancock, Ohio, Muhlenberg, and Logan Counties.

Section 2. A person shall not take:

(1) A bobcat except:

(a) During the open furbearer season as established in 301 KAR 2:251, unless the season closes earlier under the provisions of Section 2 of this administrative regulation;

(b) In the eastern or western bobcat zones;

(c) Using hunting or trapping methods authorized by 301 KAR 2:251; and [or]

(d) During daylight hours by hunting.

(2) More than two (2) bobcats per season.

Section 3. The department shall:

(1) Close the bobcat season in a zone before the end of the furbearer season if:

(a) 400 bobcats have been harvested in the eastern bobcat zone;

or

(b) 300 bobcats have been harvested in the western bobcat zone.

(2) Distribute public notice of early closure at least twenty-four (24) hours in advance of the day the season will close.

Section 4. (1) Within forty-eight (48) hours of taking a bobcat, a person shall take to a tagging agent for inspection and tagging:

(a) The complete unskinned carcass; or

(b) The skinned carcass and the raw fur.

(2) A person shall not:

(a) Remove the tag until the raw fur is processed; or

(b) Possess an unused bobcat tag, unless authorized by the department. [~~possess an unused bobcat tag.~~] [Bobcat Taking

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Season, Zone, Methods of Harvest, Limits and Zone Quota, and License Requirements. (1) Bobcat taking season. The day following closure of deer gun season through January 31 or until the season quota is attained, whichever comes first.

(2) Harvest zone. That portion of the state east of the line formed by and including Lewis, Rowan, Menifee, Powell, Estill, Jackson, Rockcastle, Pulaski and Wayne counties.

(3) Methods of harvest. Bobcats shall be taken by hunting or by calling during daylight hours only, or by trapping. Callers shall use only hand or mouth operated calls.

(4) Limits and zone quota.

(a) The limit is two (2) bobcats per person per season.

(b) The bobcat harvest quota is 400. Should it be determined that the quota of 400 bobcats will be filled prior to January 31, the season shall close. Notice shall be given a minimum of twenty-four (24) hours in advance of the time and date of closing. All participants in the special bobcat season may regularly contact department officials within the harvest zone, or call the wildlife division during business hours (8 a.m. - 4:30 p.m.) at (502) 564-4406 to determine the status of the harvest. No bobcats shall be tagged later than four (4) days after the announced date of closing or no later than forty-eight (48) hours following the January 31 season ending date, whichever comes first.

(5) License requirements. Bobcat hunters or trappers shall have in their possession valid Kentucky licenses for the respective method of harvest, except as exempted by KRS 150.170.

Section 2. Requirements for Possession, Tagging of Bobcats, Untagged Pelts, Tagging Agents and Possession of Bobcat Tags. (1) No person shall possess an untagged bobcat outside the legal bobcat harvest zone. It is illegal to hold a live bobcat in Kentucky except those held for exhibition by public agencies or for temporary exhibition by individuals as permitted by the commissioner.

(2) Anyone harvesting a bobcat shall take it to a tagging agent (authorized personnel of the department) for tagging within forty-eight (48) hours of being harvested, except as specified in Section 1(4)(b) of this administrative regulation. Prior to tagging, the taker shall validate eligibility according to Section 1(5) of this administrative regulation and provide his/her social security number. At the time a bobcat is tagged, the taker shall provide the tagging agent with the entire skinned bobcat carcass suitably enclosed in a plastic bag unless the owner of the bobcat intends to have the animal mounted or otherwise processed. The tagging agent may refuse to tag any bobcat if the carcass is not suitably enclosed in plastic.

(3) The tagging agent shall not tag an illegally taken bobcat. Any untagged bobcat pelt for which there is no carcass or any bobcat taken illegally may be seized.

(4) It is illegal for anyone other than a department employee to possess an unused bobcat tag.

Section 3. Processing Requirements. (1) Taxidermists are required to report monthly the status of bobcats in their possession. Taxidermists receiving tagged bobcat pelts or entire bobcats shall leave the tag attached until after the pelt is tanned or until the pelt is to be mounted. All untanned or unmounted bobcat pelts without a tag are subject to seizure.

(2) The lower jaw from bobcat carcasses received by taxidermists or fur processors, and the removed bobcat tag or the tag number shall be provided to the department when the bobcat is skinned. Jaw mail-in envelopes shall be provided upon request to the wildlife division.

(3) Tags shall remain attached to all bobcat pelts until the furs are processed.]

C. THOMAS BENNETT, Commissioner
ANN R. LATTI, Secretary
MIKE BOATWRIGHT, Chairman

DOUGLAS SCOTT PORTER, Counsel

APPROVED BY AGENCY: December 5, 1997

FILED WITH LRC: January 13, 1998 at 2 p.m.

DEPARTMENT OF AGRICULTURE Division of Regulation and Inspections (As Amended at ARRS, March 11, 1998)

302 KAR 10:070. Consumer grade quality standards.

RELATES TO: KRS 260.620, 7 CFR 56, 57, 70

STATUTORY AUTHORITY: KRS 260.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.620 requires the department to establish standards governing eggs offered for sale as graded eggs. This administrative regulation establishes the [defines] consumer grade quality standards for individual eggs to conform to the requirements established in 7 CFR 56.200 through 56.209.

Section 1. An individual egg that is offered for sale in Kentucky as a graded egg shall be classified as Kentucky consumer grade AA, A, or B, in accordance with the consumer grade quality standards established in this section.

(1) For an egg to be graded AA, the following requirements shall be met:

(a) The shell shall be:

1. Clean;
2. Unbroken; and
3. Practically normal;

(b) The air cell:

1. Shall not exceed one-eighth (1/8) inch in depth;
2. May show unlimited movement; and
3. May be free or bubbly;

(c) The white shall be clear and firm so that the yolk outline is only slightly defined if the egg is twirled before the candling light; and

(d) The yolk shall be practically free from an apparent defect.

(2) For an egg to be graded A, the following requirements shall be met:

(a) The shell shall be:

1. Clean;
2. Unbroken; and
3. Practically normal;

(b) The air cell:

1. Shall not exceed 3/16 inch in depth;
2. May show unlimited movement; and
3. May be free or bubbly;

(c) The white shall be clear and reasonably firm so that the yolk outline is fairly well defined if the egg is twirled before the candling light; and

(d) The yolk shall be practically free from an apparent defect.

(3) For an egg to be graded B, the following requirements shall be met:

(a) The shell:

1. Shall be unbroken;
2. May be slightly abnormal; and
3. May show a slight stain as follows:

a. 1/32 of the shell surface may be slightly stained if the stains are localized; and

b. 1/16 of the shell surface may be stained if the stains are scattered;

4. Shall not have adhering dirt or prominent stains;

(b) The air cell:

1. Shall not exceed three-eighths (3/8) inch in depth;
2. May show unlimited movement; and
3. May be free or bubbly;

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(c) The white may be weak and watery so that the yolk outline is well defined if the egg is twirled before the candling light;

(d) The yolk:

1. May appear dark, slightly enlarged or flattened;

2. May show clearly visible germ development, but shall not show blood due to that development; and

3. May show other serious defects that do not render the egg inedible; and

(e) Small blood spots or meat spots that may be present shall not aggregate more than one-eighth (1/8) inch in diameter. [The following shall be consumer grade quality standards for individual eggs:

(1) AA: The shell must be clean, unbroken and practically normal. The air cell must not exceed one-eighth (1/8) inch in depth. The white must be clear and firm so that the yolk outline will be only slightly defined when the egg is twirled before the candling light. The yolk must be practically free from apparent defects and may show unlimited movement and may be free or bubbly.

(2) A: The shell must be clean, unbroken and practically normal. The air cell must not exceed three-sixteenths (3/16) inch in depth, and may show unlimited movement and may be free or bubbly. The white must be clear and reasonably firm, and the yolk outline only fairly well defined, when the egg is twirled before the candling light. The yolk must be practically free from apparent defects.

(3) B: The shell must be unbroken, may be slightly abnormal, and may show slight stains but no adhering dirt. Approximately one-thirty-second (1/32) of the shell surface may be slightly stained when the stains are localized, and one-sixteenth (1/16) of the shell surface may be stained, if the stains are scattered. The air cell must not exceed three-eighths (3/8) inch in depth, may show unlimited movement, and may be free and bubbly. The white must be clear and may be slightly weak so that the yolk outline may be well defined when the egg is twirled before the candling light. The yolk may appear slightly enlarged or slightly flattened and may show other definite, but not serious defects.]

[(4) C: The shell must be unbroken, may be abnormal, and may show slight to moderate stained areas covering not more than one-fourth (1/4) of the shell surface. Prominent stains and adhering dirt are not permitted. The air cell may be over three-eighths (3/8) inch in depth and be free or bubbly. The white may be weak or watery so that the yolk may appear off center when the egg is twirled before the candling light, also the yolk may be plainly visible. The yolk may appear dark, enlarged, and flattened and may show clearly visible germ development, but no blood due to such development. It may show other serious defects that do not render the eggs inedible. Small blood clots or spots one-eighth (1/8) inch in diameter may be present. If larger than one-eighth (1/8) inch in diameter, it shall be a loss.]

BILLY RAY SMITH, Commissioner

MARK FARROW, General Counsel

APPROVED BY AGENCY: January 15, 1998

FILED WITH LRC: January 15, 1998 at 10 a.m.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, March 11, 1998)

401 KAR 50:032. Prohibitory rule for hot mix asphalt plants.

RELATES TO: KRS 224.10-100, 224.20-110, 224.20-120, 40
CFR Part 70, 42 USC 7661-7661f[-401 KAR 50:035]

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-120[-42
USC 7661-7661f]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes operational limits for hot mix asphalt plants that do not hold a Title V or conditional major permit pursuant to 40 CFR Part 70 and 401 KAR 50:035.

Section 1. Definitions. Except as provided in this section, terms used in this administrative regulation shall have the meaning given them in 401 KAR 50:010, unless the context clearly indicates otherwise.

(1) "Conditional major permit" means a permit issued to the owner or operator of a source that limits the source's PTE below the major source thresholds specified in 401 KAR 50:035, Section 1(23).

(2) "Batch mix plant" means a facility that produces hot mix asphalt by heating and drying the aggregate in a dryer before separating and mixing it with asphalt cement in separate batches.

(3) "Drum mix plant" means a facility that produces hot mix asphalt by heating, drying and mixing the aggregate with asphalt cement in one operation.

(4) "Hot mix asphalt plant" means a facility that manufactures hot mix asphalt by heating and drying aggregate and mixing it with asphalt cements. Stationary plants and portable plants shall be treated as separate sources unless two (2) or more plants are located on one (1) or more contiguous or adjacent properties and under common control of the same person or persons under common control.

(5) "Part 70 permit" means a permit issued to the owner or operator of a source pursuant to 401 KAR 50:035 and Kentucky's Part 70 Operating Permit Program approved by the U.S. EPA on November 14, 1995, (60 FR 57186) and made effective on December 14, 1995.

(6) "PTE" or "potential to emit" means the maximum capacity of a stationary source to emit a regulated air pollutant given its physical and operational design. A physical or operational limit on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limit is enforceable as a practical matter, as defined in 401 KAR 50:035, Section 1(15).

(7) "Waste oil" means a petroleum based or synthetic oil such as an engine lubricant, engine oil, motor oil, or lubricating oil for use in an internal combustion engine, or a lubricant for motor transmissions, gears, or axles which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

Section 2. Applicability. (1) This administrative regulation applies to owners and operators of hot mix asphalt plants:

(a) Whose PTE, absent the operational limits contained in Section 3 of this administrative regulation, would exceed one (1) or more of the major source thresholds defined in 401 KAR 50:035, Section 1(23); [and]

(b) That do not hold a Part 70 or conditional major permit; and

(c) That operate in compliance with 401 KAR 59:010 or 401 KAR 61:020, whichever is applicable.

(2) Compliance with this administrative regulation shall exempt a source from the requirement to obtain a Part 70 permit (unless otherwise required to do so by the U.S. EPA) or a conditional major permit, but shall not exempt a source from the requirement to obtain a state origin permit, or to revise or renew an existing permit, if required to do so pursuant to 401 KAR 50:035.

(3) Compliance with this administrative regulation shall not relieve a source from the requirement to comply with all applicable requirements, including rate-based limits or other terms and conditions stated in a permit issued by the cabinet.

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(4) A source may obtain a Part 70 or conditional major permit in lieu of complying with this administrative regulation.

Section 3. Operational Limits. Owners and operators of sources subject to this administrative regulation shall comply with the following operational limits and fuel usage requirements:

(1) Batch mix plants shall not produce more than 360,000 tons of asphalt during a [any] consecutive twelve (12) month period;

(2) Drum mix plants shall not produce more than 500,000 tons of asphalt during a [any] consecutive twelve (12) month period; and

(3) **A hot mix asphalt plant shall not use waste oil as fuel in the production of asphalt unless it has been recycled and meets the following specifications:**

(a) It does not contain more than:

1. Five (5) ppm of arsenic;

2. Two (2) ppm of cadmium;

3. Ten (10) ppm of chromium;

4. 100 ppm of lead;

5. 1000 ppm of total halogens; and

(b) It has a minimum flash point of 100 degrees F. [Hot mix asphalt plants shall not use waste oil as fuel in the production of asphalt unless it has been recycled and meets or exceeds the following specifications:

(a) No more than five (5) ppm of arsenic;

(b) No more than two (2) ppm of cadmium;

(c) No more than ten (10) ppm of chromium;

(d) No more than 100 ppm of lead;

(e) No more than 1000 ppm of total halogens; and

(f) Minimum flash point of 100°F.]

Section 4. Recordkeeping Requirements. The owner or operator of a source subject to this administrative regulation shall maintain monthly logs of asphalt production and fuel usage.

(1) The production log shall show in tons the amount of asphalt produced:

(a) Each month; and

(b) In a rolling twelve (12) month period by adding the monthly total to the previous eleven (11) months. [The production log shall show the amount of asphalt produced each month, in tons; and a rolling twelve (12) month total of asphalt production, obtained by adding each month's total to those for the previous eleven (11) months.]

(2) The fuel usage log shall show the type and amount of fuels used each month.

(a) Gaseous fuels shall be identified as natural (NAT), liquid propane gas (LPG), or liquid butane gas (LBG); and fuel usage shall be expressed in cubic feet or gallons.

(b) Fuel oils shall be identified by number (i.e., #2, #4, etc.) and fuel usage shall be expressed in gallons. Material Safety Data Sheets (MSDS) shall be maintained with the fuel usage log for all fuel oils purchased and used.

(3) All logs and MSDS sheets shall be kept on site for five (5) years from the date of last entry and shall be made available, upon request, for inspection by the cabinet or the U.S. EPA.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: January 16, 1998

FILED WITH LRC: January 16, 1998 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (As Amended at ARRS, March 11, 1998)

401 KAR 60:750. Standards of performance for municipal solid waste landfills.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.750 to 60.759, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, [224.20-100;] 224.20-110, 224.20-120, 40 CFR 60.750 to 60.759, 42 USC 7411

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation provides for the control of emissions from municipal solid waste landfills. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. Definitions. **"Administrator" means:**

(1) The Secretary of the Natural Resources and Environmental Protection Cabinet; or

(2) The Administrator of the U.S. EPA, as used in 40 CFR 60.750(b). [As used in 40 CFR 60.750 to 60.759, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 60.750(b), "administrator" means the Administrator of the U.S. EPA.]

Section 2. **Incorporation by Reference.** (1) 40 CFR 60.750 to 60.759, (40 CF 60, Subpart WWW), Standards of performance for municipal solid waste landfills, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1997, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601-1403, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105-1507, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky, 40741, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: November 13, 1997

FILED WITH LRC: November 14, 1997 at 9 a.m.

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NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, March 11, 1998)

401 KAR 61:036. Emission guidelines and compliance times
for municipal solid waste landfills.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-
120, 40 CFR 60.30c to 60.36c, 42 USC 7411(d)

STATUTORY AUTHORITY: KRS 224.10-100, [224.20-100,
224.20-110, 224.20-120, 40 CFR 60.30c to 60.36c, 42 USC 7411(d)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100
requires the Natural Resources and Environmental Protection Cabinet
to prescribe administrative regulations for the prevention, abatement,
and control of air pollution. The federal regulation incorporated by
reference in this administrative regulation provides for the control of
emissions from existing municipal solid waste landfills.

Section 1. **Incorporation by Reference.** [Definitions. As used in
40 CFR 60.30c to 60.36c, "state" means the Commonwealth of
Kentucky.

Section 2.] (1) 40 CFR 60.30c to 60.36c, (40 CFR 60, Subpart
Cc), Emission Guidelines and Compliance Times for Municipal Solid
Waste Landfills, as published in the Code of Federal Regulations,
Title 40, Part 60, July 1, 1997, is incorporated by reference.

(2) The material incorporated by reference may be obtained,
inspected, or copied at the following offices of the Division for Air
Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) Division for Air Quality, 803 Schenkel Lane, Frankfort,
Kentucky 40601-1403, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland,
Kentucky 41105-1507, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling
Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8,
Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard,
Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London,
Kentucky 40741, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite
700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah,
Kentucky 42003, (502) 898-8468.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: November 13, 1997

FILED WITH LRC: November 14, 1997 at 9 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Bureau for District Support Services
(As Amended at ARRS, March 11, 1998)

702 KAR 3:110. Document filing dates.

RELATES TO: KRS [156.034;] 156.160(1)(i), 157.060

STATUTORY AUTHORITY: KRS 156.160(1)(i)

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 156.034
requires that administrative regulations relating to statutes amended
by the 1990 Kentucky Education Reform Act be reviewed; amended

if necessary and resubmitted to the Legislative Research Commission
prior to December 30, 1990;] KRS 156.160(1)(i) requires the Kentucky
[State] Board of [for Elementary and Secondary] Education to
establish a uniform series of financial forms for local school districts,
[and] KRS 157.060 requires a local district [local districts] to submit
an annual financial report [reports]. This administrative regulation
establishes the [is necessary to establish] forms and dates of filing
for Kentucky [State] Board of [for Elementary and Secondary]
Education financial archives.

Section 1. The documents which become a part of Kentucky
[State] Board of [for Elementary and Secondary] Education archives
shall be submitted to the Division of [School District] Finance
electronically in the following adopted formats prescribed by the
Municipal Information System (MUNIS) and by the following dates
annually:

(1) [(a)] Annual Financial Report (MUNIS Annual Financial
Report, dated August, 1997) [(F-55, dated June 30, 1990, and hereby
incorporated by reference)], July 25;

(2) [(b)] Balance Sheet (MUNIS Group Code Balance Sheet,
dated August, 1997), July 25; and

(3) [(c)] Working Budget (MUNIS Working Budget, dated August,
1997) [(F-10, dated July 1, 1990, and hereby incorporated by refer-
ence)], September 15.

Section 2. Incorporation by Reference. (1) The following
material is incorporated by reference:

(a) MUNIS Annual Financial Report, dated August, 1997;

(b) MUNIS Group Code Balance Sheet, dated August, 1997;
and

(c) MUNIS Working Budget, dated August, 1997.

(2) This material [These forms are incorporated by reference
and] may be copied or obtained [viewed] at the Department of Educa-
tion, Capital Plaza Tower, 15th Floor, Monday through Friday, [from]
8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed
and recommended this proposed administrative regulation prior to its
adoption by the Kentucky Board of Education, as required by KRS
156.070(4).

Wilmer S. Cody, Commissioner
Kentucky Department of Education

JOSEPH W. KELLY, Chairman

KEVIN M. NOLAND, Department of Legal Services

APPROVED BY AGENCY: December 10, 1997

FILED WITH LRC: December 11, 1997 at 1 p.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Bureau of Learning Results Services
(As Amended at ARRS, March 11, 1998)

703 KAR 3:060. Procedures for determining rewards and
sanctions.

RELATES TO: KRS 158.645, 158.6451, 158.6453,
158.6455, 160.160

STATUTORY AUTHORITY: KRS 156.070, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455
requires the Kentucky Board of Education to promulgate adminis-
trative regulations to establish a system of determining successful
schools and a system of rewards and sanctions for certified staff in
schools and for certified staff who are not assigned to a particular A1

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school in a local school district but who are certified staff assigned to the district central office or an A2-A6 school. This administrative regulation establishes procedures for determining school and district rewards, levels of assistance, and sanctions.

Section 1. Definitions. (1) "Accountability cycle 1" means that baseline data come from the 1991-92 data year, and that growth data come from the 1992-93 and 1993-94 years.

(2) "Accountability cycle 2" means that baseline data come from the 1992-93 and 1993-94 years, and that growth data come from the 1994-95 and 1995-96 years.

(3) "Accountability cycle 3" means that baseline data come from the 1994-95 and 1995-96 years, and that growth data come from the 1996-97 and 1997-98 years.

(4) "Accountability index" means the statistic which is the combination of the academic and noncognitive indices for a school or district pursuant to 703 KAR 4.010.

(5) "Baseline" means the accountability index score which describes the school or school district's percentage of successful students during the first two (2) years of each accountability cycle.

(6) "Declines by less than five (5) percent" means obtains an average accountability index which is less than its baseline for that accountability cycle but which is not five (5) or more points below its baseline, and obtains a year two (2) accountability index below the improvement goal for that cycle.

(7) "Declines by five (5) percent or more" means obtains an average accountability index for an accountability cycle which is five (5) or more points below its baseline for that cycle and obtains a year two (2) accountability index below its improvement goal for that cycle.

(8) "Gained population" means students in grades at which accountability assessments are administered who now attend a different school because of boundary changes.

(9) "Growth accountability index" means the accountability index score that describes the school's or school district's percentage of successful students during the last two (2) years of a four (4) year accountability cycle.

(10) "Improvement goal" or "threshold" means the accountability index score which describes the amount of growth required for a school or school district for the accountability cycle.

(11) "Lost population" means students in grades at which accountability assessments are administered who no longer can attend a particular school because of boundary changes.

(12) "Maintains the previous percentage of successful students" means obtains an average accountability index not less than the baseline nor equal to or greater than its improvement goal for that accountability cycle, and obtains a year two (2) accountability index below the improvement goal for that cycle.

(13) "Maximum reward amount" or "reward level 51 amount" means the percentage of salary set by the Kentucky Board of Education. ["Maximum reward amount" may be called "reward level 51 amount."]

(14) "Minimum reward amount" or "reward level 1 amount" means one-half (1/2) of the maximum reward amount. [is half of "maximum reward amount." "Minimum reward amount" may be called "reward level 1 amount."]

(15) "Original threshold" means the threshold for the previous accountability cycle.

(16) "Performance judgment" is defined in 703 KAR 4:090, Section 1(4) [(3)].

(17) "School" means an A1 school as defined in 703 KAR 4:080, Section 1(1).

(18) "School district" means the administrative unit of schools under the jurisdiction of a board of education pursuant to KRS 160.160.

(19) "Stable population" means students in grades at which accountability assessments are administered who would have attended the school prior to and after boundary changes.

(20) "Year two (2) accountability index" means the accountability index a school or school district obtains in the last year of an accountability cycle.

Section 2. If a school does not have an accountability grade (grades four (4), five (5), seven (7), eight (8), eleven (11), or twelve (12)), that school shall be combined with the school having an accountability grade its students would subsequently attend.

Section 3. If a school has only one (1) of the two (2) accountability grades at the elementary school level (grades 4 and 5) or the middle school level (grades 7 and 8), the school shall be combined with the school having the higher grade level to which its students will be sent, forming a single accountability unit. If the school described in this section is sending or receiving its students to or from more than one (1) school, the affected schools shall be combined to form a single accountability unit.

Section 4. If a school has more than one (1) accountability level (elementary - grades 4 and 5, middle - grades 7 and 8, or high school - grades 11 and 12), the school's accountability index shall be the weighted average of the accountability indices for each accountability grade in the school.

Section 5. A school district's accountability index shall be the weighted average of its schools' accountability indices.

Section 6. (1) The performance judgment for a school or school district shall be improving category 2 for Accountability Cycle 2 if the school or school district has:

(a) Declined in the first accountability cycle;
(b) Not met its original threshold in the second cycle; and
(c) Not declined by five (5) or more points from its Accountability Cycle 2 baseline.

(2) The performance judgment for a school or school district shall be improving for Accountability Cycle 2 if the school or school district:

(a) Received a performance judgment of improving for Accountability Cycle 1;
(b) Met its original threshold in Accountability Cycle 2;
(c) Did not meet its Accountability Cycle 2 threshold; and
(d) Did not decline below its Accountability Cycle 2 baseline.

[If a school or school district has declined in the first accountability cycle and has not met its original threshold in the second cycle and has not declined by five (5) or more points from its Accountability Cycle 2 baseline, then its performance judgment shall be improving category 2 for Accountability Cycle 2.

(2) If a school or district's performance judgment for Accountability Cycle 1 was "improving", it met its original threshold in Accountability Cycle 2, but it did not meet its Accountability Cycle 2 threshold and did not decline below its Accountability Cycle 2 baseline, its performance judgment for Accountability Cycle 2 shall be "improving".]

(3) A school or district shall be determined to meet its original threshold if the average of its reading, mathematics, writing, science, social studies and noncognitive indices for Accountability Cycle 2 is equal to or greater than its threshold for Accountability Cycle 1.

Section 7. (1) Except as provided in subsection (2) of this section, certified staff in a school or school district shall earn the minimum reward amount if:

(a) The school or school district's growth accountability index for the accountability cycle exceeds its threshold by one (1) point; and
(b) [if] At least ten (10) percent of its novices, on average across the cognitive areas, move to apprentice or higher.

(2) The novice reduction required by subsection (1)(b) of this section shall not be required for a school or school district that:

(a) [Unless the school or district] Has ten (10) percent or less of

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its students scoring in the novice range on average during the first two (2) years of the accountability cycle; and

(b) Maintains or reduces this percent in the last two (2) years of the accountability cycle~~[-the novice reduction shall be required in order to receive rewards]~~.

Section 8. (1) Except as provided in subsection (2) of this section, certified staff in a school or school district shall earn the maximum reward amount if:

(a) The school or school district's growth accountability index for the accountability cycle exceeds its threshold by one (1) point plus the difference between the threshold and the baseline; and

(b) [if] At least ten (10) percent of its novices, on average across the cognitive areas, move to apprentice or higher.

(2) The novice reduction required by subsection (1)(b) of this subsection shall not be required for a school or school district that:

(a) ~~[Unless the school or district]~~ Has ten (10) percent or less of its students scoring in the novice range on average during the first two (2) years of the accountability cycle; and

(b) Maintains or reduces this percent in the last two (2) years of the accountability cycle~~[-the novice reduction shall be required in order to receive rewards]~~.

Section 9. Fifty-one (51) reward levels shall be [are] established as follows:

REWARD LEVELS ONE (1) TO FIFTY-ONE (51)

Reward Level	Reward Criteria	Reward Index Example	Amount
One	One point above threshold	38.00	50% of maximum
Two	One point above threshold plus 2% of difference between threshold and baseline	38.14	51% of maximum
Three	One point above threshold plus 4% of difference between threshold and baseline	38.28	52% of maximum
Four	One point above threshold plus 6% of difference between threshold and baseline	38.42	53% of maximum
Five	One point above threshold plus 8% of difference between threshold and baseline	38.56	54% of maximum
Six	One point above threshold plus 10% of difference between threshold and baseline	38.70	55% of maximum
Seven	One point above threshold plus 12% of difference between threshold and baseline	38.84	56% of maximum
Eight	One point above threshold plus 14% of difference between threshold and baseline	38.98	57% of maximum
Nine	One point above threshold plus 16% of difference between threshold and baseline	39.12	58% of maximum
Ten	One point above threshold plus 18% of difference between threshold and baseline	39.26	59% of maximum
Eleven	One point above threshold plus 20% of difference between threshold and baseline	39.40	60% of maximum
Twelve	One point above threshold plus 22% of difference between threshold and baseline	39.54	61% of maximum
Thirteen	One point above threshold plus 24% of difference between threshold and baseline	39.68	62% of maximum
Fourteen	One point above threshold plus 26% of difference between threshold and baseline	39.82	63% of maximum
Fifteen	One point above threshold plus 28% of difference between threshold and baseline	39.96	64% of maximum
Sixteen	One point above threshold plus 30% of difference between threshold and baseline	40.10	65% of maximum
Seventeen	One point above threshold plus 32% of difference between threshold and baseline	40.24	66% of maximum
Eighteen	One point above threshold plus 34% of difference between threshold and baseline	40.38	67% of maximum
Nineteen	One point above threshold plus 36% of difference between threshold and baseline	40.52	68% of maximum
Twenty	One point above threshold plus 38% of difference between threshold and baseline	40.66	69% of maximum
Twenty-one	One point above threshold plus 40% of difference between threshold and baseline	40.80	70% of maximum
Twenty-two	One point above threshold plus 42% of difference between threshold and baseline	40.94	71% of maximum
Twenty-three	One point above threshold plus 44% of difference between threshold and baseline	41.08	72% of maximum
Twenty-four	One point above threshold plus 46% of difference between threshold and baseline	41.22	73% of maximum

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Twenty-five	One point above threshold plus 48% of difference between threshold and baseline	41.36	74% of maximum
Twenty-six	One point above threshold plus 50% of difference between threshold and baseline	41.50	75% of maximum
Twenty-seven	One point above threshold plus 52% of difference between threshold and baseline	41.64	76% of maximum
Twenty-eight	One point above threshold plus 54% of difference between threshold and baseline	41.78	77% of maximum
Twenty-nine	One point above threshold plus 56% of difference between threshold and baseline	41.92	78% of maximum
Thirty	One point above threshold plus 58% of difference between threshold and baseline	42.06	79% of maximum
Thirty-one	One point above threshold plus 60% of difference between threshold and baseline	42.20	80% of maximum
Thirty-two	One point above threshold plus 62% of difference between threshold and baseline	42.34	81% of maximum
Thirty-three	One point above threshold plus 64% of difference between threshold and baseline	42.48	82% of maximum
Thirty-four	One point above threshold plus 66% of difference between threshold and baseline	42.62	83% of maximum
Thirty-five	One point above threshold plus 68% of difference between threshold and baseline	42.76	84% of maximum
Thirty-six	One point above threshold plus 70% of difference between threshold and baseline	42.90	85% of maximum
Thirty-seven	One point above threshold plus 72% of difference between threshold and baseline	43.04	86% of maximum
Thirty-eight	One point above threshold plus 74% of difference between threshold and baseline	43.18	87% of maximum
Thirty-nine	One point above threshold plus 76% of difference between threshold and baseline	43.32	88% of maximum
Forty	One point above threshold plus 78% of difference between threshold and baseline	43.46	89% of maximum
Forty-one	One point above threshold plus 80% of difference between threshold and baseline	43.60	90% of maximum
Forty-two	One point above threshold plus 82% of difference between threshold and baseline	43.74	91% of maximum
Forty-three	One point above threshold plus 84% of difference between threshold and baseline	43.88	92% of maximum
Forty-four	One point above threshold plus 86% of difference between threshold and baseline	44.02	93% of maximum
Forty-five	One point above threshold plus 88% of difference between threshold and baseline	44.16	94% of maximum
Forty-six	One point above threshold plus 90% of difference between threshold and baseline	44.30	95% of maximum
Forty-seven	One point above threshold plus 92% of difference between threshold and baseline	44.44	96% of maximum
Forty-eight	One point above threshold plus 94% of difference between threshold and baseline	44.58	97% of maximum
Forty-nine	One point above threshold plus 96% of difference between threshold and baseline	44.72	98% of maximum
Fifty	One point above threshold plus 98% of difference between threshold and baseline	44.86	99% of maximum
Fifty-one	One point above threshold plus 100% of difference between threshold and baseline	45.00	100% of maximum

Section 10. Sanctions shall be applied to a school or [schools and] school district [districts] pursuant to KRS 158.6455(3)-(7) and this administrative regulation.

Section 11. Reward Amounts. (1) The maximum reward amount shall be ten (10) percent of the average (mean) salary of the certified personnel in the five (5) highest paying public school districts in Kentucky. This average shall be weighted by the number of certified personnel in each of these five (5) districts. The total amount of rewards to be distributed to schools and school districts earning rewards shall not exceed 1.75 percent of the total amount of total funds paid to certificated personnel within Kentucky's public schools

during the last year of the accountability cycle. If the reward levels described in this section will result in the allocation of funds that exceed this amount, the reward for each school or school district shall be reduced proportionately.

(2) For accountability cycle II, an additional amount of rewards shall be distributed to accommodate data corrections identified after June 1, 1997. These additional reward amounts shall be calculated in accordance with this administrative regulation.

Section 12. If, as a result of a change in service area boundaries or local policies affecting student population served by a school, less than eighty (80) percent of a school's student population at its

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accountability grades is stable, the school shall be considered a reconfigured school. To determine if eighty (80) percent of the population is stable, the number of students in the stable population shall be divided by the sum of that number, plus the lost population, plus the gained population. If the result is less than eight-tenths (.8), the school shall be considered a reconfigured school.

Section 13. A school that is considered a reconfigured school in the first year of an accountability cycle shall be treated as if not reconfigured, with the exception that the noncognitive index for the district from the previous year at the corresponding level (elementary, middle, or high school) shall be substituted for that school's noncognitive data, beginning with accountability cycle 3.

Section 14. (1) A school that is considered a reconfigured school in the second year of the accountability cycle shall be offered the option of having its baseline calculated from the second year of the accountability cycle, as opposed to the normal weighted average of the first two (2) years of the cycle, with the noncognitive index for the district from the previous year at the corresponding level (elementary, middle, or high school) substituted for that school's noncognitive data beginning with accountability cycle 3.

(2) A school that is considered a reconfigured school in the second year of an accountability cycle shall have the option of applying to itself the performance judgment that would have applied to the district at that level (elementary, middle, or high school), if separate decisions were to be applied at the district level.

Section 15. A school that is considered a reconfigured school in the third or fourth year of an accountability cycle shall have the performance judgment that would have applied to the district at that level (elementary, middle, or high school), if separate decisions were to be applied at the district level.

Section 16. A reconfigured school that has contained more than one (1) level (elementary, middle, and high school) and is reconfigured by removing an entire level of accountability grades may request that the portion of the school remaining stable be considered normally within the accountability system using its established historical data.

Section 17. A school in transition because of a new building being built or a new policy affecting population served and being phased in may request that the Department of Education establish data to maintain the continuity of accountability data if the request does not require the tracking of individual student data. This request shall require the approval of each affected school council (or the principal, if a school is not required to have a council) and the superintendent of the district.

This is to certify that the chief state school officer has reviewed and recommended this proposed administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

Wilmer S. Cody, Commissioner
Kentucky Department of Education

JOSEPH W. KELLY, Chairman

KEVIN M. NOLAND, Department of Legal Services

APPROVED BY AGENCY: December 10, 1997

FILED WITH LRC: December 11, 1997 at 1 p.m.

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Bureau of Learning Results Services (As Amended at ARRS, March 11, 1998)

703 KAR 4:110. Code of ethics for state required testing.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455
STATUTORY AUTHORITY: KRS 156.070, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and sanctions for certified staff in schools and districts. This administrative regulation establishes a Code of Ethics for appropriate testing practices for state required tests.

Section 1. School and district personnel shall comply with the "Code of Ethics for Appropriate Testing Practices for School and District Personnel" dated October, 1997.

Section 2. Incorporation by Reference. (1) The "Code of Ethics for Appropriate Testing Practices for School and District Personnel", dated October, 1997 [August, 1996], is [hereby] incorporated by reference.

(2) It [-and] may be inspected and copied at the Department of Education, Office of Curriculum, Assessment, and Accountability, 18th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this proposed administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

Wilmer S. Cody, Commissioner
Kentucky Department of Education

JOSEPH W. KELLY, Chairman

KEVIN M. NOLAND, Department of Legal Services

APPROVED BY AGENCY: December 10, 1997

FILED WITH LRC: December 11, 1997 at 1 p.m.

PUBLIC PROTECTION AND REGULATION CABINET Public Service Commission (As Amended at ARRS, March 11, 1998)

807 KAR 5:069. Filing requirements and procedures for federally-funded construction project of a water association, commission, or district or a combined water, gas or sewer district. [water associations, commissions, or districts or combined water, gas or sewer districts.] [Water district and water association construction cases.]

RELATES TO: KRS 278.020(1), 278.023, 278.190, 278.300 [Chapter 278]

STATUTORY AUTHORITY: KRS 278.020(1), 278.023, 278.040(3), 278.190, 278.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.020(1) authorizes the commission to issue a certificate [certificates] of public convenience and necessity for utility construction. KRS 278.300 authorizes the commission to approve the assumption of an [any] obligation, liability, or evidence of indebtedness by a

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utility. KRS 278.190 authorizes the commission to approve proposed changes in rates. KRS 278.023 provides that the commission shall review, recommend modifications to, and issue orders necessary to implement an agreement regarding a federally-funded construction project, including those portions of the agreement relating to financing, construction, and rates. KRS 278.023(2) provides that the commission shall prescribe by administrative regulation the specific documents required to be filed for commission review of a construction project financed in whole or in part under the terms of an agreement with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development and to be undertaken by a water association, commission or district or a combined water, gas, or sewer district formed under KRS Chapter 74 or 273. This administrative regulation prescribes [sets out minimum] filing requirements and procedures a water association, commission, or district, or a combined water, gas or sewer district formed under KRS Chapter 74 or 273 [water district or water association] shall follow when seeking commission approval of a construction project financed in whole or in part under the terms of an agreement with the U.S. Department of Agriculture [by Farmers Home Administration] or the U.S. Department of Housing and Urban Development.

Section 1. [Commission Responsibility. The commission shall approve an application within thirty (30) days from the time the utility meets minimum filing requirements. Approval shall be by order granting a certificate of public convenience and necessity to construct proposed systems and authorizing any financing or revisions in customer rates necessary to the proposal and which are set out in the financing documents.

Section 2. Utility Responsibility. The utility shall file its application in proper form and include discussion of minimum filing requirements set out herein. Any deviation to the minimum filing requirements shall be clearly identified in the application and supported by an appropriate motion to deviate. The thirty (30) day period for commission review shall not begin until the minimum filing requirements are met or an order granting the motion to deviate is entered.

Section 3. Minimum Filing Requirements. A utility proposing to construct a project financed in whole or in part by the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development shall file with the commission the following documents and information: [An application filed under this administrative regulation shall include the following:]

(1) All documents and information required by 807 KAR 5:001, Section 8: [A formal application, signed by a utility official and counsel, consistent with requirements of 807 KAR 5:001, Section 8: An original and ten (10) of the application, including all exhibits, shall be submitted. The application shall clearly state reasons for filing and statutes under which commission approval is needed.]

(2) [Minimum filing requirements shall be defined as the following detailed information and shall be included with the application:

(a) Copy of FmHA letter of conditions. For projects financed with HUD funds,] A copy of the documents from the U.S. Department of Agriculture or U.S. Department of Housing and Urban Development, as appropriate, stating approval of the project and [appropriate agency approval letter,] including all terms and conditions to be met; [shall be included.]

(3) A [(b)] copy of the [FmHA] letter of concurrence in bid award;

(4) A [(c)] copy of the preliminary and final engineering reports;

(5) A [(d)] certified statement from an authorized utility official confirming:

(a) [(1)] That the proposed plans and specifications for the project have been designed to meet the minimum construction and operating requirements established [set out] in 807 KAR 5:066, Section 4 [(5)] (3) and (4), Section 5 [(6)] (1), Sections 6 and 7 [and 8], Section 8 [(9)] (1) through (3), Section 9 [(10)] (1) and Section 10 [(11)];

(b) [(2)] That all other state approvals or permits have [already] been obtained;

(c) [(3)] That the [any] proposed rates, if any, shall produce the total revenue requirements set out in the engineering reports; and

(d) The [(4)] dates upon which [when] construction will begin and end;

(6) If applicable, a statement [(e)] that notice meeting the requirements of Section 2 [to the customers has been given in conformance with Section 4] of this administrative regulation has been given, together with a copy of the notice; and

(7) If applicable, [shall be included in the application:

(f) If necessary,] a motion requesting approval to deviate from a [any] minimum construction standard or operating condition required by [set out in] subsection (5)(a) [(2)(d)] of this section, together with supporting evidence [The motion shall be sufficiently supported] to identify and explain the reasons that the minimum requirements cannot be met.

Section 2. [(4)] Notice to Customers of Rate Change. If a change in rates is required to finance the construction project, the [A] utility shall, before [give public notice to its customers of a proposed rate change made under this administrative regulation in the following manner:

(1) Prior to or at the same time application is made, [a one (1) time notice shall be given by either direct] mail to each customer, or publish in a newspaper of general circulation in the local service area, a [:

(2) The] notice that contains [shall contain] the current and proposed rates and a brief description of the construction project.

Section 3. [(5)] Additional Construction Activity. If [in instances where] surplus project funds remain after the approved construction has been completed, the [a] utility may construct an additional plant facility [facilities] [as an ordinary extension of service] without prior commission approval if [it results in] no change in existing [customer's] rates will result. The utility shall notify the commission in writing of [any] additional construction proposed under this section, and shall attach to the notice a statement of the federal lending agency authorizing the utility to use the remaining project funds in the manner proposed. [include appropriate borrower authorization statements:]

Section 4. [(6)] System Maps and Records. Within thirty (30) days after [Following] completion of [any] construction authorized under this administrative regulation, the utility shall revise its [maintain] system maps and records maintained pursuant to [consistent with] 807 KAR 5:006, Section 22, to include all required information regarding the new construction. [(18):]

B. J. HELTON, Chairman
LAURA DOUGLAS, Secretary
DEBORAH T. EVERSOLE, Attorney

APPROVED BY AGENCY: December 16, 1997
FILED WITH LRC: December 19, 1997 at 2 p.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

LABOR CABINET
Department of Workers' Claims
(Amended After Hearing)

803 KAR 25:190. Utilization review and medical bill audit.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.035(5), 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims, and the commissioner may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(5) also requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. This administrative regulation insures that insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and audit program.

Section 1. Definitions. (1) "Carrier" is defined by KRS 342.011(6).

(2) "Commissioner" is defined by KRS 342.0011(9).

(3) [(2)] "Denial" means a determination by the utilization reviewer that the medical treatment or service under review is not medically necessary or appropriate and, therefore, payment is not recommended.

(4) [(3)] "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with adopted fee schedules.

(5) [(4)] "Preauthorization" means a process whereby payment for a medical service or course of treatment is assured in advance by a carrier, (review by the utilization review program of the medical necessity and appropriateness of medical services prior to the service being rendered.)

(6) [(5)] "Utilization review" means a review of the medical necessity and appropriateness of medical care and services for purposes of recommending payments for a compensable injury or disease. Medical services which are rendered or requested for incidents which are noncompensable under KRS Chapter 342 shall not be subject to utilization review.

(7) [(6)] "Utilization review and medical bill audit plan" means the written plan submitted to the commissioner by each [insurance] carrier, [individual self-insured employer, group self-insurer, or vendor] describing the procedures governing utilization review and medical bill [bills] audit activities.

(8) [(7)] "Vendor" means a person or entity [which is not required to implement a utilization review or medical bill audit program, but] which implements a utilization review and medical bill audit program for purposes of offering those services to [insurance] carriers; [individual self-insured employers or group self-insurers].

Section 2. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that:

(a) A utilization reviewer is appropriately qualified;

(b) Treatment rendered to an injured worker is medically necessary and appropriate; and

(c) Necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that:

(a) A statement or payment for medical goods and services and charges for a deposition, report, or photocopy complies with KRS Chapter 342 and applicable administrative regulations;

(b) A medical bill auditor is appropriately qualified; and

(c) A statement for medical services is not disputed without reasonable grounds.

Section 3. Utilization Review and Medical Bill Audit Plan Approval.

(1) ~~All carriers [An insurance carrier, individual self-insured employer, and group self-insurer]~~ shall fully implement and maintain a utilization review and medical bill audit program.

(2) ~~All carriers [Each insurance carrier, individual self-insured employer and group self-insurer]~~ shall provide to the commissioner a written plan describing the utilization review and medical bill audit program. The commissioner shall approve [a] utilization review and medical bill audit plans which comply [plan which complies] with the requirements of this administrative regulation and KRS Chapter 342.

(3) A vendor shall submit to the commissioner for approval a written plan describing the utilization review and medical bill audit program. ~~[The utilization review and medical bill audit program described in the written plan shall comply with the requirements of this administrative regulation.]~~ Upon approval, the vendor shall receive written notice from the commissioner.

(4) Utilization review shall be performed by a private review agent certified by the Kentucky Cabinet for Health Services pursuant to KRS 211.461 to 211.466. A medical bill audit plan shall not require certification by the Kentucky Cabinet for Health Services.

(5) ~~Carriers who contract [An insurance carrier, individual self-insured employer, and group self-insurer which contracts]~~ with an approved vendor for utilization review or medical bill audit services shall notify the commissioner of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(6) A plan shall be approved for a period of four (4) years, or until December 31, 2000, whichever is later. At least ninety (90) days prior to the expiration of the period of approval, a [December 31, 2000, and every four (4) years thereafter, an insurance] carrier or its [individual self-insured employer, group self-insurer, and] approved vendor shall apply for renewal of the approval. During the term of an approved plan, the commissioner shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

Section 4. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner shall include the following elements:

(1) A description of the process, policies and procedures whereby decisions shall be made.

(2) A description of the specific criteria utilized in the decision making process, including a description of the specific medical guidelines used as the resource to confirm the medical diagnosis and to provide consistent criteria and practice standards against which care quality and related costs are measured.

(3) A description of the criteria by which claims, medical services and medical bills shall be selected for review.

(4) A description of the qualifications of internal and consulting personnel who shall conduct utilization review and medical bill audit and the manner in which the personnel shall be involved in the review

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process.

(5) A description of the process to assure that treatment plans shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25:096.

(6) A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25:096.

(7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision.

(8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program.

(9) An assurance that a database shall be maintained recording the instances of utilization review, medical bill audit, the name of the reviewer, the extent of the review, the conclusions of the reviewer, and the action, if any, taken as the result of the review. Data shall be maintained for a period of no less than two (2) years and shall be subject to audit by the commissioner, or his agent pursuant to KRS 342.035(5)(b).

(10) An assurance that a toll free line shall be provided for an employee or medical provider to contact the utilization reviewer. The reviewer or a representative of the reviewer shall be reasonably accessible to interested parties at least five (5) days per week, forty (40) hours per week during normal business hours.

(11) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information.

(12) An assurance that the acute low back pain practice parameter adopted by the commissioner pursuant to KRS 342.035(8)(a) shall be incorporated in the plan as the standard for evaluating applicable low back claims. Additional medical guidelines which may be adopted by the commissioner pursuant to KRS 342.035(8)(a) shall be incorporated in a utilization review plan.

Section 5. Claim Selection Criteria. (1) Unless the carrier, in good faith, denies the claim [is denied] as noncompensable, medical services reasonably related to the [a] claim shall be subject to utilization review if:

- (a) A medical provider requests preauthorization of a medical treatment or procedure; or
- (b) Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan is received; or
- (c) The total medical costs cumulatively exceed \$3000; or
- (d) The total lost work days cumulatively exceed thirty (30) days;

or

(e) An arbitrator or administrative law judge orders a review.

(2) If applicable, utilization review shall commence when the carrier has notice that [begin no later than fifteen (15) days following the occurrence of] a claims selection criteria has been met.

(a) When preauthorization has been requested, the initial utilization review decision shall be communicated to the medical provider and employee [rendered] within two (2) working (thirty (30)) days of the initiation of the utilization review process, unless additional information is required. Where additional information is required, tender of a single request shall be made within two (2) additional working days. The requested information shall be tendered by the medical provider within ten (10) working days. The initial utilization review decision then shall be rendered within two (2) working days following receipt of requested information.

(b) When retrospective utilization review occurs, the initial utilization review decision shall be communicated to the medical provider and employee within ten (10) days of the initiation of the utilization review process, unless additional information is required. Where additional information is required, tender of a single request shall be made within two (2) additional working days. The requested information shall be tendered by the medical provider within ten (10) working days. The initial utilization review decision then shall be rendered within two (2) working days following receipt of requested

information.

(3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be provided within twenty-four (24) hours following a request for expedited review.

(4) Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020. The thirty (30) day period shall commence on the date of the final utilization review decision.

(5) Each medical bill audit shall be initiated [audited] within seven (7) days of receipt to assure:

- (a) Compliance with applicable fee schedules;
- (b) Accuracy; and
- (c) That a physician has been designated in accordance with 803 KAR 25:096.

(6) A medical bill audit shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020.

Section 6. Utilization Review and Medical Bill Audit Personnel Qualifications. (1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. A [licensed] physician, registered nurse, licensed practical nurse, medical records technician or other personnel, who through training and experience is qualified to issue decisions on medical necessity or appropriateness, shall issue the initial utilization review approval.

(2) A [licensed] physician shall issue an initial utilization review denial. A [licensed] physician shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the license required by the jurisdiction in which they are employed.

(3) Personnel conducting a medical bill audit, shall have the education, training or experience necessary for evaluating medical bills and statements.

Section 7. Written Notice of Denial. (1) Following initial review, a written notice of denial shall be issued to both the medical provider [treating physician] and the employee in a timely manner but no more than ten (10) [thirty (30)] days from the initiation of the utilization review process. The notice of denial shall be clearly entitled "UTILIZATION REVIEW - NOTICE OF DENIAL" and shall contain:

- (a) A statement of the medical reasons for denial;
 - (b) The name, state of licensure and medical license number of the reviewer; and
 - (c) An explanation of utilization review reconsideration rights.
- (2) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 8. Reconsideration. (1) A reconsideration process to appeal an initial decision shall be provided within the structure of utilization review. An aggrieved party may request reconsideration of the initial utilization review decision within fourteen (14) [ten (10)] days of receipt of a written notice of denial. Reconsideration of the initial utilization review decision shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer. A written reconsideration decision shall be rendered within ten (10) [twenty-one (21)] days of receipt of a request for reconsideration. The written decision shall be clearly entitled "UTILIZATION REVIEW - RECONSIDERATION DECISION". If the reconsideration decision is made by an appropriate specialist or subspecialist, the written decision shall further be entitled "FINAL UTILIZATION REVIEW DECISION". Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers shall be

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given the opportunity to present additional information.

(2) If a utilization review denial is upheld upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area has not previously reviewed the matter, an aggrieved party may request further review by a board eligible or certified physician in the appropriate specialty or subspecialty. A written decision shall be rendered within ten (10) days of the request for specialty reconsideration. The specialty decision shall be clearly entitled "FINAL UTILIZATION REVIEW DECISION".

(3) A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit. An aggrieved party may request reconsideration of the medical bill audit decision within fourteen (14) [ten (10)] days of receipt of that decision. Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer. A written decision shall be rendered within ten (10) [seven (7)] days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT - RECONSIDERATION DECISION". A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020.

WALTER W. TURNER, Commissioner

STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: March 5, 1998

FILED WITH LRC: March 9, 1998 at 4 p.m.

CONTACT PERSON: Donna Elsen Floyd, Counsel, Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Telephone Number: (502) 564-5550, Ext. 465, Fax Number: (502) 564-5934.

REGULATORY IMPACT ANALYSIS

Contact Person: Donna Elsen Floyd

(1) Type and number of entities affected: All injured workers in Kentucky; all carriers handling workers' compensation claims; all medical care providers that treat injured workers; and vendors providing utilization review and medical bill audit services.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. The department does not anticipate an effect on cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. The department does not anticipate an effect on the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The amendments further define the current utilization review process. The refinements in the process do not impact compliance, reporting, or paperwork requirements to cause an effect on costs associated with these functions.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: It is anticipated that the amendment may indirectly decrease administrative costs of the department by decreasing the number of medical fee disputes filed and litigated through administrative proceedings.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Normal budget allocations. No additional source necessary.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. The Department does not anticipate an economic impact in the geographical area.

(b) Kentucky: No public comments were received. The department does not anticipate an economic impact on Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The department has developed these amendments through thoughtful debate by an active advisory committee consisting of representatives from interested parties. This alternative emerged as the most viable.

(8) Assessment of expected benefits: Increased access to expedient, cost-effective medical care for injured workers and decreased fee disputes that arise after services have already been delivered.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Increased accessibility to medical providers for injured workers.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Decreased accessibility to medical providers for injured workers.

(c) If detrimental effect would result, explain detrimental effect: The amendments provide an alternative for medical providers to be assured payment for medical services that are delivered. Without such assurance, medical providers may be less willing to treat injured workers.

(9) 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:

(10) Any additional information or comments: None

(11) Tiering: Tiering is not applied because this regulation is applied equally to all injured workers, carriers handling workers' compensation claims, medical providers treating injured workers, and vendors providing utilization review and medical bill audit services.

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development (Amended After Hearing)

907 KAR 1:145. Supports for community living services for individuals with mental retardation or developmental disabilities.

RELATES TO: KRS 205.520, 42 CFR 44, Subpart G, 42 USC 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194.050, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage provisions relating to home and community-based services

provided to an individual with mental retardation or developmental disabilities as an alternative to intermediate care facility services for the mentally retarded.

Section 1. Definitions. "Supports for community living (SCL)" means community-based waiver services for an individual with mental retardation or developmental disabilities.

Section 2. General Coverage Provisions. (1) Except as provided in subsection (2) of this section, SCL services shall be provided to an individual eligible for Medicaid:

- (a) Who meets patient status criteria for intermediate care for the mentally retarded in accordance with 907 KAR 1:022;
- (b) Who is in a community residence living situation; and
- (c) For whom SCL services are an appropriate alternative to institutionalization.

(2) SCL services shall not be provided to an individual who:

- (a) Is an inpatient of a hospital;
- (b) Is a resident of a nursing facility; or
- (c) Is an inpatient of a facility for the mentally retarded.

(3) **Nothing in subsection (2) of this section shall preclude an individual eligible for Medicaid from applying for supports for community living services.**

(4) The department may exclude from coverage an individual for whom the cost of SCL services exceeds the cost of the appropriate level of institutional care, as provided for in 42 USC 1396n(c)(3).

(5) [(4)] The SCL service agency shall provide one (1) or more of the services as outlined in Section 4 of this administrative regulation.

(6) [(5)] The federally designated Peer Review Organization (PRO) shall make the level of care determination as the agent of the department.

Section 3. Provider Participation. (1) A participating SCL service provider shall meet the applicable certification requirements for providing community-based waiver services in accordance with 907 KAR 1:671, 907 KAR 1:672 and 907 KAR 1:675.

(2) Group homes shall be licensed by the Commonwealth of Kentucky in accordance with 902 KAR 20:078.

Section 4. Covered Services. (1) The following shall be covered SCL services:

(a) Residential support services provided to an individual residing in an alternative living arrangement. The residential options are:

- 1. Group home;
- 2. Staffed residence; and
- 3. Family home.

(b) Support coordination as follows:

- 1. Initiation and ongoing monitoring of admission, assessment and eligibility processes;
- 2. Development and monitoring of an individual support plan;
- 3. Ensuring access to and freedom of choice of SCL providers;
- 4. Monitoring of the health, safety and welfare of the individual by a support coordinator;
- 5. Ensuring the availability of a waiver service;
- 6. Providing pertinent information to an individual, parent or legal representative;

7. Establishing and overseeing a human rights committee for the review of overall procedures and individual behavior plans;

8. Acting on behalf of the individual to assist in gaining access to and receiving services from qualified SCL providers; and

9. Providing assistance to the individual, his family or legal representative in accessing another service as needed.

(c) Community living supports provided to an individual in their own home, **i.e., not a group home, family home, staff residence,** to assist, train or support in activities including:

- 1. Laundry services;
- 2. Meal preparation;

- 3. Household care and maintenance;
- 4. Daily living skills;
- 5. Socialization;
- 6. Relationship building;
- 7. Leisure choices; and
- 8. Participation in community activities.

- (d) Behavioral support;
- (e) Psychological services;
- (f) Occupational therapy;
- (g) Physical therapy;
- (h) Speech therapy;

(i) Community habilitation services to provide nonresidential support training and intervention in activities that include:

- 1. Self care;
- 2. Daily living skills;
- 3. Communication;
- 4. Behavior support;
- 5. Community living;
- 6. Social skills;
- 7. Participation in community activities;
- 8. Utilization of community resources; and
- 9. Vocational training.

(j) Supported employment for a participating individual eligible under Health Care Financing Administration (HCFA) regulations. Services required under 29 USC 701 et. seq. shall not be covered by the Medicaid Program;

(k) Respite care provided for the temporary relief of the staff or family or for the safety of the individual;

(l) Wellness monitoring providing one (1) visit per month by a registered nurse to:

- 1. Evaluate the condition of an individual at risk of medical complications; and

2. Refer the individual to the appropriate medical services.

(m) Specialized medical equipment and supplies; and

(n) Personal emergency response systems.

(2) Room and board shall be excluded from coverage.

(3) Special education and related services that are required to be provided by the public school system under 20 USC 1400 et seq. shall be excluded from coverage.

Section 5. Prior Authorization for Services. (1) The department shall prior authorize an SCL service to ensure that:

- (a) Client status is met;
- (b) There are adequate services for the needs of the individual; and

(c) The services do not exceed the cost of the appropriate level of institutional care.

(2) An individual who is eligible for SCL services shall be given the choice of SCL services or traditional intermediate care facility services for persons with mental retardation or developmental disabilities.

Section 6. SCL Waiting List. Using procedures described in the Department for Medicaid Services Supports for Community Living Manual, incorporated by reference, an individual may be placed on a waiting list maintained by the department. The main components of the SCL waiting list process are as follows:

(1) Application. An individual shall be placed on the SCL waiting list upon receipt of a completed application for supports for community living services.

(2) SCL waiting list placement.

(a) The order of placement on the SCL waiting list shall be determined chronologically by date of receipt of the application by the department, unless an emergency situation exists which meets specified criteria as follows:

- 1. Death or loss of the immediate care provider;
- 2. Emergency hospitalization of the immediate care provider; or

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3. Other circumstances relating to the situation of the individual or caregiver to be considered by the department on a case-by-case basis.

(b) If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list.

(c) A written notification of the date and placement on the SCL waiting list shall be mailed to the individual or his legal representative and support coordination provider if identified.

(3) Maintenance of the SCL waiting list. The department shall, at least annually, update the SCL waiting list. The individual or his legal representative and the support coordination provider shall be contacted in writing to verify the accuracy of the data on the SCL waiting list and the continued desire to pursue placement in the SCL Program. The requested data shall be received by the department within thirty (30) days from the date of the letter, excluding holidays and weekends.

(4) Criteria for removal from the SCL waiting list. The removal from the waiting list shall not prevent the submittal of a new application at a later date for the individual.

(a) The criteria for removal from the waiting list shall be:

1. After a documented attempt, the department is unable to locate the individual or his legal representative;

2. SCL placement for services is offered and the individual or his legal representative refuses the offer of placement or does not, without good cause, complete the application process with the department within sixty (60) days of the placement allocation date; or

3. The individual is deceased.

(b) If the individual is removed from the SCL waiting list, written notification shall be mailed by the department to the individual or his legal representative and the SCL coordination provider.

Section 7. Appeal Rights. (1) An adverse action regarding a Medicaid beneficiary may be appealed in accordance with 907 KAR 1:563 [1:560].

(2) No decision to terminate an individual or to reallocate placement subject to appeal shall be final until an order is issued in accordance with 907 KAR 1:563. [the hearing officer issues a decision.]

Section 8. Incorporation by Reference. (1) "Supports for Community Living Manual", Department for Medicaid Services, March 1998 Edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY A. MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: March 13, 1998

FILED WITH LRC: March 13, 1998 at noon

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: 1102 potential recipients are served by this program at any given time.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments regarding this matter were received at the public hearing.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments regarding this matter were received at the public hearing.

(c) Compliance, reporting, and paperwork requirements, including

factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None (Number of individuals served at any given time will not exceed 1102 in the year.)

2. Second and subsequent years: None (Same as above).

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$3,041,000 (cost)

2. Continuing costs or savings: \$3,041,000 (cost)

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None. Given that this regulation is replacing the recently expired AIS/MR waiver, the reporting and paperwork requirements remain the same.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. *Federal matching funds of 70.37% equaling \$2,139,952 and state matching funds of 29.63% equaling \$901,048. State revenues will come from funds previously designated for the expiring waiver.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: It will allow individuals, who would otherwise be placed in an ICF-MR, to remain within the community and attain their highest possible level of functioning. It also will allow the individual to be cared for in a family setting.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients because the AIS/MR waiver expired on August 31, 1997. Failure to implement this regulation would result in the termination of services to the mentally retarded or developmentally disabled.

(9) 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation

does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(Amended After Hearing)**

907 KAR 1:155. Payments for supports for community living services for individuals with mental retardation or developmental disabilities.

RELATES TO: KRS 205.520, 42 CFR 441, Subpart G, 42 USC 1396a, b, d, n, EO 96-862

STATUTORY AUTHORITY: KRS 194.050, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Service. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage provisions relating to home and community based waiver services provided to an individual with mental retardation or developmental disabilities as an alternative to intermediate care facility services for the mentally retarded.

Section 1. Definition. "Supports for community living (SCL)" means community-based waiver services for an individual with mental retardation or developmental disabilities.

Section 2. Coverage. (1) The cabinet shall reimburse a participating provider of SCL for a service to a Medicaid recipient who:

(a) Meets patient status criteria for intermediate care for the mentally retarded; and

(b) Is authorized for the SCL service by the department.

(2) In order to be covered, a service shall be described, defined, and provided in accordance with the terms and conditions specified in 907 KAR 1:145.

Section 3. Payment Amounts. (1) A participating in-state SCL provider certified in accordance with 907 KAR 1:145 shall be reimbursed at a prospective rate per unit of service during the first year of participation based on a budgeted cost report in accordance with the Department for Medicaid Services Supports for Community Living Payment Rate Determination Manual, incorporated by reference.

(2) Payment rate setting shall be as follows:

(a) Reimbursement shall be made using a projected rate per unit of service based on the most recent available [an] annual cost report as of June 1 preceding the July 1 rate setting with cost trended and indexed through June 30 of the rate year; and

(b) Reimbursement shall be retroactively adjusted to incorporate adjustments to the annual cost report as a result of an audit or desk

review.

(3) Reimbursement for medical services, dentures, eyeglasses, and hearing aids shall be paid at a reasonable cost, determined by the department, if prescribed for a recipient by a physician as necessary for an individual's habilitation and are not otherwise covered by the Medicaid Program. These services shall be paid apart from the services paid through the cost report, but limited to reasonable cost.

(4) ~~Minor home adaptations shall be paid on the basis of reasonable cost not to exceed \$1500 per individual per patient year. The patient year for an individual begins on the first day of admittance of the individual to the SCL program, with a new patient year beginning for that individual on the same day in each succeeding calendar year.~~

(5) A payment and rate shall be subject to a test of reasonableness through an audit.

(5) [(6)] Utilizing the formula described in 42 CFR 441.303(f)(1) as a guideline and applying accumulated statistical data, the department shall set, effective July 1 each year, an annualized upper limit, which is the aggregate amount reimbursed to the SCL providers not to be exceeded in a twelve (12) month calendar period, to be applied to the total payments for SCL services.

(6) [(7)] The department may reduce established rates or limit new rates by a percentage amount which assures that the total payments to a provider are not in excess of the annualized upper limit. A reduction factor shall be applied in a manner as to ensure an even flow of reimbursement to an SCL provider through the year.

Section 4. Units of Service. The units of service shall be as follows:

(1) An SCL coordination services unit of service shall be one (1) month;

(2) A residential care services unit of service shall be twenty-four (24) hours;

(3) A community living SCL services unit of service shall be one (1) hour;

(4) A respite care services unit of service shall be one (1) hour; institutional respite unit of service shall be twenty-four (24) hours;

(5) A community habilitation services unit of service shall be one (1) hour;

(6) A physical therapy, occupational therapy, speech therapy, behavioral support, and psychological services unit of service shall be one-fourth (1/4) hour;

(7) A wellness monitoring unit of service shall be one (1) visit;

(8) A supported employment unit of service shall be one (1) hour;

(9) A Personal Emergency Response System (PERS) unit of service shall be one (1) month of initial installation and one (1) month of usage; and

(10) Specialized medical equipment and supplies unit of service shall be one (1) item.

Section 5. Payment Exclusions and Limitations. (1) Payment shall not include:

(a) The cost of room and board; or

(b) The cost of maintenance, upkeep and improvements to the residence when it is a group home or other licensed facility.

(2) A payment shall not be made to:

(a) A community living SCL provider who provides community living services for routine care and supervision and which duplicates homemaker and personal care services being provided by a family member; or

(b) A community habilitation provider for supported employment services for individuals not receiving payment according to 29 USC 794, et seq.

Section 6. Auditing and Reporting. (1) A participating provider shall be required to maintain fiscal and service records for a period of

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not less than five (5) years and to provide, as requested, reports determined necessary by the department for the effective functioning and administration of the program.

(2) A provider shall be required to make available upon request service and financial records to a representative or designee of:

(a) The Commonwealth of Kentucky, Cabinet for Health Services;
(b) The United States Department of Health and Human Services, Comptroller General;

(c) The Department of Health and Human Services, Health Care Financing Administration;

(d) The General Accounting Office; or

(e) The Commonwealth of Kentucky, Office of the Auditor of Public Accounts.

Section 7. Appeals Rights. A negative action regarding a Medicaid provider may be appealed in accordance with 907 KAR 1:671.

Section 8. Incorporation by Reference. (1) The Supports for Community Living Payment Rate Determination Manual, Department for Medicaid Services, March 1998 Edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY A. MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: March 13, 1998

FILED WITH LRC: March 13, 1998 at noon

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: 1102 potential recipients are served at any given time.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments regarding this matter were received at the public hearing.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments regarding this matter were received at the public hearing.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None. (Number of individuals served at any given time will not exceed 1102 in the year).

2. Second and subsequent years: None (Same as above).

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$3,041,000 (cost)

2. Continuing costs or savings: \$3,041,000 (cost)

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None. Given that this regulation replaces the recently expired AIS/MR waiver, the reporting and paperwork requirements remain the same.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. *Federal matching funds of 70.37% equaling \$2,139,952 and state matching funds of 29.63% equaling \$901,048. State revenues will come from funds previously designated for the expiring waiver.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: It will allow individuals, who would otherwise be placed in an ICF-MR, to remain within the community and attain their highest possible level of functioning. It will also allow the individual to be cared for in a family setting.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients because the AIS/MR waiver expired on August 31, 1997. Failure to implement this regulation would result in the termination of services to the mentally retarded or developmentally disabled.

(9) 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

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CABINET FOR HEALTH SERVICES

Department for Mental Health Mental Retardation Services (Amended After Hearing)

908 KAR 1:380. Licensing procedures and standards for the operation of alcohol and other drug abuse prevention programs.

RELATES TO: KRS 222.211 [222-231]

STATUTORY AUTHORITY: KRS 194.050, 222.211, [222-231];
EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194.050, 222.211 [222-231], and Executive Order 96-862 authorize the cabinet to regulate alcohol and other drug abuse agencies and programs. Executive Order 96-862, effective 7/02/96, reorganizes the Cabinet for Human Resources and places the Department for Mental Health and Mental Retardation Services and its programs under the Cabinet for Health Services. This administrative regulation provides licensure requirements and minimum standards for the operation of agencies providing alcohol and other drug abuse prevention.

Section 1. Definitions. (1) "Agency" means as defined in KRS 222.005(2).

(2) "Alcohol and other drug abuse" means as defined in KRS 222.005(12).

(3) "Cabinet" means as defined in KRS 222.005(3).

(4) "Certified chemical dependency prevention-professional" means an individual who is recognized by the Kentucky Certification Board of Chemical Dependency Professionals, Inc.

(5) "Consumer" means the recipient of prevention services.

(6) "Legal entity" means a unit other than a natural person with a separate and distinct independent existence, having lawful standing in the Commonwealth of Kentucky to function legally, to sue or be sued and make decisions through agents, by means of a partnership agreement, articles of incorporation, legislative act, or executive order.

(7) "Outcome evaluation" means an assessment of ways in which individuals, systems, and communities participating in prevention programs have changed as a result of that program.

(8) "Prevention" means as defined in KRS 222.211(1).

(9) "Preventionist" means any individual or certified prevention professional who receives remuneration for alcohol and other drug prevention programs.

(10) "Process evaluation" means describing and documenting what actually was done, how much, when, for whom and by whom during the course of the program.

(11) "Program" means as defined in KRS 222.005(10).

Section 2. Licensing Procedures. (1) No agency receiving remuneration for any program shall operate without first obtaining from the cabinet an alcohol and other drug abuse prevention license [~~for each facility~~], unless the agency is exempted under KRS 222.003(1) and (2).

(2) Any agency operating a program without first obtaining a license shall be subject to the penalties as stated in KRS 222.990(2). An application for licensure or renewal of licensure shall be submitted in writing to the Cabinet for Health Services, Office of Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621, and shall include at a minimum the agency name and mailing address.

(3) An application for licensure shall be accompanied by a fee of \$155. The license shall remain in effect for one (1) year from the date of issue and may be renewed. An application for renewal shall be accompanied by a fee of eighty (80) dollars.

(4) The license shall be conspicuously posted in a public area at [~~of each separate facility operated by~~] the agency and shall indicate the year the license was issued or renewed.

(5) An application for licensure and renewal shall be processed as follows:

(a) The cabinet may conduct an on-site inspection of each agency to determine compliance with licensure standards;

(b) The agency shall provide representatives of the cabinet access during normal hours of operation to any documents needed to complete the inspection;

(c) The cabinet shall notify the agency in writing of any violation of licensure standards identified during the inspection;

(d) The agency shall submit to the cabinet a written plan of correction within ten (10) days of receipt of the notice of violation. The plan of correction shall specify the corrective action to be taken and the date when each violation shall be corrected.

(6) Changes in agency status.

(a) Name change.

1. The agency shall notify the cabinet in writing within ten (10) calendar days of the effective date of change.

2. The cabinet may issue a new license for the remainder of the licensure period.

3. The agency shall submit a processing fee of twenty-five (25) dollars to the cabinet.

(b) Change of location. The agency shall not deliver services at a new location until an application for licensure accompanied by a fee of eighty (80) dollars is filed with the cabinet.

(c) Change of ownership. The new owner of the agency shall submit to the cabinet an application for licensure accompanied by a fee of eighty (80) dollars [~~for each facility~~] within ten (10) calendar days of the effective date of change.

(d) Discontinuing a program. The agency shall notify the cabinet in writing within ten (10) calendar days of the effective date of discontinuance.

(7) The certificate of licensure shall be the property of the cabinet and shall be returned by the agency to the cabinet upon closure or revocation of the license.

(8) The cabinet shall make available to the public a list of all licensed alcohol and other drug prevention agencies [~~identifying each separate facility~~]. The cabinet may issue revisions and corrections to this list as changes occur.

Section 3. Physical Plant. There shall be written housekeeping, sanitation and maintenance procedures which shall be followed at all times to ensure that the agency [facility] shall be clean and in good repair.

Section 4. Organization and Administration. (1) Governing body.

(a) An agency shall have a governing body with overall authority and responsibility for the agency's operation.

(b) The governing body shall have written documentation to show the agency is a legal entity in the Commonwealth of Kentucky by means of a partnership agreement, articles of incorporation, legislative act or executive order.

(c) The agency shall maintain written documentation to show that it has professional liability insurance in the minimum amount of \$100,000 per occurrence;

(d) The responsibilities of the governing body shall be specified in writing and shall include:

1. Adopting a mission statement that outlines the agency's purpose;

2. Adopting a conflict of interest policy to govern participation by a governing body member in decisions which may be influenced by a member's business interest;

3. Appointing an executive director who shall be principally responsible for the day-to-day operation of the agency;

4. Adopting an administrative structure and establishing lines of authority for all prevention programs operated by the agency;

5. Documenting administrative structure and lines of authority on an organizational chart, including names of current governing board members;

6. Adopting written policies and procedures to direct administra-

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tive and program functions of the agency to ensure that sufficient staff and resources are available for the successful delivery of programs;

7. Reviewing written prevention policies and procedures at least every two (2) years making needed revisions and incorporating relevant findings of the agency's quality assurance system;

8. Overseeing a system of financial management and accountability;

9. Obtaining agency professional liability insurance in the amount of \$100,000 per occurrence at a minimum;

10. Completing a minimum of two (2) hours of annual training on alcohol and other drug prevention for prevention agencies, and in multiservice agencies for that particular component of the board that provides oversight to the prevention program.

11. Meeting as a whole at least quarterly and keeping written records demonstrating the ongoing discharge of its responsibilities.

(2) Staffing and staff qualifications.

(a) A preventionist who is actively involved in the development and implementation of prevention programs shall be certified by the Kentucky Certification Board for Prevention Professionals as a prevention professional or become a Kentucky certified prevention professional within twenty-four (24) months of the effective date of this administrative regulation or within twenty-four (24) months of employment whichever is longer.

(b) The agency shall designate one (1) or more individuals as prevention supervisor.

(c) A prevention supervisor shall meet at least one (1) of the following sets of qualifications:

1. A bachelors degree plus five (5) years of work experience in prevention or the related fields of health, social science, marketing, communications or education. Two (2) years of the work experience shall be in administration; or

2. A masters degree, with two (2) years of work experience in prevention administration or the related fields of health, social sciences, marketing, communications or education.

(d) Staff responsible for providing prevention services within the agency shall be clearly designated.

(e) The agency shall designate an individual as an ombudsman.

Section 5. Quality Assurance. (1) Staff and community volunteer development.

(a) The prevention agency shall establish a system of on-going staff development to include training and supervision of all prevention staff and community volunteers which shall be outlined in the agency's policy and procedures manual and which shall support the attainment of the goals and objectives of the prevention program.

(b) The prevention agency shall make training available for administrative staff, all preventionists, and volunteers. The training shall be in areas that enable volunteers and staff to carry out their expected job duties.

(c) Completion of training shall be documented in the volunteer and staff development files and shall identify the name of the training, clock hours earned and dates attended.

(2) Program quality assurance. The agency shall have written policy and procedures for assuring the quality of each program operated by the agency which shall include the following:

(a) Designation of an individual responsible for monitoring and evaluating the quality assurance activities;

(b) Description of the range of activities and services provided in each program;

(c) A statement of intended program outcomes and indicators of effectiveness; and

(d) Establishment of a mechanism and a schedule for the collection, organization and analysis of data to be used for the process evaluation and outcome evaluation of programs to determine quality of services.

Section 6. Personnel and Employment Practices. (1) The agency

shall have written policies and procedures governing employment practices for agency employees and subcontractors which shall include:

(a) Protections against discrimination of any employee or prospective employee on the basis of gender, age, race, ethnicity, religious affiliation, and disability including prior history of alcohol or other drug abuse;

(b) Provisions for recruiting, selecting, promoting, disciplining and terminating staff;

(c) Procedures for confirming previous checks or conducting background checks from the Justice Cabinet for all agency staff and subcontract employees working with minors to assure that there is no previous record of conviction related to abuse or molestation of children;

(d) Provision for the maintenance of personnel records for each staff member containing the following:

1. Application for employment;

2. Job specifications;

3. Written references;

4. Results of background checks;

5. Documentation of all education, work experience, training and status of professional licensure, certification and registration;

6. Salary information;

7. Job performance appraisals;

8. Disciplinary actions;

9. Commendations; and

10. Employee incident reports.

(e) Written job specifications for all positions identifying the qualifications, duties, reporting supervisor and positions supervised;

(f) Explanation of employee benefits, training and staff development opportunities, safety and work related injury procedures, employee grievance procedures, rules of conduct and compensation plan;

(g) Information on equal employment opportunities and affirmative action policies;

(h) Provisions for ensuring an alcohol and drug free work place to include actions to be taken when an employee is involved in the unlawful manufacture, distribution, possession or use of alcohol and any controlled substance at the agency;

(i) A provision for yearly job appraisal which includes an evaluation, based on objective criteria of each employee's performance in relation to their expected job duties;

(j) Ethical standards identifying acceptable employee conduct regarding consumer's rights;

(k) Conflict of interest policies governing dual relationships with other legal entities;

(l) Provisions to assure the confidentiality of personnel records;

(m) Procedures for providing an employee with access to their personnel record; and

(n) Procedures for the storage and retention of personnel records.

(2) A staff member shall be given access to a copy of the agency's policies and procedures at the time of employment and shall be notified of revisions as they are made.

Section 7. Program Operation and Services. (1) Each program operated under the authority of the alcohol and other drug prevention license shall have a program operations manual containing the following:

(a) Philosophy;

(b) Mission statement;

(c) Methods for determining the needs of the populations to be served and programs provided in response to these identified needs;

(d) Methods for tailoring programs to the characteristics of specific target audiences including age, gender, drug use patterns, racial, ethnic and cultural heritage;

(e) Methods to be used to review all activity plans, information, materials and curricula prior to use for accuracy, potential effective-

ness and appropriateness in influencing the alcohol and drug use behavior of the target audience;

(f) Methods for soliciting input and involving the community or identified target audience in planning;

(g) Methods for making or receiving prevention consumer referrals within or outside the agency;

(h) Methods for referring or delivering services to consumers having special speech, language, visual or hearing needs;

(i) Methods for determining an individual's or agency's suitability for participation in the prevention program; and

(j) Policies and procedures for setting and collecting fees.

(2) The prevention agency shall maintain reports and records documenting the following:

(a) Results of needs assessments;

(b) Any collaboration with community or other agencies;

(c) Material and curricula reviewed;

(d) Program activities and services delivered;

(e) Case management information pertaining to early intervention and prevention programs directed at specific audiences including the following:

1. Screening and assessment results;

2. Prevention services provided;

3. research data showing effectiveness of prevention programs used for the specific target audiences;

(f) Background checks conducted on volunteers working with minors to assure that there is no previous record of conviction related to the abuse or molestation of minors;

(g) Identification of which of the following prevention strategies was employed:

1. Alternatives which provide for the participation of target populations in activities that exclude alcohol and other drug use. Methods shall include involving agency and community members in the design and provision of constructive and healthy activities that offset the attraction to or otherwise meets the needs usually filled by alcohol and other drugs;

2. Community-based process which aims to enhance the ability of community members to identify problems and resources and to appropriately select the prevention strategies that will more effectively impact behaviors relating to alcohol and other drug use. Methods shall include involving communities in planning, organizing, and implementing prevention programs through interagency collaboration, coalition building, and networking;

3. Consultation which involves an interaction and contractual relationship between two (2) or more people wherein one who has special skills or expertise in accomplishing a specific goal provides one who does not have the same skills or expertise, guidance in the mutual accomplishment of that goal;

4. Education which involves two (2) way communication and interaction between the educator or facilitator and the participants. Methods shall include direct training, training of trainers and training of impactors. This strategy consists of a well-defined, structured learning process which involves both knowledge and skill development. Educational programs seek to accomplish the following:

a. Motivate individuals to make healthy choices about alcohol and other drug use;

b. Help them develop the competencies needed to make those choices;

c. Prepare them to develop and implement prevention programs in particular settings.

5. Public and social policy change which establishes or changes written or unwritten community standards, codes, and attitudes, thereby influencing incidence and prevalence of alcohol and other drug use problems in the general population and creating an environment more conducive to prevention. Methods shall include changing laws and community standards to restrict availability and access, price increases and community wide actions;

6. Information dissemination which is characterized by one (1)

way communication of information from the source to the audience, with limited contact between the two (2). Methods shall include identification, collection and dissemination of resource materials, media communication, public speaking and networking activities. Information dissemination programs provide the following:

a. Awareness and knowledge of the nature and extent of alcohol and other drug use, abuse and addiction;

b. The effect of alcohol or other drugs on individuals, families and communities;

c. Information to increase perceptions of risk; and

d. Identification of available prevention programs and services.

7. Problem identification and referral which is designed to identify persons who are beginning to experience alcohol and other drug problems or those for whom the risk of developing problems is particularly high. Methods shall include screening, intensive preventive education, or referral for a clinical assessment;

(h) Documentation of consumer referrals made and sources used within or outside the agency;

(i) Process and outcome evaluation results;

(j) Follow-up plans; and

(k) Fees assessment and collection.

Section 8. Consumer Rights. An agency licensed to provide alcohol and other drug prevention programs shall have written policies and procedures for ensuring the rights of the consumer which shall include:

(1) Assurances that there shall be no unlawful discrimination in determining eligibility for admission to a prevention program;

(2) A statement of consumer rights posted in the agency [facility] with the name, address and telephone number of the agency's ombudsperson;

(3) Assurances of the confidentiality of consumer's alcohol, tobacco, and other drug issues; and

(4) Grievance procedures posted in the agency [facility] which shall include at a minimum:

(a) Time frames for reviewing and responding to consumer complaints;

(b) Requirements for the documentation of grievances in each consumer record and in a central agency incident file; and

(c) Requirements for referring to the appropriate authority any allegations of abuse or neglect in accordance with:

1. KRS 209.030 regarding the abuse or neglect of adults; and

2. KRS 620.030 regarding the abuse or neglect of minors.

Section 9. Complaints. (1) A suspected violation of a licensure standard shall be reported to the cabinet.

(2) The complainant and information related to a suspected violation shall be kept confidential and shall not be disclosed publicly during an investigation. Once the investigation is complete, disclosure of the information shall be subject to the provision of KRS 61.870 to 61.884.

(3) A complaint received by the cabinet shall be processed according to the following procedures:

(a) The cabinet may conduct an on-site inspection to determine if a violation of a licensure standard has occurred; and

(b) The cabinet may conduct an audit of the agency's financial records in accordance with generally accepted government auditing standards.

Section 10. Revocation. (1) Violations of licensure standards may result in the revocation of a license.

(2) Conditions which shall result in the revocation of a license include the following:

(a) Any violation creating an immediate danger to the prevention consumer;

(b) Fraud in obtaining a license or in connection with services provided;

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(c) Gross negligence, misconduct or violation of the ethics code of the Kentucky chemical dependency certification board which results in revocation of the prevention professional credential;

(d) Any conviction of an agency preventionist or volunteer of a crime related to the abuse, neglect or exploitation of a child or an adult.

Section 11. Penalties. (1) Denial or revocation [suspension] of a license.

(a) Plan of correction. If [When] an agency fails to submit an acceptable plan of correction within ten (10) calendar days from the date of a notice of violation, the cabinet shall notify the agency, in accordance with Section 12 of this administrative regulation, that the license may be denied thirty (30) calendar days after the date of the notice of denial or suspension unless:

1. The agency submits an acceptable plan of correction to the cabinet;
2. The agency requests a hearing in accordance with Section 12 of this administrative regulation; or
3. The agency notifies the cabinet in writing that the application for licensure is withdrawn.

(b) Denial of an application for licensure. When an application for licensure is denied, the legal entity named in the application may reapply for a license in accordance with Section 2 of this administrative regulation after a period of:

1. One (1) year from the date of denial; or
2. Thirty (30) days from the date of application for licensure was withdrawn by the agency.

(2) Reapplication. The legal entity named in the application may reapply for a license in accordance with Section 2 of this administrative regulation after a period of one (1) year from the date of revocation.

Section 12. Appeals. (1) If the cabinet takes action to deny or revoke an agency license, the cabinet shall notify the agency in writing stating the reasons for the adverse actions and the agency's right to appeal in accordance with KRS 222.231(6).

(2) If the agency believes an action by the cabinet is unfair, without reason, or unwarranted, the agency may appeal the action in writing to the Secretary, Cabinet for Health Services, 4th Floor, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) calendar days after receipt of the notice of action from the cabinet.

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

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

(5) An agency that continues to operate after the closing date established by the secretary, or his designee, shall be subject to legal action by the cabinet as provided by law.

ELIZABETH R. WACHTEL, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: March 9, 1998

FILED WITH LRC: March 9, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth R. Wachtel, Commissioner

(1) Type and number of entities affected: Currently there are 14 community mental health centers and 10 private programs providing

alcohol and other drug prevention services in 32 different locations and 125 preventionists which are affected. These programs provide services to 300,000 consumers per year. All of the aforementioned Programs and preventionists will be affected by the additional licensing and certification requirements.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received on this matter.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received on this matter.

(c) Compliance, reporting, and paperwork requirements including factors increasing or decreasing costs (note any effects upon competition.) Direct and indirect costs or savings to those affected: There will be a direct cost to programs and preventionists providing prevention services. The amount for licensing agencies and certifying staff will be \$25,170. Of this amount, certification will cost \$20,210 which may be borne by the agency or may be considered as a professional expense for the individual preventionists. Since all of the prevention programs are funded by the Division of Substance Abuse or federal grants, and receive reimbursement for training expenses, the cost for the required training for certification is not reflected in the above amount. Due to requirements applicable to some supervisors, there will be an additional cost of \$3200 per year which will be borne either by the agency or the prevention supervisor. There will be no effects on competition since all entities are being effected equally.

1. First year: \$28,370

2. Continuing costs: \$28,370

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. There will be no additional costs to the promulgating agency. Costs of any training or technical assistance required by affected entities will be absorbed by existing resources.

2. On-going costs will be absorbed by existing resources.

3. Additional factors increasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There will be no additional paperwork or reporting for the promulgating agency.

(4) Assessment of anticipated effect on state and local revenues: Licensing fees of \$5,000.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments were received.

(b) Kentucky: No comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered. KRS 222.211 authorizes the cabinet to promulgate administrative regulations related to prevention programs. Establishment of licensing standards is the only legitimate method available to the cabinet in accordance with KRS Chapter 13A establish operational standards for prevention programs. These standards are necessary to assure the effectiveness of prevention services to citizens in accordance with generally accepted professional practices.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: It will protect to protect the consumer and increase the quality of prevention services. The delivery of more effective services will result in a more positive health outcome for the consumer specifically as it relates to alcohol and other drug problems.

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(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(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.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not used since the application of policy is required to be applied in a like manner for all affected entities in order to assure a consistent level of quality.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Although the entities affected by this regulation receive federal monies from the Substance Abuse Prevention and Treatment Block Grant, there is no federal regulatory mandate to license prevention programs which this regulation governs.

2. State compliance standards. None

3. Minimum of uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate? None

5. Justification for the imposition of stricter standard, or additional or different responsibilities of requirements. None

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, MARCH 13, 1998

COUNCIL ON POSTSECONDARY EDUCATION
(Amendment)

13 KAR 2:045. Determination of residency status for admission and tuition assessment purposes.

RELATES TO: KRS Chapter 13B, 164.020, 164.030, 164A.330(9)
STATUTORY AUTHORITY: KRS 164.020(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.020(8) requires the Council on Postsecondary Education to determine tuition and approve the minimum qualifications for admission to a state-supported postsecondary education institution [the public institutions of higher education] and authorizes the Council to set different tuition amounts for residents of Kentucky and for nonresidents [of Kentucky]. This administrative regulation establishes the procedure and guidelines for determining the residency status of a student who is seeking admission to, or who is enrolled at, a state-supported postsecondary education institution [public institution of higher education and for each student residency determination].

Section 1. Definitions. (1) "Academic term" means a division of the school year during which a course of studies is offered, and includes a semester, quarter, or single, consolidated summer term as defined by the institution.

(2) "Continuous enrollment" means enrollment in a state-supported postsecondary education institution [college or university] at the same degree level for consecutive terms, excluding summer term, since the beginning of the period for which continuous enrollment is claimed unless a sequence of continuous enrollment is broken due to extenuating circumstances beyond the student's control, including serious personal illness or injury, or illness or death of a parent.

(3) "Degree level" means enrollment in a course or program which could result in the award of a:

- (a) Certificate, diploma or other programs at a technical institution;
- (b) Baccalaureate degree or lower including enrollment in a course by a nondegree seeking postbaccalaureate student;
- (c) [(b)] Graduate degree or graduate certification other than a first-professional degree in law, medicine, dentistry or "Pharm. D"; or
- (d) [(e)] Professional degree in law, medicine, dentistry, or "Pharm. D".

(4) "Demonstration of Kentucky domicile and residency" means the presentation of documented information and evidence sufficient to prove by a preponderance of the evidence that a person is domiciled in Kentucky and is a resident of Kentucky.

(5) "Dependent person" means a person who cannot demonstrate financial independence from parents or persons other than a spouse and who does not meet the criteria established in Section 5 of this administrative regulation.

(6) "Determination of residency status" means the decision of a postsecondary education institution [college or university] and a subsequent decision by the Council on Postsecondary Education including an administrative hearing, if appropriate, that results in the classification of a person as a Kentucky resident or as a nonresident for admission and tuition assessment purposes.

(7) "Domicile" means a person's true, fixed, and permanent home and is the place where the person intends to remain, and to which the person expects to return if absent without intending to establish a new domicile elsewhere.

(8) "Full-time employment" means continuous employment for at least forty-eight (48) weeks at an average of at least thirty (30) hours per week.

(9) "Independent person" means a person who demonstrates financial independence from parents or persons other than a spouse

and who can meet the criteria established in Section 5 of this administrative regulation.

(10) "Institution" [~~institution of higher education~~, or "college"] means an entity defined in KRS 164.001(10) [all entities offering instruction and conferring degrees or diplomas beyond the secondary school level, including four (4) year colleges or universities, two (2) year institutions including community colleges, and postsecondary vocational-technical schools;] if the type of institution is not expressly stated.

(11) "Kentucky residency" or "Kentucky resident" means the result of a determination by an institution or by the Council on Postsecondary Education that a person is a resident of Kentucky for the purpose of tuition assessment and for the purpose of admission to that institution, if applicable.

(12) "Nonresident" means a person who is domiciled outside of Kentucky or who currently maintains legal residence outside Kentucky or who has not met the criteria for Kentucky residency established in this administrative regulation.

(13) "Preponderance of the evidence" means the greater weight of evidence, or evidence which is more credible and convincing to the mind.

(14) "Parent" means one (1) of the following:

- (a) A person's father or mother; or
- (b) A court-appointed legal guardian if:

1. The guardianship is recognized by an appropriate court within the United States;

2. [(f)] There was a relinquishment of the rights of the parents; and

3. The [independent of a] guardianship was not established primarily to confer Kentucky residency on the person.

(15) "Residence" or "residency" means the place of abode of a person and the place where the person is physically present most of the time for a noneducational purpose in accordance with Section 3 of this administrative regulation.

(16) "Sustenance" means living expenses including room, board, maintenance, transportation, and educational expenses including tuition, fees, books, and supplies.

Section 2. Scope (1) State-supported postsecondary education [Public] institutions [~~of higher education~~] were established and are maintained by the Commonwealth of Kentucky primarily for the benefit of qualified residents of Kentucky. The substantial commitment of public resources to postsecondary [higher] education is predicated on the proposition that the state benefits significantly from the existence of an educated citizenry. As a matter of policy, access to postsecondary [higher] education shall be provided so far as feasible at reasonable cost to an individual who is domiciled in Kentucky and who is a resident of Kentucky. [~~bona-fide residents of the state;~~]

(2) The Council on Postsecondary Education requires a student who is neither domiciled in nor a resident of Kentucky to meet higher admission standards and to pay a higher level of tuition than resident students.

(3) The Commonwealth of Kentucky has a significant interest in providing for the needs of Kentucky's citizenry in graduate, health related and other professional programs. Limited space and the high cost of professional programs, combined with the need to ensure an equitable number of professional health practitioners in the state, makes Kentucky especially vigilant in residency determinations at the graduate and professional program levels of instruction. This administrative regulation is predicated on a basic assumption that an individual domiciled in Kentucky is more likely to practice professionally in the Commonwealth than is a student who is not domiciled in Kentucky and who is primarily located in the Commonwealth for the purpose of attending an institution.

(4) This administrative regulation applies to all student residency determinations regardless of circumstances, including the Southern Regional Education Board contract spaces, reciprocity agreements, where appropriate, and academic common market programs.

Section 3. Determination of Residency Status; General Rules. (1) A determination of residency shall include:

(a) An initial determination of residency status by an institution during the [a college or university at the time of] admission process or upon enrollment in an institution for a specific academic term or for admission into a specific academic program;

(b) Each administrative and residency review committee determination made by an institution;

(c) A reconsideration of a determination of residency status by an [the] institution based upon a changed circumstance;

(d) An intermediate review by the Appeals Officer of the Council on Postsecondary Education if requested by the student; and

(e) An administrative hearing conducted in accordance with the provisions of KRS Chapter 13B and 13 KAR 2:070, if requested by the student.

(2)(a) An initial determination of residency status shall be based upon the facts in existence when the credentials established by an institution for admission for a specific academic term have been received and during the period of review by the institution. Provided, however, that an institution may delay an initial determination of residency status for graduate, doctoral or professional school applicants until the applicant is admitted to the program;

(b) An initial determination of residency status shall be based on:

1. Information derived from admissions materials;

2. Other materials required by an institution and which are consistent with this administrative regulation; or

3. Other information available to the institution from any source.

(3) An individual seeking a determination of Kentucky residency status shall demonstrate that status by a preponderance of the evidence.

(4) A determination of residency status shall be based upon verifiable circumstances or actions.

(5) Evidence and information cited as the basis for Kentucky domicile and residency shall accompany the application for a determination of residency status.

(6) A student classified as a nonresident shall retain that status until the student is officially reclassified by an [the] institution or the Council on Postsecondary Education, as appropriate.

(7) A student may apply for a review of a determination of residency status once for each academic term.

(8) If an institution has information that a student's residency status may be incorrect, the institution shall review and determine the student's correct residency status.

(9) If the Council on Postsecondary Education has information that an institution's determination of residency status for a student may be incorrect, it may require the institution to review the circumstances and report the results of that review.

(10) An institution shall impose a penalty or sanction against a student who gives incorrect or misleading information to an institutional official, including payment of nonresident tuition for each academic term for which resident tuition was assessed based on an improper determination of residency status and may also include:

(a) [Criminal prosecution;

(b)] Student discipline by the institution through a policy written and disseminated to students; or

(b) Criminal prosecution.

(c) Payment of nonresident tuition for each academic term for which resident tuition was assessed based on an improper determination of residency status;

Section 4. Presumptions Regarding Residency Status. (1) In making a determination of residency status, it shall be presumed that

a person is a nonresident if:

(a) A person is, or seeks to be, an undergraduate student and whose admissions records show the student to be a graduate of an out-of-state high school;

(b) A person's admission records indicate the student's residence to be outside of Kentucky at the time of application for admission;

(c) A person moves to Kentucky primarily for the purpose of enrollment in an institution [of higher education];

(d) A person moves to Kentucky and within twelve (12) months enrolls in an institution of higher education more than half time; or

(e) A person has a continuous absence of one (1) year from the state.

(2) A presumption arising from subsection (1) of this section shall be overcome by a demonstration of Kentucky domicile and residency.

Section 5. Determination of Whether a Student is Dependent or Independent. (1) In a determination of residency status, an institution shall first determine whether a student is dependent or independent. This provision is predicated on the assumption that a dependent person lacks the financial ability to live independently of the person upon whom the student is dependent and therefore lacks the ability to form their requisite intent to establish domicile.

(2) In determining the dependent or independent status of a person, the following information shall be considered as well as other relevant information available at the time the determination is made:

(a) 1. That the person has not been claimed as a dependent on the federal or state tax returns of a parent or other person for the year preceding the date of application for a determination of residency status; or

2. ~~[(b) 1-]~~ That the person is no longer claimed by a parent or other person as a dependent or as an exemption for federal and state tax purposes; and

(b) 2- That the person has financial earnings and resources independent of both parents or a person other than a spouse necessary to provide for the person's own sustenance.

(3) In determining the independent or dependent status of an individual, financial earning and resources from state, federal and other student financial assistance programs shall be excluded.

(4) An individual who enrolls in an institution [college] immediately following graduation from high school and remains enrolled shall be presumed to be a dependent person unless the contrary is evident from the information submitted.

(5) ~~[(4)]~~ Domicile may be inferred from the student's permanent address, parent's mailing address, or location of high school of graduation.

(6) ~~[(5)]~~ Marriage to a person domiciled in and who is a resident of Kentucky shall be a factor considered by an institution in determining whether a student is dependent or independent.

(7) Gifts from or made or cosigned by a parent or family member other than a spouse, if used for sustenance of the student;

(a) Shall not be considered in establishing a student as independent; and

(b) Shall be a factor in establishing that a student is dependent.

Section 6. Effect of a Determination of Dependent or Independent Status on a Determination of Residency Status. (1) The effect of a determination that a person is dependent shall be as follows:

(a) The domicile and residency of a dependent person shall be the same as either parent. The domicile and residency of the parent shall be determined in the same manner as the domicile and residency of an independent person.

(b) The domicile and residency of a dependent person whose parents are divorced, separated, or otherwise living apart shall be [a resident of] Kentucky if either parent is domiciled in and is a resident of Kentucky regardless of which parent has legal custody or is entitled to claim that person as a dependent pursuant to Kentucky income tax provisions.

(c)1. If the parent or parents of a dependent person are Kentucky residents and are domiciled in Kentucky but subsequently move from the state, the dependent person shall be considered a resident of Kentucky while in continuous enrollment at the degree level in which currently enrolled.

2. If continuous enrollment is broken or the current degree level is completed, the dependent person's residency status shall be reassessed when the circumstances detailed in subparagraph 1 of this paragraph are present.

(2) If ~~[an independent person;]~~ the sole parent or both parents of a dependent person moves out of state, Kentucky domicile and residency, having been previously established, shall be retained until steps are taken to establish domicile and residency elsewhere.

Section 7. Member of Armed Forces of the United States, Spouse and Dependents; Effect on a Determination of Residency Status. (1) A member, spouse, or dependent of a member whose domicile and residency was Kentucky at the time of induction into the Armed Forces of the United States, and who maintains Kentucky as home of record and permanent address, shall be entitled to Kentucky residency status:

(a) During the time of active service; or [and]

(b) If the member, spouse, or dependent returns to this state within six (6) months of the date of the member's discharge from active duty.

(2)(a) A member, spouse or dependent of a member of the Armed Forces of the United States stationed in Kentucky on active military orders shall be considered a Kentucky resident while the member is on active duty in this state pursuant to those orders if the member is not:

1. Stationed in Kentucky for the purpose of enrollment at an institution ~~[of higher education];~~ or

2. On temporary assignment of less than one (1) year.

(b) A member, spouse or dependent of a member, shall not lose Kentucky residency status if the member is thereafter transferred on military orders while the member, spouse or dependent requesting the status is in continuous enrollment at the degree level in which currently enrolled.

(3) A person's residency status established pursuant to this section shall be reassessed if the qualifying condition is terminated.

Section 8. Status of Nonresident Aliens; Visas and Immigration.

(1)(a) A person holding a permanent residency visa or classified as a political refugee shall establish domicile and residency in the same manner as another person.

(b) Time spent in Kentucky and progress made in fulfilling the conditions of domicile and residency prior to obtaining permanent residency status shall be considered in establishing Kentucky domicile and residency.

(2) A person holding a nonimmigrant visa with designation A, E, G, H, I, L, N, O, P, R, S, TD or TN shall establish domicile and residency the same as another person.

(3)(a) An independent [A] person holding a nonimmigrant visa with designations B, C, D, F, J, K, M, or Q shall not be classified as a Kentucky resident, because that person does not have the capacity to remain in Kentucky indefinitely and therefore cannot form the requisite intent necessary to establish domicile within the meaning of this administrative regulation.

(b) A dependent person holding a visa as described in paragraph (a) of this subsection, but who is a dependent of a parent holding a visa as described in subsection (2) of this section, shall be considered as holding the visa of the parent.

(c) A dependent person holding a visa described in subsection (2) of this section or paragraph (a) of this subsection, if a parent is a citizen of the United States and is a resident of and domiciled in Kentucky, shall be a resident of Kentucky for the purposes of this administrative regulation.

Section 9. Beneficiaries of a Kentucky Educational Savings Plan Trust. A beneficiary of a Kentucky Educational Savings Plan Trust shall be granted residency status if the beneficiary meets the requirements of KRS 164A.330(9).

Section 10. Criteria Used in a Determination of Residency Status.

(1) A determination of Kentucky domicile and residency shall be based upon verifiable circumstances or actions. A single fact shall not be paramount, and each situation shall be evaluated to identify those facts which are essential to the determination of domicile and residency.

(2) The following facts, although not conclusive, shall have probative value in their entirety and shall be individually weighted, appropriate to the facts and circumstances in each determination of residency;

(a) Acceptance of an offer of full-time employment or transfer to an employer in Kentucky or contiguous area while maintaining residence and domicile in Kentucky;

(b) Continuous physical presence in Kentucky while in a nonstudent status for the twelve (12) months immediately preceding the start [commencement] of the academic term for which a classification of Kentucky residency is sought;

(c) 1. Filing of Kentucky resident income tax return for the calendar year preceding the date of application for a change in residency status; or

2. Payment of Kentucky withholding taxes while employed during the calendar year for which a change in classification is sought;

(d) Full-time employment of at least one (1) year while living in Kentucky;

(e) Attendance as a full-time, nonresident student at an out-of-state institution ~~[of higher education]~~ based on a determination by that school that the person is a resident of Kentucky;

(f) Abandonment of a former domicile or residence and establishing domicile and residency in Kentucky with attendance at an institution ~~[of higher education]~~ following and incidental to the change in domicile and residency;

(g) Obtaining licensing or certification for a professional and occupational purpose in Kentucky;

(h) Payment of real property taxes in Kentucky;

(i) Ownership of real property in Kentucky, if the property was used by the student as a residence preceding the date of application for a determination of residency status;

(j) Long-term lease of at least twelve (12) consecutive months of noncollegiate housing;

(k) Marriage of an independent student to a Kentucky resident; and

(l) Continued presence in Kentucky during academic breaks.

(3) The following facts, because of the ease and convenience in completing them, shall have limited probative value in a determination that a person is domiciled in and is a resident of Kentucky:

(a) Kentucky automobile registration;

(b) ~~[(m)]~~ Kentucky driver's license; and

(c) ~~[(n)] Continued presence as a resident in Kentucky during academic breaks; and~~

(e) Registration as a Kentucky voter.

(4) Provided, however, that the absence of a fact contained in subsection (3) of this section shall have significant probative value in determining that a student is not domiciled in or is not a resident of Kentucky.

(5) ~~[(3)]~~ Kentucky residency status shall not be conferred by the performance of an act which is incidental to fulfilling an educational purpose or by an act which is performed as a matter of convenience. Mere physical presence in Kentucky, including living with a relative or friend, shall not be sufficient evidence of domicile and residency.

Section 11. Effect of a Change in Circumstances on Residency Status. (1) If a person becomes independent or if the residency status

of a parent or parents of a dependent person changes, an [the] institution shall reassess residency either upon a request by the student or a review initiated by an institution.

(2) Upon transfer to ~~or matriculation from~~ a Kentucky ~~[public]~~ institution ~~[of higher education]~~, a student's residency status shall be reassessed by the receiving institution.

(3) A reconsideration of a determination of residency status for a dependent person shall be subject to the provisions for continuous enrollment, if applicable.

Section 12. Institutional Requirements; Designation of Office and Officer and Publication of the Administrative Regulation. (1) Each institution shall designate:

(a) A person or office at the institution with responsibility for a determination of residency status at that institution; and

(b) An administrative office or person with delegated day-to-day responsibility for administration of this administrative regulation.

(2) The designation of an administrative office or person pursuant to subsection (1) of this section shall be in writing setting forth the duties and responsibilities. A copy shall be provided to the Council on Postsecondary Education.

(3) Each institution shall establish an operational policy for the determination of residency status which shall be filed with the Council on Postsecondary Education and which shall include:

(a) Procedures describing the steps in the initial determination of residency status;

(b) Designated responsibilities of each institutional official;

(c) Responsibilities of a person requesting admission to an [the] institution or to an academic program, or, requesting a change in residency status;

(d) Procedures for the operation of a residency review committee created pursuant to Section 13 of this administrative regulation;

(e) Timetables and deadlines for student and institutional responses to a request for a review of an institutional determination of residency status;

(f) Training of institutional officials responsible for a determination of residency status; and

(g) The role of the residency review committee.

(4) The administrative regulation shall be published in its entirety in all of each institution's catalogs and disseminated to each student.

(5) Copies of the administrative regulation shall be maintained in the office designated pursuant to subsection (1) of this section and shall be made available to each student requesting Council on Postsecondary Education review of an institution's initial determination, review or reconsideration of residency status.

Section 13. Establishment of a residency review committee by an Institution. (1) Each institution shall establish a residency review committee, which shall be a standing committee, to review, evaluate, and act upon:

(a) A student appeal related to an initial determination of residency status;

(b) A recommendation of the administrative office or person designated pursuant to Section 12 of this administrative regulation, that the residency review committee review, evaluate, and act upon an initial determination of residency status; and

(c) A student request for a reconsideration of a residency classification because of a changed circumstance.

(2) The Kentucky Community and Technical College System may establish uniform policies and procedures for each branch within the system as defined in KRS 164.001(11) including a provision for separate institutional residency review committees.

(3) Membership on the residency review committee shall include at least one (1) faculty and one (1) student member.

(4) ~~[(3)]~~ The policies and procedures of an institution's residency review committee shall be in writing and published for student use.

(5) ~~[(4)]~~ A copy of the document authorizing and creating an

institution's residency review committee, and a copy of the operating policies and procedures of the residency review committee shall be provided to the Council on Postsecondary Education.

Section 14. Student Responsibilities. (1) A student shall register under the proper residency classification which includes the following actions:

(a) Raising a question in a timely manner concerning residency classification;

(b) Making application for change of residency classification in a timely manner with the designated office or person at the institution; and

(c) Notifying the designated office or person at the institution immediately upon a change in residency.

(2) If a student fails to notify an institutional official of a change in residency, an institutional official may investigate and evaluate the student's current residency status.

(3)(a) If a student fails to provide, in a timely manner, information required by an institution in a determination of residency status or by the Council on Postsecondary Education in an appeal of a determination of residency status, the student shall be notified by the institution or by the Council on Postsecondary Education, as appropriate, that the review has been canceled and that a determination has been made.

(b) Notification shall be made by registered mail, return receipt requested.

(c) Notification shall be made within ten (10) calendar days after the deadline for receipt of materials has passed.

(4) A student shall not be entitled to appeal a determination of residency status if the determination made by an institution or by the Council on Postsecondary Education is made because a student has failed [for a failure] to meet published deadlines for the submission of information as set forth in subsection (3) of this section. A student may request a review of a determination of residency status in a subsequent academic term.

Section 15. Procedures for an Initial Determination of Residency Status, an Institutional Review of Residency Status and for a Reconsideration of a Determination of Residency Status. (1) Application for a review of a determination of residency status shall be made to the administrative office or person designated by an [the] institution pursuant to Section 12 of this administrative regulation.

(2) The application, with supporting documentation, shall be made by the student no later than [within] thirty (30) calendar days after the first day of classes of the academic term for which a review of a determination of residency status is sought.

(3) An application shall consist of:

(a) An affidavit authorized by the Council on Postsecondary Education and submitted by the student or the parent of a dependent student asserting the claim for a determination of residency status and asserting that the documentation and information are accurate and true; and

(b) Information and documentation required by an institution and consistent with this administrative regulation which is necessary to substantiate a request for a change in a determination of residency status.

(4)(a) An application shall be first reviewed by the office or person designated by the institution pursuant to Section 12 of this administrative regulation.

(b) If a student asks, in writing and in a manner set forth by the institution consistent with this administrative regulation, to appeal the decision of the designated office or person, the residency review committee shall review, evaluate, and act upon that appeal.

(c) An application for a review of residency status which is not submitted in a timely manner, shall result in a determination of residency status consistent with an initial determination of residency status.

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(5) The decision of the designated office or person, or of the residency review Committee shall be set forth in a letter that includes [include]:

(a) Findings of fact;

(b) Determination of whether the applicant is deemed to be a "dependent person" or "independent person"; [and]

(c) Whether the applicant is a resident or nonresident, and the reasons consistent with institutional policy and this administrative regulation; and

(d) A citation of the specific section of the administrative regulation that provided the basis for the institutional determination.

(6) If a student has requested an institutional review of a residency determination, the student shall be notified in writing, by registered or certified mail, of the decision of the administrative officer designated by the institution or the residency review committee, as appropriate, within forty-five (45) calendar days after receipt of a person's application for a change.

(7) A change in a determination of residency shall not be made retroactive beyond the academic term in which the request for a change is made.

(8) A student shall have the right to appeal a decision of the residency review committee to the Council on Postsecondary Education pursuant to Sections 16, 17, and 18 of this administrative regulation

(9) An institution shall, by written policy, establish deadlines for the submission of written documentation by a person seeking a review of an initial determination of residency status and shall not consider an appeal which does not conform to the timetable requirements for documentation and for the process established in the institution's operational policy.

Section 16. Procedure for Appeal to the Council on Postsecondary Education and Intermediate Review by the Council on Postsecondary Education Appeals Officer. (1) The President of the Council on Postsecondary Education shall designate a person on the staff of the Council on Postsecondary Education to serve as an appeals officer.

(2) The appeals officer's review of an institutional determination of residency status shall be to determine whether the residency review committee's written decision was supported by a preponderance of evidence and whether the decision conforms [conformed] to this administrative regulation.

(3) Upon receipt of notice from the residency review committee of an institution's [the] decision by certified or registered mail, the student shall have fourteen (14) calendar days to appeal that decision to the Council on Postsecondary Education by giving notice in writing to the office or person designated by the institution to administer this administrative regulation.

(4) An appeal filed more than fourteen (14) calendar days after receipt of the decision of the residency review committee shall be dismissed and the decision of the residency review committee shall be final.

(5) The office or person designated by the institution pursuant to Section 12 of this administrative regulation shall be responsible for forwarding to the Council on Postsecondary Education a complete copy of the student's file within fourteen (14) calendar days of the receipt of a notice of appeal. The student may review the content of the file before it is forwarded to the Council on Postsecondary Education.

Section 17. Determination of the Council on Postsecondary Education Appeals Officer. (1) The appeals officer shall make a determination, based solely on the written record submitted, to affirm or reverse the residency review committee's decision.

(2) Provided, however, that the appeals officer may order the appeal remanded to the residency review committee for further proceedings before the appeals officer renders a final determination

if the appeals officer determines that the residency review committee:

(a) Failed to consider all information and evidence submitted; [or]

(b) Failed to follow institutional policies and procedures; or

(c) The information provided by an institution does not support a determination of residency.

(3)(a) New information provided by the student that was not available to the institution at the time of the institution's determination of residency status shall result in a decision by the appeals officer to remand the case to the residency review committee for further action.

(b) A remand by the appeals officer [~~because of information not available at the time of the determination of residency status~~] shall require the residency review committee to reconsider the determination of residency status in light of the new information.

(c) An institution shall notify a student in writing of additional information required and shall establish a deadline for the receipt of that information.

(d) The residency review committee shall consider the new information or evidence and shall forward a written recommendation to the appeals officer within twenty-one (21) calendar days after receipt of the notice of remand.

(e) [(d)] A copy of the residency review committee recommendation shall be provided to the student.

(f) [(e)] A remand shall be part of the appeal to the Council on Postsecondary Education and shall not constitute a determination by the appeals officer.

(4) The determination of the appeals officer shall be in writing and shall state the reason for the decision.

(5)(a) Except as provided in paragraph (b) of this subsection, within twenty-one (21) calendar days after receipt of the student's file, the recommendation of the appeals officer shall be forwarded to the student by certified or registered mail with a copy to the office or person designated by the institution to administer this administrative regulation.

(b) If the appeals officer remands an appeal under subsection (2) of this section, the twenty-one (21) days shall not include the time the order was made until the time the residency review committee's written recommendation was received by the appeals officer.

(6) The student shall have ten (10) calendar days after receipt of the appeals officer's recommendation to file a written appeal by registered or certified mail with the Council on Postsecondary Education requesting a formal adjudicatory hearing pursuant to KRS Chapter 13B and 13 KAR 2:070.

Section 18. Administrative Hearing to be Held If Requested by Student. (1) An administrative hearing on a request for a change in a determination shall be held in accordance with the provisions of KRS Chapter 13B and 13 KAR 2:070.

(2) The recommended order shall be received by the President of the Council on Postsecondary Education who shall issue a final decision on the appeal.

(a) The decision of the president shall be in writing and in accordance with KRS 13B.120.

(b) The decision of the president shall be provided to the student and the institution within twenty-one (21) calendar days after receipt of the hearing officer's decision.

(3) Upon receipt of the notification of the final decision of the president, the student shall have the right to appeal the decision to the appropriate court in accordance with KRS 13B.140.

Section 19. Charges to Institutions for Administrative Hearings. The Council on Postsecondary Education, upon receipt of a bill for the conduct of an administrative hearing on an appeal of a determination of residency status, shall assign one-half (1/2) of the cost of the administrative hearing to the institution from which the appeal is taken. An [The] institution shall provide payment to the Council on Postsecondary Education or to the office or administrative entity so designated by the Council on Postsecondary Education within thirty

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(30) calendar days of receipt of the notice of payment.

LEONARD V. HARDIN, Chair

DENNIS L. TAULBEE, General Counsel

APPROVED BY AGENCY: March 10, 1998

FILED WITH LRC: March 13, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on administrative regulation 13 KAR 2:045, Determination of residency status for admission and tuition assessment purposes, will be held on April 24, 1998, at 9 a.m. at 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the Council on Postsecondary Education in writing by April 14, 1998. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the notice of intent to promulgate an 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 amendment to the administration regulation to: Mr. Dennis L. Taulbee, Director of Staff Services/General Counsel, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, (502) 573-1555, FAX (502) 573-1535.

REGULATORY IMPACT ANALYSIS

Agency Contact: Dennis L. Taulbee

(1) Type and number of entities affected: This regulation affects the eight public senior institutions of higher education and the Kentucky Community and Technical College System institutions. It also affects all students enrolled at those institutions who might seek a determination of residency status.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation is to be implemented. Negligible.

(b) Cost of doing business in the geographical area in which the administrative regulation is to be implemented. This administrative regulation has no impact on business.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation. No increase or decrease is anticipated or required.

2. Second and subsequent years. No increase or decrease is anticipated or required.

(3) 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

(b) Reporting and paperwork requirements. No additional requirements.

(4) Assessment of anticipated effect on state and local revenues. None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. State general funds - existing appropriation. No new funds required.

(6) Economic impact in Kentucky on:

(a) Geographical area in which administrative regulation will be implemented. None

(b) On Kentucky. None

(7) Assessment of alternative methods; reasons why alternatives were rejected. None. Administrative regulation processes work well but fine tuning was required.

(8) Assessment of expected benefits. The current administrative regulation needed minor adjustment to correct an error made during

the last review process and to acknowledge cases resolved as part of administrative hearings.

(a) Impact on public health and environmental welfare is not applicable.

(b) State whether a detrimental effect on environment and public health would result if not implemented. Same as (a).

(c) If detrimental effect would result, explain detrimental effect. Same as (a).

(9) 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. Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions. Not applicable.

(10) Any additional information or comments. No additional comments are offered.

(11) TIERING: Is tiering being applied. Tiering is not being applied and is not appropriate for this administrative regulation.

GENERAL GOVERNMENT CABINET State Board of Examiners and Registration of Architects (Amendment)

201 KAR 19:095. Professional practice standards; violations, penalties.

RELATES TO: KRS 323.095, 323.120

STATUTORY AUTHORITY: KRS 323.210

NECESSITY, FUNCTION, AND CONFORMITY: To define basis for board to proceed against architects for unprofessional practice.

Section 1. Penalties for Unprofessional Practice. (1) The board may refuse to issue, reissue, or renew or may issue a private or public reprimand or may probate, suspend for a period or revoke the license of any architect to practice architecture for any of the following reasons:

(a) Gross incompetency or gross negligence.

(b) Unprofessional conduct or conduct tending to bring the profession into disrepute.

(c) Conviction of a felony.

(d) Fraudulent or dishonest architectural practice.

(e) Use of false evidence, or misrepresentation in an application for licensing or licenses renewal application.

(f) Signing or affixing his seal to any plans, prints, specifications for buildings, or reports which have not been prepared personally or by employees under his supervision.

(g) Failure to comply with established continuing education requirements.

(2) The procedure for this action shall be in accordance with the provisions of KRS 323.130 [and 323.140].

Section 2. Gross Incompetence and Gross Negligence Defined. The following acts or omissions by an architect shall be deemed to be gross incompetence or gross negligence within the meaning of the law:

(1) Willfully failing to use reasonable care and diligence in his professional practice, resulting in a building or structure being improperly constructed to the detriment of the occupants.

(2) Willfully failing to use reasonable care and diligence in preparing drawings, specifications, and other documents relating to the design and construction of buildings for the protection of a client in all relationships as agent of the client.

Section 3. Unprofessional Conduct Defined. The following acts by an architect shall be deemed to be "unprofessional conduct":

(1) Accepting compensation for architectural services from any

entity other than his client or employer.

(2) Offering or making a payment or gift to a government official (whether elected or appointed) with the intent to influence the official judgment in connection with a prospective or existing project in which the architect has an interest in providing architectural services.

(3)(a) Offering or making a payment or gift, as an individual architect or as a participating member of a partnership or corporation, to an elected governmental official, candidate for governmental office, or the campaign of a candidate for governmental office, when the payment or gift is a violation of federal or state campaign finance laws or administrative regulations.

(b) Entering a plea of guilty or an "Alford" plea to, or having been found guilty of, or having been convicted of, a felony or misdemeanor involving the violation of federal or state campaign finance laws, and the time for appeal has lapsed or the judgement or conviction has been affirmed on appeal, irrespective of an order granting probation following the conviction, suspending imposition of sentence shall be conclusive proof of a violation of this section, and a certified copy of said judgement or order shall constitute sufficient proof of such a violation.

(4) Offering or making any gifts, except gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent to influence the judgment of an existing or prospective client in connection with a project in which the architect has an interest.

(5) Having a financial interest in the manufacture, sale or installation of any component or process used in a project for which he is the architect unless the client has been advised and has waived any objection.

(6) Publicly endorsing a product, system, or service, or permitting the use of his name or photograph to imply endorsement of a product, system, or service not designed or developed by him; or

(7)(a) Using paid advertising on behalf of himself, his partner, associate, or any other architect affiliated with him or his firm, that contains a statement or claim which is false or tends to be misleading, deceptive, or unfair, or which makes material claims of superiority which cannot be substantiated rather than being designed to inform the public.

(b) Advertising may include the name of the architect or firm, address, telephone number, a statement of the fields of practice, and a statement of the geographical area where services are rendered, and cost of services.

(c) An architect or architectural firm which advertises a fee for specific services and accepts such employment shall perform such services for the amount stated, and a statement to that effect shall be included in every advertisement.

(d) Advertisements may be by newspaper or magazine advertisements, radio or television announcements, or display advertisements in the city or telephone directories.

Section 4. Conviction of a Felony. Entering a plea of guilty or an "Alford" plea to, or having been found guilty of, or having been convicted of a felony, and the time for appeal has lapsed or the judgement or conviction has been affirmed on appeal, irrespective of an order granting probation following the conviction, suspending imposition of sentence shall be conclusive proof of a violation of this section, and a certified copy of said judgment or order shall constitute sufficient proof of such a violation.

Section 5. Fraudulent or Dishonest Practice Defined. The following practices by an architect shall be deemed to be "fraudulent or dishonest practice" within the meaning of the law:

(1) Making untrue or deceitful statements in an application for examination or registration, or in an application for license renewal or in any other statements or representations to the board.

(2) Affixing his seal to any drawings other than those for which he is the author. All plans shall be sealed by the author or authors

thereof. "Authors" is defined as those in responsible charge of the preparation of plans which are made by them personally or under their supervision.

(3) Bribing any person or persons who may influence the selection of an architect.

(4) Willfully misleading or defrauding any person or persons employing him as an architect.

(5) Willfully violating the laws of Kentucky or any other state, where such are applicable, relating to the practice of architecture; or willfully violating any rule or administrative regulation of this board made in pursuance to law.

(6) Using, or attempting to use, or practicing under, a license that has been suspended or revoked or which has not been renewed as required by law and the administrative regulations of the board.

Section 6. Registration while Working for Others. (1) An architect may work as the employee of another architect without affecting the status of his registration;

(2) Or he may work as an employee for any firm in which his duties are not those of any architect, without affecting the status of registration. But if he works as an architect for, or with, an individual not an architect, or a firm or corporation not under the control of architects, then he shall maintain free and unbiased judgment and unrestrained use of his professional prerogatives and services to clients; and the terms of his employment or agreement shall permit full compliance with the "obligations of practice," and these administrative regulations.

Section 7. Office Staffing. Each office maintained for the preparation of drawings, specifications, reports and other professional work shall have a regularly employed architect duly registered with this board, in full authority and responsible charge, having direct knowledge and supervisory control of such work.

DAVID MOHNEY, President

JIM GRAWE, Assistant Attorney General

APPROVED BY AGENCY: January 28, 1998

FILED WITH LRC: March 13, 1998 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on April 22, 1998 at 3 p.m. at 841 Corporate Drive, Suite 200B, Lexington Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 15, 1998, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this 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 to: Jerry W. Herndon, Executive Director, State Board of Examiners and Registration of Architects, 841 Corporate Drive, Suite 200B, Lexington, Kentucky 40503, (606) 246-2069, or fax your request to (606) 246-2431.

REGULATORY IMPACT ANALYSIS

Contact person: Jerry W. Herndon

(1) Type and number of entities affected: Approximately 2400 licensees.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation:

2. Second and subsequent years:

(3) 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

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No effect.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) 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:

(10) Any additional information or comments: This regulation amended to implement penalty for failure to comply with new continuing education regulation (201 KAR 19:087).

(11) TIERING: Is tiering applied? No. Tiering is not required because:

(a) This administrative regulation governs one class of person, applicants for examination, for which uniform standards are required; and

(b) There is not rational basis for the establishment of different requirements for members of the class.

JUSTICE CABINET Kentucky Parole Board (Amendment)

501 KAR 1:030. Determining parole eligibility.

RELATES TO: KRS 439.340(3)

STATUTORY AUTHORITY: KRS 439.340(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340 requires the Kentucky Parole Board to adopt administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

Section 1. Definitions. As used in these administrative regulations, unless the content otherwise requires:

(1) "Board" means the Kentucky Parole Board or a quorum thereof.

(2) "Chair" means the chairman of the board.

(3) "Deferment" means a decision by the board that an inmate shall serve a specific number of months before further parole

consideration.

(4) "Detainer" means a document issued or made by a legal authority, authorizing the keeper of a prison or jail to keep the person named in the document in custody.

(5) "Panel" means anything less than a quorum.

(6) "Parole" means the release of an inmate with a signed parole certificate to the community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision. If a court or other authority has issued a detainer against the inmate, the board, in its discretion, may release him to answer the detainer.

(7) "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence if the inmate has an approved parole plan and has signed his parole certificate.

(8) "Parole rescission" means a decision of the board to terminate or rescind an inmate's parole recommendation, before the inmate is actually released on parole.

(9) "Parole revocation" means the formal procedure by which the board may terminate or revoke a parolee's release on parole.

(10) "Preliminary hearing" means the initial hearing conducted by an administrative law judge to determine whether probable cause exists to believe a parolee has violated the conditions of his parole.

(11) "Quorum" means the number of members of any body who shall be present in order for the body to transact business.

(12) "Reconsideration" means a decision to review a previous board action.

(13) "Serve-out" means a decision of the board that an inmate shall serve until the completion of his sentence (SOT - serve-out time).

(14) "Youthful offender" is defined in KRS 635.020 and proceeded against in accordance with KRS 640.010.

Section 2. Statement of Content. (1) It is the intent of the Kentucky General Assembly in creating the board that it be autonomous and in all respects functionally and administratively separate from any other state agency, except as provided in KRS 439.320(1). Consequently, the board shall protect its necessary freedom from real or apparent political control, manipulation or undue or improper influence by any person, group or other entity.

(2) A decision of the board regarding policy, procedures and its actions in parole matters shall be determined by simple majority vote of the members of the board, except as provided in KRS 439.320(2). Panels of the board may make recommendations to the full board if authorized.

Section 3. Administration. (1) Board structure. The composition of the board shall be as provided by law. The appointment of members of the board, the selection of its chair, and the quorum requirements shall be those specified by law.

(2) Information concerning the board.

(a) The board shall provide and disseminate written information concerning its functions.

(b) The board shall maintain close communication and cooperation with the Justice Cabinet and the Department of Corrections, the Governor and his staff, members and committees of the General Assembly, and other public officials, including judges, state attorney general, Commonwealth attorney, law enforcement officials and public defenders. The board shall communicate and cooperate with public and private service agencies, including, an agency which deals with mental health, vocational rehabilitation, legal aid, human services and victims of crime.

(c) Since the board has the authority to grant parole, it welcomes the opinion of the sentencing judge, prosecuting attorney, other public officials, and private citizens, including victims of crime, concerning parole consideration.

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Section 4. Parole Eligibility. (1) Initial parole review date.

(a) A person confined to a state penal institution or county jail who has been convicted of a felony offense committed after the effective date of this administrative regulation shall have his case reviewed by the board, unless otherwise prohibited by statute, in accordance with the following schedule:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years
Persistent felony offender I in conjunction with a Class A, B or C felony	10 years

For the crimes, committed on or after July 15, 1986, of murder, manslaughter I, rape I, sodomy I, assault I, kidnapping - where there is serious physical injury or death, arson I - where there is serious physical injury or death, criminal attempt, criminal solicitation, or criminal conspiracy to commit any of the previously listed capital offenses or a Class A felony which involves serious physical injury or death of the victim:

Sentences of a number of years	As prescribed by statute
Sentences of life	As prescribed by statute

(b) A person confined to a state penal institution or county jail who has been convicted of a felony offense committed on or after December 3, 1980, but prior to the effective date of this administrative regulation, shall have his case reviewed by the board in accordance with the following schedule:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years

(c) A person confined to a state penal institution or county jail who has been convicted of a felony offense committed prior to December 3, 1980 shall have his case reviewed by the board in accordance with the following schedule:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1 year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 ½ years	7 months
2 ½ years up to 3 years	8 months
3 years	10 months

More than 3 years, up to and including 9 years	1 year
More than 9 years, up to and including 15 years	2 years
More than 15 years, up to and including 21 years	4 years
More than 21 years, up to and including life	6 years

Parole eligibility on an individual serving multiple sentences, where one (1) or more of the crimes resulted in a conviction committed under Section 4(b) or (c) of this administrative regulation and one (1) or more committed under Section 4(a) of this administrative regulation, shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(d) After the initial review for parole, a subsequent review, during confinement, shall be at the discretion of the board; however, the maximum deferment given at one (1) time shall not exceed the statutory minimum parole eligibility for a life sentence. The board shall reserve the right to order a serve-out on a sentence.

(e) If a confined prisoner is sentenced for a felony committed prior to the date of his instant commitment and this conviction shall be served consecutively, it shall be added to the sentence being served to determine eligibility for parole consideration if the inmate has not been discharged from the institution since his original admission on that institutional number. If the confined prisoner is a returned parole violator with an additional consecutive sentence, parole eligibility shall be determined on the length of the new sentence only, calculated from the date of final sentencing. If the confined prisoner is recommended for parole or given a serve-out or deferment and receives an additional concurrent or consecutive sentence, parole eligibility on the new sentence shall be calculated from the date of original admission on the aggregate sentences, total time to serve, and allowing jail credit on all sentences as if he has never been seen by the board. If the additional sentence shall be served concurrently, he shall start to accrue parole eligibility on the day he is committed on the first sentence.

(f) If a person receives a concurrent or consecutive sentence for a crime committed while confined in the institution or while on escape from the institution, he shall not begin to accrue eligibility time towards parole consideration on the latter sentence until he becomes eligible for parole on the sentence for which he is originally confined. This shall include a life sentence.

(g) In determining parole eligibility for an inmate who receives a sentence for an escape, the board shall require, in addition to the amount of time to be served for parole eligibility on the original sentence, and for a crime committed while in the institution or on an escape, the service of additional time equal to the time to be served for an additional sentence received for the escape.

(h) If a confined prisoner receives a deferment, escapes before he meets the board again, returns to the institution from the escape but does not receive a new sentence for the escape, the time out on escape shall be added to the deferred date to arrive at his new adjusted deferment date. However, if he later receives a sentence for that escape, his time shall be calculated on the new sentence from the date of sentencing. A new escape sentence shall void the deferment.

(i) If an inmate receives a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence for a crime committed while on escape or confined in an institution, he shall automatically be brought before the board again when he becomes eligible for parole consideration on the additional sentence. His parole eligibility shall be calculated from the date of sentencing on the new sentence.

(j) If an inmate receives a parole recommendation but escapes prior to being released, the parole recommendation shall be rescinded by the board upon receipt of a signed affidavit attesting to the fact

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that the escape has occurred from the institutional parole officer of the institution where the inmate escaped. Upon return to a state institution, the inmate shall be placed before the board at its next regularly scheduled hearing at the institution where he is confined.

(k) A person who is shock probated and later returned as a shock probation violator shall be considered for parole after he serves the required time. This sentence shall be calculated by adding the period of time the inmate is out of the institution to his original parole eligibility date.

(l) A person returned to the institution as a shock probation violator with a new concurrent sentence shall have a separate date of parole eligibility on each sentence computed. The inmate shall have a separate hearing on each eligibility date. The adjusted parole eligibility date on the sentence for which he received shock probation shall be determined by adding the period of time he is out of the institution to his original parole eligibility date, calculated prior to being shock probated.

(m) A person who is shock probated and returned to the institution with a new sentence acquired while on shock probation to be served consecutively, shall be eligible for a parole hearing if he has served the amount of time to be eligible for a parole hearing on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences.

(2) An inmate who has committed an offense on or after the effective date of this administrative regulation shall not be eligible for parole consideration prior to his minimum eligibility date, as determined pursuant to Section 4(1) of this administrative regulation, unless he has:

(a) Successfully completed the First Incarceration Shock Treatment (FIST) Program implemented by CPP 21.2, V. Policy, B. Eligibility Criteria, incorporated by reference, in 501 KAR 6:020; and

(b) Not been convicted of an offense that resulted in serious physical injury.

(3) The parole hearing shall consist of an interview with the inmate by the board, or a panel. If the inmate is too ill to appear, the board may, at its discretion, appoint one (1) member to interview the inmate in the health care facility where he is confined and report back to the remaining members. A majority vote by a quorum shall be required before action is taken.

(4) If an inmate refuses to meet the board on his scheduled hearing date, a notarized statement to that effect shall be presented. A person refusing to meet the board may petition the board for reconsideration.

(5) An inmate who is psychologically unstable may be deferred in absentia until he is able to meet the board if the board receives documentation from a certified psychologist or psychiatrist.

(6) The board shall schedule the initial parole hearing as follows, unless otherwise prescribed by statute:

(a) For an institution that has hearings scheduled once per month, the inmate shall, if administratively possible, be seen during the month he is eligible for parole consideration.

(b) For an institution that has hearings scheduled bimonthly, the inmate shall, if administratively possible, be seen during the month eligible or one (1) month prior to the month he is eligible for parole consideration.

(c) If it is not administratively possible to conduct the initial parole hearing during the month the inmate is eligible, the inmate shall be seen at the next available board hearing conducted at the institution where the inmate is housed.

Section 5. Board Criteria for Granting or Denying Parole. (1) Before granting or denying parole, the board shall apply any of the following factors to an inmate:

- (a) Current offense - seriousness, violence involved, firearm used;
- (b) Prior record;

(c) Institutional adjustment and conduct - disciplinary reports, loss of good time, work and program involvement;

(d) Attitude toward authority - before and during incarceration;

(e) History of alcohol or drug involvement;

(f) History of prior probation, shock probation or parole violations;

(g) Education and job skills;

(h) Employment history;

(i) Emotional stability;

(j) Mental capacities;

(k) Terminal illness;

(l) History of deviant behavior;

(m) Official and community attitudes toward accepting inmate back in the county of conviction;

(n) Victim impact statement and victim impact hearing;

(o) Review of parole plan - housing, employment, need for community treatment and follow-up resources;

(p) Other factors involved that relate to the inmate's needs and public safety.

(2) The board may rescind a parole recommendation anytime prior to the release of an inmate on parole.

(3) The board may reconsider a decision to deny parole if the chair requests the full board to reconsider a decision and the full board votes in writing, and the majority votes in favor of the reconsideration hearing.

(4) An inmate whose parole is revoked, rescinded or denied by deferment or serve-out may request an appellate review by the board. A request for the review shall be received by the board within twenty-one (21) days from the date the final disposition is made available to the inmate. If the request is not received within twenty-one (21) days, it shall be denied. The request shall be screened by a board member or his designee to decide if a review shall be conducted. A review shall be conducted for the following reasons:

(a) If there is significant new evidence that was not available at the time of the hearing. A request based on the availability of new evidence or information shall be accompanied by adequate documentation.

(b) If there is an allegation of misconduct by a board member that is substantiated by the record.

(c) If there is a significant procedural error by a board member. A request which requires further consideration shall be based on one (1) or more of the above reasons. A request based on an allegation of misconduct or significant procedural error shall clearly indicate the specific misconduct or procedural error. If the case is set for review, it shall be conducted from the record of the first hearing. The appearance of the inmate shall not be necessary. If a board member wishes to have additional testimony, an appearance hearing may be conducted. The board shall vote after reviewing the initial taped interview and the record. A decision to change the result of the hearing that is the subject of the appeal shall require the concurrence of four (4) board members. This decision shall be final.

Section 6. Youthful Offender. (1) A youthful offender shall be subject to the jurisdiction of the board as described in KRS 640.080.

(2) The Cabinet for Human Resources and the Department of Corrections shall provide the board with necessary records to conduct a hearing as described in KRS 640.100.

(3) A youthful offender shall be subject to the board's applicable administrative regulations.

(4) A youthful offender housed by the Cabinet for Human Resources shall have a hearing at a site agreed upon by that cabinet and the board.

(5) A youthful offender housed by the Department of Corrections shall have a hearing at a site determined by the board.

(6) An administrative law judge shall hold a preliminary revocation hearing at a facility out of sight and sound of adult inmates.

(7) A final revocation hearing for a youthful offender shall be held at a site agreed upon by the Cabinet for Human Resources and the

board or the central office of the board.

(8) Special hearings for a youthful offender shall be held in central office.

Section 7. Conditions of Parole. (1) The general conditions are as follows. The parolee shall:

(a) Report to his parole officer immediately upon arrival at his destination and submit in writing once a month, or more if directed by the officer, a report on forms prescribed by the Division of Probation and Parole.

(b) Permit his parole officer to visit his home and place of employment at any time.

(c) Not indulge in the use of a nonprescribed controlled substance.

(d) Work regularly and support his legal dependents. If unemployed, he shall report this fact to his officer and make every attempt to obtain other employment.

(e) Not associate with a convicted felon except for a legitimate purpose, including family, residential, occupational or treatment.

(f) Not visit with an inmate of a penal institution without permission of his parole officer.

(g) Not leave the state, district, residence or place of employment without written permission of his parole officer.

(h) Not be permitted to purchase, own or have in his possession a firearm or other weapon.

(i) Not violate any law or city ordinance of this state, any other state or the United States.

(j) Not falsify any report to his parole officer.

(k) Not have the right to register for voting purposes and may not hold office; if he registers or reregisters prior to restoration of his civil rights, he shall be in violation of the law which carries a maximum penalty of five (5) years in prison.

(l) Comply with the rules and administrative regulations prescribed by the Division of Probation and Parole and special instructions of his parole officer.

(m) Pay a supervision fee unless expressly waived by the board.

(2) If additional supervision or conditions are deemed necessary in a case, the board may order a parolee to:

(a) Be placed in the Intensive Supervision Program, administered by the Department of Corrections, pursuant to 501 KAR 6:020 and CPP 27-11-01;

(b) Observe a curfew;

(c) Not associate with, or contact a specific individual;

(d) Not frequent a certain place or business;

(e) Be tested periodically for drugs; or

(f) Observe any condition the board has determined is necessary for the rehabilitation of the parolee. [KRS 439.340 requires the Kentucky Parole Board to adopt administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.]

Section 1. Definitions. As used in these administrative regulations, unless the content otherwise requires:

(1) "Board" means the Kentucky Parole Board or a quorum thereof.

(2) "Quorum" means the number of members of any body who must necessarily be present in order for the body to transact business.

(3) "Panel" means anything less than a quorum.

(4) "Chair" means the Chairman of the Kentucky Parole Board.

(5) "Detainer" means a document issued or made by a legal authority, authorizing the keeper of a prison/jail to keep in his custody the person named in the document.

(6) "Serve-out" means a decision of the board that an inmate shall serve until the completion of his sentence (SOT - serve-out time).

(7) "Deferment" means a decision of the board that an inmate shall serve a specific number of months before further parole

consideration:

(8) "Reconsideration" means a decision to review a previous board action.

(9) "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence if the inmate has an approved parole plan and if the inmate has signed his parole certificate.

(10) "Parole" means the release of an inmate with a signed parole certificate to the community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision. Where a court or other authority has issued a detainer against the inmate, the board, in its discretion, may release him to answer the detainer of such court or authority.

(11) "Parole rescission" means a decision of the board to terminate or rescind an inmate's parole recommendation, before such inmate means actually released on parole.

(12) "Parole revocation" means the formal procedure by which the board may terminate or revoke a parolee's release on parole.

(13) "Preliminary hearing" means the initial hearing conducted by an administrative law judge to determine whether probable cause exists to believe a parolee has violated the conditions of his parole.

(14) "Youthful offender" means a juvenile declared as such as described in KRS 640.010.

Section 2. Statement of Content. (1) It is the intent of the Kentucky General Assembly in creating the Kentucky Parole Board that it be autonomous and in all respects functionally and administratively separate from any other state agency, except as provided in KRS 439.320(1). Consequently, the board shall protect such necessary freedom from real or apparent political control, manipulation, or undue or improper influence by any person, group, or other entity of any kind.

(2) All decisions of the board regarding policy, procedures and its actions in parole matters shall be determined by simple majority vote of the members of the board, except as provided in KRS 439.320(2). Panels of the board may make recommendations to the full board where authorized.

Section 3. Administration. (1) Board structure. The composition of the board shall be as provided by law. The appointment of members of the board, the selection of its chair, and the quorum requirements shall be those as specified by law.

(2) Information concerning the board.

(a) The board shall provide and disseminate written information concerning the functions of the Kentucky Parole Board.

(b) The board shall maintain close communication and cooperation with the Justice Cabinet and the Department of Corrections, the Governor and his staff, members and committees of the General Assembly, and other public officials, including judges, state attorney general, Commonwealth Attorney, law enforcement officials and public defenders. The board shall communicate and cooperate with all public and private service agencies, including, but not limited to, agencies dealing with mental health, vocational rehabilitation, legal aid, human services and victims of crime.

(c) Since the board has the authority to grant parole, it welcomes the opinion of the sentencing judge, prosecuting attorney, other public officials, and private citizens, including victims of crime, concerning parole consideration.

Section 4. Parole Eligibility. (1) Initial parole review date:

(a) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed after the effective date of this administrative regulation shall have their cases reviewed by the board (unless otherwise prohibited by statute) in accordance with the schedule set out as follows:

Time Service Required

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Sentence Being Served ————— Before First Review
(Minus Jail Credit)

1 year, up to but not including 2 years ————— 4 months
2 years, up to and including 39 years ————— 20% of
sentence received
More than 39 years, up to & including life ————— 8 years
Persistent felony offender in conjunc-
tion with a Class A, B, or C felony ————— 10 years

For the crimes, committed on or after July 15, 1986, of murder, manslaughter I, rape I, sodomy I, assault I, kidnapping (where there is serious physical injury or death), arson I (where there is serious physical injury or death), criminal attempt, criminal solicitation, or criminal conspiracy to commit any of the previously listed capital offenses or Class A felonies which involve serious physical injury or death of the victim:

Sentences of a number of years ————— As prescribed by statute
Sentences of life ————— As prescribed by statute

(b) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed on or after December 3, 1980 but prior to the effective date of this administrative regulation shall have their cases reviewed by the board in accordance with the schedule set out as follows:

Sentence Being Served ————— Time Service Required
Before First Review
(Minus Jail Credit)

1 year, up to but not including 2 years ————— 4 months
2 years, up to and including 39 years ————— 20% of sentence
received
More than 39 years, up to and including ————— 8 years
life

(c) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed prior to December 3, 1980 shall have their cases reviewed by the board in accordance with the schedule set out as follows:

Sentence Being Served ————— Time Service
Required
Before First Review
(Minus Jail Credit)

1 year ————— 4 months
More than 1 year and less than 18 months ————— 5 months
18 months up to and including 2 years ————— 6 months
More than 2 years and less than 2 1/2 years ————— 7 months
2 1/2 years up to 3 years ————— 8 months
3 years ————— 10 months
More than 3 years, up to & including 9 years ————— 1 year
More than 9 years, up to & including 15 years ————— 2 years
More than 15 years, up to & including
21 years ————— 4 years
More than 21 years, up to & including life ————— 6 years

Parole eligibility on those individuals serving multiple sentences; one (1) or more of the crimes which resulted in the convictions committed under Section 4(b) or (c) of this administrative regulation and one (1) or more committed under Section 4(a) of this administrative regulation, shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(d) After the initial review for parole, subsequent review, so long

as confinement continues, shall be at the discretion of the board; except maximum deferment given at any one (1) time shall not exceed the minimum parole eligibility for a life sentence as established by statute. The board reserves the right to order a serve-out on any sentence:

(e) A sentence on conviction of a felony imposed upon a confined prisoner for a crime committed prior to the date of his instant commitment, if designated to be served consecutively, shall be added to the sentence being served to determine eligibility for parole consideration if the inmate has not been discharged from the institution since his original admission on that institutional number. If the confined prisoner is a returned parole violator with an additional consecutive sentence then parole eligibility shall be determined on the length of the new sentence only, calculated from the date of final sentencing. If the confined prisoner has been recommended for parole or given a serve-out or deferment and receives an additional sentence, running either concurrently or consecutively, parole eligibility on the new sentence shall be calculated from the date of original admission on the aggregate sentences (total time to serve) and allowing jail credit on all sentences, as if he had never been seen by the board. If the additional sentence is designated to be served concurrently, he shall be considered as having started to accrue parole eligibility on the day he was committed on the first sentence.

(f) A person receiving a concurrent or consecutive sentence for crime committed while confined in the institution or while on escape from the institution shall not begin accruing eligibility time towards parole consideration on the latter sentence until he has become eligible for parole on the sentence, including a life sentence, for which he was originally confined.

(g) In determining parole eligibility for an inmate who has received a sentence for an escape, the board shall require, in addition to the amount of time to be served for parole eligibility on the original sentence, and the time required to be served for any crime committed while in the institution or while on escape, the service of additional time equal to the time to be served for any additional sentence received for such escape.

(h) If a confined prisoner receives a deferment, escapes before he meets the board next time, returns to the institution from escape but does not have a new sentence for escape, the time out on escape shall be added to the deferred date to arrive at his new adjusted deferment date. However, if he later receives an escape sentence for that escape, his time shall be calculated on the new sentence from the date of sentencing. A new escape sentence shall void the deferment.

(i) Even though an inmate has received a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence or sentences for crimes committed while on escape or while confined in the institution, he shall automatically be brought before the board again when, and not until, he becomes eligible for parole consideration on the additional sentence(s) and the parole eligibility shall be calculated from the date of sentencing on the new sentence or sentences.

(j) If an inmate has received a parole recommendation but escapes prior to being released on parole, the parole recommendation shall be rescinded by the board upon receipt of an affidavit signed and submitted by the institutional parole officer of the institution from where the inmate escaped attesting to the fact that the escape has occurred. Upon return to a state institution, the inmate shall be placed back before the board at its next regularly scheduled hearing at the institution where he is confined.

(k) A person who is shock probated and later returned as a shock probation violator shall be considered for parole after he has served the required time on the sentence calculated by adding on the period of time the inmate was out of the institution to his original parole eligibility date.

(l) Persons returned to the institution as a shock probation violator with a new concurrent sentence shall have separate dates of parole

eligibility on each sentence computed and the inmate shall be heard separately on each eligibility date. The adjusted parole eligibility date on the sentence on which he was shock probated shall be determined by adding the period of time he was out of the institution to his original parole eligibility date calculated prior to being shock probated.

(m) A person who is shock probated and later returned to the institution with a new sentence acquired while on shock probation and ordered to be served consecutively shall be eligible for a parole hearing when he has served the amount of time required to be eligible for a parole hearing required on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences.

(2) In keeping with the intent of the Act, the Parole Board may with the consent of the majority of the board review the case of any inmate for parole consideration prior to his eligibility date. This shall not be done until the reason for such action is submitted to all members in writing, along with all supporting documents, and all members shall note in writing as to their desire to grant a hearing. This shall then be filed in the record of the inmate in question and made a permanent part of his file in the central office of the Department of Corrections.

(3) The parole hearing shall consist of an interview with the inmate by the board, or a panel. In instances when the inmate is too ill to appear before the board, the board may, at its discretion, appoint one (1) member to interview the inmate in the health care facility where he is confined and report back to the remaining members. In this instance, as in all cases, a majority vote by a quorum is required before action is taken.

(4) If an inmate refuses to meet the board on his scheduled hearing date, a notarized statement shall be presented to this effect. A person refusing to meet the board may petition the board for reconsideration.

(5) Inmates who are psychologically unstable may be deferred in absentia until they are able to meet the board if the board receives documentation from a certified psychologist or psychiatrist.

(6) The board shall schedule the initial parole hearing as follows (unless otherwise prescribed by statute):

(a) For those institutions that have hearings scheduled once per month, the inmates shall be seen during the month they are eligible for parole consideration, if administratively possible.

(b) For those institutions that have hearings scheduled bimonthly, the inmates shall be seen during the month eligible or one (1) month prior to the month they are eligible for parole consideration, if administratively possible.

(c) In those instances where it is not administratively possible to conduct the initial parole hearing during the month the inmate is eligible for a parole hearing, the inmate shall be seen at the next available board hearing conducted at the institution where the inmate is housed.

Section 5. Board Criteria for Granting or Denying Parole. (1) Before granting or denying parole, the board shall apply any or all of the following factors to each inmate:

- (a) Current offense—seriousness, violence involved, firearm used;
- (b) Prior record;
- (c) Institutional adjustment and conduct—disciplinary reports, loss of good time, work and program involvement;
- (d) Attitude toward authority—before incarceration, during incarceration;
- (e) History of alcohol or drug involvement;
- (f) History of prior probation, shock probation or parole violations;
- (g) Education and job skills;
- (h) Employment history;
- (i) Emotional stability;
- (j) Mental capacities;
- (k) Terminal illness;

- (l) History of deviant behavior;
- (m) Official and community attitudes toward accepting inmate back in the county of conviction;
- (n) Victim impact statements and victim impact hearings;
- (o) Review of parole plan—housing, employment, need for community treatment and follow-up resources;
- (p) Any other factors involved that would relate to the inmate's needs and the safety of the public.

(2) The board may rescind a parole recommendation anytime prior to the release of an inmate on parole.

(3) The board may reconsider a decision to deny parole if the chairman requests the full board to reconsider a decision and the full board votes in writing, and the majority votes in favor of the reconsideration hearing.

(4) An inmate whose parole has been revoked, rescinded or denied by deferment or serve out may request an appellate review by the board. Requests for an appellate review shall be received by the board within twenty-one (21) days from the date the final disposition is made available to the inmate. If the request is not received within twenty-one (21) days, it shall be denied. The request shall be screened by a board member or designee to decide if a review shall be conducted. Reviews shall be conducted for the following reasons:

(a) If there is significant new evidence that was not available at the time of the hearing;

(b) If there are allegations of misconduct by a board member that are substantiated by the record.

(c) If there were significant procedural errors by a board member.

All requests which will receive further consideration shall be based on one (1) or more of the above reasons. Requests based on the availability of new evidence or information shall be accompanied by adequate documentation. Requests based on allegations of misconduct or significant procedural errors shall clearly indicate the specific misconduct or procedural errors(s).

If the case is set for review, it shall be conducted from the record of the first hearing and the appearance of the inmate shall not be necessary. If a board member wishes to have additional testimony, an appearance hearing may be conducted. The board shall vote after reviewing the initial taped interview and the record. A decision to change the result of the hearing that is the subject of the appeal shall require the concurrence of four (4) board members. The decision rendered after an appellate review is final.

Section 6. Youthful Offender. (1) Youthful offenders are subject to the jurisdiction of the Kentucky Parole Board as described in KRS 640.080.

(2) The Cabinet for Human Resources and the Department of Corrections shall provide the Parole Board with all necessary records to conduct a hearing as described in KRS 640.100.

(3) Youthful offenders shall be subject to all sections of the Kentucky Parole Board administrative regulations as applicable.

(4) Youthful offenders housed by the Cabinet for Human Resources shall have a hearing at a site agreed upon by that cabinet and the Parole Board.

(5) All youthful offenders housed by the Department of Corrections shall have a hearing at a site determined by the Parole Board.

(6) Administrative law judges shall hold preliminary revocation hearings at facilities out of sight and sound of adult inmates.

(7) Final revocation hearings for youthful offenders shall be held at a site agreed upon by the Cabinet for Human Resources and the Kentucky Parole Board or the Central Office of the Parole Board.

(8) Special hearings for youthful offenders shall be held in central office.

Section 7. Conditions of Parole. (1) The general conditions are as follows:

(a) The parolee shall report to his parole officer immediately upon arrival at his destination and submit in writing once a month, or more

often if directed by the officer, a report on forms prescribed by the Division of Probation and Parole:

(b) The parolee shall permit his parole officer to visit his home and place of employment at any time:

(c) The parolee shall not indulge in the use of nonprescribed controlled substances:

(d) The parolee shall work regularly and support his legal dependents. When unemployed, he shall report this fact to his officer and make every attempt to obtain other employment:

(e) The parolee shall not associate with a convicted felon except for legitimate purposes, including but not limited to family, residential, occupational or treatment purposes:

(f) The parolee shall not visit with inmates of penal institutions without permission of his parole officer:

(g) The parolee shall not leave the state, district, residence or place of employment without written permission of his parole officer:

(h) The parolee shall not be permitted to purchase, own or have in his possession a firearm or other weapon:

(i) The parolee shall not violate any law or city ordinance of this state or any other state or of the United States:

(j) The parolee shall not falsify any report to his parole officer including his monthly report:

(k) The parolee does not have the right to register for voting purposes and cannot hold office; should he register or reregister prior to restoration of civil rights, he shall be in violation of the law which carries a maximum penalty of five (5) years in prison:

(l) The parolee shall comply with all rules and administrative regulations prescribed by the Division of Probation and Parole and special instructions of his parole officer:

(m) The parolee shall pay a supervision fee unless expressly waived by the Parole Board:

(2) Special conditions of parole may be added in individual cases at the discretion of the Parole Board.]

LINDA F. FRANK, Chair

TAMELA BIGGS, Staff Attorney

JACK DAMRON, Staff Attorney

APPROVED BY AGENCY: March 9, 1998

FILED WITH LRC: March 12, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1998, at 9 a.m., in the State Office Building Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by April 14, 1998, 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 canceled. 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 wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation.

CONTACT PERSON: Barbara Jones, General Counsel, Justice Cabinet, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601, Phone (502) 564-3279, Fax (502) 564-5244.

REGULATORY IMPACT ANALYSIS

Contact Person: Barbara Jones, General Counsel

(1) Type and number of entities affected: 8,729 inmates and 14,211 parolees and probationers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) 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

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds budgeted for this 1996 - 1998 biennium.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET

Kentucky Department of Corrections (Amended)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) The following material

ADMINISTRATIVE REGISTER - 2150

is incorporated by reference:

(a) "Department of Corrections Policies and Procedures, Volume I, January 8, 1998 [~~November 12, 1997~~]":

- 1.1 Legal Assistance for Corrections Staff
- 1.2 News Media (Amended 1/8/98)
- 01-04-01 The operation of Contracted Adult Correctional Facilities
- 1.6 Extraordinary Occurrence Reports
- 1.9 Institutional Duty Officer
- 1.11 Population Counts and Reporting Procedures
- 1.12 Operation of Motor Vehicles by Department of Corrections Employees
- 2.1 Inmate Canteen
- 2.2 Warden's Fund
- 2.10 Surplus Property
- 3.12 Institutional Staff Housing
- 4.2 Staff Training and Development
- 4.3 Firearms and Chemical Agents Training
- 4.7 Uniformed Employee Dress Code
- 6.1 Open Records Law
- 7.2 Asbestos Abatement
- 8.1 Occupational Exposure to Bloodborne Pathogens [~~Added 2/11/98~~]
- 8.2 Fire Safety [~~Added 2/11/98~~]
- 9.4 Transportation of Inmates to Funerals or Bedside Visits
- 9.5 Execution [~~Added 2/11/98~~]
- 9.6 Contraband
- 9.8 Search Policy
- 9.18 Informants
- 9.19 Found Lost or Abandoned Property
- 10.2 Special Management Inmates
- 10.3 Safekeepers
- 10.4 Special Needs Inmates
- 11.2 Nutritional Adequacy of the Diet for Inmates
- 11.3 Special Diet Procedures
- 11.4 Alternative Diet
- 13.1 Pharmacy Policy and Formulary
- 13.2 Health Maintenance Services
- 13.3 Medical Alert System
- 13.4 Health Program Audits
- 13.5 Acquired Immune Deficiency Syndrome
- 13.6 Sex Offender Treatment Program
- 13.7 Involuntary Psychotropic Medication Policy
- 13.8 Substance Abuse Treatment Program
- 13.9 Dental Services
- 14.1 Investigation of Missing Inmate Property
- 14.2 Personal Hygiene Items
- 14.3 Marriage of Inmates
- 14.4 Legal Services Program
- 14.6 Inmate Grievance Procedures (Amended 1/8/98)
- 15.1 Hair and Grooming Standards
- 15.2 Offenses and Penalties (Amended 1/8/98)
- 15.3 Meritorious Good Time
- 15-05-01 Restoration of Forfeited Good Time
- 15.6 Adjustment Procedures and Programs (Amended 1/8/98)
- 15.7 Inmate Account Restriction
- 15.8 Unauthorized Substance Abuse Testing
- 16.1 Inmate Visits
- 16.2 Inmate Correspondence
- 16.3 Telephone Calls (Amended 1/8/98)
- 16.4 Inmate Packages
- ~~17.1~~ Inmate Personal Property (Amended 1/8/98)
- ~~[17-01-01]~~
- 17.2 Assessment Center Operations
- 17.3 Controlled Intake of Inmates

(b) "Department of Corrections Policies and Procedures, Volume

II, January 8, 1998 [~~April 14, 1997~~]":

- 18.1 Classification of the Inmate
- 18.5 Custody and Security Guidelines
- 18.7 Transfers
- 18.9 Out-of-state Transfers
- 18-10-01 Parole Progress Reports
- 18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
- 18.13 Population Categories
- 18.15 Protective Custody
- 18.17 Interstate Agreement on Transfers
- 18.18 International Transfer of Inmates
- 19.1 Government Services Projects
- 19.2 Community Services Projects
- 19.3 Inmate Wage Program
- 20.1 Educational Programs and Educational Good Time
- 21.1 Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)
- 21.2 Phase I: Program Selection Assessment Criteria (Amended 1/8/98)
- 21.3 Program Schedule - Phase II and Phase III
- 21.4 Platoon Size and Composition
- 21.5 Physical Conditions Program Component
- 21.6 Group and Individual Counseling
- 21.7 Drug and Alcohol Abuse Counseling and Treatment
- 21.8 Work Programs Component
- 21.9 Education and Life Management
- 21.10 Auxiliary Services
- 21.11 Offenses and Penalties
- 22.1 Privilege Trips
- 23.1 Religion
- 25.1 Gratuities
- 25.2 Public Official Notification of Release of an Inmate
- 25.3 Pre-release Program
- 25.4 Inmate Furloughs
- 25.6 Community Center Program (Amended 1/8/98)
- 25.7 Expedient Release
- 25.8 Extended Furloughs
- 25.10 Administrative Release of Inmates
- 25.11 Victim Notification

(c) "Department of Corrections Policies and Procedures, Volume III, January 8, 1998 [~~November 12, 1997~~]":

- 27-01-01 Probation and Parole Procedures
- 27-02-01 Duties of Probation and Parole Officers
- 27-03-01 Workload Formula Supervisor/Staff Ratio
- 27-05-01 Testimony, Court Demeanor and Availability of Legal Services
- 27-06-01 Availability of Supervision Services
- 27-06-02 Equal Access to Services
- 27-07-01 Cooperation with Law Enforcement Agencies
- 27-08-01 Use of Force
- 27-09-01 Kentucky Community Resources Directory
- 27-11-01 Intensive Supervision (Amended 1/8/98)
- 27-12-01 Supervision: Case Classification
- 27-12-02 Risk Assessment
- 27-12-03 Initial Interview
- 27-12-04 Conditions of Regular Supervision/Request for Modification
- 27-12-05 Releasee's Report
- 27-12-06 Grievance Procedures for Offenders
- 27-12-07 Employment, Education/Vocational Referral
- 27-12-08 Supervision Plan

ADMINISTRATIVE REGISTER - 2151

27-12-09	Casebook
27-12-10	Guidelines for Monitoring Supervision Fee
27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13	Community Service Work
27-12-14	Client Travel Restrictions
27-13-01	Drug and Alcohol Testing of Offenders
27-13-02	Alcohol Detection
27-14-01	Interstate Compact Transfers
27-14-02	Interstate Compact Out-of-state Probation and Parole Violation
27-15-01	Supervision Report; Violations, Unusual Incidents
27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence
27-17-01	Absconder Procedures
27-18-01	Probation and Parole Issuance of Detainer/Warrant
27-19-01	Preliminary Revocation Hearing
27-20-01	Division of Probation and Parole Controlled Intake Program
27-20-02	Prisoner Intake Notification
27-20-03	Prisoner Status Change
27-21-01	Apprehension and Transportation of Probation and Parole Violators
27-22-01	Fugitive Unit - Apprehensions
27-22-02	Fugitive Unit - Transportation of Fugitives
27-23-01	In-state Transfer
27-24-01	Closing Supervision Report
27-24-02	Reinstatement of Clients to Active Supervision
27-25-01	Application for Final Discharge from Parole
27-26-01	Assistance to Former Clients and Dischargees
27-27-01	Restoration of Civil Rights
27-28-01	Firearms/Explosives: Application for Relief from Disability
27-29-01	Parole Review Dates Modification
28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03	Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04	Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05	Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06	Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07	Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08	Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09	Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01	Expedient Release Program
28-03-01	Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
28-04-01	Furlough Verifications
28-05-01	Out-of-state Investigations

(2) This material may be inspected, copied, or obtained at the Office of General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601, (502) 564-2024, facsimile (502) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: March 9, 1998

FILED WITH LRC: March 12, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1998 at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by April 14, 1998, 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 canceled. 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.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Phone (502) 564-2024, Fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 2,948 employees of the correctional institutions, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) 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

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1996-1998 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

ADMINISTRATIVE REGISTER - 2152

(a) Necessity of proposed administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

501 KAR 6:080. Department of Corrections manuals.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate [commissioner to adopt, amend or rescind] administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards by the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections. (These administrative regulations are in conformity with those provisions.)

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

(a) "Department of Corrections Manuals, January 8, 1998":

(b) It may be inspected, copied, or [Pursuant to the authority vested in the Department of Corrections the following policies and procedures are incorporated by reference on July 14, 1995 and hereinafter shall be referred to as Department of Corrections Manuals: Copies of the procedures may be] obtained at [from] the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, [or may be reviewed at the Office of General Counsel weekdays from] 8 a.m. to 4:30 p.m.

Offender Records Manual - None

Stock Procedure Manual - None

Food Services Manual - None

Classification Manual - (Amended 1/8/98 [7/14/95])

Diet Manual - None

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: March 9, 1998

FILED WITH LRC: March 12, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1998 at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by April 14, 1998, 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 canceled. 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.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Phone (502) 564-2024, Fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 2,948 employees of the Department of Corrections, 8,729 inmates, 14,211 parolees and probationers, and visitors to all state correctional institutions.

(a) Direct and indirect costs or savings 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:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the administrative regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(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 administrative 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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:301. Adoption and extension of established federal standards.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

ADMINISTRATIVE REGISTER - 2153

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally-recognized standards-producing organization.

(7) "Standard" means the same as regulation or federal rule [a standard] which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. ["Standard" has the same meaning as and includes the words "regulation" and "rule".]

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1910.11-.19 of the Code of Federal Regulations revised as of July 1, 1997 [1996], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration are incorporated by reference.

(b) The revision to 29 CFR 1910.16, "Longshoring and Marine Terminals", as published in the Federal Register, Volume 62, Number 143, July 25, 1997. [~~The revision to 29 CFR 1910.19, "Special provisions for air contaminants", as published in the Federal Register, Volume 61, Number 214, November 4, 1996.~~]

(c) ~~The revision to 29 CFR 1910.19, "Special provisions for air contaminants," as published in the Federal Register, Volume 62, Number 7, January 10, 1997.]~~

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: March 10, 1998

FILED WITH LRC: March 12, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1998, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 23, 1998, five work 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 canceled. 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: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-3070.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendment to this regulation affects all employers in general industry within the jurisdiction of the KyOSH Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of this amendment. These amendments to this administrative regulation correct a typing error in the "NECESSITY, FUNCTION AND CONFORMITY" paragraph, change a definition to meet KRS Chapter 13A requirements (Section 1(7)), update the incorporation of the Code of Federal Regulations (Section 2(1)(a)), and incorporate, by reference, revisions to "Longshoring and marine terminals", as published in the Federal Register, July 25, 1997 revising the general industry standards to conform the standard to the terminology used in the marine cargo environment.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from these revisions.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions which will increase or decrease costs. There will be no affect on competition.

(d) Reporting and paperwork requirements: This amendment will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this revision.

(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: There will be no reporting or paperwork requirements as a result of this change.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed amendment incorporates by reference corrections to federal standards published in the Federal Register and updated the regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: This proposed amendment will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of 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:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments to this administrative regulation correct a typing error in the "NECESSITY, FUNCTION AND CONFORMITY" paragraph, change a definition to meet KRS Chapter 13A requirements (Section 1(7)), update the incorporation of the Code of Federal Regulations (Section 2(1)(a)), and incorporate, by reference, revisions to "Longshoring and marine terminals", as published in the Federal Register, July 25, 1997 revising the general industry standards to conform the standard to the terminology used in the marine cargo environment.

3. Minimum or uniform standards contained in the federal mandate. The amendment incorporates corrections, as published in the Federal Register, Volume 62, Number 143, July 25, 1997 1996, to the previously incorporated regulations of 29 CFR Part 1910.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this amendment is identical to the federal standard and updates the regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This revision imposes no stricter, additional or different responsibilities than federal standards.

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This amendment affects local government entities who work in maritime operations.

3. State the aspect or service of local government to which this administrative regulation relates. The amendment affects the safety and health of employees of local government who perform work in maritime operations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of the amendment is to comply with federal regulations relating to occupational safety and health and to update the regulation. There will be no increase or decrease in local government revenues or significant expenditures. The amendment will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:320. Air contaminants.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910.1000-.1500
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910.1000-.1500

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) Definitions applicable to this part:

(a) "Act" means KRS Chapter 338.

(b) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(c) "Employee" means any person employed except those employees excluded in KRS 338.021.

(d) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(e) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(f) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(g) "Standard" means the same as regulation or federal rule which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment.

(h) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or U.S. Department of Labor.

(2) Definitions for Section 2 of this administrative regulation.

(a) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of three-tenths (0.3) mu particles.

(b) "Authorized employee" means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(c) "Clean change room" means a room where employees put on clean clothing and/or protective equipment in an environment free of 4,4'-Methylene bis (2-chloroaniline). The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(d) "Closed system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) where containment prevents the release of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(e) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.

(f) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary or Health, Education and Welfare to act for the Director.

(g) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.

(h) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-

chloroaniline) which may result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).

(i) "External environment" means any environment external to regulated and nonregulated areas.

(j) "Isolated system" means a fully enclosed structure other than the vessel of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(k) "Laboratory type hood" means a device enclosed on three sides and the top and bottom designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(l) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(m) "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas or the external environment.

(n) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

(o) "Regulated area" means an area where entry and exit is restricted and controlled.

(3) Definitions for Section 5 of this administrative regulation.

(a) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet.

(b) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet.

(c) "U.S. Department of Labor" means Kentucky Labor Cabinet.

Section 2. 4,4'-Methylene bis (2-Chloroaniline). (1) Scope and application.

(a) This section applies to any area in which, 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under subsection (5)(b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than 1.0 (one) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas where 4,4'-Methylene bis (2-chloroaniline) is stored in sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only;

2. Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point

of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations as defined in Section 1(1)(m) of this administrative regulation are prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving "laboratory type hood," or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charge, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

1. Access shall be restricted to authorized employees only;

2. Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 1910.134. A respirator affording higher level or protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under subsection (5)(b), (c), and (d) of this section.

6. Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains are prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall:

1. Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with 1910.134;

2. Be decontaminated before removing the protective garments and hood;

3. Be required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this subparagraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.

2. Experiments, procedures and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.

4. Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are release.

5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.

6. Employees engaged in animal support activities shall be:

a. Provided with, and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

b. Prior to each exit from a regulated area employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under subsection (5)(b), (c), and (d) of this section.

c. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and

d. Required to shower after the last exit of the day.

7. Employees, other than those engaged in animal support activities, each day shall be:

a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat.

b. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under paragraphs (e)2, 3, and 4 of this subsection.

c. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.

8. Air pressure in laboratory areas and animal rooms where 4,4'-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding area. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated.

9. There shall be no connection between regulated areas and any other areas through the ventilation system.

10. A current inventory of 4,4'-Methylene bis (2-chloroaniline) shall be maintained.

11. Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modification of maintenance operations, by personnel fully qualified to certify correct containment and operation.

(g) Premixed solutions. Where 4,4'-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however,

1. Only authorized employees shall be permitted to handle such materials;

2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;

3. Employees shall be required to remove and leave protective clothing and equipment when leaving the work area at the end of the work day or at any time solution is spilled on such clothing or equipment. Used clothing and equipment shall be placed in impervious containers for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)2, 3, and 4 of this section.

4. Employees shall be required to wash hand and face after removing such clothing and equipment and before engaging in other activities.

5. Employees assigned to work covered by the subparagraph

shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), (c)1 and 2, and (d)3 and 4, 5, 6, and 7 of this section;

6. Work areas where solution may be spilled shall be:

a. Covered daily or after any spill with a clean covering;

b. Cleaned thoroughly daily and after any spill.

(3) General regulated area requirements.

(a) Employee identification. A daily roster of employees entering regulated areas shall be established and maintained. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years. The rosters and/or summaries shall be provided upon request to authorized representatives of the assistant secretary and the director. In the event that the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.

(b) Emergencies. In an emergency, immediate measures including, but not limited to the requirements of subparagraphs 1, 2, 3, 4, and 5 of this paragraph shall be implemented.

1. The potentially affected area shall be evacuated as soon as the emergency has been determined.

2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

3. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (6)(b) of this section.

4. Where an employee has a known contact with 4,4'-Methylene bis (2-chloroaniline) such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

5. An incident report on the emergency shall be reported as provided in subsection (6)(b) of this section.

(c) Hygiene facilities and practices.

1. Storage or consumption of food, storage or use of containers of beverages, storage or application of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

2. Where employees are required by this section to wash, washing facilities shall be provided in accordance with 1910.141.

3. Where employees are required by this section to shower, facilities shall be provided in accordance with 1910.141(d)(3).

4. Where employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 1910.141(e), for the number of such employees required to change clothes.

5. If toilets are located in regulated areas, the toilets shall be in a separate room.

(d) Contamination control.

1. Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean make-up air in equal volume shall replace air removed.

2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment and the decontamination facility.

4. Dry sweeping and dry mopping are prohibited.

(4) Signs, information and training.

(a) Signs.

1. Entrance to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
Authorized Personnel Only

2. Entrances to regulated areas containing operations covered in subsection (3)(e) of this section shall be posted with signs bearing the legend:

Cancer-Suspect Agent Exposed
In this Area
Impervious Suit Including Gloves,
Boots, and Air-Supplied Hood
Required At All Times
Authorized Personnel Only

3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(b) Container contents identification.

1. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5 and (f)7b, and (f)7b, and (g)3 of this section which are accessible only to, and handled only by authorized employees, or by other employees trained in accordance with paragraph (e) of this subsection, may have contents identification limited to a generic or proprietary name, or other proprietary identification, or the carcinogen and percent.

2. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5, (f)7b, and (f)7b, and (g)3 of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with subparagraph of this paragraph shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in subsection (1)(a) of this section.

3. Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

4. Containers which have 4,4'-Methylene bis (2-chloroaniline) contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive of affected portions of the body.

(c) Lettering. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches. Labels on containers required under this section shall not be less than one-half (1/2) the size of the largest lettering on the package, and not less than eight (8) point type in any instance; provided that no such required lettering need be more than one (1) inch in height.

(d) Prohibited statements. No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(e) Training and indoctrination.

1. Each employee prior to being authorized to enter regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

- a. The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;
- b. The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) which could result in exposure;
- c. The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;
- d. The purpose for and application for decontamination practices and purposes;
- e. The purpose for and significance of emergency practices and procedures;
- f. The employees specific role in emergency procedures;
- g. Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release

of 4,4'-Methylene bis (2-chloroaniline);

h. The purpose for and application of specific first-aid procedures and practices.

(i) A review of this section at the employees first raining and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of assistant secretary and the director.

(5) Reports.

(a) Operations. Not later than March 1, 1974, the information required in subparagraphs 1, 2, 3, and 4 of this paragraph shall be reported in writing to the nearest OSHA Area director. Any changes in such information shall be similarly reported in writing within fifteen (15) calendar days of such change.

1. A brief description and implant location of the area(s) regulated and the address of each regulated area:

2. The name(s) and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area.

3. The number of employees in each regulated area, during normal operations including maintenance activities; and

4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area; e.g., whether it is manufactured, processed, used, repackaged, release, stored, or otherwise handled.

(b) Incidents. Incidents which result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph.

1. A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within twenty-four (24) hours to the nearest OSHA Area Director.

2. A written report shall be filed with the nearest OSHA Area Director within fifteen (15) calendar days thereafter and shall include:

- a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;
- b. A description of the area involved, and the extent of known and possible employee and area contamination; and
- c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and
- d. An analysis of the circumstances to be taken, with specific completions dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided periodic physical examination, not less often than annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids of cytotoxic agents, pregnancy and cigarette smoking.

(b) Records.

1. Employers or employees examined pursuant to this paragraph shall cause to be maintained complete and accurate record of all such medical examinations. Records shall be maintained for the duration

of the employee' employment. Upon termination of the employee' employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided upon request to authorized representatives of the assistant secretary or the director: and upon request of an employee or former employee, to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employees suitability for employment in the specific exposure.

Section 3. Laboratory Activities. (1) The requirements of this subsection shall apply to research and quality control activities involving the use of chemicals covered by 1910.1003-.1016.

(a) Mechanical pipetting aids shall be used for all pipetting procedures.

(b) Experiments, procedures and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(c) Surfaces on which chemicals covered by .1103-.1016 are handled shall be protected from contamination.

(d) Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are released.

(e) All other forms of chemicals covered by .1003-.1016 shall be inactivated prior to disposal.

(f) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(g) Employees engaged in animal support activities shall be:

1. Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

2. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under subsection (5)(b), (c), and (d) of this section.

3. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities; and

4. Required to shower after the last exit of the day.

(h) Employees, other than those engaged only in animal support activities, each day shall be:

1. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suite, or fully buttoned laboratory coat;

2. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified under subsection (5)(b), (c), and (d) of this section.

3. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities.

(i) Air pressure in laboratory areas and animal rooms where chemicals covered by .1003-.1016 are handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless

decontaminated.

(j) There shall be no connection between regulated areas and any other areas through the ventilation system.

(k) A current inventory of chemicals covered by .1003-.1016 shall be maintained.

(l) Ventilated apparatus such as laboratory-type hoods, shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

Section 4. Access to Exposure or Medical Records. (1) The language relating to the access to exposure or medical records in subsection (2) of this section shall apply in lieu of 29 CFR 1910.1020(e)(1)(i);

(2) 29 CFR 1910.1020(e)(1)(i) is amended to read: "Whenever an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why such a time is unreasonable or impractical."

(3) The language relating to the access to exposure or medical records in subsection (4) of this section shall apply in lieu of 29 CFR 1910.1020(e)(1)(iii);

(4) 29 CFR 1910.1020(e)(1)(iii) is amended to read: "Whenever an employee or designated representative requests a copy of a record, the employer shall, except as specified in (v) of this section, within the period of time previously specified assure that either:"

Section 5. The language relating to gloves in paragraph (2) of this subsection shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix);

(2) Gloves shall be worn when it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin when performing vascular access procedures and when handling or touching contaminated items or surfaces.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraph 1 through 2 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1997 [1995], is incorporated by reference:

1. 29 CFR 1910.1000 to 29 CFR 1910.1030(d)(3)(viii); and
2. 29 CFR 1910.1030(d)(3)(x) through 29 CFR 1910.1500.

(b) The revisions to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 62, Number 149, August 4, 1997, [63, Number 7, January 10, 1997;] are incorporated by reference.

~~[(c) The revisions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 61, Number 165, August 23, 1996, are incorporated by reference.~~

~~(d) The revisions to 29 CFR 1910.1003, "13-Carcinogens", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.~~

~~(e) The revisions to 29 CFR 1910.1003, "13-Carcinogens (4-Nitrophenyl, etc.)", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.~~

~~(f) The revisions to 29 CFR 1910.1004, "alpha-Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.~~

~~(g) The revisions to 29 CFR 1910.1006, "Methyl-chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.~~

~~(h) The revisions to 29 CFR 1910.1007, "3,3'-Dichlorobenzidine (and its salts)", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.~~

~~(i) The revisions to 29 CFR 1910.1008, "bis-Chloromethyl ether",~~

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as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

(j) The revisions to 29 CFR 1910.1009, "beta-Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

(k) The revisions to 29 CFR 1910.1010, "Benzidine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

(l) The revisions to 29 CFR 1910.1011, "4-Aminodiphenyl", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

(m) The revisions to 29 CFR 1910.1012, "Ethyleneimine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

(n) The revisions to 29 CFR 1910.1013, "beta-Propiolactone", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

(o) The revisions to 29 CFR 1910.1014, "2-Acetylaminofluorene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

(p) The revisions to 29 CFR 1910.1015, "4-Dimethylaminoazobenzene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

(q) The revisions to 29 CFR 1910.1016, "N-Nitrosodimethylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

(r) The revisions to 29 CFR 1910.1018, "Inorganic arsenic", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

(s) The renumbering of 29 CFR 1910.20, "Access to Employee and Medical Records", to 29 CFR 1910.1020, as published in the Federal Register, Volume 61, Number 46, June 20, 1996, is incorporated by reference, as follows:

1. 29 CFR 1910.1020 through 29 CFR 1910.1020(e)(1);

2. 29 CFR 1910.1020(e)(1)(ii); and

3. 29 CFR 1910.1020(e)(3)(iii)(a) through Appendix B to 1910.1020.

(t) The revisions to 29 CFR 1910.1025, "Occupational Exposure to Lead", as published in the Federal Register, Volume 60, Number 196, October 11, 1995, are incorporated by reference:

(u) 29 CFR 1910.1051, "Occupational Exposure to 1,3-Butadiene", as published in the Federal Register, Volume 61, Number 214, November 4, 1996, is incorporated by reference:

(v) 29 CFR 1910.1051, "Occupational Exposure to Methylene Chloride", as published in the Federal Register, Volume 61, Number 7, January 10, 1997, is incorporated by reference:

(w) The renumbering of 29 CFR 1910.96, "Ionizing Radiation", to 29 CFR 1910.1096, as published in the Federal Register, Volume 61, Number 46, June 20, 1996, is incorporated by reference:

(x) The revisions to 29 CFR 1910.1200, "Hazard Communication", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

(y) The removal of 29 CFR 1910.1499, "Source of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference:

(z) The removal of 29 CFR 1910.1500, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.]

(2) The language relating to the access of exposure and medical records in Section 4(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.1020(e)(1)(i).

(3) The language relating to the access of exposure and medical records in Section 4(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.1020(e)(1)(iii).

(4) The language relating to gloves in Section 5(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix).

(5) This material may be inspected, copied or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman
KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: March 10, 1998

FILED WITH LRC: March 12, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1998, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 23, 1998, five work 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 canceled. 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: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-3070.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: These revisions simply update the incorporation by reference to include the latest published version of the applicable portion of the Code of Federal Regulations and make corrections to omissions and typographical errors in the tables for air contaminants located at 29 CFR 1910.1000. These are not substantive changes to the regulation and should not effect cost of living.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: The revisions simply update the incorporation by reference to include the latest published version of the applicable portion of the Code of Federal Regulations and make corrections to omissions and typographical errors in the tables for air contaminants located at 29 CFR 1910.1000. These are not substantive changes to the regulation and should not effect cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: There will be no effect.

1. First year following implementation:

2. Second and subsequent years: Reporting and paperwork requirements: None

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(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:

(4) Assessment of anticipated effect on state and local revenues:

These revisions will have no anticipated effect on state and local revenues.

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(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations are adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. The amendment incorporates corrections to, 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 62, Number 149, August 4, 1997.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. There will be no anticipated effect on local government as these are minor corrections to the tables regulating air contaminants.

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

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:500. Maritime employment.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1915, 1917, 1918, 1919

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1915, 1917, 1918, 1919

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of Maritime employment.

Section 1. Definitions. As used in the material incorporated by reference in Section 2 of this administrative regulation:

(1) "Administration" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky;

(2) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet;

(3) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet;

(4) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Incorporation by Reference. (1) The following is incorporated by reference:

(a) Chapter 29, Part 1915 of the Code of Federal Regulations, revised as of July 1, 1997 [1996], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

~~[1. The revision to 29 CFR 1915.1000, "Air Contaminants", as published in the Federal Register, Volume 62, Number 7, January 10, 1997, is incorporated by reference.~~

~~2. 29 CFR 1910.1052, "Methylene Chloride", as published in the Federal Register, Volume 62, Number 7, January 10, 1997, is incorporated by reference.~~

~~3. The revisions to 29 CFR 1915.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 61, Number 165, August 23, 1996.]~~

(b) Chapter 29 Part 1917 of the Code of Federal Regulations, revised as of July 1, 1997 [1996], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

1. The revisions to 29 CFR 1917.1, "Scope and Applicability", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

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2. The revisions to 29 CFR 1917.2, "Definitions", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

3. The revisions to 29 CFR 1917.3, "Incorporation by Reference", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

4. The revisions to 29 CFR 1917.11, "Housekeeping", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

5. The revisions to 29 CFR 1917.13, "Slings", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

6. The revisions to 29 CFR 1917.17, "Railroad Facilities", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

7. The revisions to 29 CFR 1917.20, "Interference with Communications", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

8. The revisions to 29 CFR 1917.23, "Hazardous Atmospheres and Substances (See also 1917.2(r))", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

9. The revisions to 29 CFR 1917.24, "Carbon Monoxide", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

10. The revisions to 29 CFR 1917.25, "Fumigants, Pesticides, Insecticides, and Hazardous Preservatives (See also 1917.2(p))", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

11. The revisions to 29 CFR 1917.26, "First Aid and Lifesaving Facilities", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

12. The revisions to 29 CFR 1917.27, "Personnel", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

13. The revisions to 29 CFR 1917.28, "Hazard Communication (See also 1917.1(a)(2)(vi))", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

14. The revisions to 29 CFR 1917.30 "Emergency Action Plans", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

15. The revisions to 29 CFR 1917.42, "Miscellaneous Auxiliary Gear", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

16. The revisions to 29 CFR 1917.43, "Powered Industrial Trucks", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

17. The revisions to 29 CFR 1917.44, "General Rules Applicable to Vehicles", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

18. The revisions to 29 CFR 1917.45, "Cranes and Derricks (See also 1917.50)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

19. The revisions to 29 CFR 1917.46, "Load Indicating Devices", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

20. The revisions to 29 CFR 1917.48, "Conveyors", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

21. The revisions to 29 CFR 1917.50, "Certification of Marine Terminal Material Handling Devices (See also mandatory Appendix IV, Part 1918 of this Chapter)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

22. The revisions to 29 CFR 1917.71, "Terminals Handling Intermodal Containers or Roll-On Roll-Off Operations", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

23. The revisions to 29 CFR 1917.73, "Terminal Facilities Handling Menhaden and Similar Species of Fish (See also 1917.2, Definition of Hazardous Cargo, Materials, Substance, or Atmosphere)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

24. The revisions to 29 CFR 1917.91, "Eye and Face Protection",

as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

25. The revisions to 29 CFR 1917.93, "Head Protection", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

26. The revisions to 29 CFR 1917.94, "Foot Protection", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

27. The revisions to 29 CFR 1917.95, "Other Protective Measures", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

28. The revisions to 29 CFR 1917.112, "Guarding of Edges", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

29. The revisions to 29 CFR 1917.118, "Fixed Ladders", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

30. The revisions to 29 CFR 1917.119, "Portable Ladders", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

31. The revisions to 29 CFR 1917.121, "Spiral Stairways", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

32. The revisions to 29 CFR 1917.124, "Dockboards (Car and Bridge Plates)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

33. The revisions to 29 CFR 1917.126, "River Banks", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

34. The revisions to 29 CFR 1917.152, "Welding, Cutting and Heating (Hot Work) (See also 1917.2, Definition of Hazardous Cargo, Materials, Substance, or Atmosphere)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

35. The revisions to 29 CFR 1917.153, "Spray Painting (See also 1917.2, Definitions of Hazardous Cargo, Materials, Substance, or Atmosphere)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

36. The revisions to 29 CFR 1917.156, "Fuel Handling and Storage", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

37. The revisions to 29 CFR 1917.157, "Battery Charging and Changing", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

(c) The revisions to 29 CFR Part 1918, "Safety and Health Regulations for Longshoring", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

[(c) Chapter 29 Part 1918 of the Code of Federal Regulations, revised as of July 1, 1996, published by the Office of the Federal Register, National Archives and Record Services, General Services Administration.]

(d) Chapter 29 Part 1919 of the Code of Federal Regulations, revised as of July 1, 1997 [1996], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(2) This material may be inspected, copied, or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman
KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: March 10, 1998

FILED WITH LRC: March 12, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1998, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this

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hearing shall notify this agency in writing by April 23, 1998, five work 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 canceled. 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: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-3070.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

- (1) Type and number of entities affected: This amendment affects all public sector employers that perform marine cargo handling.
- (2) Direct and indirect costs or savings on the:
 - (a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: The Occupational Safety and Health Administration (OSHA) projects the total costs to some 3700 employers nationwide affected by the revised regulations incorporated by this amendment to be \$3,093,279. The cost per employer in Kentucky should be considerably less than the national average as fully one-third of the projected costs pertain to equipment that would not be required of employers in this state due to the size of the establishment and the material being handled.
 - (b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: See above.
 - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
 1. First year following implementation:
 2. Second and subsequent years: There are no additional factors regarding these revisions which will increase or decrease costs. There will be no effect on competition.
 - (d) Reporting and paperwork requirements: This amendment will not entail any reporting or additional paperwork requirements.
- (3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this revision.
 - (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: There will be no reporting or paperwork requirements as a result of this change.
- (4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.
 - (b) Kentucky: Undetermined; no public comments were received.
- (7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed amendment incorporates by reference corrections to federal standards published in the Federal Register and updated the regulation.
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of

the geographic area in which implemented and on Kentucky: This proposed amendment will enhance worker safety throughout Kentucky by keeping the affected regulations of the agency identical to the federal agency.

- (b) State whether detrimental effect on environment and public health would result if not implemented:
- (c) If detrimental effect would result, explain detrimental effect:
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of 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:
- (10) Any additional information or comments:
- (11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).
2. State compliance standards. These amendments update references to the last published Code of Federal Regulations (Section 1(1) paragraphs (a), (b) and (d), and incorporate, by reference, revisions to "Longshoring and marine terminals", as published in the Federal Register, July 25, 1997 (revisions to Section 1(1)(c)).
3. Minimum or uniform standards contained in the federal mandate. The amendment incorporates revisions to the longshoring and marine terminal standards, as published in the Federal Register, Volume 62, Number 143, July 25, 1997.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this amendment is identical to the federal standard and updates the regulation.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This revision imposes no stricter, additional or different responsibilities than federal standards.

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
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This amendment affects local government entities who work in maritime operations.
3. State the aspect or service of local government to which this administrative regulation relates. The amendment affects the safety and health of employees of local government employees who perform work in maritime operations.
4. How does this administrative regulation affect the local government or any service it provides? The purpose of the amendment is to comply with federal regulations relating to occupational safety and health and to update the regulation. There will be no significant increase or decrease in local government revenues or significant expenditures. The amendment will not affect the number of local government employees.

LABOR CABINET

Office of Labor Management Relations and Medication
(Amendment)

803 KAR 3:050. Arbitration.

RELATES TO: KRS 336.1661, 336.1662, 336.1663

STATUTORY AUTHORITY: KRS 336.1664

NECESSITY, FUNCTION, AND CONFORMITY: KRS 336.1664

requires the secretary to promulgate administrative regulations to effectuate the purposes of the statutes relating to arbitration of labor disputes. The function of this administrative regulation is to set forth criteria for the appointment of arbitrators, maintaining a roster of arbitrators, procedure for obtaining arbitration services, fee schedule and reporting requirements, and any other matter relating to the arbitration of labor disputes.

Section 1. Scope. This administrative regulation applies to all arbitrators listed on the roster of arbitrators maintained by the secretary, to all applicants for listing on the roster, and to all persons or parties seeking to obtain from the secretary either names or panels of names of arbitrators listed on the roster in connection with labor disputes which are to be submitted to arbitration or fact-finding.

Section 2. Listing on the Roster. Criteria for listing and retention.

(1) Persons seeking to be listed on the roster shall complete and submit an application form which may be obtained from the Kentucky Labor Cabinet, Division of Employment Standards and Mediation. Upon receipt of an executed form, the secretary or his representative shall review the application, assure that it is complete, make such inquiries as are necessary. The secretary may appoint two (2) members representing management and two (2) members representing labor of the Kentucky Labor-Management Advisory Council to assist in determining whether an applicant shall be listed on the roster. The secretary or his representative shall make all final decisions as to whether an applicant will be listed. Each applicant shall be notified in writing of the secretary's decision and the reasons therefor.

(2) Applicants for the roster will be listed on the roster upon a determination that they:

(a) Are competent and acceptable in decision-making roles in the resolution of labor relations issues, or have extensive experience in relevant positions in collective bargaining; and

(b) Are capable of conducting an orderly hearing, can analyze testimony and exhibits and can prepare clear and concise findings and awards within reasonable time limits; and

(c) Possess the factors of background and experience, availability, acceptability, geographical location, and the expressed preferences of the parties, or a combination thereof, which demonstrate that inclusion on the roster will lead to a useful role in resolving disputes.

(3) No person shall serve as an arbitrator in any arbitration in which he has any financial or personal interest in the result of the arbitration. No person shall serve as an arbitrator to disputes which involves a labor organization or employer for which he performs services or receives income. Any individual who has personal or financial relationships which may result in a conflict of interest in any future arbitration shall disclose such relationships to the secretary or his representative and biographical data furnished to the parties shall disclose such information. The secretary or his representative may restrict the panels on which a person may serve to avoid conflicts of interest or the appearance of impropriety, however the parties after full disclosure, may waive the disqualification in writing.

(4) The secretary or his representative is authorized to give written notice or cancellation to a member on the roster whenever the member:

(a) No longer meets the criteria for admission;

(b) Has been repeatedly and/or flagrantly delinquent in submitting

awards;

(c) Has refused to make reasonable and periodic reports to the secretary of his representative concerning activities pertaining to arbitration;

(d) Has been the subject of complaints by parties who use the service, and the secretary or his representative, after appropriate inquiry, concludes that just cause for cancellation has been shown;

(e) Is determined by the secretary or his representative to be unacceptable to a substantial number of parties who use the service. The secretary or his representative may base a determination of unacceptability on the agency's records showing the number of times the arbitrator's name has been proposed to the parties and the number of times it has been selected.

(5) A member of the arbitration roster may request review of the notification or cancellation by submitting his response in writing to the secretary or his representative within ten (10) days after receipt of the notice of cancellation. The secretary or his representative may conduct an inquiry of the circumstances of the proposed cancellation and shall then submit written findings and a conclusion to the interested party. This decision shall be the final decision of the secretary.

Section 3. Procedures for Requesting Arbitration Services. (1) The parties are urged to use the request for arbitration form which has been prepared by the secretary or his representative and is available from the Kentucky Labor Cabinet, Division of Employment Standards and Mediation. A brief statement of the issues in dispute should accompany the request to enable the secretary or his representative to submit the names of arbitrators qualified for the issues involved. The request should also include a current copy of the arbitration section of the collective bargaining agreement or stipulation to arbitrate. The request for arbitration form and supporting documents shall be submitted to the Kentucky Labor Cabinet, Division of Employment Standards and Mediation, Frankfort, Kentucky 40601. The parties are encouraged to submit joint requests for arbitration.

(2) If the request for arbitration form is not utilized, the parties may request a panel or designation by letter. The letter shall include the names, addresses, and phone numbers of the parties, the location of the contemplated hearing, the issue in dispute, the number of names desired on the panel or that it is requested that the secretary or his representative designate an arbitrator, and any special qualifications of the panel or designee desired. The request should also include a copy of the arbitration section of the collective bargaining agreement or stipulation to arbitrate.

(3) In the event that the request is made by only one (1) party, the secretary or his representative will submit a panel; however, any submission of a panel shall merely be a compliance with a request and shall not reflect any contractual requirements of the parties.

Section 4. Nomination of Arbitrators. (1) The secretary or his representative shall designate an arbitrator to a labor dispute upon request by the parties or a request pursuant to an agreement which does not require the secretary or his representative to provide a panel.

(2) The secretary or his representative shall refer a panel of arbitrators to the parties upon request or a request pursuant to an agreement that calls for the secretary to provide a panel.

(a) The secretary or his representative shall submit to the parties the names of five (5) arbitrators unless the applicable collective bargaining agreement requires a different number on a panel, or unless the parties themselves request a different number, or unless the agreement or stipulation calls for the secretary or his representative to designate the arbitrator.

(b) Together with a submission of a panel, the secretary or his representative shall provide a biographical sketch for each member of the panel which provides a summary of the background, qualifications, and experience of the arbitrator.

(3) The secretary or his representative considers many factors when selecting names for inclusion on a panel or for designation to a dispute, but the agreed-upon wishes of the parties are paramount. Special qualifications of arbitrators experienced in certain issues or industries, or possessing certain backgrounds, may be identified for purposes of submitting panels or designating an arbitrator to accommodate the parties. The secretary or his representative may also consider such things as general acceptability, geographical location, general experience, availability, and the need to expose new arbitrators to the selection process in preparing panels or designating arbitrators. The secretary or his representative has no obligation to put an individual on any given panel or to designate an individual or place him on a minimum number of panels in any fixed period.

(a) If at any time all parties request for valid reasons, that a name or names be omitted from panels or from designation, such name or names shall be omitted.

(b) If at any time all parties request that a name or names be included on a panel or be designated, such name or names shall be included.

(c) If only one (1) party requests that a name or names be omitted from a panel, or that a name or names be added to the panel, or that an individual be designated or not be designated to a dispute, such request will not be honored.

Section 5. Selection and Appointment of Arbitrators. (1) The parties should notify the secretary or his representative of the agreed selection of an arbitrator. The arbitrator, if notified by the parties, shall notify the secretary or his representative of his selection and willingness to serve. Upon notification of the parties selection of an arbitrator, the secretary or his representative shall make a formal appointment of the arbitrator.

(2) Where the contract is silent on the method of selecting an arbitrator, the parties may choose one (1) of the following methods for selection of an arbitrator from a panel:

(a) Each party alternately strikes a name from the submitted panel until one (1) remains.

(b) Each party advises the secretary or his representative of its order of preference by numbering each name on the panel and submitting the numbered list in writing to the secretary or his representative. The name on the panel that has the lowest accumulated numerical number will be appointed.

(c) Informal agreement of the parties by whatever method they choose.

(3) The secretary or his representative shall, on joint or unilateral request of the parties, submit a panel or, when the applicable collective bargaining agreement authorizes, shall make a direct appointment of an arbitrator. Submission of a panel or name signifies nothing more than compliance with a request and it shall not constitute a determination by the secretary or his representative that the parties are obligated to arbitrate the dispute in question. Resolution as to the propriety of such a submission or appointment rests solely with the parties.

(4) The arbitrator, upon notification of appointment, shall communicate with the parties immediately to arrange for preliminary matters, such as date and place of hearing. Hearings shall be held within ten (10) days of the date of appointment, unless otherwise agreed by the parties.

Section 6. Conduct of Hearing. All proceedings conducted by the arbitrator shall be in conformity with the contractual obligations of the parties, unless otherwise agreed. Unless the contract or the parties require otherwise, the proceedings shall be conducted pursuant to the following rules:

(1) Time and place of hearing. The arbitrator shall fix the time and place for each hearing. At least five (5) days prior thereto the arbitrator shall mail notice of the time and place of hearing to each party, unless the parties otherwise agree.

(2) Representation by counsel. Any party may be represented at the hearing by counsel or by other authorized representative.

(3) Stenographic record. Any party may request a stenographic record by making arrangements for same through the arbitrator. If such transcript is agreed by the parties to be, or in appropriate cases determined by the arbitrator to be the official record of the proceedings, it must be made available to the arbitrator, and to the other party for inspection, at a time and place determined by the arbitrator. The total cost of such a record shall be shared equally by those parties ordering copies.

(4) Attendance at hearing. Persons having a direct interest in the arbitration are entitled to attend hearings. The arbitrator shall have the power to require the retirement of any witness or witnesses during the testimony of other witnesses. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other persons.

(5) Adjournments. The arbitrator for good cause shown may adjourn the hearing upon the request of a party or upon his own initiative, and shall adjourn when all the parties agree thereto.

(6) Oaths. The arbitrator may, in his discretion, require witnesses to testify under oath administered by any duly qualified person, and if required by law or requested by either party, shall do so.

(7) Majority decision. Whenever there is more than one (1) arbitrator, all decisions of the arbitrators shall be by majority vote. The award shall also be made by majority vote unless the concurrence of all is expressly required.

(8) Order of proceeding. A hearing shall be opened by the recording of the place, time and date of hearing, the presence of the arbitrator and parties, and counsel if any, and the receipt by the arbitrator of any pleadings. Exhibits, when offered by either party, may be received in evidence by the arbitrator. The names and addresses of all witnesses and exhibits in order received shall be made a part of the record. The arbitrator may, in his discretion, vary the normal procedure under which the initiating party first presents his claim, but in any case shall afford full and equal opportunity to all parties for presentation of relevant proofs.

(9) Arbitration in the absence of a party. The arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The arbitrator shall require the other party to submit such evidence as he may require for the making of an award.

(10) Evidence. The parties may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. Upon agreement of the parties, the arbitrator may issue subpoenas to compel the attendance of witnesses and parties and the production of books, papers, and records which may be deemed material as evidence in the case. The arbitrator shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the arbitrator and all the parties except where any of the parties is absent, in default, or has waived his right to be present.

(11) Evidence by affidavit and filing of document. The arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as he deems proper after consideration of any objections made to its admission. All documents not filed with the arbitrator at the hearing but which are arranged at the hearing or subsequently by agreement of the parties to be submitted, shall be filed with the arbitrator. All parties shall be afforded the opportunity to examine such documents.

(12) Inspection. Whenever the arbitrator deems it necessary, he may make an inspection in connection with the subject matter of the dispute after written notice to the parties who may, if they so desire, be present at such inspection.

(13) Closing of hearing. The arbitrator shall inquire of all parties

whether they have any further proof to offer or witnesses to be heard. Upon receiving negative replies, the arbitrator shall declare the hearings closed and a minute thereof shall be recorded. If briefs or other documents are to be filed, the hearings shall be declared closed as of the final date set by the arbitrator.

(14) Opinions and awards. The opinion and decision on each case submitted to an arbitrator under this administrative regulation shall be issued within ten (10) days of the closing of record, unless otherwise agreed by the parties.

(15) Reopening of hearings. The hearings may be reopened by the arbitrator on his own motion, or on the motion of either party, for good cause shown, at any time before the award is made, but if the reopening of the hearing would prevent the making of the award within the specific time agreed upon by the parties in the contract of which the controversy has arisen, the matter may not be reopened, unless both parties agree upon the extension of such time limit.

(16) Waiver of rules. Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object.

(17) Waiver of oral hearings. The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure, the arbitrator shall specify a fair and equitable procedure.

(18) Extension of time. The parties may modify any period of time by mutual agreement. The arbitrator for good cause may extend any period of time established by these rules, except the time for making the award. The arbitrator shall notify the parties of any such extension of time and its reason therefor.

(19) Form of award. The award shall be in writing and shall be signed either by the neutral arbitrator or by a concurring majority if there is more than one (1) arbitrator, unless otherwise agreed by the parties. The parties shall advise the arbitrator whenever they do not require the arbitrator to accompany the award with an opinion.

(20) Award upon settlement. If the parties settle their dispute during the course of the arbitration, the arbitrator, upon their request, may set forth the terms of the agreed settlement in an award.

(21) Delivery of award to parties. Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the arbitrator addressed to such party at his last known address or to his attorney, or personal service of the award.

(22) Release of documents for judicial proceedings. The arbitrator shall, upon the written request of a party, furnish to such party at his expense certified copies of any papers in the arbitrator's possession that may be required in judicial proceedings relating to the arbitration.

(23) Judicial proceedings. The arbitrator is not a necessary party in judicial proceedings relating to the arbitration.

(24) Fees and charges of arbitrators. An arbitrator shall not be permitted to charge in excess of \$400 [200] a day, not to exceed \$2,000 [1,000] per arbitration case.

(25) Expenses. The expense of witnesses for either side shall be paid by the party producing such witnesses. Expenses of the arbitration, other than the cost of the stenographic record, including required traveling and other expenses of the arbitrator, and the expenses of any witnesses or the cost of any proofs produced at the direct request of the arbitrator, shall be borne equally by the parties unless they agree otherwise, or unless the arbitrator in his award assesses such expenses or any part thereof against any specified party or parties.

(26) Interpretation and application of rules. The arbitrator shall interpret and apply these rules insofar as they relate to his powers and duties. When there is more than one (1) arbitrator and a difference arises among them concerning the meaning or application of any such rules, it shall be decided by majority vote. If that is unobtainable, either arbitrator or party may refer the question to the secretary for final decision.

Section 7. Hearings and Records Confidentiality. Hearings conducted under this administrative regulation remain private hearings of the parties and are not subject to any open meeting act provisions contained in any statute. Records obtained by an arbitrator remain private records of the parties and are not subject to any open records act provisions contained in any statute. The secretary or his representative does not require or request that an arbitrator report to the state, or the cabinet violations of any state statutes revealed or that agreements be interpreted to conform to the state or cabinet position on any matter of law.

Section 8. Reports. (1) Arbitrators listed on the roster shall execute and return all documents, forms and reports required by the secretary or his representative. They shall also keep the secretary or his representative informed of changes of address, telephone number, availability, and of any business or other connection or relationship which involves labor-management relations, or which creates or gives the appearance of advocacy.

(2) The secretary or his representative shall require each arbitrator listed on the roster to prepare biographical information at the time of the initial listing and to periodically update and revise the biographical sketches to replace changes in relevant data. The secretary or his representative shall decide and approve the format and content of the biographical sketches.

JOE NORSWORTHY, Chairman
KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: March 13, 1998

FILED WITH LRC: March 13, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 29, 1998, at 10 a.m., at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 22, 1998, five work 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 canceled. 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: Gary Moberly, Executive Director, Office of Labor Management Relations and Mediation, Kentucky Labor Cabinet, 1047 U.S. 127 South, Annex, Frankfort, Kentucky 40601, Telephone: (502) 564-3070.

REGULATORY IMPACT ANALYSIS

Agency Contact: Gary Moberly, Kembra Taylor

(1) Type and number of entities affected: The amendments to this regulation affect arbitrators who assist with conducting arbitration hearings for employers and employees who request assistance from the Kentucky Labor Cabinet, Office of Labor Management Relations and Mediation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None. There are no additional factors in these revisions which will increase or decrease costs to the

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public. There will be no effect upon competition. Furthermore, these amendments will not require any additional reporting or paperwork requirements.

(3) Effects on the promulgating administrative body: These changes will enable the cabinet to secure and retain qualified arbitrators to carry out the service under this regulation.

(a) Direct and indirect costs or savings:

1. First year: Undetermined; it depends upon the number of arbitrations conducted.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be no additional paperwork or reporting requirements for the agency as a result of these changes.

(4) Assessment of anticipated effect on state and local revenue: There will be no effect on local revenues; the effect on state revenues will be minimal.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State General Fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because this is the most effective methods of securing and retaining qualified arbitrators.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: None

(b) State whether detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied. No. N/A

LABOR CABINET Department of Workers' Claims (Amendment)

803 KAR 25:096. Selection of physicians, treatment plans and statements for medical services.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.260, 342.320, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the Commissioner of the Department of Workers Claims to promulgate administrative regulations necessary to carry on the work of the department under KRS Chapter 342. KRS 342.735 requires the commissioner to promulgate administrative regulations to expedite the payment of medical expense benefits. This administrative regulation regulates the selection of physicians and provides for treatment plans under KRS Chapter 342 in order to assure high quality medical care at a reasonable cost.

Section 1. Definitions. (1) "Designated physician" means the physician selected by the employee for treatment pursuant to KRS

342.020(5).

(2) "Emergency care" means:

(a) Those medical services required for the immediate diagnosis or treatment of a medical condition that if not immediately diagnosed or treated could lead to a serious physical or mental disability or death; or

(b) Medical services which are immediately necessary to alleviate severe pain.

(3) "Long-term medical care" means:

(a) Medical treatment or medical rehabilitation that is reasonably projected to require a regimen of medical care for a period extending beyond ninety (90) days.

(b) Medical treatment that continues for a period of more than ninety (90) days.

(c) Medical treatment including the recommendation that the employee not engage in the performance of the employee's usual work for a period of more than sixty (60) days.

(4) "Physician" is defined in KRS 342.0011(32).

(5) "Statement for services" means:

(a) For nonpharmaceutical bills, a completed Form HCFA 1500, or for a hospital, a completed Form UB-92, with an attached copy of legible treatment notes, hospital admission and discharge summary, or other supporting documentation for the billed medical treatment, procedure, or hospitalization; and

(b) For pharmaceutical bills, a bill containing the identity of the prescribed medication, the number of units prescribed, the date of the prescription, and the name of the prescribing physician.

(6) "Treatment plan" means a written plan which may consist of copies of charts, consultation reports or other written documents maintained by the employee's designated physician discussing symptoms, clinical findings, results of diagnostic studies, diagnosis, prognosis, and the objectives, modalities, frequency, and duration of treatment. It shall include, as appropriate, details of the course of ongoing and recommended treatment and the projected results, and may be amended, supplemented or changed as conditions warrant.

Section 2. Employer's Obligation to Supply Kentucky Workers' Compensation Designation and Medical Release Card (Form 113). Within ten (10) days following receipt of notice of a work injury or occupational disease causing lost work time or necessitating continuing medical treatment, the medical payment obligor shall mail a Form 113 to the employee, including a self-addressed, postage prepaid envelope for returning the Form 113. Failure by the medical payment obligor to timely mail the form shall waive an objection to treatment by other than a designated physician prior to receipt by the employee of the form.

Section 3. Employee Selection of Physician. (1) Except for emergency care, treatment for a work-related injury or occupational disease shall be rendered under the coordination of a single physician selected by the employee. The employee shall give notice to the medical payment obligor of the identity of the designated physician by tendering the completed Form 113, including a written acceptance by the designated physician, within ten (10) days after treatment is commenced by that physician.

(2) Within ten (10) days following receipt of a Form 113 designating a treating physician, the medical payment obligor shall tender a card to the employee, which shall be presented to a medical provider each time that medical services are sought in connection with the work-related injury or occupational disease.

(3) The card shall serve as notice to a medical provider of the identity of the designated physician, who shall have the sole authority to make referrals to treatment facilities or to specialists.

(a) The card shall bear the legend "First Designated Physician-Workers' Compensation" and shall further contain the following information:

1. Name and telephone number of the first designated physician;

2. Name, Social Security number, date of birth, and date of work injury or occupational disease and last exposure of the employee; and
3. Name and telephone number of the medical payment obligor.

(b) The reverse side of the first designated physician card shall contain:

1. A notice that treatment shall be performed by or on referral from the first designated physician; and

2. Shall further contain space for the identification and notification of a change of designated physician.

(4) Failure by the medical payment obligor to timely mail the "First Designated Physician" card shall waive an objection to treatment by other than a designated physician prior to receipt by the employee of the card.

(5) The unreasonable failure of an employee to comply with the requirements of this section may suspend all benefits payable under KRS Chapter 342 et seq. until compliance by the employee and receipt of the Form 113 by the medical payment obligor has occurred.

Section 4. Change of Designated Physician. (1) Following initial selection of a designated physician, the employee may change designated physicians once without authorization of the employer or its medical payment obligor. Referral by a designated physician to a specialist shall not constitute a change of designated physician unless the latter physician is specifically selected by the employee as the second designated physician.

(2) Within ten (10) days of a decision to change the designated physician, the employee shall complete the back of the first designated physician card and return the card with the name of the second designated physician, including a written acceptance by the second designated physician, to the medical payment obligor, which shall issue a second card within ten (10) days.

(3) The card shall bear the legend "Second Designated Physician-Workers' Compensation" and shall further contain the information required on the first designated physician card. The reverse side of the card shall contain a notice that:

(a) Treatment shall be performed by or on referral from the second designated physician; and

(b) A further change of designated physician shall require the written consent of the employer, its medical payment obligor, arbitrator, or the administrative law judge.

(4) Failure by the medical payment obligor to timely mail the "Second Designated Physician" card shall waive an objection to treatment by other than a designated physician prior to receipt by the employee of the card.

(5) If an employee's two (2) choices of designated physician have been exhausted, he shall not, except as required by medical emergency, make an additional selection of a physician without the written consent of the employer, its medical payment obligor, arbitrator, or the administrative law judge. This consent shall not be unreasonably withheld.

(6) If the employer provides medical services through a managed health care system, it may establish alternate methods for provider selection within the managed health care plan.

Section 5. Treatment Plan. (1) A treatment plan shall be prepared if:

(a) Long-term medical care is required as a result of a work-related injury or occupational disease; or

(b) The employee has received treatment with passive modalities, including electronic stimulation, heat or cold packs, massage, ultrasound, diathermy, whirlpool, or similar procedures for a period exceeding sixty (60) days. The treatment plan shall detail the need for the passive treatment, the benefits, if any, derived from the treatment, the risks attendant with termination of the treatment, and the projected period of future treatment; or

(c) An elective surgical procedure or placement into a resident work hardening, pain management, or medical rehabilitation program

is recommended. The treatment plan shall set forth specific and measurable performance goals for the employee through the surgery, work hardening, or medical rehabilitation program.

(2) The designated physician shall provide a copy of the treatment plan to the medical payment obligor seven (7) days in advance of an elective surgical procedure or placement into a resident work hardening, pain management, or medical rehabilitation program. In all other instances when a treatment plan is required, a copy of the treatment plan shall be provided within fifteen (15) days following a request by the medical payment obligor. An amendment, supplement, or change to a treatment plan shall be furnished within fifteen (15) days following a request.

(3) Preparation of a treatment plan shall be a necessary part of the care to be rendered and shall be an integral part of the fee authorized in the medical fee schedule for the underlying services. An additional fee shall not be charged for the preparation of a treatment plan or progress report, except for the reasonable cost of photocopying and mailing the records.

Section 6. Tender of Statement for Services. If the medical services provider fails to submit a statement for services as required by KRS 342.020(1) without reasonable grounds, the medical bills shall not be compensable.

Section 7. Written Denial of Statement for Services Prior to the Resolution of Claim. Prior to resolution of a workers' compensation claim by opinion or order of an arbitrator or administrative law judge, the medical payment obligor shall notify the medical provider and employee of its denial of a specific statement for services, or payment for future services from the same provider, in writing within thirty (30) days following receipt of a completed statement for services. A copy of the denial shall be mailed to the employee, employer, and medical service provider. The denial shall include a statement of the reasons for denial and a brief synopsis of available utilization review or medical bill audit procedures with relevant telephone contact numbers. A denial shall be made only for good faith reasons. Upon receipt of a denial from a medical payment obligor, a medical provider may tender a statement for services to other potential payment sources or to the patient.

Section 8. Payment or Challenge to Statement for Services Following Resolution of Claim. (1) Following resolution of a claim by an opinion or order of an arbitrator or administrative law judge, including an order approving settlement of a disputed claim, the medical payment obligor shall tender payment or file a medical fee dispute with an appropriate motion to reopen the claim, within thirty (30) days following receipt of a completed statement for services.

(2) The thirty (30) day period provided in KRS 342.020(1) shall be tolled during a period in which:

(a) The medical provider submitted an incomplete statement for services. The payment obligor shall promptly notify the medical provider of a deficient statement and shall request specific documentation. The medical payment obligor shall tender payment or file a medical fee dispute within thirty (30) days following receipt of the required documentation; or

(b) A medical provider fails to respond to a reasonable information request from the employer or its medical payment obligor pursuant to KRS 324.020(4); or

(c) The employee's designated physician fails to provide a treatment plan if required by this administrative regulation; or

(d) The utilization review required by 803 KAR 25:190 is pending. The thirty (30) day period for filing a medical fee dispute shall commence on the date of rendition of the final decision from the utilization review or medical bill audit. A medical fee dispute filed thereafter shall include a copy of the final utilization review or medical bill audit decision and the supporting medical opinions.

(3) An obligation for payment or challenge shall not arise if a

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statement for services clearly indicates that the services were not performed for a work-related condition.

Section 9. Payment Pursuant to Fee Schedules. If the statement for services contains charges in excess of those provided in the applicable fee schedule adopted by the commissioner in 803 KAR 25:089, 803 KAR 25:091, and 803 KAR 25:092, the medical payment obligor shall make payment in the scheduled amount and shall serve a written notice of denial setting forth the reason for refusal to pay a greater amount. Following receipt of a final medical bill audit reconsideration decision pursuant to 803 KAR 25:190, the medical provider may dispute the amount of payment within thirty (30) days by filing a medical fee dispute in accordance with 803 KAR 25:012.

Section 10. Patient Billing. (1) A medical provider may tender a statement for services to a patient once it has received a written denial from the medical payment obligor or has received an opinion by an arbitrator or administrative law judge finding that the services were unrelated to a work injury or occupational disease.

(2) The medical provider shall not bill a patient for services which have been found to be unreasonable or unnecessary by an arbitrator or administrative law judge, if the medical provider has been joined as a party to a workers' compensation claim or to a medical fee dispute and has had an opportunity to present any contrary evidence.

(3) The medical provider shall not bill a patient for services which have been denied by the payment obligor for failure to submit bills following treatment within forty-five (45) days as required by KRS 342.020 and Section 6 of this administrative regulation.

Section 11. Request for Payment for Services Provided or Expenses Incurred to Secure Medical Treatment. (1) If an individual who is not a physician or medical provider provides compensable services for the cure or relief of a work injury or occupational disease, including home nursing services, the individual shall submit a fully completed Form 114 to the employer or medical payment obligor within sixty (60) days of the date the service is initiated and every sixty (60) days thereafter, if appropriate, for so long as the services are rendered.

(2) Expenses incurred by an employee for access to compensable medical treatment for a work injury or occupational disease, including reasonable travel expenses, out-of-pocket payment for prescription medication, and similar items shall be submitted to the employer or its medical payment obligor within sixty (60) days of incurring of the expense. A request for payment shall be made on a Form 114.

(3) Failure to timely submit the Form 114, without reasonable grounds, may result in a finding that the expenses are not compensable.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 113, "Notice of Designated Physician", (August 15, 1996 Edition), Department of Workers Claims; and

(b) Form 114, "Request for Payment for Services or Reimbursement for Compensable Expenses", (August 15, 1996 Edition), Department of Workers Claims.

(2) This material may be inspected, copied, or obtained at the Department of Workers Claims, Monday through Friday, 9 a.m. to 4 p.m., at the following locations:

(a) Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

(b) 410 West Chestnut Street, Louisville, Kentucky 40202;

(c) 220B North 8th Street, Paducah, Kentucky 42001; or

(d) 101 Summit Drive, Pikeville, Kentucky 41501.

WALTER W. TURNER, Commissioner

STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: February 20, 1998

FILED WITH LRC: February 26, 1998 at 1 p.m.

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on April 21, 1998, at 10 a.m. (ET) in the offices of the Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 14, 1998, five (5) working 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. Written comments must be received prior to 10 a.m. (ET), on April 21, 1998, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Donna Elsen Floyd, Counsel, Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Telephone Number: (502) 564-5550, Ext. 488, Fax Number: (502) 564-5934.

REGULATORY IMPACT ANALYSIS

Contact Person: Donna Elsen Floyd.

(1) Type and number of entities affected: Injured workers for whom vocational rehabilitation evaluations are ordered by an adjudicator; all carriers paying for vocational rehabilitation evaluations; facilities providing vocational rehabilitation evaluations to injured workers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. The department does not anticipate an effect on cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. The department does not anticipate an effect on the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This amendment does not change compliance, reporting, or paperwork requirements. Costs of vocational rehabilitation evaluations will decrease.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No costs or savings are anticipated for the Department of Workers' Claims.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements for the Department of Workers' Claims.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Normal budget allocations. No additional source necessary.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. The department does not anticipate an economic impact in the geographical area.

(b) Kentucky: No public comments were received. The department does not anticipate an economic impact on Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cost of vocational rehabilitation evaluations will be decreased by including additional assessment centers as providers of evaluations.

(8) Assessment of expected benefits: Decreased costs to carriers for vocational rehabilitation evaluations.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The department does not anticipate an effect on public health or environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The department would not expect a detrimental effect on public health or environment in the absence of this regulatory amendment.

(c) If detrimental effect would result, explain detrimental effect: No effect expected.

(9) 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:

(10) Any additional information or comments: None

(11) Tiering: Tiering is not applied because this regulation is applied equally to injured workers, for whom vocational rehabilitation evaluations are ordered by an adjudicator; carriers paying for vocational rehabilitation evaluations; and facilities providing vocational rehabilitation evaluations to injured workers.

LABOR CABINET
Department of Workers' Claims
(Amendment)

803 KAR 25:101. Provision of workers' compensation rehabilitation services.

RELATES TO: KRS [Chapter] 342.710

STATUTORY AUTHORITY: KRS [Chapter 13A:] 342.260, 342.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the Department of Workers' Claims to promulgate [such] administrative regulations [as it considers necessary] to carry out its work and the work of the administrative law judges and arbitrators [in accordance with the provisions of KRS Chapter 342 and KRS Chapter 13A]. The function of this proposed administrative regulation is to regulate the provision of rehabilitation services pursuant to KRS 342.260 and 342.710.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(2) "Arbitrator" means an individual appointed pursuant to KRS 342.230(9). ["Association of Rehabilitation Nurses" means the national organization which certifies nurses as certified rehabilitation registered nurses.]

(3) "Board for Rehabilitation Certification (BRC)" means the national organization which certifies rehabilitation counselors and nurses as certified insurance rehabilitation specialists, certified rehabilitation counselors, and certified case managers.]

(3) [(4)] "Commission on Accreditation of Rehabilitation Facilities (CARF)" means the national organization which accredits rehabilitation facilities.

(4) [(5)] "Directory of Qualified Rehabilitation Facilities" means the

directory of facilities in Kentucky which are licensed pursuant to KRS Chapter 216B and which are accredited by CARF in either comprehensive inpatient rehabilitation or outpatient medical rehabilitation whose application for accreditation is pending. [These facilities are resources to which administrative law judges or Department of Workers' Claims rehabilitation counselors may refer injured employees for comprehensive medical evaluations when the administrative law judge has ordered the provision of rehabilitation services pursuant to KRS 342.710:]

(5) [(6)] "Directory of Vocational Evaluation Facilities" means the directory of facilities in Kentucky which are accredited by CARF in the area of comprehensive vocational evaluation services or are assessment centers operated by the Department for Technical Education. [These facilities are resources to which administrative law judges or Department of Workers' Claims rehabilitation counselors may refer injured employees for vocational evaluations when the administrative law judge has ordered the provision of rehabilitation services pursuant to KRS 342.710:]

(6) [(7)] "Medical rehabilitation services" means those medically oriented services beyond basic medical surgical and hospital treatment which are necessary for the accomplishment of feasible, practical, and justifiable physical rehabilitation goals. [Such services shall continue for whatever period of time is necessary to accomplish such goals:]

(8) "Qualified rehabilitation coordinator (QRC)" means an individual who is listed in the Registry of Qualified Rehabilitation Coordinators or Registry of In-House Qualified Rehabilitation Coordinators and is not a direct provider of therapeutic services.

(9) "Qualified rehabilitation coordinator intern (QRC Intern)" means an individual who meets the educational but not the certification requirements of a QRC and who is permitted a period of supervised employment under the guidance of a QRC:]

(7) [(10)] "Rehabilitation services" means both medical rehabilitation services and vocational rehabilitation services provided pursuant to KRS 342.710.

[(11)] "Suitable employment" means employment which is reasonable taking into consideration the injured employee's age, education, previous employment, place of residence, and limitations:]

(8) [(12)] "Vocational evaluation" means a comprehensive process which utilizes a combination of structured interviews and testing [; paper and pencil tests, and real or simulated work activities to assist the employee in identifying employment objectives].

(9) [(13)] "Vocational rehabilitation services" means those vocationally related services which are necessary to restore an injured employee to suitable employment.

Section 2. Application for Listing in Directory of Qualified Rehabilitation Facilities. (1) An application for listing in the Directory of Qualified Rehabilitation Facilities is not necessary for facilities fully accredited by CARF in either comprehensive inpatient rehabilitation or outpatient medical rehabilitation as the names of these facilities are obtained from CARF.

(2) Provisional listing in the Directory of Qualified Rehabilitation Facilities may be granted by the Department of Workers' Claims to a facility which is licensed through the Cabinet for Human Resources pursuant to KRS Chapter 216B but whose application to CARF for accreditation is pending. [The Department of Workers' Claims may grant provisional listing for a facility upon receipt of a letter requesting listing in the Directory accompanied by a copy of an application which has been submitted to CARF for accreditation in comprehensive inpatient rehabilitation or outpatient medical rehabilitation:]

(3) A facility shall file the following with the Department of Workers' Claims to request provisional listing:

(a) Letter requesting provisional listing in the directory; and
(b) Copy of the application which has been submitted to CARF for accreditation in comprehensive inpatient rehabilitation or outpatient medical rehabilitation.

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(4) The provisional listing shall be valid for one (1) year unless CARF accreditation is granted or denied prior thereto.

[Section 3. Registry of Qualified Rehabilitation Coordinators. (1) To apply for listing in the Registry of Qualified Rehabilitation Coordinators, an individual shall submit an application containing the information requested and in the format shown in Appendix A submit supporting documentation as the Department of Workers' Claims may require. A QRC shall also provide such information as the Department of Workers' Claims may require for monitoring purposes. An applicant may be employed by a qualified rehabilitation agency in the public sector such as the Department of Vocational Rehabilitation or Department for the Blind or may be employed in the private sector.

(2) A QRC may be a rehabilitation nurse or a rehabilitation counselor who has complied with the following educational and certification requirements:

(a) Rehabilitation nurse. A rehabilitation nurse must be:

1. A registered nurse with a current nurse license or work permit in each state in which he or she will be physically present in a case management capacity with Kentucky workers' compensation claimants; and

2. Certified as a certified rehabilitation registered nurse by the Association of Rehabilitation Nurses or certified as a certified insurance rehabilitation specialist or certified case manager by the Board for Rehabilitation Certification.

(b) Rehabilitation counselor. A rehabilitation counselor must have attained the following educational credentials:

1. A baccalaureate master's or doctoral degree in rehabilitation counseling or a related field as defined by the BRC; and

2. Certified as a certified rehabilitation counselor, certified insurance rehabilitation specialist, or certified case manager by the Board for Rehabilitation Certification.

Section 4. Registry of QRC Interns. (1) An individual who meets the licensure and educational requirements but who does not meet the certification qualifications contained in Section 3 of this administrative regulation may apply to the Department of Workers' Claims for permission to work under the direct supervision of a QRC to obtain the experience required for the appropriate certification examination. During this period of supervised employment such individual shall be designated a QRC Intern.

(2) Upon meeting the experience requirement, the QRC Intern shall apply to sit for the next available appropriate certification examination and shall provide the Department of Workers' Claims with a copy of the test results within seven (7) days of receipt. A candidate who receives a passing score may immediately apply to the Department of Workers' Claims for registration as a qualified rehabilitation coordinator. A candidate who did not receive a passing score shall be permitted one (1) more attempt to achieve a passing score at the next examination for which the candidate is eligible to participate. A qualified rehabilitation coordinator intern who fails two (2) certification examinations shall no longer be eligible to work as a qualified rehabilitation coordinator intern but may apply for registration as a QRC upon achieving the appropriate certification.

(3) Qualified rehabilitation coordinators and qualified rehabilitation coordinator interns shall provide the Department of Workers' Claims with copies of nurse licenses and notice of renewal of certification as a certified insurance rehabilitation specialist, certified rehabilitation counselor, certified rehabilitation registered nurse, or certified case manager within seven (7) days of receipt.

(4) An individual who is employed by a qualified rehabilitation facility or other facilities which provide medical or rehabilitation services to workers' compensation claimants shall not be eligible to apply for listing in the Registry of Qualified Rehabilitation Coordinators Registry of In-House Qualified Rehabilitation Coordinators or Registry of Qualified Rehabilitation Coordinator Interns.

Section 5. Registry of In-House Qualified Rehabilitation Coordinators. (1) Nothing in these administrative regulations shall prevent self-insured employers, self-insured groups, or workers' compensation insurance carriers from referring injured employees to a QRC on their staff.

(2) In-house qualified rehabilitation coordinators shall be subject to the same qualification and reporting requirements as rehabilitation nurses and counselors listed in the Registry of Qualified Rehabilitation Coordinators.]

Section 3. [6.] Referral of an Injured Employee [Employees] by the Self-Insured Employer or Insurance Carrier. (1) A self-insured employer and insurance carrier [Self-insured employers and insurance carriers] may voluntarily refer an injured employee [employees] at any time for rehabilitation case management services involving the coordination of medical rehabilitation services and vocational rehabilitation services.

(2) A self-insured employer and insurance carrier [Self-insured employers and insurance carriers] may refer an injured employee [employees only] to a case manager who is qualified as either a certified case manager, certified rehabilitation counselor, certified insurance rehabilitation specialist, or certified rehabilitation registered nurse. [qualified rehabilitation coordinators registered with the Department of Workers' Claims.]

Section 4. [7.] Referral of an Injured Employee [Employees] by an Administrative Law Judge and Arbitrator [Judges]. (1) An administrative law judge or arbitrator [judges] may refer injured employees to a Department of Workers' Claims employee for implementation of rehabilitation services [rehabilitation counselors employed by the Department of Workers' Claims to obtain evaluations] pursuant to KRS 342.710(3).

(2) A Department of Workers' Claims employee [The rehabilitation counselor to whom the case is assigned shall conduct an initial interview with the employee in the Department of Workers' Claims facility closest to the employee's residence or such other location as is reasonably convenient.

(3) Subsequent to the initial rehabilitation interview the rehabilitation counselor shall refer the employee for a vocational evaluation at a facility listed in the Directory of Vocational Evaluation Facilities. [accredited by CARF in the area of vocational evaluation.]

(3) [(4)] Absent medical incapacitation or other compelling circumstance the employees shall attend [initial rehabilitation interviews and] vocational evaluations when scheduled.

(4) [(5)] The [employees' travel expenses to attend the initial rehabilitation interview and the] cost of the vocational evaluation including travel expenses shall be paid by the employer or other parties designated by the administrative law judge or arbitrator.

(5) The employee's travel expenses shall be reimbursed in accordance with state travel administrative regulations and standards as promulgated and established pursuant to KRS Chapter 18A.

(6) Upon receipt of the vocational evaluation report the employee and employer or [] insurance carrier shall cooperate in the implementation of services designed to restore the employee to suitable employment.

[APPENDIX A

Application for Registration as a Qualified Rehabilitation Coordinator or Qualified Rehabilitation Coordinator Intern
Department of Workers' Claims
Frankfort, Kentucky 40601

APPLICATION FOR REGISTRATION

I. REGISTRATION FOR WHICH APPLICATION IS SUBMITTED:
(CHECK A, B, OR C)

A. QUALIFIED REHABILITATION COORDINATOR

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- B. IN-HOUSE QUALIFIED REHABILITATION COORDINATOR
C. QUALIFIED REHABILITATION COORDINATOR INTERN

REHABILITATION COUNSELORS ONLY:

GRC No. _____ Expiration Date _____
GIRS No. _____ Expiration Date _____
GCM No. _____ Expiration Date _____

REHABILITATION NURSES ONLY:

Ky. Nurse License No. _____ Expiration Date _____
Complete one of the following:
GIRS No. _____ Expiration Date _____
GRRN No. _____ Expiration Date _____
GCM No. _____ Expiration Date _____

II. IDENTIFYING DATA

Name: (Last, First, Middle)
Home Address: (Street, City, State, Zip)
Home Telephone Number: (area code) -- (number)
Social Security Number:
Company Name:
Office Address: (Street, City, State, Zip)
Office Telephone Number: (area code) -- (number)

If you have ever been fined or convicted or are now under charges for any violation of law please describe:
List any languages other than English which you speak and write:

Are you able to communicate in sign language with persons with hearing impairments?

Describe service area (statewide or other explain):

III. EDUCATIONAL DATA

Name & Address of College:
Graduation Date:
Major:
Minor:
Degree:

IV. EMPLOYMENT DATA

Describe your work history in detail. Beginning with your current or most recent job describe fully your duties and responsibilities. Include reason for leaving each job. Use additional sheets as necessary:

Employer:
Address:
Telephone Number: (area code) -- (number)
Name and Title of Immediate Supervisor:
Your Job Title(s):
Dates of Employment:
Duties:

Employer:
Address:
Telephone Number: (area code) -- (number)
Name and Title of Immediate Supervisor:
Your Job Title(s):
Dates of Employment:
Duties:

Employer:
Address:
Telephone Number: (area code) -- (number)
Name and Title of Immediate Supervisor:

Your Job Title(s):
Dates of Employment:
Duties:

Employer:
Address:
Telephone Number: (area code) -- (number)
Name and Title of Immediate Supervisor:
Your Job Title(s):
Dates of Employment:
Duties:

List other names under which education or employment may be verified:

V. The applicant by virtue of his notarized signature on this application hereby attests:

1. The Department of Workers' Claims is authorized to investigate any information in this application. I understand any substantial omission or misrepresentation may result in rejection of my application or revocation of my registration.

2. I agree to promptly submit any information requested for registration or monitoring purposes.

3. I agree to attend training sessions sponsored by the Department of Workers' Claims at such times and places as may be deemed necessary.

4. I agree to notify the Department of Workers' Claims within one week of a change in my employment status loss of required license or certification or other occurrence which is likely to affect my registration status.

5. Enclosed is a copy of each license or certificate I described in Section I.

6. Unless I am a nurse submitting a copy of my current Kentucky license or a rehabilitation counselor submitting a copy of my current GRC GIRS or GCM certificate attached is a copy of my letter to each college listed in Section III requesting a copy of my official transcript be mailed to: Department of Workers' Claims Rehabilitation Branch, Perimeter Park West, 1270 Louisville Road, Building C, Frankfort, Kentucky 40601.

7. Attached is a current description of services provided and fees charged to the employer/carrier. I agree to submit updated descriptions of services and fees within seven (7) days of the effective date of change.

Signed Date:
Notary:
My Commission Expires:
Date:]

WALTER W. TURNER, Commissioner
STEPHEN B. COX, General Counsel
APPROVED BY AGENCY: March 3, 1998
FILED WITH LRC: March 3, 1998 at noon

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on April 21, 1998, at 10 a.m. (ET) in the offices of the Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 14, 1998, five (5) working 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. Written comments

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must be received prior to 10 a.m. (ET), on April 21, 1998, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery or Donna E. Floyd, Counsel: Kentucky Department of Workers' Claims: Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Telephone Number: (502) 564-5550, Ext. 465, Fax Number: (502) 564-5934.

REGULATORY IMPACT ANALYSIS

Contact Person: Donna Elsen Floyd

(1) Type and number of entities affected: Injured workers for whom vocational rehabilitation evaluations are ordered by an adjudicator; all carriers paying for vocational rehabilitation evaluations; facilities providing vocational rehabilitation evaluations to injured workers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. The department does not anticipate an effect on cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. The department does not anticipate an effect on the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This amendment does not change compliance, reporting, or paperwork requirements. Costs of vocational rehabilitation evaluations will decrease.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No costs or savings are anticipated for the Department of Workers' Claims.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements for the Department of Workers' Claims.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Normal budget allocations. No additional source necessary.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. The department does not anticipate an economic impact in the geographical area.

(b) Kentucky: No public comments were received. The department does not anticipate an economic impact on Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cost of vocational rehabilitation evaluations will be decreased by including additional assessment centers as providers of evaluations.

(8) Assessment of expected benefits: Decreased costs to carriers for vocational rehabilitation evaluations.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The department does not anticipate an effect on public health or environ-

mental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The department would not expect a detrimental effect on public health or environment in the absence of this regulatory amendment.

(c) If detrimental effect would result, explain detrimental effect: No effect expected.

(9) 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:

(10) Any additional information or comments: None

(11) Tiering: Tiering is not applied because this regulation is applied equally to injured workers, for whom vocational rehabilitation evaluations are ordered by an adjudicator; carriers paying for vocational rehabilitation evaluations; and facilities providing vocational rehabilitation evaluations to injured workers.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (Amendment)

808 KAR 10:010. Forms for application, registration; notice filing; reporting and compliance.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To promulgate and make available to persons affected by the Kentucky Securities Act the forms necessary for registration, reporting and general compliance.

Section 1. The following forms are incorporated [herein] by reference. The requirements and instructions contained in the forms shall have the same force and effect as rules and administrative regulations duly promulgated. Information on obtaining the forms is available through the National Association of Securities Dealers (NASD), 1735 K Street, N.W., Washington, D.C. 20006 (or any regional NASD office) or from the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601.

(1) Form BD (revised July 1988); Application for Registration as Broker-Dealer.

(2) Form U-4 (revised April 1990) Application for Registration as Agent or Transfer of an Agent; Kentucky Investment Advisor Representative Qualification Form.

(3) Form 33-e-1 (revised October 1990); Application for Renewal of Issuer Agents.

(4) Form ADV (revised May 31, 1997 [August 1988]); Application for Registration of an Investment Adviser (may be obtained from Securities and Exchange Commission, Branch of BD and IA Registration, Washington, D.C. 20549) (including Schedule I).

(5) Form 33-h-1 (revised October 1990); Application for Renewal of Investment Adviser's License.

(6) ~~Form 34 (revised July 1990); Report to be Filed by an Issuing Company Registered for the Purpose of Selling Its Own Securities.~~

(7) Form 35-a (revised July 1990); Application for Registration by Notification (Nonissuer Distribution).

(7) [(8)] Form U-1 (revised July 1990); Uniform Application to Register [for Registration of] Securities (Coordination, Qualification or Notification) [by Notification or Coordination].

(8) Form NF - Uniform Investment Company Notice Filing.

(9) Form D - Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption.

[(9)] ~~Form IGURA (Investment Company Uniform Report and/or Application) (revised July 1990); Application for Annual Renewals of~~

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Investment Company Registrations:

(10) Form 37 (revised July 1990) (amended); Application for Registration of Securities by Qualification:

(11) Form 38-a (revised July 1990); Impounding Agreement:]

(10) [(12)] Form U-2 (revised July 1990); Uniform Consent to Service of Process [and Jurisdiction] (Investment Adviser, Broker-Dealer or Issuer).

(11) [(13)] Form U-2A (revised July 1990); Uniform Form of Corporate Resolution (Investment Adviser, Broker-Dealer or Issuer).

(12) [(14)] Form BDW (revised May 1987); Notice of Broker-Dealer withdrawal.

(13) [(15)] Form U-7 (Small Corporate Offerings Registration) (adopted by NASAA April 1989).

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Individuals and entities required to be licensed or to make filings with the department. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue neutral.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will

be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: The amendment updates forms used by the department.

(11) TIERING: Is tiering applied? The department must gather different information from the regulated entities depending on the activity in which each entity is involved.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (Amendment)

808 KAR 10:020. Capital, records and reporting requirements of broker-dealers. [Net capital of broker-dealers:]

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To adopt federal requirements for broker-dealers with respect to capital, custody, margin, financial responsibility, making and keeping records, bonding, and financial and operational reporting requirements thereby increasing uniformity among the states. [To insure that broker-dealers entrusted with the custody of their customers' money and securities are sufficiently capitalized and sufficiently liquid so as to reduce the risk of customer loss in the event the broker-dealer encounters financial misfortune.]

Section 1. Any broker-dealer, municipal securities dealer, government securities broker or government securities dealer registered with the United States Securities and Exchange Commission pursuant to Section 15 of the Securities Exchange Act of 1934 (15 USC 78o) and in compliance with all applicable rules of the United States Securities and Exchange Commission enacted pursuant thereto shall be deemed in compliance with all requirements of KRS 292.330 pertaining to capital, custody, margin, financial responsibility, making and keeping records, bonding, and financial and operational reporting requirements so long as registered, so long as in compliance with all of the rules of the United States Securities and Exchange Commission and so long as copies of any information kept or provided to the United States Securities and Exchange Commission is made available or provided to the department as the commissioner may direct by administrative regulation or order. This provision shall not preclude the commissioner or employees of the department acting at the direction of the commissioner from making reasonable requests for the assembly and production of information for the purpose of conducting an examination pursuant to KRS 292.330 or an investigation pursuant to KRS 292.460. [All broker-dealers shall meet the net capital requirements of Rule 15c3-1, 15c3-1a, 15c3-1b, 15c3-1c and 15c3-1d (17 CFR Sec. 240.15c3-1, Sec. 240.15c3-1a, Sec. 240.15c3-1b, Sec. 240.15c3-1c, and Sec. 240.15c3-1d) of the Securities and Exchange Commission of the United States Government as it exists on April 1, 1984.]

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~~Section 2. Regardless of any contrary provision in rule 15c3-1, 15c3-1a, 15c3-1b, 15c3-1c and 15c3-1d (17 CFR Sec. 240.15c3-1, Sec. 240.15c3-1a, Sec. 240.15c3-1b, Sec. 240.15c3-1c, and Sec. 240.15c3-1d) no broker-dealer shall have and maintain liquid net capital of less than \$5000 and if said broker-dealer has custody of client funds he shall have and maintain liquid net capital of \$25,000.~~

~~Section 3. The minimum capitalization established in Sections 1 and 2 of this administrative regulation may be reduced or waived by the commissioner upon a showing that such minimum capitalization is not necessary in the public interest given the limited nature of the broker-dealer's activities.~~

~~Section 4. Generally accepted accounting principles shall apply in interpreting and administering the provisions of this rule if federal and Kentucky statutes, case law, and administrative regulations and interpretations leave an issue under this regulation unresolved, but only until the issue is resolved by federal or Kentucky statutes, case law, administrative regulations, or interpretations.]~~

ARTHUR FREEMAN, Commissioner
COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Broker-dealers required to be licensed by the department. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Should reduce costs because this amendment adopts existing federal requirements with which broker-dealers already must comply and eliminates any additional or differing state level requirements.

2. Second and subsequent years: Should reduce long-range costs because of increased uniformity among the states.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. Federal law mandates this change.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: Pursuant to NSMIA, states must increase the uniformity of their laws. Many states are doing so by adopting federal standards.

(11) TIERING: Is tiering applied? No. Different treatment of individuals within the regulated class is not justified and would raise constitutional issues.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

a. States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

b. States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25 million;

c. States must increase the uniformity of their regulation. Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Financial Institutions

(Amendment)

808 KAR 10:030. Conduct of broker-dealers and employees; investment advisers and representatives.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To insure that broker-dealers, investment advisers, and agents consider the "suitability" of the security they sell to the customer and to insure that broker-dealers adequately supervise the conduct of their employees.

Section 1. Every registered broker-dealer and every registered

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agent, and as appropriate, every investment adviser and investment adviser representative, who recommends to a customer the purchase, sale or exchange of any security shall have reasonable grounds to believe that the recommendation is not unsuitable for such customer on the basis of information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by such broker-dealer or agent, or investment adviser or investment adviser representative.

Section 2. Every registered agent of a registered broker-dealer shall be subject to the supervision of a supervisor designated by such broker-dealer. The supervisor may be a partner, officer, office manager or any other qualified person, or in the case of a sole proprietor, the broker-dealer.

Section 3. As part of his responsibility under this rule, but only to the extent required by the Securities Exchange Act of 1934 or the rules adopted thereunder, every registered broker-dealer shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall set forth the procedures adopted by the broker-dealer to comply with the following duties imposed by this rule:

- (1) The review and written approval by the designated supervisor of the opening of each new customer account;
- (2) The frequent examination of all customer accounts to detect and prevent irregularities or abuse;
- (3) The prompt review and written approval of the designated supervisor of all securities transactions by registered agents and all correspondence pertaining to the solicitation or execution of all securities transactions by the agents;
- (4) The prompt review and written approval of the handling of all customer complaints.

ARTHUR FREEMAN, Commissioner
COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Investment advisers and their representatives who are required to be licensed by the department. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available

from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No effect expected.

2. Second and subsequent years: No effect expected.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Anticipate increased enforcement costs because this department had not previously regulated investment advisers representatives.

2. Continuing costs or savings: Long-range increased costs are not expected to be significantly greater than first year increase.

(b) Reporting and paperwork requirements: Anticipate increase in reporting and paperwork requirements related to increased enforcement actions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. Federal law mandates that states begin to regulate small investment advisers and their representatives.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Different treatment of individuals within the regulated class is not justified and would raise constitutional issues.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

a. States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

b. States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25 million;

c. States must increase the uniformity of their regulation. Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(Amendment)

808 KAR 10:040. Dishonest or unethical practice defined.

RELATES TO: KRS 292.330(12)(a)7

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To clarify and define the phrase "dishonest or unethical practice" as it appears in KRS 292.330(12)(a)7.

Section 1. For purposes of KRS 292.330(13) [(12)](a)7, dishonest or unethical practice shall include but not limited to:

- (1) Unreasonable delay or failure to execute orders, liquidate customers' accounts, or make [in-making] delivery of securities purchased or remittances (or credit) of securities sold.
- (2) Selling securities at unfair prices in relation to market value or with unreasonable or excessive markups or commission.
- (3) Effecting transactions in the account of a customer without his knowledge or consent or maintaining discretionary accounts without written authorization.
- (4) Willful switches, churning, overtrading or reloading of securities in a customer's account for the purpose of accumulating or compounding commissions.
- (5) Inducing a customer to invest beyond his known immediate financial resources or without regard to the nature and character of such account.
- (6) Engaging or aiding in "boiler room" operations or high pressure tactics in connection with the promotion of speculative offerings or "hot issues" by means of an intensive telephone campaign, whereby the prospective purchaser is encouraged to make a hasty decision to buy irrespective of his investment needs and objectives.
- (7) Participation in the solicitation or offer for sale of securities without the use and dissemination of a prospectus (where required), or making oral or written statements contrary to or inconsistent with the enclosures contained therein.
- (8) Making false, misleading, deceptive, exaggerated or flamboyant representations or predictions in the solicitation or sale of a security as for example:
 - (a) That the security will be resold or repurchased;
 - (b) That it will be listed or traded on an exchange or established market;
 - (c) That it will result in an assured, immediate or extensive increase in value, future market price, or return on investments;
 - (d) With respect to the issuer's financial condition, anticipated earnings, potential growth or success;
 - (e) That there is a guarantee against risk loss.
- (9) Failing to disclose a dual agency capacity or effecting transactions upon terms and conditions other than those stated per confirmations.
- (10) Failing to make a bona fide public offering pursuant to an underwriting agreement or entering into an underwriting agreement which establishes unfair or unreasonable terms and conditions or compensation.
- (11) Establishing fictitious accounts in order to execute transactions which would otherwise be prohibited.
- (12) Entering into agreements for selling concessions, discounts, commissions or allowances as consideration for services in connection with the distribution or sale of a security in Kentucky with any nonlicensed broker-dealer, [or] agent, investment adviser, or investment adviser representative unless such person is not required to be registered in order to engage in the securities business in this state.
- (13) Operating a securities business while being unable to meet current liabilities or violating any rule or order relating to minimum capital, bond, recordkeeping and report requirements, or provisions

concerning use, commingling or hypothecation of customer's funds or securities.

(14) Failure or refusal to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written demand or complaint.

(15) Attempting to enforce any condition, stipulation or provision against a customer in this state when the result would leave the customer without the choice of a forum for dispute resolution in this state or would limit the timeliness of an action to any period less than that contained in KRS 292.480(3).

ARTHUR FREEMAN, Commissioner
COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

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CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Investment advisers and their representatives who are required to be licensed by the department. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No effect expected.

2. Second and subsequent years: No effect expected.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Anticipate increased enforcement costs because this department had not previously regulated investment advisers representatives.

2. Continuing costs or savings: Long-range increased costs are not expected to be significantly greater than first year increase.

(b) Reporting and paperwork requirements: Anticipate increase in reporting and paperwork requirements related to increased enforcement actions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising

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from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. Federal law mandates that states begin to regulate small investment advisers and their representatives.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Different treatment of individuals within the regulated class is not justified and would raise constitutional issues.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

a. States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

b. States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25 million;

c. States must increase the uniformity of their regulation. Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (Amendment)

808 KAR 10:080. Guidelines for issuers.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To provide guidelines for issuers of securities of promotional companies in reference to KRS 292.390(1)(f).

Section 1. An offering of securities to be registered pursuant to KRS 292.370 by a promotional company shall meet the following conditions:

(1) There shall exist a reasonable relationship between:

(a) The consideration paid by the promoters and the public offering price;

(b) The number of shares issued and the total amount of securities to be outstanding upon completion of the offering;

(c) The percentage of the promoters' equity and the amount and term of their investment.

(2) The sale of the securities at the proposed public offering price

will not cause a dilution of the public purchaser's investment greater than sixty-six and two-thirds (66 2/3) percent unless otherwise permitted by the commissioner. [~~thirty-three and one-third (33 1/3) percent.~~]

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

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CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Small issuers required to register offerings with the department. The number is indeterminate.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Some reduction in costs expected.

2. Second and subsequent years: Some reduction in costs expected.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. Federal law mandates this change.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Designed to facilitate capital raising efforts of small business.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None expected.

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: The increase in dilution percentage contained in the amended regulation should ease the registration process for small business offerings, including SCOR and intrastate offerings. Pursuant to federal mandate, this change should increase uniformity of regulation of these offerings among the states.

(11) TIERING: Is tiering applied? Yes, this regulation only applies to small business offerings. Tiering is justified because these type of offerings do not raise the same regulatory concerns as larger offerings. In addition, it is in the public interest to ease the registration process for these offerings because registration requirements have a disproportionately adverse impact on the entities making these offerings resulting in disincentives for small business.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

a. States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

b. States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25 million;

c. States must increase the uniformity of their regulation. Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (Amendment)

808 KAR 10:090. Issuer's reports.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To provide a method by which issuers may keep a registration statement current beyond the initial one (1) year period of registration.

Section 1. The person who files a registration statement pursuant to KRS 292.360[~~except a registration statement which relates only to redeemable securities issued by an open-end management investment company as defined in the Investment Company Act of 1940;~~] may keep the registration statement current by filing the following:

(1) A copy of the issuer's annual report on Form 10-K as filed with the Securities and Exchange Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, or a document containing equivalent information acceptable to the commissioner.

(2) A statement of the aggregate amount of securities sold in the state of Kentucky during the preceding twelve (12) month period.

(3) Any posteffective amendments to the issuer's federal registra-

tion statement not already on file with the department.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Investment companies previously required to file registration statements pursuant to KRS 292.360. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered because federal law now preempts state regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: Because federal law now preempts state regulation of large investment companies, these companies will no longer be filing a registration statement pursuant to KRS 292.360. As such, the exclusion of these companies from the reporting requirements of this regulation is no longer relevant and should be deleted.

(11) TIERING: Is tiering applied? Not applicable because federal law now preempts state regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

a. States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

b. States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25 million;

c. States must increase the uniformity of their regulation. Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (Amendment)

808 KAR 10:110. Records of investment advisers.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To insure that all investment advisers maintain and preserve sufficient records for the efficient operation of their business and for the protection of their clients.

Section 1. Pursuant to KRS 292.330(12)(a), all investment advisers shall meet the recordkeeping requirements of section 203 of the Investment Advisers Act of 1940 (15 USC 80b-3), and maintain their books and records in accordance with the rules enacted thereunder by the United States Securities and Exchange Commission. Such rules, which are expressly incorporated by reference as if set out herein, shall include but not necessarily be limited to 17 CFR 275.204-2. This administrative regulation shall apply to investment advisers subject the Securities Act of Kentucky regardless of whether they are subject to the Investment Advisers Act of 1940 or subject to the rules of the United States Securities and Exchange Commission. The commissioner may, by order and upon application for good cause shown, relieve an investment adviser of compliance with this administrative regulation in part if such action is in the public interest. [Every registered investment adviser shall maintain and keep current the following books and records:

(1) Ledgers (or other records) reflecting all assets and liabilities; income and expense and capital accounts;

(2) A record showing all payments received, including date of receipt, purpose and from whom received; and all disbursements, including date paid, purpose and to whom made;

(3) A record showing all receivables and payables;

(4) Records showing separately for each client the securities purchased or sold and, to the extent it has been made available to the investment adviser, the date and amount of and price at which such purchases or sales were executed. If available to the investment adviser this record should also show the name of the security broker-dealer who handled the transaction;

(5) Records showing separately all securities bought or sold by the clients of the investment adviser and indicating thereon with proper identification of the individual account, the date, amount, and the price at which such securities were purchased or sold by or for each client; or, in the alternative, a record showing all of such securities bought or sold by or for the accounts of all clients of the investment adviser in each month, the total number of shares or principal amount of each security bought or sold and the lowest and highest price at which such purchases or sales were made during the month;

(6) Copies of broker-dealers' confirmations of all transactions placed by the investment adviser for any account, and such other broker-dealers' confirmations as may be supplied to the investment adviser by a client or broker-dealer.

Section 2. Every registered investment adviser shall preserve for a period of not less than three (3) years, the first two (2) years in an easily accessible place:

(1) All check books, bank statements, cancelled checks, and cash reconciliations;

(2) All bills or statements (or copies thereof) paid or unpaid, relating to the business of such investment adviser;

(3) Originals of all communications received and copies of all communications sent, pertaining to services rendered or to be rendered to its clients or customers by such investment adviser, other than interoffice or interdepartmental communications;

(4) All powers of attorney and other evidence of the granting of any discretionary authority in any account and copies of resolutions empowering an agent to act on behalf of any client;

(5) All written agreements (or copies thereof) entered into by an investment adviser relating to the business of such investment adviser including agreements with respect to any account, which agreements shall set forth the fees to be charged and the manner of computation and method of payment thereof.]

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

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CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Investment advisers who are required to be licensed by the department. The number is

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indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: May reduce costs because of increased uniformity with SEC and other states.

2. Second and subsequent years: May reduce costs because of increased uniformity with SEC and other states.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. Federal law mandates this change.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: This change adopts existing federal requirements and is intended to increase uniformity among the states pursuant to federal mandate.

(11) TIERING: Is tiering applied? No. Different treatment of individuals within the regulated class is not justified and would raise constitutional issues.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

a. States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

b. States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25 million;

c. States must increase the uniformity of their regulation. Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (Amendment)

808 KAR 10:130. Amendments to registration statement.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To require that any and all changes in registration statements and amendments are clearly brought to the attention of department personnel.

Section 1. All amendments to statements filed pursuant to KRS 292.360 or 292.370 shall be ~~underlined and otherwise~~ marked where there are changes from the last amendment filed.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

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CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Entities required to file registration statements and amendments with the department.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

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None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: This amendment merely deletes language rendered obsolete in the electronic age of communication.

(11) TIERING: Is tiering applied? Not applicable.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (Amendment)

808 KAR 10:150. Registration exemptions.

RELATES TO: KRS 292.410(1)

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To declare that registration is not necessary in the public interest for certain business transactions pursuant to KRS 292.410(1)(q).

Section 1. Pursuant to KRS 292.410(1)(q), the commissioner having found that registration under the Kentucky Securities Act is not necessary or appropriate in the public interest or for the protection of investors, securities issued under the following classes of transactions shall be exempt from KRS 292.340 to 292.390 and no claims of exemption need be filed with the department. However, any persons receiving commissions or other remuneration in connection with sales made pursuant to these exemptions are not relieved of compliance with the registration requirements of KRS 292.330.

~~((1) Small business organization. Where ten (10) or fewer persons organize a corporation, joint venture, or similar business organization other than a limited partnership, provided that:~~

~~(a) There are no more than twenty-five (25) offerees;~~

~~(b) The security acquired does not evidence an oil, gas or mineral interest;~~

~~(c) Each person purchases with investment intent;~~

~~(d) Each purchaser is an organizer on the date the issuer is formed;~~

~~(e) Each purchaser has access to information concerning the issuer;~~

~~(f) In connection with the organization, no commission or other remuneration is paid or given directly or indirectly to any person for soliciting any prospective buyer in this state;~~

~~(g) No public advertising through newspapers, television, radio, handbills, or other such solicitation will be employed in effectuating the proposed transaction;~~

~~((2)) Professional service corporation. Any security issued by a~~

professional service corporation organized under KRS Chapter 274 or substantially similar legislation of another state, or by a professional limited liability company or professional limited liability partnership, provided:

~~(1) ((a)) The professional service corporation or other entity~~ complies with the ownership and retransfer restrictions set forth in the applicable laws(s); [KRS Chapter 274;]

~~(2) ((b)) The securities are sold to a professional person;~~

~~(3) ((c)) The seller must reasonably believe that each buyer is purchasing for investment; and~~

~~(4) ((d)) Each professional is provided access to information concerning the professional service corporation or other entity.~~

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

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CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Issuers of certain securities required to register offerings with the department. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Should reduce costs for LLCs and PLLCs because exemption from registration for these issuers is now express.

2. Second and subsequent years: Reduction in costs should continue after the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Savings expected because registration exemption for LLCs and PLLCs is now express and department should no longer have to issue no action letters with respect to these issuers.

2. Continuing costs or savings: Savings should continue after first year.

(b) Reporting and paperwork requirements: Reduction in paperwork expected.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. Federal law mandates this change.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Designed to facilitate capital raising efforts of small businesses.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Indeterminable.

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: Organizer's exemption is now contained in statute at KRS 292.400(1)(i). This change is intended to increase uniformity of regulation among the states pursuant to federal mandate.

(11) TIERING: Is tiering applied? Yes. This regulation only applies to certain types of transactions. Tiering is justified because these types of transactions do not raise the same regulatory concerns as other transactions. Unlike with other types of transactions, the disclosure concerns addressed by requiring registration are not implicated in these transactions.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

a. States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

b. States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25 million;

c. States must increase the uniformity of their regulation. Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (Amendment)

808 KAR 10:160. Definitions.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To clarify and define terms used in KRS Chapter 292 and rules and administrative regulations promulgated thereunder.

Section 1. Definitions. When used in KRS Chapter 292 and the

rules and administrative regulations promulgated thereunder unless the context otherwise requires:

(1) ~~["Assistant representative order processing" means a person associated with a broker-dealer who accepts unsolicited customer orders for submission for execution by the broker-dealer and upon requests from customers provides market quotes.~~

(2) "Current financial statement" means a balance sheet of the issuer as of a date within four (4) months prior to the filing of the claim of exemption, a profit and loss statement for the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three (3) years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements that would be required if that business were the issuer. The profit and loss statement shall be audited by an independent, certified public accountant for the latest fiscal year presented.

(2) ~~(3)~~ "Investment intent" or "purchasing for investment" means that securities cannot be purchased with a view to, or for resale in connection with, any distribution. Securities purchased with investment intent cannot be disposed of unless the securities are registered under KRS Chapter 292 or an exemption from the registration requirements of such chapter is available. As a result, the purchaser of these securities must be prepared to bear the economic risk of the investment for an indefinite period of time and have no need of liquidity of the investment. Where securities are purchased under KRS Chapter 292 for investment, investment intent shall be presumed if the purchaser retains such securities for one (1) year ~~[two (2) years]~~ from the date of consummation of the sale. However, any disposition of the securities within one (1) year ~~[two (2) years]~~ of the date of purchase, in the absence of an unforeseeable change of circumstances, shall create a presumption that the person did not purchase the securities with investment intent.

(3) ~~(4)~~ "Promotional company" means:

(a) A corporation which has no substantial public market for its shares as evidenced by the number of market makers and the trading volume and also has no significant earnings; or

(b) A corporation which has no public market for its shares and no justification for its proposed public offering price on the basis of past earnings.

(4) ~~(5)~~ "Subsidiary" means an affiliate controlled or significantly influenced by the issuer directly, or indirectly through one (1) or more intermediaries.

(5) ~~(6)~~ "Significant subsidiary" means a subsidiary meeting any one (1) of the following conditions:

(a) The assets of the subsidiary, or the investments in and advances to the subsidiary by the issuer and the issuer's other subsidiaries, if any, exceed ten (10) percent of the assets of the issuer and its subsidiaries on a consolidated basis;

(b) The sales and operating revenues of the subsidiary exceed ten (10) percent of the sales and operating revenues of the issuer and its subsidiaries on a consolidated basis;

(c) The subsidiary is in control of or can significantly influence one (1) or more other subsidiaries and, together with such subsidiaries would, if considered in the aggregate, constitute a significant subsidiary.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

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below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

- (1) Type and number of entities affected: None
- (2) Direct and indirect costs or savings on the:
 - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.
 - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.
 - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
 1. First year following implementation: None
 2. Second and subsequent years: None
 - (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: None
 2. Continuing costs or savings: None
 - (b) Reporting and paperwork requirements: None
 - (4) Assessment of anticipated effect on state and local revenues: None
 - (5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue neutral.
 - (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:
 - (a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.
 - (b) Kentucky: Indeterminable, no comments received.
 - (7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered.
 - (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: No
 - (c) If detrimental effect would result, explain detrimental effect:
 - (9) 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:
 - (10) Any additional information or comments: The amendment deletes obsolete terminology. The term is not used by the department nor the regulated entities.
 - (11) TIERING: Is tiering applied? Not applicable, no substantive change.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (Amendment)

808 KAR 10:170. Exemption claims from securities registration; form.

RELATES TO: KRS 292.400

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To outline the informational requirements and the format for a claim of exemption from securities registration under subsections (9) and (12) and (14) of KRS 292.400.

Section 1. The following provisions shall apply to matters relating to an exemption from registration pursuant to KRS 292.400(9).

(1) The claim of exemption required to be filed pursuant to KRS 292.415(1) shall contain the following:

- (a) ~~The filing fee (payable to Kentucky State Treasurer);~~
 - (b) A declaration that the KRS 292.400(9) exemption will be relied upon;
 - (b) ~~[(e)]~~ A sample copy of the security that will be issued;
 - (c) ~~[(d)]~~ A copy of the Articles of Incorporation and Bylaws of the issuer or the equivalent governing instruments;
 - (d) ~~[(e)]~~ A prospectus, offering circular, or memorandum making full disclosure of material facts, including a discussion of all salient risk factors;
 - (e) ~~[(f)]~~ A representation that the offerees and purchasers shall have access to information concerning the issuer;
 - (f) ~~[(g)]~~ Copies of all advertising or other material to be distributed in connection with the offering;
 - (g) ~~[(h)]~~ A copy of the subscription agreement or other similar agreement;
 - (h) ~~[(i)]~~ A copy of any proposed agreement or proposed form of agreement with a securities broker-dealer or underwriter;
 - (i) ~~[(j)]~~ A copy of the preliminary or definitive Trust Indenture and/or Trust Agreement, if any;
 - (j) ~~[(k)]~~ An opinion of counsel attesting to the authority of the issuer to offer and sell the securities and stating that after the sale the securities will be valid, binding obligations of the issuer in accordance with the issuer's governing documents. A letter from an authorized officer or the governing body of the issuer may in certain circumstances be accepted in lieu of this opinion;
 - (k) ~~[(l)]~~ A representation that any commissions or other remuneration to be paid in connection with the offer or sale of the securities will be paid only to persons licensed pursuant to KRS 292.330.
- (2) The commissioner may require additional information, documentation and undertakings or waive any of the above requirements. The commissioner may require that the name and address of each purchaser and date of each such purchase be submitted to complete the filing.
- (3) For a claim of exemption pursuant to KRS 292.400(9) for an offering of securities of a church or other religious institution, a proposed issuer should be in substantial compliance with the North American Securities Administrators Association's Guidelines for Offerings of Church Bonds relative to disclosure in offering circulars and financial condition (Commerce Clearing House Blue Sky Law Reporter).

Section 2. The following provisions shall apply to matters relating to an exemption from registration pursuant to KRS 292.400(12).

(1) The claim of exemption required to be filed pursuant to KRS 292.415(1) shall contain the following:

- (a) The filing fee of \$250 ~~[(100)]~~ (payable to Kentucky State Treasurer);
- (b) A declaration that the KRS 292.400(12) exemption will be relied upon;

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- (c) A sample copy of the security that will be issued;
- (d) A copy of the articles of incorporation and bylaws of the issuer or the equivalent governing instruments;
- (e) A prospectus, offering circular, or memorandum making full disclosure of material facts, including a discussion of all salient risk factors;
- (f) A representation that the offerees and purchasers shall have access to information concerning the issuer;
- (g) Current financial statements of the issuer;
- (h) A copy of the subscription agreement or other similar agreement;
- (i) A statement as to how the proceeds of the issue will be used; and
- (j) A representation that any commission or other remuneration to be paid in connection with the offer or sale of the securities will be paid only to persons licensed pursuant to KRS 292.330.

(2) The commissioner may require additional information and documentation or waive any of the above requirements. The commissioner may require that the name and address of each purchaser and the date of each such purchase be submitted to complete the filing.

[Section 3: The following provisions shall apply to matters relating to an exemption from registration pursuant to KRS 292.400(14):

(1) The claim of exemption required to be filed pursuant to KRS 292.415(1) shall contain the following:

(a) The filing fee of \$100 (payable to Kentucky State Treasurer);
(b) A declaration that the KRS 292.400(14) exemption will be relied upon; and

(c) A declaration as to how the issuer satisfies each of the specific requirements of KRS 292.400(14), which declaration shall be signed by a principal officer of the issuer.

(2) The commissioner may require additional information, documentation or undertakings to be filed.

(3) The exemption shall be available for a period of five (5) years unless material changes regarding the issuer which relate to the statutory requirements of the exemption make the exemption unavailable. The \$100 filing fee shall be waived for the last four (4) years of the exemption period.

(4) The issuer will notify the commissioner annually (approximately one (1) year from the effective date of the exemption) that the conditions of the exemption are still being complied with and that the issuer is still relying upon and claiming the exemption.

(5) If the exemption becomes unavailable at any time as a result of material changes affecting the issuer's statutory exemption, the issuer shall immediately notify the commissioner.]

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Issuers of certain securities who are exempt from registration with the department. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Little, if any, costs.

2. Second and subsequent years: May reduce long-range costs because of increased uniformity with other states.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. Federal law mandates this change.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: Indeterminable

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: Changes are intended to increase uniformity of regulation among the states pursuant to federal mandate.

(11) TIERING: Is tiering applied? Yes. This regulation only applies to certain types of offerings. Tiering is justified because these types of offerings do not raise the same regulatory concerns as other types of offerings. The public interest is best served by exempting these offerings from the registration requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

a. States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

b. States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25

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million;

c. States must increase the uniformity of their regulation. Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (Amendment)

808 KAR 10:200. Investment advisers' minimum liquid capitalization; bond.

RELATES TO: KRS 292.330(5)

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To protect the public interest by establishing a minimum liquid capitalization for investment advisers.

Section 1. (1) Unless an investment adviser posts a bond pursuant to subsection (2) of this section, an investment adviser registered or required to be registered under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000, and every investment adviser registered or required to be registered under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

(2) Every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded in an amount of not less than \$35,000 determined by the commissioner based upon the number of clients and the total assets under management of the investment adviser by a bonding company qualified to do business in Kentucky. The requirements of this administrative regulation shall not apply to those applicants or registrants who comply with the requirements of subsection (1) of this section.

(3) The provisions of this administrative regulation shall not apply to any investment adviser that maintains its principal place of business in a state other than Kentucky provided such investment adviser is registered in its home state and in compliance with such state's net capital and bonding requirements, if any. [The minimum liquid net capital to be maintained by an investment adviser shall be \$5,000 unless the investment adviser charges prepaid fees or has custody of client funds, in which case the minimum liquid net capital to be maintained by such investment adviser shall be \$20,000.]

Section 2: ~~The minimum capitalization established in Section 1 of this administrative regulation may be reduced or waived by the commissioner upon a showing that such minimum capitalization is not necessary in the public interest given the limited nature of the adviser's activities.]~~

ARTHUR FREEMAN, Commissioner
COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regula-

tion. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Investment advisers required to register with the department. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No change.

2. Second and subsequent years: No change.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue neutral.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. Federal law mandates this change.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: This change is intended to increase uniformity of regulation among the states pursuant to federal mandate. The amendments are based on NASAA model act language which have been, or will be, adopted by many other states.

(11) TIERING: Is tiering applied? Yes. Tiering is justified because investment advisers who maintain custody of client funds pose greater regulatory concerns than those who do not. Requiring a greater minimum net worth and the posting of a bond addresses those concerns.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

a. States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

b. States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25 million;

c. States must increase the uniformity of their regulation. Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(Amendment)

808 KAR 10:210. Registration exemptions - Federal Regulation D.

RELATES TO: KRS 292.410(1), 17 CFR 230.262 (1992) [252(e)(d)-(f)-(1956)], 230.504-505 [505-506] (1982), 230.508(a) (1989), as amended or made effective by Release Nos. 33-6389 (April 15, 1982), 33-6437 (December 4, 1982), 33-6663 (November 10, 1986), 33-6758 (April 11, 1988), 33-6825 (April 19, 1989)

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To declare that registration is not necessary in the public interest for certain business transactions pursuant to KRS 292.410(1)(q).

Section 1. The following federal regulations and releases are adopted without change: 17 CFR 230.262 (1992), 230.501, 504-505 [230.252(c)-(d)-(e)-(f)-(1956)], 230.505-506 [1982], 230.508(a) (1989), as amended or made effective by Release Nos. 33-6389 (April 15, 1982), 33-6437 (December 4, 1982), 33-6663 (November 10, 1986), 33-6758 (April 11, 1988), and 33-6825 (April 19, 1989)

Section 2. Pursuant to KRS 292.410(1)(q), the commissioner, having found that registration is not necessary or appropriate in the public interest or for the protection of investors, exempts the transaction in subsection (1) of this section [the following transaction is determined to be exempt] from the registration provisions of KRS 292.340 through KRS 292.390.

(1) Any offer or sale of securities offered or sold in compliance with Securities Act of 1933, Regulation D, either 230.504 or 230.505 [230.505 or 230.506], including any offer or sale made exempt by application of Rule 508(a), as made effective in Release No. 33-6389 and as amended in Release Nos. 33-6437, 33-6663, 33-6758, 33-6825 and which satisfies the following further conditions and limitations:

(a) Persons receiving commissions, finders fees, or other remuneration in connection with sales of securities in reliance on this administrative regulation are not relieved of compliance with KRS 292.330.

(b) The issuer does not offer or sell the securities by means of a form of general advertisement or general solicitation. The following shall not constitute "general solicitation" within the meaning of this section:

1. Solicitation of indications of interest in accordance with such terms and conditions as the commissioner may adopt by administra-

tive regulation; or

2. Offers to sell securities and the dissemination of written offering materials in accordance with the terms of this administrative regulation at least thirty (30) days after the withdrawal of an application by the issuer to register the same class of securities.

(c) The issuer reasonably believes that each purchaser of the securities in Kentucky is acquiring the securities for investment and is aware of any restrictions imposed on transferability and resale of the securities. The basis for reasonable belief may include:

1. Obtaining a written representation signed by the purchaser that the purchaser is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on the transferability and resale of the securities; and

2. Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under KRS Chapter 292, and setting forth or referring to the restrictions on transferability and sale of securities.

(d) No exemption under this rule shall be available for the securities of any issuer, if any of the parties or persons described in Securities Act of 1933, Regulation A, Rule 230.262 [230.252, Sections (e), (d), (e) or (f)]:

1. Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any federal or state law within five (5) years prior to the commencement of the offering.

2. Has been convicted within five (5) years prior to commencement of the offering of any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

3. Is currently subject to any federal or state administrative order or judgment entered by that state's securities administrator within five (5) years prior to reliance on this exemption or is subject to any state's administrative order or judgment in which fraud or deceit was found and the order or judgment was entered within five (5) years of the expected offer and sale of securities in reliance upon this exemption.

4. Is currently subject to any state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities.

5. Is subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five (5) years prior to the commencement of the offering permanently restraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state.

6. The prohibitions of subparagraphs 1, 2, [through] 3 and 5 of this paragraph shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker/dealer employing such person is licensed or registered in this state and the Form BD filed with this state discloses the order, conviction, judgment or decree relating to such person.

7. Any disqualification caused by this section is automatically waived if the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied. It is a defense to a violation of this subsection if issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that a disqualification under the subsection existed.

(e) [(e)] The issuer shall file with the department [of Financial Institutions] a notice on Form D (17 CFR 239.500) no later than fifteen (15) days after the first sale of securities from or into this state in the case of a transaction pursuant to Rule 505, or at least ten (10)

business days prior to the first sale of securities from or into this state in the case of a transaction pursuant to Rule 504 during which time the department shall not have determined that the exemption provided by this administrative regulation is not available. [or to an investor in this state which results from an offer being made in reliance upon this exemption.]

1. Every notice on Form D shall be manually signed by a person duly authorized by the issuer.

2. Any information furnished by the issuer to offerees shall be filed with the notice required pursuant to this paragraph and, if such information is altered in any material way during the course of the offering, the department [of Financial Institutions] shall be notified of such amendment within fifteen (15) days after an offer using such amended information.

3. At the time of filing of the notice on Form D, the issuer shall pay to the commissioner a filing fee of \$250. [There is no filing fee.]

4. In the event that the issuer files any additional documents with the United States Securities and Exchange Commission subsequent to its initial filing, copies of same shall be filed with the department [of Financial Institutions].

(f) Issuers selling securities in reliance on this administrative regulation should consider furnishing written information to prospective investors in view of the antifraud provisions of this chapter and federal securities laws. In any offering in reliance on Rule 504 to persons who are not accredited investors, the department may consider the information to be provided to prospective investors in determining whether the exemption provided by this administrative regulation is available.

(g) [(d)] In all sales to nonaccredited investors pursuant to Rule 504 the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that [both of the following conditions are satisfied:

1. ~~The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situations and needs. For the limited purpose of this condition only, it may be presumed that if the investment does not exceed ten (10) percent of the investor's net worth, it is suitable.~~

2:] the purchaser either alone or with his or her [his/her] purchaser representative(s) has such knowledge and experience in financial and business matters that he or she [he/she] is or they are capable of evaluating the merits and risk of the prospective investment.

(2) A failure to comply with a term, condition or requirement of subsection (1)(a), (e) and (f) [(e) and (d)] of this section will not result in loss of the exemption for any new offer or sale to a particular individual or entity if the person relying on the exemption shows:

(a) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and

(b) The failure to comply was insignificant with respect to the offering as a whole; and

(c) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of [subsection (1)(a); (e) and (d) of] this section.

(3) Where an exemption is established only through reliance upon subsection (2) of this section, the failure to comply shall nonetheless be actionable by the commissioner.

(4) Offers and sales which are exempt under this rule may not be combined with offers and sales exempt under any other rule or section of this Act, however, nothing in this limitation shall act as an election. Should for any reason the offers and sales fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

(5) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate

to satisfy the antifraud provisions of this state's securities law.

(6) In any proceeding involving this rule, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

(7) In view of the objective of this rule and the purpose and policies underlying the securities act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Issuers filing Regulation D exemptions. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Should reduce costs associated with filing for these exemptions.

2. Second and subsequent years: Reduction in costs should continue after the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue neutral.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

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(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. Federal law mandates this change.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Designed to facilitate capital raising efforts of small business.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Indeterminable

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: Exemption for Rule 506 transactions eliminated because federal law now preempts state regulation of these offerings. Rule 504 transactions will now be exempt from registration. Adopt federal definition of "accredited investor". Changes are intended to increase uniformity of regulation among the states pursuant to federal mandate.

(11) TIERING: Is tiering applied? Yes. Tiering is justified because Regulation D transactions do not raise the same regulatory concerns as other offerings. In addition, the public interest is served by exempting Regulation D transactions from registration because the registration requirements have a disproportionately adverse effect on the entities who undertake these transactions resulting in disincentives for small businesses.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

a. States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

b. States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25 million;

c. States must increase the uniformity of their regulation. Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (Amendment)

808 KAR 10:225. Administrative hearing procedures.

RELATES TO: KRS Chapter 13B, 292.330, 292.460, 292.470, 292.500(1), (3), (9)

STATUTORY AUTHORITY: KRS 292.500(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.330(12), 292.390(3), and 292.410(2) authorize the commissioner to order the denial, suspension, or revocation of a registration or registration exemption of a broker-dealer, agent, [or] investment adviser, investment adviser representative, or issuer agent for a violation of KRS Chapter 292. KRS 292.500(9) requires that an administrative hearing be conducted in accordance with KRS Chapters 13B and 292. KRS 292.500(3) authorizes the commissioner of the department to promulgate administrative regulations to implement the

provisions of KRS Chapter 292. This administrative regulation establishes supplemental administrative hearing procedures for matters relating to a broker-dealer, agent, investment adviser, investment adviser representative, issuer agent, or security.

Section 1. Definitions. (1) "Administrative hearing" is defined by KRS 13B.010(2).

(2) "Commissioner" is defined by KRS 292.310(4).

(3) "Department" means the Department of Financial Institutions.

(4) "Hearing officer" is defined by KRS 13B.010(7).

(5) "Party" is defined by KRS 13B.010(3).

(6) "Person" is defined by KRS 292.310(10).

Section 2. Complaint and Answer. (1) The department attorney may file a written complaint against a person if:

(a) The attorney believes that the person is violating or has violated a provision of KRS Chapter 292; and

(b) The commissioner has not entered an order against the person based on the same conduct or allegation.

(2) The complaint shall:

(a) Describe the allegation made against the person;

(b) Request the commissioner to enter an appropriate order; and

(c) Comply with the requirements for notice of an administrative hearing established by KRS 13B.050(c) through (h).

(3) A person shall respond to the complaint by filing a written answer with the department. If an answer is not filed in accordance with subsection (4) of this section, the department attorney shall seek a final order from the commissioner granting the relief requested in the complaint.

(4) An answer shall:

(a) Be filed within twenty (20) days of service of the complaint;

(b) Respond to each allegation in the complaint; and

(c) Include a request for an administrative hearing if the person:

1. Does not agree that there has been a violation of KRS Chapter 292; or

2. Believes that the requested action is not appropriate.

(5) If requested, an administrative hearing shall be held pursuant to the provisions of KRS Chapter 13B and this administrative regulation. The notice of hearing required by KRS 13B.050 shall be sent to the parties after the request for an administrative hearing has been received.

Section 3. Attorney Representation. (1) An attorney who represents a party shall send written notification to the department, the hearing officer, and each party stating:

(a) That the attorney is representing the party; and

(b) The name, address, telephone number, and, if applicable, the facsimile number of the attorney and the client.

(2) If there is a change in the information provided in the notice, the attorney shall send written notification of the change to the department, the hearing officer, and each party.

(3) Withdrawal. An attorney who wishes to withdraw shall submit written notification stating that:

(a) The attorney is withdrawing;

(b) The client has been informed of the withdrawal; and

(c) The withdrawal is authorized by the rules of the Kentucky Supreme Court.

Section 4. Hearing Officers. If a hearing officer is disqualified, the commissioner shall assign another hearing officer within ten (10) days of the disqualification.

Section 5. Filings. (1) Each document filed with the department for an administrative hearing shall include a certificate of service. The certificate of service shall:

(a) Certify that the document was served as required by KRS 13B.080(2);

- (b) Identify the method of service; and
- (c) Be signed by the individual who served the document.
- (2) Pursuant to KRS 13B.080(2), a document sent by facsimile machine shall be considered served on a party on the date of the facsimile transmission if the:
 - (a) Document contains a statement that the:
 - 1. Document was served by facsimile machine; and
 - 2. Original of the document will be mailed to each party within five (5) business days of the date the facsimile was sent; and
 - (b) Party mails the original to the department within five (5) business days of the date the facsimile was sent.

Section 6. Motions. (1) A request for a hearing officer to take or refrain from taking an action shall be made by an oral or written motion.

(2) A motion shall state the basis for the motion, including a citation to or description of the legal authority in support of the requested action, if applicable.

(3) A party shall be given an opportunity to respond to a motion.

Section 7. Consolidation and Severance. (1) A hearing officer may consolidate cases assigned to his docket upon a finding by the hearing officer that:

- (a) There are:
 - 1. Common questions of law or fact; or
 - 2. Identical issues or witnesses; and
- (b) Consolidation is appropriate.

(2) A hearing officer may sever consolidated cases or claims in an administrative action upon a finding that the requirements for consolidation established in subsection (1) of this section are not met.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Investment advisers and their representatives who are required to be licensed by the department. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including

factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No effect expected.

2. Second and subsequent years: No effect expected.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Anticipate increased enforcement costs because this department had not previously regulated investment advisers representatives.

2. Continuing costs or savings: Long-range increased costs are not expected to be significantly greater than first year increase.

(b) Reporting and paperwork requirements: Anticipate increase in reporting and paperwork requirements related to increased enforcement actions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. Federal law mandates that states begin to regulate small investment advisers and their representatives.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Different treatment of individuals within the regulated class is not justified and would raise constitutional issues.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

a. States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

b. States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25 million;

c. States must increase the uniformity of their regulation. Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

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PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (Amendment)

808 KAR 10:240. Registration exemptions - sale of business.

RELATES TO: KRS 292.410(1)(q)

STATUTORY AUTHORITY: KRS 13A.350, 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To declare that registration is not necessary in the public interest for certain business transactions pursuant to KRS 292.410(1)(q).

Section 1. Pursuant to KRS 292 [202].410(1)(q), the commissioner having found that registration is not necessary or appropriate in the public interest or for the protection of investors, the following class of transactions is determined to be exempt from the registration provisions of KRS 292.330 through 292.390: the offer or sale of 100 percent of the ownership interest in any corporation provided that:

(1) No less than 100 percent of the stock of the corporation is either offered or sold; and

(2) The stock is sold to no more than one (1) individual or preexisting entity.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: None

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and

enforcement of administrative regulation: Not applicable.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: Correction of typographical error.

(11) TIERING: Is tiering applied? Not applicable. No substantive change.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (Amendment)

808 KAR 10:260. Examination requirement for individuals advising the public on securities, broker-dealers, and agents.

RELATES TO: KRS 292.310, 292.330, 292.500(3)

STATUTORY AUTHORITY: KRS 292.330(4), (12)(b)6, 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.330(4) and (12)(b)6 authorize the commissioner to require an examination as evidence of knowledge of the securities business as a condition of registration. This administrative regulation requires an individual who advises the public regarding securities to successfully complete a written examination that demonstrates knowledge of the requirements of the securities laws and exempts certain individuals from the examination requirement.

Section 1. An individual, including an investment adviser or an investment adviser representative, who advises the public regarding the value of securities or the advisability of investing in, purchasing, or selling securities shall demonstrate competence in the law of securities by taking and passing with a minimum score of seventy (70) percent, the Series 63 Uniform Securities Law Examination administered by the National Association of Securities Dealers, the Series 65 Uniform Investment Advisor Law Examination administered by the National Association of Securities Dealers, or the Series 66 Uniform Combined State Law Examination administered by the National Association of Securities Dealers. Each individual who takes the exam shall provide to the commissioner a copy of the notification from the National Association of Securities Dealers informing him of his score on the examination.

Section 2. The following individuals shall not be required to take and pass the examination:

(1) An individual who has been employed continuously since on or before July 1, 1991, by an investment adviser who has been registered in Kentucky continuously since on or before July 1, 1991;

(2) An individual (including an officer, partner, director, or clerical staff) employed by a registered investment adviser if the individual does not advise the public regarding the value of securities or the

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advisability of investing in, purchasing, or selling securities.

(3) An investment adviser who is exempt from registration under KRS 292.330(1) and an individual employed by the exempted investment adviser.

Section 3. A registered investment adviser shall not employ an individual as an investment adviser or as one who represents an investment adviser unless that individual has complied with this administrative regulation.

Section 4. An individual, or a principal in the case of a corporation, as a condition of Kentucky registration as a broker-dealer or agent, shall:

(1) Pass one (1) of the following National Association of Securities Dealers ("NASD") examinations: Series 1, 2, 6, 7, 11, 17, 22, 24, 26, 39, 40, 52, 53, or 62; and

(2) Pass the NASD Series 63 or Series 66 examination.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Broker-dealers and agents required to register with the department. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Expect savings because exam requirements are now expressly stated.

2. Continuing costs or savings: Savings should continue after first year.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: Specifically sets forth examination requirements for regulated persons. Department already has these requirements but now they will be expressly stated.

(11) TIERING: Is tiering applied? Not applicable. No substantive changes.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (Amendment)

808 KAR 10:300. Registration exemptions - pension plans.

RELATES TO: KRS 292.330-292.390, 292.400(11), 292.410(1)(q), 17 CFR 230.701

STATUTORY AUTHORITY: KRS 292.400(11), 292.410(1)(q), 292.500(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.400(11) exempts from the registration requirements of KRS 292.340 to 292.390 an investment contract issued in connection with certain employee benefit plans, but not the securities in the plan. KRS 292.410(1)(q) exempts from the registration requirements of KRS 292.330 to 292.390 a transaction for which the commissioner finds registration is not necessary or appropriate in the public interest or for the protection of investors. This administrative regulation exempts an offer or sale of a security within the above-referenced employee benefit plans from the registration requirements.

Section 1. (1) The registration provisions of KRS 292.330 to 292.390 and the notice filing provisions of KRS 292.395, shall not apply to an offer or sale of a security by an issuer pursuant to a written compensatory benefit plan including, without limitation, a purchase, savings, option, bonus, stock appreciation, profit sharing, thrift, incentive, pension or similar plan, or an interest in a plan, if the offer or sale qualifies for the registration exemption of 17 CFR 230.701.

(2) In order to provide an exemption from the registration requirements of KRS 292.330 to 292.390 and from the notice filing provisions of KRS 292.395, for a security issued in an employee compensatory circumstance, this exemption shall not apply to a plan or scheme to circumvent that purpose, including one to raise capital. In those cases, registration or some other exemption from registration shall be required.

(3) A filing with the department shall not be necessary to claim the exemption.

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ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

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PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Entities who issue covered securities in connection with an employee benefit plan. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue neutral.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative would be to require notice filings related to the issuance of the covered securities. This alternative was rejected because the department already exempts the securities from registration and, therefore, the department has no regulatory interest in requiring notice filings.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: The reference to notice filings was necessitated because of the creation of federal covered securities in NSMIA.

(11) TIERING: Is tiering applied? Not applicable as the amendment does not impose any additional requirements on the regulated entities.

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Local Health Department Operations

(Amendment)

902 KAR 8:040. Definition of terms applicable for the personnel program for local health departments.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.1755 [211-090, 212-170, 1994 Ky. Acts ch. 336]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.170 and 211.1755 [-212-170, and 212-870] requires the cabinet to supervise the personnel functions of local health departments and [-House Bill 631 provides that the cabinet shall] establish policies and procedures for the local health department personnel program through the promulgation of administrative regulations. The purpose of this administrative regulation is to provide for definitions of terms used in administrative regulations 902 KAR 8:060 [8:050] through 902 KAR 8:140 that describe the various components of a personnel administration program applicable for local health departments established under the provisions of KRS Chapter 211 [212].

Section 1. Definitions. As used in administrative regulations 902 KAR 8:060 [8:050] through 902 KAR 8:140:

(1) "Agency" is defined by KRS 211.1751(1). [1994 Ky. Acts ch. 336, Sec. 1.]

(2) "Allocate" means assigning a position to an appropriate class on the basis of similarity of work and level of responsibility performed in the position.

(3) "Appeal" means the right, under the provisions of 902 KAR 8:110, to appear before the Local Health Department Employment Personnel Council or a hearing officer appointed by the department and be heard on matters of discrimination or disciplinary actions, provided for under 902 KAR 8:060 [8:050] through 902 KAR 8:140.

(4) "Appointing authority" means the board of health or other lawfully delegated individual authorized under KRS Chapter 212 to make appointments.

(5) "Available" means an individual on a register for a class of positions willing to accept appointment in specified areas to a particular position of that class.

(6) "Cabinet" means the Cabinet for Health Services. [Human Resources.]

(7) "Certification of eligibles" means a list of eligibles issued by the Department for Public Health [Services] to the appointing authority of an agency certifying that the individuals meet the established minimum qualifications of the position, passed the required examination, and may be considered for employment.

(8) "Class" means a group of positions similar as to the duties performed; degree of supervision exercised or required; minimum requirements of training, experience, or skill; and other characteristics.

(9) "Classified service" means employment subject to the terms of administrative regulations 902 KAR 8:060 [8:050] through 902 KAR 8:140 except for:

(a) A health officer or a health department director employed under the provisions of 902 KAR 8:140; or

(b) An employee appointed on a seasonal, temporary, or emergency basis as described in administrative regulation 902 KAR 8:080; or

(c) An employee appointed as a janitor after the effective date of this administrative regulation; or

(d) An employee appointed under the provisions of 902 KAR 8:080 to work an irregular schedule as needed by an agency and whose hours of actual work do not exceed 400 hours per year.

(10) "Classification plan" is defined by KRS 211.1751(2). [1994 Acts ch. 336, Sec. 1.]

(11) "Compensation plan" is defined by KRS 211.1751(3). [1994 Acts ch. 336, Sec. 1.]

(12) "Compensatory time" means the accumulation of leave time for time worked on an hour-for-hour basis in excess of thirty-seven and one-half (37.5) hours per week subject to the provisions of KRS Chapter 337 and the Fair Labor Standards Act, 29 USC 206.

(13) [~~"Competitive examination" means a formal process of measuring the qualifications of applicants for employment or promotion.~~]

(14) "Council" is defined by KRS 211.1751(4). [1994 Acts ch. 336, Sec. 1.]

(14) [(15)] "Demotion" means a change of an employee from a position in one (1) class to a position in another class having a lower entrance salary.

(15) [(16)] "Department" is defined by KRS 211.1751(5). [1994 Acts ch. 336, Sec. 1.]

(16) [(17)] "Detail to special duty" means the assignment of an employee to a position for not more than twenty-six (26) pay periods to fulfill the responsibilities of an employee on leave or the assumption of additional job duties which are temporary.

(17) [(18)] "Disabled veteran" means a veteran who has established by official records of the United States government the present existence of a service connected disability.

(18) [(19)] "Discrimination" means any administrative decision based in whole or in part on a person's race, sex, age, religion, national origin or disability, except where the decision is supported by a valid occupational qualification.

(19) [(20)] "Discipline" means any effort to positively instruct or punish an employee concerning inappropriate conduct and behavior or unsatisfactory job performance requiring redirection.

(20) [(21)] "Eligible" means an individual whose name appears on a register for a particular class.

(21) [(22)] "Eligible list" means a list of names of persons who have been found qualified through suitable competitive examinations for positions or classes of positions.

(22) [(23)] "Emergency appointment" means the appointment of a person to a position, for a period not to exceed seven (7) pay periods, when an emergency makes it impractical or impossible to fill the position through standard appointment procedures.

(23) [(24)] "Excessive absenteeism" means absences from the employee's work station that cause the irregular attendance with or without approval of the agency. Absences may include tardiness, leaving early, abuse in the use of sick leave, excess use of sick leave that causes repetitive disruption of job performance and responsibilities of the employees and the agency, abuse in the use of annual leave, violating agency break policy, or violation of agency lunch policy.

(24) [(25)] "Flagrant violation" means a breach of state law, agency rules, policies, or directives by an employee, which, under the circumstances, constitutes a clear, present or immediately foreseeable threat or danger to the life, safety, health, or welfare of patients, other employees, the subject employee, or general public; or the employee's activities and behavior [otherwise] seriously disrupts the agency's normal course of business.

(25) [(26)] "Full-time employee" means an employee who is

compensated on a salary basis for a standard biweekly pay period.

[(27)] "Immediate family" means the spouse, parent, child, brother, or sister, the spouse of either of them, grandparent, grandchildren, mother or father-in-law, or daughter or son-in-law.]

(26) "Insubordination" means the willful refusal or the ignoring of requests to perform a task or to comply with an order given to the employee by a supervisor under circumstances where the employee's behavior is not justified by reasonable concern over safety.

(27) [(28)] "Job description" means a written description for each classification setting forth the title of the class, the characteristics of the work, the minimum requirements, and the special requirements, including any physical standards deemed necessary to satisfactorily do the work.

(28) [(29)] "Local health department" means an agency as defined above subject to the provisions of administrative regulations 902 KAR 8:040 [8:050] through 902 KAR 8:140.

(29) [(30)] "Minimum qualifications" means a comprehensive statement setting forth the minimum background required as to education and experience.

(30) [(31)] "Minimum salary" means the lowest rate of pay in the salary range for a class of positions.

[(32)] "Nonstatus employee" means a provisional, emergency, temporary, or seasonal employee, or an employee who has not completed the initial probationary period.]

(31) [(33)] "Initial probationary period" means the period an employee is required to serve prior to becoming a regular [permanent] employee in an agency.

(32) [(34)] "Outstanding merit payment" means a lump sum payment made to an employee based on an employee's outstanding job performance.

(33) [(35)] "Part-time employee" means an employee who is compensated on a biweekly basis for hours worked and whose hours worked do not average 100 hours of work per month.

(34) [(36)] "Part-time 100 hour employee" means an employee who is compensated on a biweekly basis for hours worked and whose hours worked average 100 hours per month.

(35) "Pay status" means any period of time for which an employee receives pay for time worked or utilizes approved accumulated leave for an absence. Paid time leave includes sick leave, extended sick leave, vacations using annual leave or compensatory leave, holidays, military leave, or other types of paid leave provided by administrative regulation 902 KAR 8:120.

(36) [(37)] "Performance evaluation" means a method of evaluating each employee on the employee's capability of performing the duties and responsibilities of the job.

(37) [(38)] "Probationary employee" means an employee serving the required initial probationary period following appointment.

(38) [(39)] "Promotional probationary period" means a period during which an employee is required to demonstrate fitness for the duties to which the employee has been promoted by actual performance of the duties of the position.

(39) [(40)] "Reemployment list" means a list of persons who may be appointed to a class of positions without further certification or examination due to their prior career status in the classification or related classification.

(40) [(41)] "Register" means an officially promulgated list of eligibles for a job classification in the order of their final ratings on a merit examination.

(41) "Regular status employee" means an employee who has successfully completed a required initial probationary period upon appointment and any extension thereof and is subject to the provisions of administrative regulations 902 KAR 8:040 through 902 KAR 8:140.

(42) "Salary range" means the rate and range of pay established for a class of positions.

[(43)] "~~Seasonal position" means a position established for a specific seasonal purpose and for a specific period of time not to~~

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exceed nineteen (19) pay periods:

(44) "Status employee" means an employee who has satisfactorily completed the required initial probationary period and is afforded the rights and privileges provided by administrative regulation 902 KAR 8:050 through 902 KAR 8:140.

(45) "Temporary appointment" means an appointment for a period not to exceed thirteen (13) pay periods from a register of eligibles for a period not to exceed a six (6) month period.]

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: February 25, 1998

FILED WITH LRC: February 25, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held April 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, first floor, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by April 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of the intent to attend the public hearing or written comments to: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, Fax (502) 564-7543.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Nelson

(1) Type and number of entities affected: The administrative regulations would relate to all local health departments except the Louisville-Jefferson County Health Department, Northern Kentucky District Health Department, and the Lexington-Fayette County Health Department.

(2) Direct and indirect costs or savings to those affected: None as this administrative regulation provide definitions of terms used in subsequent administrative regulations.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: None

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(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: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: None

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None, there were no comments received regarding this

administrative regulation.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this administrative regulation provides definitions of terms for subsequent administrative regulations.

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or policy is 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because the definitions would be applied to affected local health department.

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? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government.

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

4. How does this administrative regulation affect the local government or any service it provides.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There are no federal mandates governing this administrative regulation.

2. State compliance standards.

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

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

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Local Health Department Operations
(Amendment)

902 KAR 8:060. Classification and compensation plans for local health departments of Kentucky.

RELATES TO: KRS 211.170(1),(2), 212.170, 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.1751, 211.1755

NECESSITY, FUNCTION, AND CONFORMITY: KRS 212.170

and 212.870 requires the cabinet to supervise the personnel functions of local health departments. KRS 211.1755 provides that the cabinet shall administer a personnel program for the local health departments. This administrative regulation provides for the classification and

compensation plans for local health departments. The classification plan describes the duties and responsibilities, and the minimum requirements of training, experience, and other qualifications that are necessary for the satisfactory performance of the duties of the various jobs performed by local health department employees. The compensation plan provides salary schedules for the various classes with the salary of each class consistent with the functions outlined in the classification specifications and provides requirements which must be met for salary adjustments for employees.

Section 1. Classification Plan. (1) A comprehensive position classification plan shall be established by the department with the advice of the Local Health Department Employment Personnel Council and the local health departments.

(2) The classification plan shall set forth for each class of positions:

- (a) A title;
- (b) A description of the duties and responsibilities;
- (c) The minimum requirements of training and experience; and
- (d) Other qualifications that are necessary or desirable for the satisfactory performance of the duties of the class.

(3) The class specifications shall be descriptive and explanatory and used to allocate positions to classes as determined by their duties or responsibilities. The language of class specifications shall not be construed as limiting or modifying the authority which an appointing authority has to change the duties and responsibilities or assign duties to employees which are of similar kind or quality.

(4) Each position in an agency shall be allocated to one (1) of the classes established by the classification plan.

(5) A reallocation or allocation shall be made to new or existing classes as additional classes are established, abolished, or changed.

(6) The department shall allocate newly established positions to classes upon receipt of a statement of duties, responsibilities, and requirements of the positions from the appointing authority.

(7) The department shall:

(a) Maintain the classification plan by reviewing job descriptions prepared by the appointing authority for appropriate allocation of positions to approved classes; and

(b) Conduct a general review of the classification plan at least annually based on the review of job descriptions and other information.

(8) An agency shall change the classification of an existing position through a reclassification if a material and permanent change in the duties and responsibilities of a position occurs and the change in the duties and responsibilities are characteristic of a different classification.

(a) The employee within a position at the time it is reclassified shall serve with the same status obtained before the position was reclassified.

(b) A reclassification shall not be permitted during the initial employment probationary period.

(9) The department shall change the allocation of existing positions if it is determined that the position is incorrectly allocated and there has been no substantial change in duties from those in effect when the position was originally classified. If a position is reallocated, the employee within the class of position shall be entitled to serve with the same status obtained before the position was reallocated.

(10) The department shall maintain a master set of all approved class specifications. The department shall provide each appointing authority with a set of the class specifications.

Section 2. Compensation Plan. (1) The department shall establish a compensation plan with the advice of the Local Health Department Employment Personnel Council and the local health departments. The plan shall take into consideration the following:

(a) Evaluation of the complexity of the duties and responsibilities

of the various classes as described by the classification plan provided for in Section 1 of this administrative regulation;

- (b) Financial conditions of the agencies;
- (c) Experience in recruiting for positions;
- (d) Prevailing rates of pay for services of similar kind and quality;
- (e) Benefits received by employees; and
- (f) Consistency in application among local health departments.

(2) The compensation plan shall include minimum, intermediate, and maximum rates of pay for the various classes within the classification plan. The compensation plan shall also be used to determine salary adjustments provided for under this administrative regulation and under what circumstances salary adjustments may exceed the maximum.

(3) The department shall annually review and amend as necessary the compensation plan with the advice of the Local Health Department Employment Personnel Council and local health departments. Amendments shall include changes in minimum, midpoint, and maximum salary levels for respective classifications of the classification plan and the manner in which salary adjustments, as appropriate, shall be granted.

(4) The entrance salary of any employee entering employment shall be at the minimum of the range established for the class to which the employee is appointed unless otherwise approved by the department.

(5) A new minimum entrance salary may be established by an agency with the approval of the department if it is determined that it is not possible to recruit qualified employees for a class of positions at the established entrance salary. Appointments to the position may be made within the new salary range applicable to the class. If appointments are made at the new established minimum entrance salary, employees of the agency in the same class paid at a lower salary shall have their salaries adjusted to the newly established minimum entrance salary.

(6) The department may approve a higher entrance salary for new employees entering professional, technical, or clerical positions if the individual possesses qualifications in training and experience that exceed [above] the minimum required for the class as follows:

(a) Two (2) percent salary adjustment, not to exceed the midpoint, for each year of experience and appropriate education or training in excess of the minimum requirements for the respective classification; or

(b) Other qualifications established by the department with the advice of the council and local health departments.

(7) Employees possessing the same qualifications in the same class of positions, in the same agency, and who are paid below the salary level as adjusted, of the newly appointed employee, shall have their salary adjusted to the approved entrance salary level.

(8) If a former employee is reinstated or reemployed in a class for which he was previously employed, the appointing authority may make an appointment at the same pay rate the employee had been paid at the termination of service. An appointing authority may reemploy a former employee at a higher salary rate than previously if justified on the basis of:

- (a) Additional qualifications acquired by the employee;
- (b) Established minimum entrance salary above the former salary; or
- (c) Compensation plan changes.

Section 3. Salary Adjustments. (1) The appointing authority shall grant an employee a five (5) percent increase in salary upon successful completion of the required initial employment probationary period. The salary adjustment shall take effect the first pay period following completion of the probationary period. An employee shall not be given an original probationary increment more than once for successful completion of the probationary period in the same classification.

(2) The agency may, at the beginning of each fiscal year, annually

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establish a standard salary adjustment rate, not to exceed five (5) percent, for which all employees shall be eligible and given consideration based on documented satisfactory job performance.

(a) The salary adjustment shall be given to each employee at the beginning of the first [full] pay period following twenty-six (26) [full] pay periods of [continuous] service during which the employee earned annual and sick leave provided by 902 KAR 8:120 since the established anniversary date.

(b) If an agency does not grant an annual increment no outstanding meritorious lump sum payment shall be approved.

(3) An appointing authority may deny an annual increment to an employee for the following reasons;

- (a) Documented unsatisfactory work performance;
- (b) Excessive absenteeism;
- (c) Excessive tardiness;
- (d) Record of disciplinary action; or
- (e) Failure to cooperate.

(4) An employee whose annual increment is denied shall be notified by the appointing authority in writing at least two (2) weeks prior to the anniversary date. The employee action for which the annual increment was denied may lead to disciplinary action if not corrected.

(5) An employee's established anniversary date shall be the first day of the first [full] pay period upon completion of twenty-six (26) pay periods of [continuous] service during which the employee earned annual and sick leave provided by 902 KAR 8:120 after initial employment.

(6) An employee who is advanced to a higher pay grade through a reclassification of his position shall have his salary increased to the higher of:

- (a) Five (5) percent; or

(b) The minimum salary assigned to the reclassified position if the employee's salary is below the minimum of the new grade.

(7) An employee returning to duty from leave without pay shall receive an annual increment when the employee has completed twenty-six (26) pay periods of service since the date the employee last received an annual increment.

(8) Annual increment dates shall not change when an employee:

- (a) Is in a position which is assigned a new or different salary grade;
- (b) Receives a salary adjustment as a result of his position being reallocated;
- (c) Is transferred;
- (d) Receives a demotion;
- (e) Is approved for detail to special duty;
- (f) Returns from military leave; or
- (g) Is reclassified; or
- (h) Is promoted.

(9) The appointing authority, with the approval of the department may award any regular [permanent], full-time or part-time employee an outstanding meritorious lump sum payment if:

(a) The employee's acts or ideas resulted in significant financial savings to the local health department, or a significant improvement in service to the citizens; or

(b) The employee's job performance is outstanding.

(10) A lump sum payment shall not exceed eight (8) percent of the employee's current annual salary within a one (1) year consisting of twenty-six (26) full pay periods based on the annual increment date.

(a) The appointing authority may grant two (2) four (4) percent lump sum payments within the same time period but there shall be at least a thirteen (13) pay period interval between requests.

(b) The appointing authority shall submit written justification to the department for the outstanding merit payment to be effective.

(11) If a new or different salary range is made applicable to a class of position, either through a compensation plan change or the establishment of a new minimum entry salary for a classification,

persons employed in positions of that class at the effective date of the adjustment shall have their salary placed at least at the minimum entry salary of the new range.

~~[(a) An adjustment may be made to an employee's salary level within the new range not to exceed the rate of increase provided in the established new salary range.~~

~~(b) An appointing authority shall afford equitable treatment to all employees affected by the adjustment.]~~

(12) An employee may be detailed to special duty on a temporary basis, not to exceed twenty-six (26) pay periods, to occupy a position and assume the job duties of an employee on an approved leave of absence or assume additional job duties for a temporary time period.

(a) An employee who is approved for detail to special duty shall receive a salary increase of five (5) percent over the salary received prior to detail to special duty.

(b) After completion of the special assignment, the employee shall be transferred back to the former classification with the employee's salary reduced to the salary rate received prior to the detail assignment following completion of the special assignment. An employee shall be entitled to all salary increases he would have received had he not been on special assignment.

(13) If an above minimum entrance rate is established by an agency for a specified class based on documented recruitment needs, or a new entrance salary is established by a compensation plan change, the department may approve a salary adjustment for employees in the same class. The adjustment shall not exceed the rate of increase to the newly established minimum. In fixing salaries on an adjustment, an appointing authority shall afford equitable treatment to all employees affected by the adjustment.

(14) The department may approve other salary adjustments with the advice of the Local Health Department Employment Personnel Council and local health departments. Salary adjustments may address special working conditions, after hours adjustment where working hours cannot be adjusted or other specific circumstances.

(15) An appointing authority may request a salary adjustment not to exceed five (5) percent if an employee is assigned permanent job duties and responsibilities which are more complex and difficult than current job duties, but are less than those indicated through a reclassification.

(16) An agency may grant a one (1) time salary adjustment for all [each] employees during the fiscal year. The salary adjustment shall not exceed five (5) percent.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: February 25, 1998

FILED WITH LRC: February 25, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held April 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, first floor, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by April 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of the intent to attend the public hearing or written comments to: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, Fax (502) 564-7543.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Nelson

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(1) Type and number of entities affected: The administrative regulations would relate to all local health departments except the Louisville-Jefferson County Health Department, Northern Kentucky District Health Department, and the Lexington-Fayette County Health Department.

(2) Direct and indirect costs or savings to those affected: None as this administrative regulation provides for the various classifications used to describe the job duties and responsibilities of employees and the salary adjustments permissible.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments provided.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments were provided.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(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: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None, there were no comments received regarding this administrative regulation.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this administrative regulation provides for the classifications used to describe the duties and responsibilities of the employees and salary adjustments permissible.

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy that may be in conflict, overlapping, or duplication: No statute, administrative regulation, or policy is 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because the provisions of the administrative regulations would be applied to all affected local health department.

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? No

2. State whether this administrative regulation will affect the local

government or only a part or division of the local government.

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

4. How does this administrative regulation affect the local government or any service it provides.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There are no federal mandates governing this administrative regulation.

2. State compliance standards.

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

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

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Local Health Department Operations (Amendment)

902 KAR 8:070. Recruitment, examination, and certification of eligibles for local health departments of Kentucky.

RELATES TO: KRS 211.170(1),(2), 212.170, 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.1751, 211.1755

NECESSITY, FUNCTION, AND CONFORMITY: KRS 212.170 and 212.870 requires the cabinet to supervise the personnel functions of local health departments. KRS 211.1755 provides that the cabinet shall administer a personnel program for local health departments. This administrative regulation establishes procedures and standards for the recruitment, examination, and certification of individuals for potential employment by local health departments.

Section 1. Recruitment of Eligible Individuals. (1) ~~[For those job classifications in which there is expected to be a considerable and recurring need of eligibles:]~~ The department, with the advice of the council and the local health departments, shall establish a [recruitment] program which shall provide for the recruitment needs of the various agencies. [be both positive and continuous. Under the recruitment plan, applications may be accepted at any time and examinations held whenever and wherever the department deems necessary.]

(2) The recruitment plan shall specify the following:

(a) The conditions under which applications for potential employment will be received;

(b) The assessment or examination method utilized to select the individual that meets the minimum requirements of education and experience and possesses the knowledge, skills and abilities to perform the job duties and responsibilities of the position;

(c) The requirements for announcing a vacant position which shall include the following:

1. The title and minimum salary of the class of position;

2. Information as to the rates of pay at which appointments are expected to be made;

3. The types of duties to be performed;

4. The minimum qualifications of education, training, and experience required;

5. The date, if required, on which applications are to be received in the agency;

6. Veteran's preference;

7. The date, time and place of an examination for the position if required; and

8. All other conditions of competition, including the fact that failure in one (1) part of the examination shall disqualify an applicant; and

9. If an agency requires preemployment drug testing, criminal records checking, physical examination or other special conditions upon an offer of employment. [For those job classifications for which continuous recruitment is not needed, special announcements shall be used.]

(3) An agency shall announce publicly the recruitment effort to fill a position. Based on the type of position to be filled, the notice of the recruitment effort shall be [examinations shall be announced publicly and may be] distributed to one (1) or more of the following: public officials, employment service offices, newspapers, educational institutions, professional and vocational societies, other media and other individuals and organizations as necessary.

[(4) A public announcement of an examination shall specify:

(a) The title and minimum salary of the class of position;

(b) Information as to the rates of pay at which appointments are expected to be made;

(c) The types of duties to be performed;

(d) The minimum qualifications required;

(e) The date, if required, on which applications are to be received in the department;

(f) Veteran's preference;

(g) The date, time and place of an examination for the position if required;

(h) All other conditions of competition, including the fact that failure in one (1) part of the examination shall disqualify an applicant; and

(i) Other special requirements of federal and state legislation such as the American with Disabilities Act 42 USC 12101 et seq. or Civil Rights Act 42 USC 2000(d).

(5) An application for employment, form CH-36, "Application for Employment", shall be required of each individual seeking potential employment with an agency. Form CH-36, "Application for Employment", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of State and Local Health Administration, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday during the office hours of 8 a.m. and 4:30 p.m.

(6) Except in continuous recruitment programs, an application for employment shall be mailed to the department on or before the closing date specified in the announcement as published by the agency or postmarked before midnight on that date.]

(4) [(7)] The department shall be the custodian of all applications.

(5) [(8)] The department shall refuse to examine an applicant, not qualify an applicant, remove the applicant's name from a register, refuse to certify any eligible on a register, or may consult with the appointing authority in taking steps to remove such person already appointed, if:

(a) The applicant is found to lack specific requirements established for the examination for the class or position;

(b) The applicant is unable to perform duties of the class;

(c) Except as provided for in subsection (6) of this section, the applicant has been convicted of a felony, a job related misdemeanor, or a misdemeanor for which a jail sentence may be imposed;

(d) The applicant has previously been dismissed from any public service for delinquency, misconduct, or other similar cause;

(e) The applicant made a false statement of material fact in the application;

(f) The applicant has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment;

(g) The applicant has directly or indirectly obtained information regarding examinations to which the applicant was not entitled;

(h) The applicant has failed to submit a complete application;

(i) An applicant has failed to submit the application within the prescribed time limits as prescribed by the agency in the published announcement;

(j) The applicant has taken part in the compilation, administration, or correction of the examination; or

(k) The applicant has otherwise failed to meet the provisions of this administrative regulation.

(6) Subject to final department approval, an applicant or employee who has been convicted of a misdemeanor may be employed, or continue employment, if the appointing authority and the department formally determines that:

(a) The applicant is otherwise highly qualified and eligible for appointment; and

(b) The misdemeanor conviction will not adversely affect the applicant's job performance; and

(c) A specific need exists for the appointment or continuing appointment of this applicant or employee; and

(d) Every determination made is fully supported by written documentation available for public inspection under the provisions of KRS Chapter 61.

(7) [(9)] A disqualified applicant shall be promptly notified of the action by letter to the applicant's last known address.

Section 2. Character of Examinations. (1) Examinations shall be practical in nature, constructed to reveal the capacity [capability] of the applicant for the particular position as well as general background and related knowledge. An [The various parts of the] examination may be written, oral, personal interview, physical, or an evaluation of experience and training, a demonstration of skill, or any combination of types so long as applicants for a position are given the same examination.

(2) The recruitment plan required by this administrative regulation shall identify the examination process for each job classification.

(3) The department, in conjunction with an agency, may designate monitors as necessary to conduct examinations, and may arrange for the use of public buildings in which to conduct the examinations. The department shall provide for the compensation of monitors.

(4) [(3)] If an oral examination is a part of a total examination for a position, the department may appoint one (1) or more impartial oral examination boards as needed.

(5) [(4)] The department shall notify each applicant by mail of the final rating of examination requiring test scores as soon as the rating of the examination has been completed and the register established. An eligible, upon written request and presentation of proper identification, shall be entitled to information concerning his relative position on a register.

[(5) A vacancy in an agency may be filled by promotion of a qualified permanent employee.

[(6) Promotions shall be based upon individual performance, with due consideration for length of service and capability of the individual to perform the duties and responsibilities of the new position. A candidate for promotion shall be certified by the department as meeting the qualifications for the position.]

Section 3. Establishment of Registers [and Certification] of Eligibles. (1) For continuous recruitment job classifications, as determined by the agency, the department shall establish and maintain registers as follows:

(a) If a job classification requires an applicant to meet the minimum qualifications and does not require a scored examination an individual shall remain on the register for a period of one (1) year from the date on which the individual is determined qualified; or

(b) If a job classification requires an applicant to meet the minimum qualifications and does require a scored examination an individual shall remain on the register for a period of one (1) year from the date on which a passing score of seventy (70) or above is achieved. [positions that require an examination the department shall maintain a register of eligible persons who made a passing score of seventy (70). The register shall remain active unless a new examination is administered or the department determines that the register is

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exhausted. An individual shall remain on the register for a period of one (1) year from the date on which a passing score of seventy (70) or above is achieved.]

(2) For job classifications that require special announcement, as determined by the agency, the department shall establish and maintain registers as follows:

(a) If a job classification requires an applicant to meet the minimum qualifications and does not require a scored examination an individual shall remain on the register for a period of one (1) year from the date on which the individual is determined qualified; or

(b) If a job classification requires an applicant to meet the minimum qualifications and requires a scored examination an individual achieving a score of seventy (70) or above shall remain on the register for a period of one (1) year from the date on which the examination was given.

(3) The names of eligible persons who have taken a scored examination and achieved a score of seventy (70) or above shall be placed on the register in order of their final ratings. If two (2) or more eligibles have final ratings which are identical, their names shall be arranged in the order of their ratings on the written part of the examination, if any, or in order of the date of receipt of application. If applications of eligibles have ratings which are identical are received on the same day, the names shall be placed on the certification in alphabetical order.

(4) [(3)] If a vacancy exists in a class of positions for which there is no appropriate register, the department may prepare an appropriate register for the class from one (1) or more existing related registers.

[(4)] The life of each register established as a result of a special announcement shall be one (1) year from the date of examination, if required, or the date upon which the department has completed the evaluation of applicants.]

(5) A register may be deemed to be exhausted by the department if fewer than three (3) eligibles remain on the register. If a register is exhausted, each eligible on the register shall be notified by mail at his last known address.

(6) The department may remove the name of an eligible from a register:

(a) For any of the causes stipulated for disqualifying an applicant provided for under Section 1 of this administrative regulation;

(b) If the eligible cannot be located by the postal authorities as evidenced by the return of one (1) notice or a returned notice marked no forwarding address;

(c) On receipt of a statement from the eligible stating that he no longer desires consideration for a position;

(d) If an offer of a probationary appointment to the class for which the register was established has been declined by the eligible;

(e) An eligible receives a probationary appointment;

(f) Declines an offer of appointment for which the eligible previously indicated acceptance;

(g) The eligible fails to report for a scheduled interview without valid reason;

(h) An eligible fails to maintain a current address as evidenced by the return from postal authorities of unclaimed but properly addressed letters; or

(i) An eligible has been certified three (3) times to an appointing authority and has not been offered employment.

(7) An eligible who is appointed on a probationary basis shall be removed from all applicable registers. The [An] eligible [who is appointed on a probationary basis] may request in writing to the department requesting that [to have] his name be reinstated to the applicable [any] register at any time before its expiration.

(8) The department shall notify the eligible by mail to his last known address of this action and the reasons therefore.

Section 4. Issuance of Certificate of Eligibles. (1) [(9)] For positions requiring an examination requiring test scores and upon receipt of a request, the department shall certify and submit in writing

to the appointing authority the names of available persons.

(a) If one (1) position is involved, the names of the persons whose scores fall within the highest ten (10) scores earned on the examination for that class of position shall be certified.

(b) If there are fewer than the number of eligibles specified in this section, the available number shall be certified and appointment will be made if there are as many as three (3) available eligibles for each vacancy.

(c) If more than one (1) position is involved, the department shall certify an additional eligible for each position in excess of one (1).

(d) The department shall certify and submit the five (5) highest available scores on the appropriate promotional register, if one exists.

(2) [(10)] For positions which do not require an examination the department shall certify all names of eligibles to the appointing authority.

(3) [(11)] The appointing authority may request, in writing to the department, special experience, education, or skills different from the minimum requirements of the class. If, after investigation of the duties and responsibilities of the position, the department approves the request, a certification may be issued to the agency containing the names of those individuals who possess the qualifications specified.

(4) [(12)] The life of a certification of eligibles during which action may be taken shall be sixty (60) days from the date of issue unless specified on the certification of eligibles.

(5) A regular [(13)] An employee [with status], placed in a layoff category, shall have first priority for consideration in filling a vacancy in a classified position for which the employee is qualified in the agency from which laid off.

(a) A regular [status] employee in the layoff category shall indicate in writing to the department that he desires reemployment.

(b) No examination shall be required for reemployment in the same job classification from which the employee was laid off.

(c) If a laid-off regular employee [with status] desires reemployment in a different job classification, the employee shall meet the requirements and pass the required examinations for the job classifications in which he seeks reemployment.

(d) The life of the reemployment register is one (1) year or until the employee is reemployed, whichever comes first.

Section 5. Application for Employment. (1) An application for employment, form CH-36, "Application for Employment", revised January 1998, shall be required of each individual seeking potential employment with an agency.

(2) Form CH-36, "Application for Employment", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Public Health, Division of Local Health Operations, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday during the office hours of 8 a.m. and 4:30 p.m.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: February 25, 1998

FILED WITH LRC: February 25, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held April 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, first floor, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by April 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of the intent to attend the public hearing or written comments to: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the General Counsel,

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Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, Fax (502) 564-7543.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Nelson

(1) Type and number of entities affected: The administrative regulations would relate to all local health departments except the Louisville-Jefferson County Health Department, Northern Kentucky District Health Department, and the Lexington-Fayette County Health Department.

(2) Direct and indirect costs or savings to those affected: The costs incurred to the local health departments would depend on the recruitment activities in order to fill vacant positions. This administrative regulation amends current recruitment procedures and requires public announcement of a vacant position in newspapers, college placement offices, employment offices, etc.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received regarding costs of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments received.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The health departments would be required to report recruitment activities in order to establish employment registers. This would not add any additional costs as this is already implemented.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs to the agency because existing costs would not be impacted as a result of this administrative regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork and reporting requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: None

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments received.

(b) Kentucky: No comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as this is an existing regulation that is being amended to lessen the difficulty in recruiting potential employees for local health departments.

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied as the regulation would be applied to all local health departments.

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? No. This regulation relates to local health departments established under the provisions of KRS 212. Each health department is governed by a board of health appointed by the Secretary of the Cabinet of Human resources. A health department would not be considered a part of local government. Funding of the public health services and programs is derived from state, federal and local public health tax and other local sources.

(2) State whether this administrative regulation will affect the local government or only a part or division of the local government. The administrative regulation applies to local health departments which are not part of a local government.

(3) State the aspect or service of local government to which this administrative regulation relates. This administrative regulation governs the recruitment and examination procedures of local health departments.

(4) How does this administrative regulation affect the local government or any service it provides? The administrative regulation would have minimum impact on a health department. The administrative regulation would eliminate the earning of compensatory leave by employees determined to be non exempt under federal and state labor laws. This should reduce the liability of the health department where compensatory leave was allowed to accumulate. It is not known how much overtime would be worked by non exempt employees beyond the current levels budgeted.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There are no federal mandates governing this administrative regulation.

2. State compliance standards.

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

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

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Local Health Department Operations
(Amendment)

902 KAR 8:080. Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.1755 [211.090; 212.170, 1994 Ky. Acts ch. 336]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.170 and 211.1755 [211.090, 212.170, and 212.870] requires the cabinet to supervise the personnel functions of local health departments and [-House Bill 634 provides that the cabinet shall] establish policies and procedures for the local health department personnel program through the promulgation of administrative regulations. This administrative regulation describes the various categories of employment and types

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of appointments permitted under the merit system, the standards under which the appointments are made and requires a probation period following appointment or promotion. This administrative regulation describes an evaluation process to measure employee performance of job duties and responsibilities. Requirements for employee resignations and the process of lay off is also addressed.

Section 1. Initial Appointments. The appointing authority of a local health department shall make an initial appointment of an eligible only from a certification of eligibles issued by the department. ~~[The appointing authority or other designated supervisory staff shall interview and examine applicants certified and shall report the final selection to the department.]~~

Section 2. Provisional Appointments. (1) If there are urgent reasons for filling a position and no appropriate register exists, the appointing authority may submit to the department the name of a person to fill the position pending examination and establishment of a register. If the person's qualifications have been certified by the department as meeting the minimum qualifications, the person may be provisionally appointed to fill the existing vacancy.

(2) No provisional appointment shall be made until the position has been classified and minimum qualifications established for the class of position. The provisional appointment shall not exceed thirteen (13) pay periods from the date of appointment or within two (2) weeks of the date on which the department notifies the appointing authority that an appropriate register has been established, whichever occurs first.

(3) Successive provisional appointments of the same person shall not be permitted. A position shall not be filled by repeated provisional appointments.

(4) Provisional service immediately prior to original appointment may be credited, at the request of the appointing authority, toward the required probationary period.

Section 3. Reinstatement. (1) For a period of time not to exceed three (3) years since termination of employment from an agency, a regular [permanent] employee who has resigned while in good standing, or separated without prejudice, may be eligible for reinstatement to the same position or in a corresponding position without examination, with the same seniority rights and leave status. The individual being considered for reinstatement shall be certified by the department as meeting the current minimum qualifications.

(2) The individual being considered for reinstatement shall not be required to serve a probationary period if the employee has had a break in service of not more than twelve (12) months. If the employee has had a break in service of more than twelve (12) months, the employee shall serve a probationary period. [The annual increment date shall be twenty-six (26) pay periods from the effective date of reinstatement. Accumulated sick leave earned during prior employment with the agency shall be reinstated upon employment and the period of time of prior employment with the agency may be used to determine the rate at which the employee earns annual leave.]

(3) The annual increment date shall be twenty-six (26) pay periods from the effective date of reinstatement.

(4) Accumulated sick leave earned during prior employment with the agency shall be reinstated upon employment and the period of time of prior employment with the agency may be used to determine the rate at which the employee earns annual leave.

Section 4. Emergency Appointments. (1) If an emergency exists that requires the immediate services of one (1) or more persons and it is not possible to secure a person from an appropriate register, or there is no person qualified for provisional appointment, the appointing authority may appoint ~~[with the approval of the department]~~ a person with the approval of the department ~~[or persons at the minimum entrance salary for the class]~~. An emergency appointment shall

not exceed seven (7) pay periods in duration and shall not be renewable. The department may make investigations as necessary to determine if an emergency exists.

(2) The appointing authority shall report an emergency appointment to the department, providing the name of the appointee, rate of pay, length of employment, nature of emergency, and duties to be performed. Separation from service of an emergency appointee shall also be reported.

(3) An emergency appointment shall not confer upon the incumbent a privilege or right to promotion, transfer, or reinstatement to a position under the merit system.

Section 5. Temporary Appointments. (1) If a vacancy occurs in a position having duties of a strictly temporary nature, a certification may be issued by the department of those eligibles, who have indicated a willingness to accept temporary employment in the order of their places on an appropriate register.

(2) The duration of a temporary appointment shall not exceed thirteen (13) pay periods.

(3) The acceptance or refusal of a temporary appointment shall not affect an eligible's standing on a register or eligibility for a probationary appointment.

(4) The period of temporary service shall not constitute a part of the initial employment probationary period.

(5) Successive temporary appointments of an employee to the same position shall not be made.

Section 6. Seasonal Appointment. (1) The appointing authority may, with the approval of the department, establish a position on a seasonal basis for up to nineteen (19) pay periods to accommodate the following:

- (a) Increased work activity of a seasonal nature;
- (b) Work study or job training programs;
- (c) Special projects; or
- (d) Summer employment.

(2) Only an applicant meeting the established minimum requirements for the position may be appointed to a seasonal position.

(3) Successive appointments to the same seasonal position shall not be made.

Section 7. Appointment of an Individual to an Itinerant Hour Position. (1) An agency because of special working requirements in meeting programmatic service needs, may establish a position having itinerant hours of work.

(2) An agency may appoint an individual who meets the minimum requirements of education and experience established for the position to an itinerant hours position.

(3) An individual appointed shall be compensated on a fee for service or hourly rate as determined by the agency.

(4) The hours of work of the individual shall not exceed 400 hours per year.

(5) An individual appointed to the itinerant hour position shall not be considered in the classified service and continued employment shall be subject to the discretion of the appointing authority.

(6) The compensation of the individual employed shall be determined by the appointing authority and in accordance with applicable administrative regulations.

(7) The individual employed shall not be eligible for salary adjustments provided by 902 KAR 8:060.

Section 8. Performance Appraisal. (1) The appointing authority, or designated supervisory staff, shall conduct a performance appraisal for each permanent employee on an annual basis, and for each probationary employee prior to completion of the required probationary period.

(2) An overall rating of "below requirements" or "inadequate" shall require that a new rating of the employee be made within ninety (90)

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days.

(3) Performance appraisals shall be considered in determining annual and probationary salary advancements and in requesting and approving promotions, demotions, dismissals, and in determining the order of separations due to reduction of work force.

~~[(4) Performance appraisals shall be prepared and recorded on Form CH-40, "Employee Performance Appraisal", revised April 1993. Form CH-40, "Employee Performance Appraisal", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.]~~

Section 9. [8:] Initial Probationary Period. (1) An employee shall be required to serve a probationary period upon initial employment.

(2) The initial probationary period shall normally be thirteen (13) pay periods except as provided in subsection (3) of this section.

(3) If the employee has satisfactorily completed the initial probationary period based on a performance evaluation, the appointing authority shall notify the department fourteen (14) days prior to the expiration of the initial probationary period that regular status has been confirmed, [as to one (1) of the following actions:

~~(a) The employee has satisfactorily completed the initial probationary period based on a performance evaluation, and permanent status has been confirmed;~~

~~(b) The employee has not successfully performed the duties and completed the probationary period as evidenced by the required performance evaluation, and shall be dismissed without the right of appeal and hearing; or~~

~~(c) If the initial probationary period will be extended because of absences during the probationary period due to medical reasons which cause the employee to be absent from work for twenty (20) days or more during the probationary period.]~~

(4) If the employee is to be dismissed during the initial probationary period, the employee shall be notified at least fourteen (14) days prior to the effective date of dismissal and prior to the expiration of the probation period. The employee may be placed on a register of eligibles by the department if the action is appropriate. The employee shall not be certified to the agency from which separated unless the agency requests otherwise. [The department, with the advice of the Local Health Department Employment Personnel Council, may require an initial probationary period in excess of thirteen (13) pay periods; not to exceed a total probationary period of twenty-six (26) pay periods, for specific classifications, for example, the health environmentalist classification;]

(5) The initial probationary period may be extended for the following:

(a) Because of absences during the probationary period due to medical reasons which cause the employee to be absent from work for twenty (20) days or more during the probationary period;

(b) The employee has been unable to complete required job related training course(s). [If the employee is to be dismissed during the initial probationary period, the employee shall be notified at least fourteen (14) days prior to the effective date of dismissal and prior to the expiration of the probation period. The employee may be placed on a register of eligibles by the department if the action is appropriate. The employee shall not be certified to the agency from which separated unless the agency requests otherwise;]

(6) The employee serving a probationary period may be eligible for promotion to a position in a higher class, provided the employee is certified from an appropriate register. If an employee is promoted during a probationary period, the probationary period shall begin with the date the employee was promoted. ~~[of the most recent appointment;]~~

(7) The department, with the advice of the Local Health Department Employment Personnel Council, may require an initial probationary period in excess of thirteen (13) pay periods, not to exceed a

total probationary period of twenty-six (26) pay periods, for specific classifications, for example, the health environmentalist classification.

Section 10. [9:] Probation Period Following Promotion. (1) A promotional probationary period of thirteen (13) full pay periods shall be required of an employee upon promotion.

(2) If an employee is granted leave in excess of twenty (20) consecutive work days during the promotional probationary period, his initial probation shall be extended for the same length of time as the granted leave to cover the absence.

(3) A performance evaluation shall be completed for the employee prior to completing the probationary period to determine the employee's ability to perform successfully the job duties.

(4) If approved by the appointing authority, a promoted employee may request to be reverted to a position in the former class during the probationary period.

(5) An employee who has been promoted but fails to successfully complete the probationary period, as documented by the performance evaluation conducted by the appointing authority, shall revert to a position of his former class. If there is no vacancy in the former class the employee may be reverted to a position in a different class if qualified and certified by the department.

(6) Documentation of the reasons for unsuccessful completion shall be provided to the employee and the department.

(7) If a permanent employee is dismissed for cause while serving a promotional probationary period the employee has the right to appeal the dismissal in accordance with 902 KAR 8:110.

Section 11. [10:] Resignations. (1) An employee who desires to terminate his service with an agency shall submit a written resignation to the appointing authority.

(2) Resignations shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be filed in the employee's personnel file.

(3) Failure of an employee to give fourteen (14) calendar day notice shall, unless otherwise approved by the appointing authority, result in the employee forfeiting payment for accrued annual leave.

(4) An employee's lump sum payment for accumulated annual leave and compensatory time may be held by an agency until the employee who has resigned, retired, or been dismissed, returns agency credit cards, keys to buildings and automobiles or other agency property in the possession of the employee.

Section 12. [11:] Layoffs. (1) An appointing authority may lay off an employee in the classified service if necessary because of shortage of funds, abolishment of a position, or other material change in the duties or the organization of the agency.

(2) Prior to the notification of an employee that he is subject to layoff and prior to the layoff of an employee, the appointing authority shall submit a layoff plan to the department for approval. The plan shall contain the name of the employee and the reasons, in detail, for the layoff. Upon approval of the plan by the department, the employee shall be notified that he is subject to layoff, and of:

(a) The reason for the layoff;

(b) The procedures established for the layoff of employees; and

(c) The rights granted employees subject to layoff. [The agency shall submit a plan to the department for approval prior to layoff. The plan shall identify the factors considered and identify the employee proposed to be laid off. The agency shall consider at least the following factors:

(a) Seniority of employees;

(b) Results of employee performance evaluation;

(c) Qualification of employees; and

(d) Type of appointment or source of funding;]

(3) An agency established under KRS 212.040 shall undertake the following procedures in assisting an employee subject to layoff:

(a) An employee subject to layoff shall be transferred to a vacant

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position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the agency.

(b) If a vacancy does not exist, the employee shall be notified of all vacant positions within the agency for which the employee is qualified. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified before any applicant or eligible on a register, except another laid-off employee with greater seniority already on a reemployment register.

(c) If no position is available to an employee subject to layoff, the employee shall be notified in writing that he is to be laid off effective fifteen (15) days after receipt of the notice, and of the rights and privileges granted laid-off employees.

(4) An agency established under KRS 212.850 shall undertake the following procedures in assisting an employee subject to layoff:

(a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the agency. The position shall be located in the same county as the position from which the employee is subject to layoff;

(b) If a vacancy does not exist, the employee shall be transferred to a vacant position within the agency for which the employee is qualified. The position shall be located in the same county as the position from which the employee is subject to layoff; and

(c) If a position is not available, the employee shall be notified of all vacant positions within the agency for which the employee is qualified. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified before any applicant or eligible on a register, except another laid-off employee with greater seniority already on a reemployment register.

(d) If no position is available to an employee subject to layoff, the employee shall be notified in writing that he is to be laid off effective fifteen (15) days after receipt of the notice, and of the rights and privileges granted laid-off employees.

(5) In the same agency, county and job classification, provisional, temporary, emergency, and probationary employees shall be laid off before regular full-time or regular part-time employees with status. For purposes of layoff, "probationary employee" does not include an employee serving a promotional probation.

(6) If two (2) or more employees subject to layoff in a layoff plan submitted to the department have the same qualifications, the employee with the lesser seniority shall be laid off first.

(7) An employee who is laid off shall be placed on a reemployment register for the class of position from which the employee was laid off and for any class qualified.

(8) For a period of one (1) year, laid-off employees shall be given priority consideration by the agency before any applicant or eligible except another laid-off employee with greater seniority who is already on a reemployment register.

(9) For a period of one (1) year, a laid-off employee shall not be removed from any register unless the employee:

(a) Notifies the department in writing that the employee no longer desires consideration for a position on a register;

(b) Declines two (2) written offers of appointment to a position of the same classification and salary, and located in the same county or agency, as the position from which the employee was laid off;

(c) Without good cause, fails to report for an interview after being notified in writing at least ten (10) calendar days prior to the date of the interview;

(d) Unable to perform the duties of the class;

(e) Been convicted of a job related misdemeanor, except that convictions for violations of traffic regulations shall not constitute grounds for disqualification; or

(f) Cannot be located by postal authorities at the last address provided by the laid off employee.

Section 13. Performance Appraisal Form. (1) Performance appraisals shall be prepared and recorded on Form CH-40, "Employee

Performance Appraisal", revised April 1993.

(2) Form CH-40, "Employee Performance Appraisal", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m. [The employee shall be notified of the effective date and given written notice of the reasons for the layoff and the right to be placed on a reemployment register.

(4) No permanent employee shall be separated by layoff if there are provisional, temporary, emergency, seasonal, or probationary employees serving in the agency in the same class.]

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: February 25, 1998

FILED WITH LRC: February 25, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held April 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, first floor, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by April 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of the intent to attend the public hearing or written comments to: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, Fax (502) 564-7543.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Nelson

(1) Type and number of entities affected: The administrative regulations would relate to all local health departments except the Louisville-Jefferson County Health Department, Northern Kentucky District Health Department, and the Lexington-Fayette County Health Department.

(2) Direct and indirect costs or savings to those affected: There would be no direct costs associated with this administrative regulation. The administrative regulation describes the types of appointments, requirement for a probationary period, process for a layoff, and performance evaluation.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received regarding costs of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments received.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The health departments would be required to report recruitment activities in order to establish employment registers. This would not add any additional costs as this is already implemented.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs to the agency because current costs would not be impacted as a result of this administrative regulation.

1. First year: None

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2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: No additional paperwork and reporting requirements.
- (4) Assessment of anticipated effect on state and local revenues: None
- (5) Source if revenue to be used for implementation and enforcement of administrative regulation: None
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: No comments received.
 - (b) Kentucky: No comments received.
- (7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as this is an existing regulation that is being amended to lessen the difficulty in recruiting potential employees for local health departments.
- (8) Assessment of expected benefits: None
- (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
- (b) State whether a detrimental effect on environment and public health would result if not implemented: None
- (c) If detrimental effect would result, explain detrimental effect: None
- (9) Identify any statute, administrative regulation or governmental 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:
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? No. Tiering was not applied as the regulation would be applied to all local health departments.

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? No. This regulation relates to local health departments established under the provisions of KRS Chapter 212. Each health department is governed by a board of health appointed by the Secretary of the Cabinet of Human resources. A health department would not be considered a part of local government. Funding of the public health services and programs is derived from state, federal and local public health tax and other local sources.
- (2) State whether this administrative regulation will affect the local government or only a part or division of the local government. The administrative regulation applies to local health departments, which are not part of a local government.
- (3) State the aspect or service of local government to which this administrative regulation relates. This administrative regulation governs the types of appointments, requirements for a probationary period, procedures for a layoff, and resignations of local health departments employees.
- (4) How does this administrative regulation affect the local government or any service it provides? The administrative regulation would have minimum impact on a health department. The administrative regulation describes the types of appointments, requirement for a probationary period, process for a layoff, and performance evaluation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There are no federal mandates governing this administrative regulation.
2. State compliance standards.

3. Minimum or uniform standards contained in the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Local Health Department Operations (Amendment)

902 KAR 8:090. Promotion, transfer, and demotion of local health department employees.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.1751, 211.1755, EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.090, 212.170, and 212.870 [211.170 and 211.1755] requires the cabinet to supervise the personnel functions of local health departments. KRS 211.1755 provides that the cabinet shall [and] establish policies and procedures for the local health department personnel program. This administrative regulation describes the provisions and requirements for promotions, transfers, and demotions of local health department employees. [~~Executive Order 96-862, signed July 2, 1996, reorganizes the Cabinet for Human Resources by establishing the Cabinet for Health Services and the Department for Public Health within the cabinet.~~]

Section 1. Promotion. (1) An employee may be promoted at any time upon the request of an appointing authority if the employee meets the minimum requirements of the position having a higher salary and is certified by the department.

(2) Promotions shall be based upon individual performance, with due consideration for length of service and capability of the individual to perform the duties and responsibilities of each new position.

(3) The employee shall serve a probationary period of thirteen (13) pay periods, to determine through performance evaluation if the employee can satisfactorily perform the duties and responsibilities of the position.

(4) [(3)] An employee who is promoted shall have the employee's salary raised to the greater of the following:

(a) The amount required to raise the salary of the employee to the minimum established for the class;

(b) Three (3) percent of the employee's current salary if the promotion is to a class having a one (1) grade higher salary range; or

(c) Six (6) percent of the employee's current salary if the promotion is to a class having a salary range which is two (2) or more grades higher.

(5) [(4)] An employee who satisfactorily completes the required promotional probationary period of thirteen (13) pay periods, as documented by the performance evaluation, shall receive a three (3) percent increase in salary.

(6) [(5)] A regular [permanent] employee promoted from a classified position to an unclassified position retains the employee's status in the classified service. If separated from an unclassified position following promotion, an employee shall revert to the class in which the employee previously held status. If there is no vacancy in that class, the employee may be reverted to a position for which the employee is qualified and certified by the department. Time served in an unclassified position shall count towards years of service and seniority.

Section 2. Transfers. (1) A transfer of a regular [permanent]

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employee from a position in one (1) organizational subdivision to a position of the same class in another organizational subdivision within an agency, may be made at any time by the appointing authority.

(2) A transfer of a regular [permanent] employee from a position in one class to a position in another class within an agency having the same entrance salary may be made only with the approval of the appointing authority and upon certification of the department. The department may require a qualifying examination.

(3) An employee of one (1) agency shall not transfer to another agency without prior approval of each appointing authority.

(a) Accumulated annual and sick leave shall be transferred.

(b) Accumulated compensatory leave shall be paid in lump sum by the sending agency.

(c) The annual increment date shall be retained by the employee.

(4) An employee appointed to a position in an agency having prior work experience in a health department established under KRS 212.350, 212.640, or 212.782 may use the length of employment in determining the rate of earning annual leave provided for under 902 KAR 8:120.

Section 3. Demotions. (1) An employee may be demoted for one (1) of the following reasons:

(a) Documented unsatisfactory employee performance during the promotional probationary period;

(b) An employee, with the approval of the appointing authority, voluntarily requests a demotion to a position having a lower salary range and less responsibilities and duties;

(c) Documented disciplinary problems or the inability of an employee to perform the duties and responsibilities required of the position; or

(d) Due to a reorganization or reassignment of job duties based on a reorganization plan submitted by an agency and approved by the department.

(2) The salary of an employee who voluntarily requests demotion shall be reduced by five (5) percent if the demotion is to a classification having a one (1) or two (2) grades lower.

(3) The salary of an employee who voluntarily requests a demotion shall be reduced by three (3) percent for each grade decrease if the demotion is to a classification resulting in a decrease of three (3) or more grades.

(4) Except as provided in subsection (6) of this section, the salary of an employee who is demoted because of documented disciplinary problems or inability to perform the duties and responsibilities required of the position, shall be reduced to a salary level determined by adding the total percentage difference, as described by the compensation plan, between the employees current grade level and the grade of the classification to which the employee is demoted.

(5) If a demotion is due to a reorganization of an agency, the plan shall state if a reduction in salary of an employee is to occur.

(6) If an employee is demoted during the initial probationary period, the employee shall continue in the employee's probationary period as if the original appointment had been to the position of the lower class.

(7) An employee demoted as a result of documented unsatisfactory performance during the promotional probationary period shall have the employee salary reduced to the level prior to promotion.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: February 25, 1998

FILED WITH LRC: February 25, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held April 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, first floor, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by April 14,

1998. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of the intent to attend the public hearing or written comments to: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, Fax (502) 564-7543.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Nelson

(1) Type and number of entities affected: The administrative regulations would relate to all local health departments except the Louisville-Jefferson County Health Department, Northern Kentucky District Health Department, and the Lexington-Fayette County Health Department.

(2) Direct and indirect costs or savings to those affected: There would be no direct costs associated with this administrative regulation. The administrative regulation describes the types of appointments, requirement for a probationary period, process for a layoff, and performance evaluation.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received regarding costs of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments received.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The health departments would be required to report recruitment activities in order to establish employment registers. This would not add any additional costs as this is already implemented.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs to the agency because current costs would not be impacted as a result of this administrative regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork and reporting requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: None

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments received.

(b) Kentucky: No comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as this is an existing regulation that is being amended to lessen the difficulty in recruiting potential employees for local health departments.

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

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(c) If detrimental effect would result, explain detrimental effect:
None

(9) Identify any statute, administrative regulation or governmental 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied as the regulation would be applied to all local health departments.

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? No. This regulation relates to local health departments established under the provisions of KRS Chapter 212. Each health department is governed by a board of health appointed by the Secretary of the Cabinet of Human resources. A health department would not be considered a part of local government. Funding of the public health services and programs is derived from state, federal and local public health tax and other local sources.

(2) State whether this administrative regulation will affect the local government or only a part or division of the local government. The administrative regulation applies to local health departments, which are not part of a local government.

(3) State the aspect or service of local government to which this administrative regulation relates. This administrative regulation governs the promotion, transfer, and demotion of local health department employees

(4) How does this administrative regulation affect the local government or any service it provides? The administrative regulation would have minimum impact on a health department. The administrative regulation describes the types of appointments, requirement for a probationary period, process for a layoff, and performance evaluation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There are no federal mandates requiring this administrative regulation.

2. State compliance standards.

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

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

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Local Health Department Operations (Amendment)

902 KAR 8:100. Disciplinary procedures applicable for local health department employees.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.1751, 211.1755 [212.170, 1994 Ky. Acts ch. 336]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. The administrative regulation governs

separations and disciplinary procedures applicable for local health departments. Included are requirements for progressive disciplinary steps, predisciplinary action procedures, and an appeal process.

Section 1. Disciplinary Action. (1) An appointing authority may discipline an employee for lack of good behavior or the unsatisfactory performance of job duties.

(2) ~~[A classified employee with status shall not be disciplined except for cause:~~

(3)] Situations that may warrant disciplinary action are situations such as:

(a) Inefficiency or incompetency in the performance of duties;

(b) Negligence in the performance of duties;

(c) Careless, negligent, or improper use of local health department property or equipment;

(d) Failure to maintain satisfactory and harmonious working relationships with the public and coworkers;

(e) Habitual improper use of sick leave and other leave privileges;

(f) Habitual pattern of failure to report for duty at the assigned time and place;

(g) Failure to obtain or maintain a current license or certificate or other qualifications required by law or rule as a condition of continued employment;

(h) Gross misconduct or conduct unbecoming an employee;

(i) ~~[Willful abuse or misappropriation of funds, property, or equipment;~~

(j) ~~[Conviction of a felony;~~

(k) ~~[Falsification of an official document relating to or affecting employment;~~

(l) ~~[Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, or that would interfere with the ability of management to manage;]~~

(m) ~~[Damage or destruction of agency property;~~

(n) ~~[Abuse towards patients, coworkers, or the public in the performance of duties;]~~

(o) ~~[Refusal to carry out a reasonable and proper assignment from an authorized supervisor (insubordination);]~~

(p) ~~[Reporting to work under the influence of alcohol or illegal drugs, or partaking on the job;]~~

(q) ~~[Sleeping or failure to remain alert during working hours;~~

(r) ~~[Violation of confidential information policies of the agency;~~

(s) ~~[Prohibited political activity; and]~~

(t) ~~[Unauthorized absence or absence for any period of working without notifying supervisor;~~

(u) ~~[Breach of state law, agency rules, policies, or directives; and]~~

(v) ~~[Failure to report illegal activities of coworkers or supervisors.]~~

Section 2. Administering Disciplinary Actions. (1) A classified employee with regular status shall not be disciplined by the appointing authority except for cause.

(2) Except as provided by subsection (4) of this section, an appointing authority shall apply discipline in a progressive manner with each disciplinary action more severe in an effort to correct an employee's performance or behavior problem.

(3) Progressive discipline shall normally consist of the following actions:

(a) Verbal admonishment;

(b) Written admonishment or warning;

(c) Demotion or suspension; and

(d) Dismissal.

(4) One (1) or more of the disciplinary actions stated in subsection (3) of this section may be bypassed by the appointing authority based on the severity of the performance or behavior problem.

Section 3. Predisciplinary Action Hearing. (1) Except as provided in Section 4(8) of this administrative regulation [subsection (7) of this

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section], prior to a demotion provided by 902 KAR 8:090, Section 3(1)(c), suspension, or dismissal, a classified regular employee with status shall be notified in writing of the intent of the agency to demote, suspend, or dismiss the employee. The notice shall also state the following:

(a) The specific reasons for the demotion, suspension, or dismissal including:

1. The statutory, regulatory, or agency policy violation; or
2. The specific action or activity on which the intent to demote, suspend, or dismiss is based; and
3. The date, time, and place of the action or activity; and
4. The name of the parties involved.

(b) That the employee has the right to appear personally, or with counsel if the employee has retained counsel, to reply to the appointing authority regarding the intent to demote, suspend, or dismiss.

(2) No later than five (5) working days after receipt of the notice of intent to demote, suspend, or dismiss, excluding the day the employee receives the notice, the employee may request to appear to reply to the appointing authority.

(3) The meeting shall be held within six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.

(4) No later than five (5) working days after the employee appears to reply to the intent to demote, suspend, or dismiss, the appointing authority shall determine whether to demote, suspend, or dismiss the employee or to alter, modify, or rescind the intent to demote, suspend, or dismiss. The appointing authority shall notify the employee in writing of the decision.

(5) ~~(a)~~ If the appointing authority determines that the employee shall be demoted, suspended, or dismissed, the employee shall be notified in writing ~~[fourteen (14) days prior to the action]~~ of:

(a) ~~[1:]~~ The effective date of the demotion, suspension, or dismissal; and

(b) ~~[2:]~~ The statutory, regulatory, or agency policy violation; or

(c) ~~[3:]~~ The specific action or activity on which the demotion, suspension, or dismissal is based; and

(d) ~~[4:]~~ The date, time, and place of the action or activity;

(e) ~~[5:]~~ The name of the parties involved;

(f) ~~[6:]~~ That the employee may appeal the demotion, suspension, or dismissal to the Local Health Department Employment Personnel Advisory Council no later than fifteen (15) days after the effective date of the demotion, suspension, or dismissal.

(6) ~~[(b)]~~ The appointing authority shall provide the employee with the appeal request form.

~~[(6)] All appeals shall be submitted on Form CH-41, "Request for Appeal", dated April 1, 1993. Form CH-41, "Request for Appeal", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.~~

~~(7) Upon determining that an employee has committed a flagrant violation and there is a need to diffuse a presently dangerous or disruptive situation, a supervisor may direct the offending employee to vacate the premises. The appointing authority shall, by the most immediate means, contact the department and relate the action taken. A pretermination hearing shall be provided as soon as practicable after removal. The employee may be placed on leave using accumulated leave or on immediate suspension without pay.]~~

Section 4. Conditions for Immediate Dismissal of an Employee.

(1) An appointing authority may immediately dismiss an employee for serious misconduct infractions.

(2) Examples of misconduct infractions that may be considered serious enough to merit immediate dismissal include the following:

(a) Threatening, assaulting, fighting with, or harassing a supervisor, another employee, or anyone encountered during the normal

course of business;

(b) Stealing or deliberately damaging the agencies or another employees property;

(c) Possessing a weapon at work;

(d) Reporting to work under the influence of alcohol, narcotics, or other drugs, unless the drug was prescribed by a physician; or

(e) Taking unauthorized leave or failing to show up at work without notifying a supervisor for more than three (3) consecutive work days.

(3) The employee shall be notified by the appointing authority regarding the intent to dismiss.

(4) No later than five (5) working days after receipt of the notice of intent to dismiss, excluding the day the employee receives the notice, the employee may request to appear personally, or with counsel if the employee has retained counsel to reply to the appointing authority.

(5) The meeting shall be held within six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.

(6) No later than five (5) working days after the employee appears to reply to the intent to dismiss, the appointing authority shall determine whether to modify, or rescind the intent to dismiss. The appointing authority shall notify the employee in writing of the decision.

(7) If the appointing authority determines that the employee shall be dismissed immediately, the employee shall be notified in writing of:

(a) The effective date of the dismissal; and

(b) The statutory, regulatory, or agency policy violation; or

(c) The specific action or activity on which the dismissal is based; and

(d) The date, time, and place of the action or activity;

(e) The name of the parties involved;

(f) That the employee may appeal the dismissal to the Local Health Department Employment Personnel Council no later than fifteen (15) days after the effective date of the dismissal.

(g) The appointing authority shall provide the employee with the appeal request form.

(8) If an employee has committed a serious misconduct infraction and there is a need to diffuse a presently dangerous or disruptive situation, a supervisor may direct the offending employee to vacate the premises. The appointing authority shall, by the most immediate means, contact the department and relate the action taken. A pretermination hearing shall be provided as soon as practicable after removal. The employee may be placed on leave using accumulated leave or on immediate suspension without pay.

Section 5. Appeal Form (1) All appeals shall be submitted on Form CH-41, "Request for Appeal", dated January, 1998.

(2) Form CH-41, "Request for Appeal", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: February 25, 1998

FILED WITH LRC: February 25, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held April 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, first floor, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by April 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend

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the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of the intent to attend the public hearing or written comments to: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, Fax (502) 564-7543.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Nelson

(1) Type and number of entities affected: The administrative regulations would relate to all local health departments except the Louisville-Jefferson County Health Department, Northern Kentucky District Health Department, and the Lexington-Fayette County Health Department.

(2) Direct and indirect costs or savings to those affected: There would be no direct costs associated with this administrative regulation. The administrative regulation describes the procedures required in the event an employee would be disciplined and examples of situations that cause disciplinary action.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received regarding costs of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments received.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The health departments would be required to report disciplinary actions to the department through an automated personnel system. In addition the local health department would maintain necessary documentation regarding the disciplinary action.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs to the agency because current costs would not be impacted as a result of this administrative regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork and reporting requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues as this administrative regulation is procedural in providing due process to an employee.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State agency staff would be responsible for assuring regulation is followed.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments received.

(b) Kentucky: No comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as this is an existing regulation that is being amended.

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied as the regulation would be applied to all local health departments.

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? No. This regulation relates to local health departments established under the provisions of KRS Chapter 212. Each health department is governed by a board of health appointed by the Secretary of the Cabinet for Health Services. A health department would not be considered a part of local government. Funding of the public health services and programs is derived from state, federal and local public health tax and other local sources.

(2) State whether this administrative regulation will affect the local government or only a part or division of the local government. The administrative regulation applies to local health departments, which are not part of a local government.

(3) State the aspect or service of local government to which this administrative regulation relates. This administrative regulation governs employee disciplinary procedures used by local health departments.

(4) How does this administrative regulation affect the local government or any service it provides? The administrative regulation would have minimum impact on a health department. The administrative regulation governs employee disciplinary procedures used by local health departments.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There are no federal mandates governing this administrative regulation.

2. State compliance standards.

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

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

CABINET FOR HEALTH SERVICES Department for Public Health Division of Local Health Department Operations (Amendment)

902 KAR 8:110. Disciplinary appeal process applicable for local health department employees.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.1752, 211.1755

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755 and 211.1752 requires the cabinet to supervise the personnel functions of local health departments and establish policies and procedures for the local health department personnel program. KRS 211.1752 provides for an appeal process for employees who are disciplined, applicants or employees who allege discrimination in personnel actions, and eligibles who question their rating in the

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examination process. This administrative regulation provides for the specific appeal process.

Section 1. Appeals. (1) An employee with status who is demoted according to 902 KAR 8:090, Section 3(1)(c), suspended, or dismissed shall have the right to appeal the action. The appeal shall be in writing and mailed to the department no later than fifteen (15) days after the effective date of the demotion, suspension, or dismissal.

(2) An applicant who has taken an examination may appeal his rating in any part of an examination to assure rating procedures have been applied fairly and equitably. The appeal shall be in writing and mailed to the department no later than thirty (30) days after the date on which notification of the results of the examination was mailed to the applicant.

(3) An eligible whose name has been removed from a register for any of the reasons specified in administrative regulation 902 KAR 8:070, Section 1(8) may appeal the action. The appeal shall be mailed to the department within thirty (30) days after the date on which the notification of removal was mailed to the eligible.

(4) An applicant or employee who has reason to believe that he has been discriminated against because of sex, religious, or political opinions or affiliations, race, national origin, disability, or age in any personnel action may appeal within thirty (30) days of the date of the alleged discrimination.

(5) ~~A request for an appeal, provided for under this section, shall be submitted in writing using Form CH-41, "Request for Appeal" (July 1, 1994). Form CH-41, "Request for Appeal", dated July 1, 1994 may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.~~

(6) All appeals shall be conducted in accordance with procedures as set forth in Section 2 of this administrative regulation.

Section 2. Hearing Process. (1) The department shall schedule an administrative hearing upon an appeal to be held within sixty (60) days of receipt of the appeal. Notice of the hearing and conduct of the proceedings shall be in accordance with the requirements of KRS Chapter 13B.

(2) The hearing shall be conducted by the Local Health Department Employment Personnel Council or a designated hearing officer.

(3) The Local Health Department Employment Personnel Council shall, within the time allowed by KRS Chapter 13B, make findings of fact, conclusions of law, and based on the record issue a final order. If a hearing officer is designated to hear the appeal, the hearing officer shall make findings of fact, conclusions of law, and recommend a final order to the Local Health Department Employment Personnel Council at its next meeting. The Local Health Department Employment Personnel Council may adopt the report as submitted, amend the findings and recommendations based on evidence contained, or remand the appeal to the hearing officer for further action as appropriate or rehear the appeal. The decision of the Local Health Department Employment Personnel Council shall be considered a final order and binding upon the employee and appointing authority.

Section 3. Appeal Form. (1) A request for an appeal, provided for under this section, shall be submitted in writing using Form CH-41, "Request for Appeal" dated January 1998.

(2) Form CH-41, "Request for Appeal", dated January 1998 may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.

RICE C. LEACH, M.D., Commissioner
JOHN H. MORSE, Secretary
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: February 25, 1998

FILED WITH LRC: February 25, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held April 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, first floor, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by April 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of the intent to attend the public hearing or written comments to: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, Fax (502) 564-7543.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Nelson

(1) Type and number of entities affected: The administrative regulations would relate to all local health departments except the Louisville-Jefferson County Health Department, Northern Kentucky District Health Department, and the Lexington-Fayette County Health Department.

(2) Direct and indirect costs or savings to those affected: There would be no direct costs associated with this administrative regulation. The administrative regulation describes the procedures required in the event an employee would be disciplined and the appeal process in the event the employee would disagree with the disciplinary action. Costs involved would depend on the frequency of disciplinary actions, the conduct of appeal proceedings in accordance with KRS Chapter 13B, and, the utilization of attorneys by the parties involved.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received regarding costs of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments received.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The health departments would be required to report disciplinary actions to the department through an automated personnel system. In addition the local health department would maintain necessary documentation regarding the disciplinary action. KRS Chapter 13B requires certain documents.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs to the agency because current costs would not be impacted as a result of this administrative regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork and reporting requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues as this administrative regulation is procedural in providing due process to an employee.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State agency staff would be responsible for assuring regulation is followed.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising

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from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments received.

(b) Kentucky: No comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as this is an existing regulation that is being amended.

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied as the regulation would be applied to all local health departments.

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? No. This regulation relates to local health departments established under the provisions of KRS Chapter 212. Each health department is governed by a board of health appointed by the Secretary of the Cabinet for Health Services. A health department would not be considered a part of local government. Funding of the public health services and programs is derived from state, federal and local public health tax and other local sources.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The administrative regulation applies to local health departments, which are not part of a local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation governs employee disciplinary procedures used by local health departments.

4. How does this administrative regulation affect the local government or any service it provides? The administrative regulation would have minimum impact on a health department. The administrative regulation governs employee disciplinary procedures used by local health departments.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There are no federal mandates requiring this administrative regulation.

2. State compliance standards.

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

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

CABINET FOR HEALTH SERVICES Department for Public Health Division of Local Health Department Operations (Amendment)

902 KAR 8:120. Leave provisions applicable to employees of local health departments.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.1755

NECESSITY, FUNCTION, AND CONFORMITY: KRS 212.170 and 212.870 requires the cabinet to supervise the personnel functions of local health departments. KRS 211.1755 provides that the cabinet shall establish policies and procedures for the local health department personnel program. This administrative regulation governs the leave provisions applicable for employees of local health departments. These provisions address hours of work, earning of annual and sick time, holiday schedules, other leave provisions and the earning of compensatory time.

Section 1. Hours of Work. (1) The normal work week shall consist of thirty-seven and one-half (37.5) hours per week.

(a) The appointing authority shall establish the hours of work and days of work, of the agency or specific employees and may be changed by the appointing authority to provide for flexibility in meeting particular work requirements of the agency or specific employees whose schedules may require them to work different hours.

(2) All hours worked in excess of the thirty-seven and one-half (37.5) hours during the established work week shall be approved by the appointing authority and subject to compensatory time and overtime provisions of this administrative regulation.

(3) The standard pay period shall consist of seventy-five (75) hours.

(4) An appointing authority may establish a position having special conditions of employment based on the needs of the agency with the approval of the department.

(5) The employee appointed, transferred, or who requests consideration for special conditions shall acknowledge acceptance of the special conditions in writing.

(6) Special conditions may include the following:

(a) If annual leave and sick leave may be earned and at a rate based on the hours worked;

(b) Methods of payment of earned compensation that may be prorated; and

(c) Arrangements for handling nonwork time that may occur with the specific job responsibilities.

Section 2. Earning of Annual Leave. (1) Each full-time employee except seasonal, temporary, and emergency employees shall be allowed to earn annual leave credit at the following rate:

Years of Service	Annual Leave Hours Earned Per Pay Period/Per Year
0 to 5 years	3.5 hours per pay period/91.0 hours per year
5 to 10 years	4.4 hours per pay period/114.4 hours per year
10 to 15 years	5.2 hours per pay period/135.2 hours per year
15 years & over	6.1 hours per pay period/158.6 hours per year
20 years & over	7.0 hours per pay period/182 hours per year

(2) Annual leave for full-time employees shall accrue only when an employee has been in pay status at least thirty-seven and one-half (37.5) hours of the standard pay period. The employee shall be credited with additional leave credit upon the first day of the pay period following the pay period in which the leave was earned.

(3) Each part-time employee except a seasonal, temporary, or emergency employee, designated as serving on a part-time 100 hour

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basis, who works an average of 100 hours a month shall earn annual leave credit at the following rate:

Years of Service	Annual Leave Hours Earned Per Pay Period/Per Year
0 to 5 years	2.1 hours per pay period/54.6 hours per year
5 to 10 years	2.6 hours per pay period/67.6 hours per year
10 to 15 years	3.1 hours per pay period/80.6 hours per year
15 years & over	3.6 hours per pay period/93.6 hours per year
20 years & over	4.2 hours per pay period/109.2 hours per year

(4) In computing years of total service for determining the rate of earning annual leave for designated part-time 100 hour employees, only those months during which the employee was designated as a full-time, part-time 100 hour or was on educational leave with pay shall be used.

(5) Annual leave shall accrue only if an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on authorized educational leave with pay.

(6) The maximum amount of annual leave earned by full-time employees that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

Years of Service	Maximum Amount
0 to 5 years	225.0 hours
5 to 10 years	277.5 hours
10 to 15 years	337.5 hours
15 to 20 years	390.0 hours
Over 20 years	450.0 hours

(7) The maximum amount of annual leave for a designated part-time 100 hour employee who works an average of 100 hours per month that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

Years of Service	Maximum Amount
0 - 5 years	120 hours
5 - 10 years	148 hours
10 - 15 years	180 hours
15 - 20 years	208 hours
Over 20 years	240 hours

(8) Except as provided for in Section 3(8) of this administrative regulation, annual leave earned in excess of that which is allowed to be accumulated shall be converted to sick leave and credited during the first pay period following the end of the calendar year. Annual leave shall not be granted in excess of that earned.

Section 3. Use of Annual Leave Credit. (1) An employee who has accumulated annual leave credit, upon request and approval of the appointing authority, shall be granted leave subject to the operating requirements of the agency.

(2) Employees shall be charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(3) Absence for a fraction or part of a day that is chargeable to annual leave shall be charged in fifteen (15) minute periods.

(4) Employees shall be paid a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 2 of this administrative regulation, if separated by proper resignation, layoff, retirement, or changes from full-time or part-time 100 hour to part time.

(5) Upon the death of an employee, the employee's estate shall be entitled to be paid for the unused portion of the employee's accumulated annual leave, not to exceed the maximum amount allowable.

(6) Annual leave shall not be advanced or taken until it is earned.

(7) Absences due to sickness, injury, or disability in excess of accumulated sick leave, may be charged against annual leave if approved by the appointing authority.

(8) An employee who has accumulated annual leave in excess of 275 hours may request payment of an amount of annual leave not to exceed seventy-five (75) hours during the fiscal year of the agency. The requested annual leave payment shall not reduce the employees balance of annual leave below 275 hours and shall be paid in a manner convenient to the agency.

Section 4. Earning of Sick Leave. (1) A full-time employee, except an emergency employee, shall earn sick leave at the rate of three and one-half (3.5) hours per pay period.

(a) An employee shall have worked or been in pay status for at least thirty-seven and one-half (37.5) hours of the seventy-five (75) standard hours in each pay period in order to accumulate sick leave.

(b) The employee shall be credited with sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(2) An employee designated as a part-time 100 hour employee, except an emergency employee, who works an average 100 hours or more per month shall earn sick leave at the rate of two and one-tenth (2.1) hours per pay period. A part-time 100 hour employee shall be credited with additional sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(3) A full-time employee completing ten (10) years of total service with an agency shall be credited with seventy-five (75) additional hours of sick leave.

(4) An employee designated as a part-time 100 hour employee completing ten (10) years of total service with an agency shall be credited with forty-five (45) additional hours of sick leave.

Section 5. Uses of Sick Leave Credit. (1) The appointing authority, upon proper request, may grant sick leave with pay to a full-time or designated part-time 100 hour employee with sufficient leave credit, if the employee:

(a) Receives medical, psychiatric, dental, or optical examination or treatment;

(b) Is disabled by sickness or injury;

(c) Is required to provide care for a sick or injured spouse, child, parent, brother, sister, grandparent or grandchild ~~[member of his immediate family];~~

(d) If an employee would jeopardize the health of others at his duty post because of exposure to a contagious disease;

(e) Has lost by death a spouse, parent, child, brother, sister, grandparent, grandchild, mother- or father-in-law, daughter- or son-in-law ~~[member of the employee's immediate family];~~ or

(f) Is required to take a member of the employee's immediate family for medical, psychiatric, dental, or optical examination or treatment.

(2) Sick leave granted for death in the employee's ~~[immediate] family, as described in subsection (1) of this section,~~ shall be limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(3) An employee shall file a written application for sick leave with or without pay within a reasonable time. An employee shall request advance approval for sick leave for medical, dental or optical examination and for sick leave without pay. [If possible, an employee shall request sick leave absence with or without pay prior to the intended use.]

(4) If an employee is unexpectedly required to be absent from work in case of illness, the employee shall notify the employee's supervisor or other designated person. Failure to do so in a reasonable time period may be cause for denial of the sick leave for the period of absence or disciplinary action.

(5) An [employee may be required by the] appointing authority may, for good cause and on notice, require an employee to supply

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supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required signed by a licensed practitioner and [to present a statement in the form of personal affidavit, physician's statement, or other statement] certifying to the incapacity, examination, and treatment during the time for which sick leave was taken. An appointing authority may grant sick leave when the application is supported by acceptable evidence.

(6) If an employee requests leave in excess of five (5) working days a statement from the employees' physician shall accompany the request for leave. The physician statement shall contain the following:

(a) In the physician's judgement the employee is incapable of performing the essential duties of the job;

(b) Length of time that the physician would estimate that the employee's illness or disability will last;

(c) Restrictions which would render the employee in the physician's judgement incapable of performing the essential duties of the job; and

(d) Special considerations that the physician recommends be applied to accommodate the employee once released to return to work.

(7) An appointing authority may place an employee, who fails to provide a medical statement upon request, on sick leave if:

(a) The employee's health might jeopardize others; or

(b) The employee's health prevents performance of his duties and responsibilities; and

(c) Who on request fails to produce a satisfactory medical certificate.

(8) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in fifteen (15) minute periods.

(9) An employee who is transferred or otherwise changed from one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(10) Former employees who are reinstated or reemployed shall have their previous rate of earning annual leave [accumulated] and unused sick leave balances reinstated.

(11) Sick leave may be utilized in cases of absence due to illness or injury for which worker's compensation benefits are received for lost time to the extent of the differences between these benefits and the employee's regular salary.

Section 6. Maternity Leave. (1) The appointing authority shall grant a maternity leave of absence to an employee because of pregnancy. Maternity leave shall not exceed twelve (12) weeks [seven (7) pay periods], unless the appointing authority approves additional maternity leave provided the total leave does not exceed twenty-six (26) pay periods.

(2) The employee on maternity leave shall use accumulated sick leave credit if available, only for the period of time medically necessary to be absent from work as indicated by the certification of a licensed practitioner.

(a) If sick leave is not available, the employee shall use accumulated annual leave. The employee may use [and] compensatory time if available.

(b) If all leave credit is exhausted, the employee shall be placed on leave without pay.

(3) If an employee is approved for maternity leave that extends beyond the period of absence required by the employee's licensed practitioner, only accumulated annual and compensatory time may be used. If accumulated annual and compensatory leave is not available the employee shall be placed on leave without pay. [The employee shall submit a written request for maternity absence which shall include a doctor's statement indicating the expected date of delivery:

(a) The request shall be submitted to the appointing authority as soon as practical to allow for adjustments in the work schedule during the employee's absence.

(b) Additional information from the employee's doctor may be

required if there are complications and the period of absence begins sooner than agreed, extends further than agreed, or requires the use of maternity leave beyond the normal seven (7) pay periods.]

(4) The employee shall submit a written request for maternity absence which shall include a statement from a licensed practitioner indicating the expected date of delivery.

(a) The request shall be submitted to the appointing authority as soon as practical to allow for adjustments in the work schedule during the employee's absence.

(b) Additional information from the employee's licensed practitioner may be required if there are complications and the period of absence begins sooner than agreed, extends further than agreed, or requires the use of maternity leave beyond the normal twelve (12) weeks.

Section 7. Sick Leave Without Pay. (1) An appointing authority may approve sick leave without pay upon request of an employee for reasons provided for in Section 6 of this administrative regulation and this section.

(2) An employee shall have used accumulated annual, sick, and compensatory leave credit prior to approved leave without pay.

(3) The amount of continuous sick leave without pay approved by an appointing authority shall not exceed twenty-six (26) pay periods.

(4) If an employee approved for leave with pay exhausts accumulated annual, sick, and compensatory leave credit, the employee shall be placed on sick leave without pay, provided the total absence does not exceed twenty-six (26) pay periods.

(5) The appointing authority may require periodic doctor's statements during the sick leave without pay period attesting to the employee's inability to perform the essential functions of the employee's job duties with or without reasonable accommodation.

Section 8. Return from Sick Leave With or Without Pay. (1) At the termination of sick leave with pay not exceeding thirteen (13) pay periods, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding thirteen (13) pay periods, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstance permit. If the employee is unable to perform the essential functions of the position and there is no other position(s) for which the employee qualifies and is able to perform the employee may be laid off.

(2) If an employee on approved sick leave without pay has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. [If there is no available position which the employee is qualified or is willing to accept, the employee shall be laid off in accordance with administrative regulation 902-KAR-8-080.]

(3) An employee shall be considered to have resigned if the employee:

(a) Has been on continuous sick leave without pay for twenty-six (26) pay periods; and

(b) Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave; and

(c) Is unable to return to work; or

(d) Has been given priority consideration by the appointing authority for a vacant position with the agency, for which the employee qualifies and is capable of performing its essential functions with or without reasonable accommodation; and

(e) The appointing authority has been unable to place the employee in a vacant position. [An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested by the appointing authority to return to work at least ten (10) days prior to the expiration of sick leave without pay, may be dismissed by the appointing authority.]

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Section 9. Sharing of Sick Leave. (1) An employee who has accrued a sick leave balance of more than seventy-five (75) hours may, with the approval of the appointing authority, request the transfer of a specified amount of the employee's sick leave balance in excess of seventy-five (75) hours to another named employee who is authorized to receive sick leave.

(2) The appointing authority, may approve the amount of sick leave received under this section, if any, if:

(a) The employee or a member of his immediate family suffers from a medically certified illness, injury, impairment, or physical or psychiatric condition which has caused, or is likely to cause, the employee to go on leave for at least ten (10) consecutive working days;

(b) The employee's need for absence and use of leave are certified by a licensed practicing physician; and

(c) The employee has exhausted his accumulated sick leave, annual leave, and compensatory leave balances; and

(3) Leave may be transferred from an employee of one agency to an employee within the same agency or may be transferred from an employee of one agency to an employee of another agency. The department shall maintain records of leave transferred between employees and the utilization of transferred leave.

(4) If an employee is on leave transferred under this section, he shall receive the same treatment with respect to salary, wages, and employee benefits.

(5) Salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave. Leave transferred under this section which remains unused shall be returned, on a prorated basis, to the employees who transferred the leave if the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the illness or injury for which the leave was transferred to an employee in his agency.

(6) No employee shall directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with the employee's right to voluntarily contribute leave when authorized under this section.

Section 10. Court Leave. An employee shall be entitled to a leave of absence from duties, without loss of pay or time, on days during which the employee is subpoenaed by a court to serve as a juror or witness except in those cases where the employee or a member of the employee's family is a party plaintiff. If relieved from duty as a juror or witness during normal working hours, the employee shall return to work.

Section 11. Military Leave. (1) An employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his duties without the loss of pay or time, upon request, to serve under orders on training duty for a period not to exceed seventy five (75) hours in any one (1) calendar year. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave.

(2) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of active duty not to exceed six (6) years. Accumulated annual leave and compensatory leave may be paid in lump sum at the request of the employee, upon being placed on leave.

Section 12. Voting Leave. The appointing authority shall allow each employee ample time to vote. The absence shall not be charged against accumulated leave.

Section 13. Special Leave of Absence. (1) An appointing authority may grant special leave for education training or for other circumstances. [The appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year to an employee who has exhausted all accumulated annual, compensatory or sick leave credit, if applicable.]

(2) Leave may be granted for a period not to exceed twenty-six (26) pay periods. [An appointing authority, with the approval of the department, may grant a leave of absence with or without pay for a period not to exceed twenty-six (26) pay periods for the following purposes:

(a) Agency directed or approved educational leave to attend a college, university, or business school for the purpose of training in subjects related to the work of the employee and which will benefit the agency; or

(b) Purposes other than those provided by this section which are deemed to be in the best interest of the agency.]

(3) Leave may be granted with or without pay.

(4) Leave for attendance at a college, university, vocational or business school shall be for training in subjects that:

(a) Relate to the employee's work; and

(b) Will benefit the agency.

Section 14. Special Leave for Investigative Purposes. (1) An appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of allegations of employee misconduct.

(2) Leave shall not exceed thirty (30) working days.

(3) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(4) If the investigation reveals no misconduct by the employee:

(a) The employee shall be made whole for the period of the leave; and

(b) Records relating to the investigation shall be purged from agency files.

(5) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. Notification shall be made to the employee, whether the employee has remained with the agency, or has voluntarily resigned during the interim between being placed on special leave for investigative purposes and the completion of the investigation.

Section 15. Family and Medical Leave. An agency shall comply with the Family and Medical Leave Act, PL 103-3 and CFR 29 Part 825, if applicable.

Section 16. [45:] Absence Without Leave. (1) An employee who is absent from duty without approval shall report the reason for the absence to the employee's supervisor immediately.

(2) Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made by the appointing authority for each period of absence.

(3) The absence without leave may constitute grounds for disciplinary action.

(4) An employee who has been absent without leave or notice to the supervisor for more than three (3) working days shall be considered to have resigned the employee's position.

Section 17. [46:] Holidays. (1) Agency full-time employees shall be given a holiday on the following days:

(a) The first day of January and one (1) extra day;

(b) The third Monday in January;

(c) The third Monday in February;

(d) One-half (1/2) day for Good Friday;

(e) The last Monday in May;

(f) The fourth day of July;

- (g) The first Monday in September;
- (h) The fourth Thursday in November plus one (1) extra day;
- (i) The twenty-fifth of December and one (1) extra day;
- (j) Presidential election day.

(2) If any of the days enumerated in subsection (1) of this section falls on a Saturday, the preceding Friday shall be observed as the holiday. If the day enumerated falls on a Sunday, the following Monday shall be observed as the holiday. If an extra day is provided for it shall be observed as stated by the department.

(3) A full-time employee shall be in pay status on the work day prior to the holiday in order to receive the holiday benefit.

(4) Full-time exempt employees required to work on a holiday shall accrue compensatory time for the time worked.

Section 18. [47:] Earning of Compensatory Time. (1) An employee determined to be exempt under the provisions of the Fair Labor Standards Act, 29 US 206, and Kentucky Wage and Labor Law KRS Chapter 337 authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours of duty in one (1) week shall accumulate compensatory time in fifteen (15) minute periods for all excess time worked. The maximum amount of compensatory time that can be accumulated shall be 200 hours.

(2) An employee shall have the prior approval of the appointing authority or the employee's immediate supervisor before compensatory leave may be earned.

(3) A nonexempt employee authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours shall be paid at the employee's current salary for each hour not subject to the provisions of the Fair Labor Standards Act, 29 US 206, and Kentucky Wage and Labor Law KRS Chapter 337.

Section 19. [48:] Using Accumulated Compensatory Time. (1) An employee who has accrued compensatory time shall be permitted by the appointing authority to take compensatory time off if practical and upon proper request by the employee.

(2) An employee who has accumulated at least thirty (30) hours of compensatory time may be paid for the accumulated leave by the appointing authority upon written request. If payment is approved by the appointing authority, it shall be at the employee's regular rate of pay and in thirty (30) hour increments.

(3) If an employee has accumulated the maximum amount of compensatory leave, the appointing authority shall pay the employee for at least fifty (50) hours of accumulated compensatory leave at the employee's regular rate of pay and reduce the employee's compensatory leave balance accordingly.

(4) Upon separation from service or transfer to another agency, unused compensatory time shall be reimbursed in a lump sum payment to the employee.

(5) Upon the death of an employee, the employee's estate shall be paid for any unused accumulated compensatory time.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: February 25, 1998

FILED WITH LRC: February 25, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held April 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, first floor, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by April 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of the intent to

attend the public hearing or written comments to: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, Fax (502) 564-7543.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Nelson

(1) Type and number of entities affected: The administrative regulations would relate to all local health departments except the Louisville-Jefferson County Health Department, Northern Kentucky District Health Department, and the Lexington-Fayette County Health Department.

(2) Direct and indirect costs or savings to those affected: There would be no direct costs associated with this administrative regulation. The administrative regulation describes the procedures required in the event an employee would be disciplined and the right of the employee to appeal the disciplinary action. Costs would be incurred by a local health department in the event an employee is disciplined and appeals his/her disciplinary action.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received regarding costs of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments received.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The health departments would be required to report disciplinary actions to the department through an automated personnel system. In addition the local health department would maintain necessary documentation regarding the disciplinary action.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs to the agency because current costs would not be impacted as a result of this administrative regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork and reporting requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues as this administrative regulation is procedural in providing due process to an employee.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State agency staff would be responsible for assuring regulation is followed.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments received.

(b) Kentucky: No comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as this is an existing regulation that is being amended.

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

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(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied as the regulation would be applied to all local health departments.

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? No. This regulation relates to local health departments established under the provisions of KRS Chapter 212. Each health department is governed by a board of health appointed by the Secretary of the Cabinet for Health Services. A health department would not be considered a part of local government. Funding of the public health services and programs is derived from state, federal and local public health tax and other local sources.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The administrative regulation applies to local health departments, which are not part of a local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation governs employee disciplinary procedures used by local health departments.

4. How does this administrative regulation affect the local government or any service it provides? The administrative regulation would have minimum impact on a health department.

The administrative regulation governs employee leave provisions for local health departments.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There are federal mandates requiring this administrative regulation.

2. State compliance standards.

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

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

CABINET FOR HEALTH SERVICES Department for Public Health Division of Local Health Department Operations (Amendment)

902 KAR 8:130. Participation of local health department employees in political activities.

RELATES TO: KRS 211.170(1), (2), 212.170(4)[-212.870]

STATUTORY AUTHORITY: KRS 194.050, 211.1755, [211.090; 212.170[-1994 Ky. Acts ch. 336]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. KRS 211.1755 [House Bill 631] provides that the cabinet shall establish policies and procedures for the local health department personnel program. This administrative regulation governs participation of local health department employees in political activities.

Section 1. Political Activities of Employees. An employee in the classified service shall not:

(1) Serve on or for any political committee, party, or other similar organization;

(2) Serve as a delegate or alternate to a caucus or party convention, but may vote in the selection of delegates to a party convention and in the selection of precinct committeemen and committeewomen;

(3) Solicit or handle political contributions;

(4) Solicit the sale of or sell items or tickets for any political party, faction, or candidate; however, an employee may voluntarily purchase the items or tickets;

(5) Serve as an officer of a political club, as a member or officer of any of its committees, or address a club on any partisan political matters, or be active in organizing it;

(6) Serve in connection with the preparation for, organizing or conducting a political meeting or rally or address a political meeting on any partisan political matter except to vote;

(7) Engage in partisan activity at the polls during primary, regular, or special elections in the position of checker, challenger, or watcher;

(8) Solicit votes and assist voters to mark ballots;

(9) Become a candidate for nomination or election to a federal, state, county, or municipal office, except for a school board district office, which is to be filled in an election in which party candidates are involved or for which compensation is paid;

(10) Solicit others to become candidates for nomination or election to those offices described above;

(11) Distribute partisan campaign literature or material;

(12) Initiate or circulate partisan political nominating petitions; or

(13) Canvass a district or solicit political support for a party, faction, or candidate, in person or in writing.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: February 25, 1998

FILED WITH LRC: February 25, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held April 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, first floor, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by April 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of the intent to attend the public hearing or written comments to: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, Fax (502) 564-7543.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Nelson

(1) Type and number of entities affected: The administrative regulations would relate to all local health departments except the Louisville-Jefferson County Health Department, Northern Kentucky District Health Department, and the Lexington-Fayette County Health Department.

(2) Direct and indirect costs or savings to those affected: There would be no direct costs associated with this administrative regulation. The administrative regulation describes the prohibited activities of an employee in participating in political events.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent

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available from the public comment received: No public comments were received regarding costs of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments received.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no reporting requirements of this administrative regulation.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs to the agency because current costs would not be impacted as a result of this administrative regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork and reporting requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues as this administrative regulation is procedural in providing due process to an employee.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State agency staff would be responsible for assuring regulation is followed.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments received.

(b) Kentucky: No comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as this is an existing regulation that is being amended.

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied as the regulation would be applied to all local health departments.

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? No. This regulation relates to local health departments established under the provisions of KRS Chapter 212. Each health department is governed by a board of health appointed by the Secretary of the Cabinet for Health Services. A health department would not be considered a part of local government. Funding of the public health services and programs is derived from state, federal and local public health tax and other local sources.

(2) State whether this administrative regulation will affect the local government or only a part or division of the local government. The administrative regulation applies to local health departments, which are not part of a local government.

(3) State the aspect or service of local government to which this administrative regulation relates. This administrative regulation governs prohibited political activities of employees in local health department departments.

(4) How does this administrative regulation affect the local government or any service it provides? The administrative regulation would have minimum impact on a health department. The administrative regulation prohibited political activities of employees in local health department departments.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There are no federal mandates relating to this administrative regulation.

2. State compliance standards.

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

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

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Local Health Department Operations

(Amendment)

902 KAR 8:140. Appointment of a health officer or a health department director of a local health department.

RELATES TO: KRS 211.170(1), (2), 212.280

STATUTORY AUTHORITY: KRS 194.050, 212.170, 212.1755, 212.870[-EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. KRS 211.1755 provides that the cabinet shall establish policies and procedures for the local health department personnel program. KRS 212.170, 212.230, and 212.870 describes the requirements for and process of appointing a health officer or a health department director for a local health department. This administrative regulation describes the process of appointing a health officer or a health department director of a health department and the provision of coverage or noncoverage of the merit system. [~~Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.~~]

Section 1. Appointment of Health Officer. (1) An agency shall appoint ~~be under the direction of~~ a health officer ~~[appointed]~~ in accordance with the provisions of KRS 212.170, 212.230, or 212.870.

(2) The health officer shall be an unclassified employee and hold office at the pleasure of both the board of health of the agency and the department.

(3) The health officer in the unclassified service shall be subject to the following administrative regulations:

(a) 902 KAR 8:060, Classification and compensation plans for local health departments of Kentucky; and

(b) 902 KAR 8:070, Recruitment, examination, and certification of eligibles for local health departments; and

(c) ~~[(b)]~~ 902 KAR 8:080, Initial appointment, probationary period, and performance evaluation; and

(d) ~~[(e)]~~ 902 KAR 8:120, Leave provisions applicable to employees of local health departments; and

(e) ~~[(d)]~~ 902 KAR 8:140, Appointment of a health officer or a

health department director of a local health department.

(4) An individual promoted to the position of health officer may receive a ten (10) percent or fifteen (15) percent increase in salary over the employees current salary or to a salary increase to the minimum of the grade assigned to the health officer classification, which ever is higher.

Section 2. Appointment of Health Department Director. (1) In the absence of a health officer provided for in this administrative regulation, an agency shall be under the direction of a health department director who shall meet minimum qualifications of education and experience established by the department.

(2) A qualified individual appointed or promoted to the position of health department director after the effective date of this administrative regulation, shall be employed in the unclassified service and hold office at the pleasure of both the board of health of the agency and the department.

(3) Individuals who are in the position of physician director or health department director shall maintain their status after the effective date of this administrative regulation.

(4) A health department director in the unclassified service shall be subject to the following administrative regulations:

(a) 902 KAR 8:060, Classification and compensation plans for local health departments of Kentucky; and

(b) 902 KAR 8:070, Recruitment, examination, and certification of eligibles for local health departments;

(c) [(b)] 902 KAR 8:080, Initial appointment, probationary period, and performance evaluation;

(d) [(e)] 902 KAR 8:120, Leave provisions applicable to employees of local health departments; and

(e) [(d)] 902 KAR 8:140, Appointment of health officers of local health departments.

(4) An individual promoted to the position of health department director may receive a ten (10) percent or fifteen (15) percent increase in salary over the employees current salary or to a salary increase to the minimum of the grade assigned to the appropriate health department director classification, which ever is higher.

Section 3. Removal of a Health Officer or Health Department Director in the Unclassified Service. (1) Except as provided for in Section 2(3) and (4) of this administrative regulation, if a health officer or health department director in the unclassified service is removed by the board of health or the department, he shall be notified in writing, and within fourteen (14) days may make a written request for a pretermination conference.

(2) If no request for a pretermination conference is made, the removal shall become effective upon the expiration of fourteen (14) days.

(3) If a request for a pretermination conference is made, the pretermination conference shall be held at the office of the agency within fourteen (14) calendar days after the request is received by the board of health of the agency.

(4) The health officer or director of health shall not be removed until the pretermination conference has been held and a decision rendered by the board of health of the agency and the department.

(5) Upon termination of employment, an employee who was promoted to the health officer or health department director position may revert to the position from which he was promoted or may be considered for a vacant position for which he qualifies in the agency. The employee shall have had at least five (5) years of continuous service with the agency prior to the promotion to be considered for reversion. The reversion shall be subject to the approval of the board of health of the agency.

(6) An employee originally appointed to the health officer or health department director position may only be reverted to a position in the classified service for which he qualifies.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: February 25, 1998

FILED WITH LRC: February 25, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held April 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, first floor, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by April 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of the intent to attend the public hearing or written comments to: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, Fax (502) 564-7543.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Nelson

(1) Type and number of entities affected: The administrative regulations would relate to all local health departments except the Louisville-Jefferson County Health Department, Northern Kentucky District Health Department, and the Lexington-Fayette County Health Department.

(2) Direct and indirect costs or savings to those affected: There would be no direct costs associated with this administrative regulation. The administrative regulation describes the procedures for the appointment of a health officer or health department director.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received regarding costs of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments received.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The health departments would be required to the appointment to the administering agency and subsequent approval by the commissioner.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs to the agency because current costs would not be impacted as a result of this administrative regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork and reporting requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues as this administrative regulation is.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State agency staff would be responsible for assuring regulation is followed.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments received.

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- (b) Kentucky: No comments received.
- (7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as this is an existing regulation that is being amended.
- (8) Assessment of expected benefits: None
- (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
- (b) State whether a detrimental effect on environment and public health would result if not implemented: None
- (c) If detrimental effect would result, explain detrimental effect: None
- (9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None identified.
- (a) Necessity of proposed regulation if in conflict:
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? No. Tiering was not applied as the regulation would be applied to all local health departments.

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? No
2. State whether this administrative regulation will affect the local government or only a part or division of the local government.
3. State the aspect or service of local government to which this administrative regulation relates.
4. How does this administrative regulation affect the local government or any service it provides.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. No federal mandate governs this administrative regulation.
2. State compliance standards.
3. Minimum or uniform standards contained in the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HEALTH SERVICES Office of Inspector General (Amendment)

902 KAR 20:026. Operations and services; skilled nursing facilities.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 314.011(8), 314.042(8), 320.210(2), EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 mandate that the Cabinet for Health Services [Human Resources] regulate health facilities and health services. This administrative regulation establishes licensure requirements for the operation of skilled nursing facilities. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Administrator" means a person who is

licensed as a nursing home administrator pursuant to KRS 216A.080.

(2) ["Board" means the Commission for Health Economics Control in Kentucky:

(3)] "Facility" means a skilled nursing facility.

(3) [(4)] "License" means an authorization issued by the cabinet for the purpose of operating a skilled nursing facility and offering skilled nursing services.

(4) [(5)] "Occupational therapist" means a person who is registered by the American Occupational Therapy Association or a graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association in collaboration with the American Occupational Therapy Association and who is engaged in or has completed the required supervised clinical experience period prerequisite to registration by the American Occupational Therapy Association.

[(6)] "Speech pathologist" means a person who:

(a) Meets the education and experience requirements for a Certificate of Clinical Competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or

(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.]

(5) [(7)] "Qualified dietician" or "nutritionist" means:

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

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

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

(6) [(8)] "Qualified medical record practitioner" means a person who has graduated from a program for medical record administrators or technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as a Registered Records Administrator or an Accredited Record Technician by the American Medical Record Association.

(7) [(9)] "Qualified social worker" means a person who is licensed pursuant to KRS 335.090, if applicable, and who is a graduate of a school of social work accredited by the Council on Social Work Education.

[(10)] "Protective devices" means devices that are designed to protect a person from falling; to include side rails, safety vest or safety belt.]

(8) [(11)] "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

(9) "Speech pathologist" means a person who:

(a) Meets the education and experience requirements for a certificate of clinical competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or

(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.

Section 2. Scope of Operations and Services. Skilled nursing facilities are establishments with permanent facilities including inpatient beds. Services provided include medical services, and continuous nursing services to provide treatment for patients. Patients in a skilled nursing facility are patients who require inpatient care but are not in an acute phase of illness, and who currently require

primarily convalescent or rehabilitative services and have a variety of medical conditions.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator. All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence.

(3) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Personnel policies, practices and procedures that support sound patient care.

(b) Notification of changes in patient status and service cost. There shall be written policies and procedures relating to notification of responsible person(s) in the event of significant changes in patient status, patient charges, billings, and other related administrative matters.

(c) Patient care policies. The facility shall have written policies to govern the skilled nursing care and related medical and other services provided, which shall be developed with the advice of professional personnel, including one (1) or more physicians and one (1) or more registered nurses and other health personnel (e.g., social workers, dietitians, pharmacists, speech pathologists and audiologists, physical and occupational therapists and mental health personnel). Pharmacy policies and procedures shall be developed with the advice of a subgroup of physicians and pharmacists who serve as a pharmacy and therapeutics committee. A physician or a registered nurse shall be responsible for assuring compliance with and annual review of these policies. In addition to written policies for services, the facility shall have written policies to include:

1. Admission, transfer, and discharge policies including categories of patients accepted and not accepted by the facility.

2. Medication stop orders;

3. Medical records;

4. Transfer agreement;

5. Utilization review; and

6. Use of restraints.

(d) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children [to the Cabinet for Human Resources] pursuant to KRS Chapters 209 and 620.

(e) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(4) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(5) Admission.

(a) Patients shall be admitted only upon the referral of a physician. Additionally, the facility shall admit only persons who require medical and continuous skilled nursing care and who currently require primarily convalescent or rehabilitative services for a variety of medical conditions. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. The facility shall obtain a medical evaluation within forty-eight (48) hours of admission, unless an evaluation was performed within five (5) days prior to admission. The medical evaluation shall include current medical findings, rehabilitation potential, a summary of the course of treatment followed in the hospital or intermediate care facility (a current hospital discharge summary containing the above information shall be acceptable).

(c) If the physician's orders for the immediate care of a patient are

unobtainable at the time of admission, the facility shall contact the physician with responsibility for emergency care to obtain temporary orders.

(d) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility to include: fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(6) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(7) Transfer and discharge. The facility shall comply with the requirements of 900 KAR 2:050 when transferring or discharging residents. [Transfer procedures and agreements.]

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients, shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient, and shall arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to an appropriate level of care.

(c) The agreement shall provide for the transfer of personal effects, particularly money and valuables, and for the transfer of information related to these items.

(d) When a transfer is to another level of care within the facility, the complete patient record or a current summary thereof shall be transferred with the patient.

(e) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least the following: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(f) Except in an emergency, the patient, his next of kin, or responsible person[(s)] if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(8) Tuberculosis testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, tuberculosis testing in long term care facilities.

(9) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, evaluation of performance, records of in-service training and ongoing education, along with employee's name, address and social security number.

(c) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(d) Staffing classification requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of

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patients, and the amount and kind of personal care, nursing care, supervision, and program needed to meet the needs of the patients, as determined by medical orders and by services required by this administrative regulation.

2. If the staff to [f] patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

3. The facility shall have a director of nursing service who is a registered nurse and who works full time during the day, and who devotes full time to the nursing service of the facility. If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing, who shall be a registered nurse, so that there shall be the equivalent of a full-time director of nursing service. The director of nursing shall be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric or geriatric nursing. The director of the nursing service shall be responsible for:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel;

b. Recommending to the administrator the number and level of nursing personnel to be employed, participating in their recruitment and selection, and recommending termination of employment when necessary;

c. Assigning and supervising all levels of nursing personnel;

d. Participating in planning and budgeting for nursing care;

e. Participating in the development and implementation of patient care policies and bringing patient care problems requiring changes in policy to the attention of the professional policy advisory group;

f. Coordinating nursing services with other patient care services;

g. Planning and conducting orientation programs for new nursing personnel and continuing in-service education for all nursing personnel;

h. Participating in the selection of prospective patients in terms of nursing services they need and nursing competencies available;

i. Assuring that a nursing care plan shall be established for each patient and that his plan shall be reviewed and modified as necessary;

j. Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies are assigned duties consistent with their training and experience.

4. Supervising nurse. Nursing care shall be provided by or under the supervision of a full-time registered nurse. The supervising nurse shall be a licensed registered nurse who may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing. The supervising nurse shall make daily rounds to all nursing units performing such functions as visiting each patient, and reviewing medical records, medication cards, patient care plans, and staff assignments, and whenever possible accompanying physicians when visiting patients.

5. Charge nurse. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times and who is responsible for the nursing care of patients during her tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

6. Pharmacist. The facility shall employ a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

7. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on

a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

c. In a facility with an organized rehabilitation service using a multidisciplinary team approach to meet all the needs of the patient, and where all therapists' services are administered under the direct supervision of a physician qualified in physical medicine who will determine goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, persons with qualifications other than those described in subsection (8)(d)7a of this section may be assigned duties appropriate to their training and experience.

8. Dietary. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and who shall be on duty a minimum of thirty-five (35) hours each week.

9. The administrator shall designate a person for each of the following areas who will be responsible for:

a. Medical records. The person responsible for the records shall maintain, complete and preserve all medical records. If the person is not a qualified medical record practitioner he shall be trained by and receive regular consultation from a qualified medical record practitioner.

b. Social services. There shall be a full-time or part-time social worker employed by the facility, or a person who has training and experience in related fields to find community resources, to be responsible for the social services. If the facility does not have a qualified social worker on its staff, consultation shall be provided by a qualified social worker. The person responsible for this area of service shall have information promptly available on health and welfare resources in the community.

c. Patient activities. This person shall have training or experience in directing group activities.

(e) In-service educational programs.

1. There shall be an in-service education program in effect for all nursing personnel at regular intervals in addition to a thorough job orientation for new personnel. Opportunities shall be provided for nursing personnel to attend training courses in rehabilitative nursing and other educational programs related to the care of long-term patients. Skill training for nonprofessional nursing personnel shall begin during the orientation period, to include demonstration, practice and supervision of simple nursing procedures applicable in the individual facility. It shall also include simple rehabilitative nursing procedures to be followed in emergencies. All patient care personnel shall be instructed and supervised in the care of emotionally disturbed and confused patients, and shall be assisted to understand the social aspects of patient care.

2. Social services training of staff. There shall be provisions for orientation and in-service training of staff directed toward understanding emotional problems and social needs of sick and infirm aged persons and recognition of social problems of patients and the means of taking appropriate action in relation to them. Either a qualified social worker on the staff, or one (1) from outside the facility, shall participate in training programs, case conferences, and arrangements for staff orientation to community services and patient needs.

(10) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation including current medical findings, medical history, physical examination and diagnosis. (The medical

evaluation may be a copy of the discharge summary or history and physical report from a hospital, or an intermediate care facility if done within five (5) days prior to admission.)

3. [The physician's] Orders for medication, diet, and therapeutic services. These shall be dated and signed by the prescribing physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrist in the practice of optometry as defined in KRS 320.210(2).

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication or prescription number, dosage and name of prescribing physician or advanced registered nurse practitioner or therapeutically-certified optometrist.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, visits by physician and phone calls to the physician, medically prescribed diets and restorative nursing measures.

8. Nursing supervisor's written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services.

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary completed, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Physician services.

(a) The health care of each patient shall be under supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients shall be evaluated by a physician at least once every thirty (30) days for the first ninety (90) days following admission. Subsequent to the 90th day following admission, the patients shall be evaluated by a physician every sixty (60) days. There shall be evidence in the patient's medical record of the physician's visits to the patient at appropriate intervals.

(c) There shall be evidence in the patient's medical record that the patient's attending physician has made arrangement for the medical care of the patient in the physician's absence.

(d) Availability of physicians for emergency care. The facility shall have arrangements with one (1) or more physicians who will be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the patient is not immediately available. A schedule listing the names and telephone numbers of these physicians and the specific days each shall be on call shall be posted in each nursing station. There shall be established procedures to be followed in an emergency, which cover immediate care of the patient, persons to be notified, and reports to be prepared.

(2) Nursing services.

(a) Twenty-four (24) hour nursing service. There shall be twenty-four (24) hour nursing service with a sufficient number of nursing personnel on duty at all times to meet the total needs of patients. Nursing personnel shall include registered nurses, licensed practical nurses, aides and orderlies. The amount of nursing time available for patient care shall be exclusive of nonnursing duties. Sufficient nursing time shall be available to assure that each patient:

1. Shall receive treatments, medication, and diets as prescribed;

2. Shall receive proper care to prevent decubiti and shall be kept comfortable, clean and well-groomed;

3. Shall be protected from accident and injury by the adoption of indicated safety measures;

1. Shall be treated with kindness and respect.

(b) Rehabilitative nursing care. There shall be an active program of rehabilitative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence.

1. Rehabilitative nursing care initiated in the hospital shall be continued immediately upon admission to the facility.

2. Nursing personnel shall be taught rehabilitative nursing measures and shall practice them in their daily care of patients. These measures shall include:

a. Maintaining good body alignment and proper positioning of bedfast patients;

b. Encouraging and assisting bedfast patients to change positions at least every two (2) hours, day and night to stimulate circulation and prevent decubiti and deformities;

c. Making every effort to keep patients active and out of bed for reasonable periods of time, except when contraindicated by physician's orders, and encouraging patients to achieve independence in activities of daily living by teaching self care, transfer and ambulation activities;

d. Assisting patients to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary;

e. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapist.

(c) Dietary supervision. Nursing personnel shall assure that patients are served diets as prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.

(d) Nursing care plan. There shall be written nursing care plans for each patient based on the nature of illness, treatment prescribed, long and short term goals and other pertinent information.

1. The nursing care plan shall be a personalized, daily plan for individual patients. It shall indicate what nursing care is needed, how it can best be accomplished for each patient, what are the patient's preferences, what methods and approaches are most successful, and what modifications are necessary to insure best results.

2. Nursing care plans shall be available for use by all nursing personnel.

3. Nursing care plans shall be reviewed and revised as needed.

4. Relevant nursing information from the nursing care plan shall be included with other medical information when patients are transferred.

(3) Specialized rehabilitative services.

(a) 1. Rehabilitative services shall be provided upon written order of the physician; or

2. An advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrist in the practice of optometry as defined in KRS 320.210(2), may write an order for rehabilitative services limited to their scope of practice; and

3. A written order shall indicate [which indicates] anticipated goals and prescribe [prescribed] specific modalities to be used and frequency of [physical, speech and occupational] therapy services.

(b) Therapy services shall include:

1. Physical therapy which includes:

a. Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;

b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.

2. Speech therapy which include:

- a. Services in speech pathology or audiology;
- b. Cooperation in the evaluation of patients with speech, hearing, or language disorders;
- c. Determination and recommendation of appropriate speech and hearing services.

3. Occupational therapy services which includes:

- a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests;
- b. Guiding the patient in his use of therapeutic creative and self-care activities for improving function.

(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.

(d) Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the facility such as parallel bars, hand rails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.

(4) Personal care services. Personal care services shall include: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, and washing, grooming and cutting of hair.

(5) Pharmaceutical services.

(a) Procedures for administration of pharmaceutical services. The facility shall provide appropriate methods and procedures for obtaining, dispensing and administering of drugs and biologicals, which have been developed with the advice of a staff pharmacist, or a consultant pharmacist, in cooperation with the facility's pharmacy and therapeutics committee.

(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the pharmacy department.

(c) If the facility does not have a pharmacy department, it shall have provisions for promptly and conveniently obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but does maintain a supply of drugs:

1. The consultant pharmacist shall be responsible for the control of all bulk drugs and maintain records of their receipt and disposition.

2. The consultant pharmacist shall dispense drugs from the drug supply, properly label them and make them available to appropriate licensed nursing personnel.

3. Provisions shall be made for emergency withdrawal of medications from the drug supply.

(e) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(f) Medication services.

1. ~~[Conformance with physician's orders:]~~ All medications administered to patients shall be ordered in writing by the patient's physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8) and limited to their scope of practice, or therapeutically-certified optometrist in the practice of optometry as defined in KRS 320.210(2) and limited to their scope of practice. Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician or advanced registered nurse practitioner or therapeutically-certified optometrist within forty-eight (48) hours. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy or stop orders. The registered nurse or the pharmacist shall review each patient's medication profile at least monthly. The patient's [prescribing] physician shall review each patient's medications at the time of the medical evaluation pursuant to subsection (1)(b) of this section. The patient's attending physician

shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with ~~[the Medical Practice Act (KRS 311.530 to 311.620)]~~ and ~~[Nurse Practice Act of (KRS Chapter 314)]~~, or by personnel who have completed a state approved training program from a state approved training provider. The administration of oral and topical medicines by certified medicine technicians shall be under the supervision of licensed medical or nursing personnel. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician, a registered nurse or a properly trained licensed nurse. Each dose administered shall be recorded in the medical record.

a. The nursing station shall have readily available items necessary for the proper administration of medications.

b. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

c. Medications prescribed for one (1) patient shall not be administered to any other patient.

d. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.

e. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

f. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

3. Labeling and storing medications.

a. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

b. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels shall be destroyed in accordance with state and federal laws.

c. Cabinets shall be well lighted and of sufficient size to permit storage without crowding.

d. Medications no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

e. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

f. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, kind, dosage, balance, remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the

nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with [KRS 218A.230, or] 21 CFR 1307.21[-, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources].

4. Use of restraints [or protective devices. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care].

a. No [form of] restraints [or protective devices] shall be used except as permitted by KRS 216.515(6). [under written orders of the attending physician:

a. Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.]

b. [Physical restraint.] Restraints that require lock and key shall not be used. [In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours:]

c. Restraints shall be applied only by appropriately trained personnel [trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such reports shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others].

d. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. [Restraints shall be comfortable and easily removed in case of an emergency:

e. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation:]

5. Infection control and communicable diseases.

a. There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

(i) Policies which address the prevention of disease transmission to and from patients, visitors and employees, including:

i. Universal blood and body fluid precautions;

ii. Precautions for infections which can be transmitted by the airborne route; and

iii. Work restrictions for employees with infectious diseases.

(ii) Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

b. The facility shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections for all personnel responsible for direct patient care.

c. Sharp wastes.

(i) Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

(ii) Needles shall not be recapped by hand, purposely bent or broken, or otherwise manipulated by hand.

(iii) The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Health Services [Human Resources] and the Natural Resources and Environmental Protection Cabinet.

d. Disposable waste.

(i) All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

(ii) The facility shall establish specific written policies regarding handling and disposal of all wastes.

(iii) The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

(iv) Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations [pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9].

e. Patients infected with the following diseases shall not be admitted to the facility: anthrax, campylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus.

f. A facility may admit a noninfectious tuberculosis patient under continuing medical supervision for his tuberculosis disease.

g. Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

h. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(6) Diagnostic services. The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder. Radiology services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and administrative regulations. All diagnostic services shall be provided only on the request of a physician. The physician shall be notified promptly of the test results. Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.

(7) Dental services. The facility shall assist patients to obtain regular and emergency dental care. Provision for dental care: patients shall be assisted to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(8) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social services shall participate in clinical staff conferences and confer with the attending physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical record for the benefit of all staff involved in the care of the patient.

(9) Patient activities. Activities suited to the needs and interests of patients shall be provided as an important adjunct to the active treatment program and to encourage restoration to self-care and resumption of normal activities. Provision shall be made for purposeful activities which are suited to the needs and interests of patients.

(a) The activity leader shall use, to the fullest possible extent, community, social and recreational opportunities.

(b) Patients shall be encouraged but not forced to participate in such activities. Suitable activities are provided for patients unable to leave their rooms.

(c) Patients who are able and who wish to do so shall be assisted to attend religious services.

(d) Patients' request to see their clergymen shall be honored and space shall be provided for privacy during visits.

(e) Visiting hours shall be flexible and posted to permit and encourage visiting friends and relatives.

(f) The facility shall make available a variety of supplies and equipment adequate to satisfy the individual interests of patients. Examples of such supplies and equipment are: books and magazines, daily newspapers, games, stationery, radio and television and the like.

(10) Residential services.

(a) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8). When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this administrative regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and all menus shall be kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories, and participation in rounds and conference.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well-balanced palatable meals. Records of food purchased for preparation shall be on file for thirty (30) days.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8).

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or left over food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted within a reasonable length of time.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 [~~(Kentucky's Food Service Establishment Act and Food Service Code)~~].

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Hand-washing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Patients' personal clothing shall be laundered as often as is necessary. Laundering of patients' personal clothing shall be the responsibility of the facility unless the patient or the patient's family accepts this responsibility. Patient's personal clothing laundered by or through the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Room accommodations.

1. Each patient shall be provided a standard size bed or the equivalent at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or

seettes of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: March 11, 1998

FILED WITH LRC: March 12, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1998, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by April 14, 1998, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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, in which case the person requesting the transcript shall be responsible for payment. 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: Mae B. Lewis, Administrative Specialist Principal, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently three (3) licensed skilled nursing facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

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

(b) Reporting and paperwork requirements: No additional paperwork.

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds.

(6) To the extent available from the public comments received,

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the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments addressing this issue were received.

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication. No 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?

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

CABINET FOR HEALTH SERVICES Office of Inspector General Division of Licensing and Regulation (Amendment)

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

RELATES TO: KRS 216B.010 to 216B.130 [216B.131], 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 314.011(8), 314.042(8), 320.210(2), EO 96-862 [(3)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105[(3)] mandate that the Cabinet for Health Services [Human Resources] regulate health facilities and health services. This administrative regulation establishes licensure requirements for existing nursing homes. This administrative regulation does not address the establishment of new nursing homes. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Activities of daily living" means activities of self-help (e.g., being able to feed, bathe and[or] dress oneself), communication (e.g., being able to place phone calls, write letters and understanding instructions) and socialization (e.g., being able to shop, being considerate of others, working with others and participating in activities).

(2) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(3) ["Board"] means the Commission on Health Economics Control in Kentucky.

(4) "Facility" means a nursing home facility.

(4) [(5)] "License" means an authorization issued by the cabinet for the purpose of operating a nursing home and offering nursing home services.

(5) [(6)] "PRN medications" means medications administered as needed.

(6) [(7)] "Qualified dietician" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and

nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

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

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

[(8)] "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.]

[(9)] "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

Section 2. Scope of Operations and Services. Nursing homes are establishments with permanent facilities that include inpatient beds. Services provided include medical services, and continuous nursing services. Patients in a nursing home facility require inpatient care but do not currently require inpatient hospital services, and have a variety of medical conditions.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator.

(a) All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence.

(b) The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the patient. The contract shall be in writing.

(3) Administrative records.

(a) The facility shall maintain a bound, permanent, chronological patient registry showing date of admission, name of patient, and date of discharge.

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

(c) Menu and food purchase records shall be maintained.

(d) A written report of any incident or accident involving a patient (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing service supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(4) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Patient care and services to include physician, nursing, pharmaceutical (including medication stop orders policy), and residential services.

(b) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children [to the Cabinet for Human Resources] pursuant to KRS Chapters 209 and 620.

(c) Use of restraints. The facility shall have a written policy that addresses the use of restraints and a mechanism for monitoring and controlling their use.

(d) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(5) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

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(6) Admission.

(a) Patients shall be admitted only upon the referral of a physician. Additionally, the facility shall admit only persons who have a variety of medical conditions and require medical services, continuous medical services, and inpatient care but do not currently require inpatient hospital services. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. Within forty-eight (48) hours after admission the facility shall obtain a medical evaluation from the patient's physician including current medical findings, medical history and physical examination. The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital or nursing facility, if done within five (5) days prior to admission.

(c) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility including fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) The facility shall provide and maintain a system for identifying each patient's personal property and facilities for safekeeping of his declared valuables. Each patient's clothing and other property shall be reserved for his own use.

(7) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(8) Transfer and discharge. The facility shall comply with the requirements of 900 KAR 2:050 when transferring or discharging residents. [Transfer procedures and agreements:]

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for from another community resource.

(c) When changes and progress occur which would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for patients to be transferred to facilities providing appropriate services.

(d) Except in an emergency, the patient, his next of kin, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(e) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(f) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(9) Tuberculosis testing. All employees and patients shall be

tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(10) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel, to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, records of in-service training and ongoing education, and the employee's name, address and social security number.

(c) Staffing requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by this administrative regulation.

2. When the staff to [f] patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergencies.

4. Volunteers shall not be counted to make up minimum staffing requirements.

5. The facility shall have a director of nursing service who is a registered nurse and who works full time during the day, and who devotes full time to the nursing service of the facility. If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing, so that there shall be the equivalent of a full-time director of nursing service. The director of nursing shall be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric or geriatric nursing. The director of the nursing service shall be responsible for:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel.

b. Recommending to the administrator the number and levels of nursing personnel to be employed, participating in their recruitment and selection and recommending termination of employment when necessary.

c. Assigning and supervising all levels of nursing personnel.

d. Participating in planning and budgeting for nursing care.

e. Participating in the development and implementation of patient care policies.

f. Coordinating nursing services with other patient care services.

g. Planning and conducting orientation programs for new nursing personnel and continuing in-service education for all nursing personnel.

h. Participating in the screening of prospective patients in terms of required nursing services and nursing skills available.

i. Assuring that a written monthly assessment of the patient's general condition is completed.

j. Assuring that a nursing care plan shall be established for each patient and that his plan shall be reviewed and modified as necessary.

k. Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies are assigned duties consistent with their training and experience.

l. Assuring that a monthly review of each patient's medications is completed and notifying the physician when changes are appropriate.

6. Supervising nurse. Nursing care shall be provided by or under

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the direction of a full-time registered nurse. The supervising nurse may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing. The supervising nurse shall make daily rounds to all nursing units performing such functions as visiting each patient, and reviewing medical records, medication cards, patient care plans, and staff assignments, and whenever possible accompanying physicians when visiting patients.

7. Charge nurse. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times who is responsible for the nursing care of patients during her tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

8. Pharmacist. The facility shall retain a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

9. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

c. In a facility with an organized rehabilitation service using a multidisciplinary team approach to meet all the needs of the patient, and where all therapists' services are administered under the direct supervision of a physician qualified in physical medicine who will determine the goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, persons with qualifications other than those described in subsection (9)(c)9a of this section may be assigned duties appropriate to their training and experience.

10. Dietary. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and on duty a minimum of thirty-five (35) hours each week.

11. Each facility shall designate a person for the following areas who will be responsible for:

a. Medical records;

b. Arranging for social services; and

c. Developing and implementing the activities program and therapeutic recreation.

12. Supportive personnel, consultants, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(d) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(e) Orientation program. The facility shall conduct an orientation program for all new employees to include review of all facility policies (that relate to the duties of their respective jobs), services and emergency and disaster procedures.

(f) In-service training.

1. All employees shall receive in-service training and ongoing education to correspond with the duties of their respective jobs.

2. All nursing personnel shall receive in-service or continuing education programs at least quarterly.

(11) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone

number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation by a physician including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, skilled nursing facility if done within five (5) days prior to admission.)

3. [The physician's] Dated and signed orders for medication, diet, and therapeutic services.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication dosage, name of prescribing physician or advanced registered nurse practitioner or therapeutically-certified optometrist and name of person who administered the medication.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, mode and frequency of PRN medications administered, condition necessitating administration of PRN medication, reaction following PRN medication, visits by physician and phone calls to the physician, medically prescribed diets and preventive maintenance or rehabilitative nursing measures.

8. Written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services (if applicable).

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Physician services.

(a) The health care of every patient shall be under the supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients shall be evaluated by a physician at least once every thirty (30) days for the first sixty (60) days following admission. Subsequent to the 60th day following admission, the patients shall be evaluated by a physician every sixty (60) days unless justified and documented by the attending physician in the patient's medical record. There shall be evidence in the patient's medical record of the physician visits to the patient at appropriate intervals.

(c) There shall be evidence in the patient's medical record that the patient's attending physician has made arrangement for the medical care of the patient in the physician's absence.

(d) Availability of physicians for emergency care. The facility shall have arrangements with one (1) or more physicians who will be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the patient is not immediately available. A schedule listing the names and telephone numbers of these physicians and the specific days each shall be on call shall be posted in each nursing station. There shall be established procedures to be followed in an emergency, which cover immediate care of the patient, persons to be notified, and reports to be prepared.

(2) Nursing services.

(a) Twenty-four (24) hour nursing service. There shall be twenty-

four (24) hour nursing service with a sufficient number of nursing personnel on duty at all times to meet the total needs of patients. Nursing personnel shall include registered nurses, licensed practical nurses, aides and orderlies. The amount of nursing time available for patient care shall be exclusive of nonnursing duties. Sufficient nursing time shall be available to assure that each patient:

1. Shall receive treatments, medication, and diets as prescribed;
2. Shall receive proper care to prevent decubiti and shall be kept comfortable, clean and well-groomed;
3. Shall be protected from accident and injury by the adoption of indicated safety measures;
4. Shall be treated with kindness and respect.

(b) Rehabilitative nursing care. There shall be an active program of rehabilitative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence.

1. Rehabilitative nursing care initiated in the hospital shall be continued immediately upon admission to the facility.

2. Nursing personnel shall be taught rehabilitative nursing measures and shall practice them in their daily care of patients. These measures shall include:

- a. Maintaining good body alignment and proper positioning of bedfast patients;
- b. Encouraging and assisting bedfast patients to change positions at least every two (2) hours, day and night to stimulate circulation and prevent decubiti and deformities;
- c. Making every effort to keep patients active and out of bed for reasonable periods of time, except when contraindicated by physician's orders, and encouraging patients to achieve independence in activities of daily living by teaching self care, transfer and ambulation activities;
- d. Assisting patients to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary;
- e. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapist.

(c) Dietary supervision. Nursing personnel shall assure that patients are served diets as prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.

(d) Nursing care plan. There shall be written nursing care plans for each patient based on the nature of illness, treatment prescribed, long and short term goals and other pertinent information.

1. The nursing care plan shall be a personalized, daily plan for individual patients. It shall indicate what nursing care is needed, how it can best be accomplished for each patient, what are the patients preferences, what methods and approaches are most successful, and what modifications are necessary to insure best results.

2. Nursing care plans shall be available for use by all nursing personnel.

3. Nursing care plans shall be reviewed and revised as needed.

4. Relevant nursing information from the nursing care plan shall be included with other medical information when patients are transferred.

(3) Specialized rehabilitative services.

(a) Rehabilitative services shall be provided upon written order of the physician which indicates anticipated goals and prescribes specific modalities to be used and frequency of physical, speech and occupational therapy services.

(b) Therapy services shall include:

1. Physical therapy which includes:
 - a. Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;
 - b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.
2. Speech therapy which includes:

- a. Service in speech pathology or audiology;
- b. Cooperation in the evaluation of patients with speech, hearing, or language disorders;
- c. Determination and recommendation of appropriate speech and hearing services.

3. Occupational therapy services which include:

- a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests;
- b. Guiding the patient in his use of therapeutic creative and self care activities for improving function.

(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.

(d) Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the facility such as parallel bars, hand rails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.

(4) Personal care services. Personal care services shall include: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, and washing, grooming and cutting of hair.

(5) Pharmaceutical services.

(a) The facility shall provide appropriate methods and procedures for obtaining, dispensing, and administering drugs and biologicals, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists.

(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the department.

(c) If the facility does not have a pharmacy department, it shall have provision for promptly obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but does maintain a supply of drugs:

1. The consultant pharmacist shall be responsible for the control of all bulk drugs and maintain records of their receipt and disposition.

2. The consultant pharmacist shall dispense drugs from the drug supply, properly label them and make them available to appropriate licensed nursing personnel.

3. Provisions shall be made for emergency withdrawal of medications from the drug supply.

(e) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(f) Medication services.

1. ~~[Conformance with physician's orders.]~~ All medications administered to patients shall be ordered in writing by the prescribing [patient's] physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrist in the practice of optometry as defined in KRS 320.210(2). Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician, advanced registered nurse practitioner or therapeutically-certified optometrist within forty-eight (48) hours. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. A registered nurse or pharmacist shall review each patient's medication profile at least monthly. The prescribing physician shall review the patient's medical profile at least every two (2) months. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients

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on discharge only on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with ~~[the Medical Practice Act (KRS 311.530 to 311.620)]~~ and ~~[Nurse Practice Act (KRS) Chapter 314]]~~ or by personnel who have completed a state approved training program from a state approved training provider. The administration of oral and topical medicines by certified medicine technicians shall be under the supervision of licensed medical or nursing personnel. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician or registered nurse. Each dose administered shall be recorded in the medical record.

a. The nursing station shall have readily available items necessary for the proper administration of medications.

b. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

c. Medications prescribed for one (1) patient shall not be administered to any other patient.

d. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician or in a predischARGE program under the supervision of a licensed nurse.

e. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

f. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

3. Labeling and storing medications.

a. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

b. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels shall be destroyed in accordance with state and federal laws.

c. Cabinets shall be well lighted and sufficient size to permit storage without crowding.

d. Medications no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

e. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

4. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V

controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with ~~[KRS 218A.230, or] 21 CFR 1307.21~~ ~~[or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources].~~

5. Use of restraints ~~[or protective devices. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care].~~

a. No ~~[form-of] restraints [or protective devices]~~ shall be used except as permitted by KRS 216.515(6), ~~[under written orders of the attending physician].~~

a. ~~Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.]~~

b. ~~[Physical restraint.] Restraints that require lock and key shall not be used. [In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours.]~~

c. ~~Restraints shall be applied only by appropriately trained personnel [trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such records shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others].~~

d. ~~Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. [Restraints shall be comfortable and easily removed in case of an emergency.]~~

e. ~~Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.]~~

6. Infection control and communicable diseases.

a. There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

(i) Policies which address the prevention of disease transmission to and from patients, visitors and employees, including:

i. Universal blood and body fluid precautions;

ii. Precautions for infections which can be transmitted by the airborne route; and

iii. Work restrictions for employees with infectious diseases.

(ii) Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

b. The facility shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections for all personnel responsible for direct patient care.

c. Sharp wastes.

(i) Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

(ii) Needles shall not be recapped by hand, purposely bent or broken, or otherwise manipulated by hand.

(iii) The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Health Services ~~[Human Resources]~~ and the Natural Resources and Environmental Protection Cabinet.

d. Disposable waste.

(i) All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure

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of personnel to waste materials.

(ii) The facility shall establish specific written policies regarding handling and disposal of all wastes.

(iii) The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

(iv) Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations [pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9].

e. Patients infected with the following diseases shall not be admitted to the facility: anthrax, campylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus.

f. A facility may admit a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

g. Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

h. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients, the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(6) Diagnostic services. The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder. Radiology services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and administrative regulations. All diagnostic services shall be provided only on the written order [request] of a physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrist in the practice of optometry as defined in KRS 320.210(2). The physician or advanced registered nurse practitioner or therapeutically-certified optometrist shall be notified promptly of the test results. Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.

(7) Dental services. The facility shall assist patients to obtain regular and emergency dental care. Provision for dental care: patients shall be assisted to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(8) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the

probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social services shall participate in clinical staff conferences and confer with the attending physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical record for the benefit of all staff involved in the care of the patient.

(9) Patient activities. Activities suited to the needs and interests of patients shall be provided as an important adjunct to the active treatment program and to encourage restoration to self-care and resumption of normal activities. Provision shall be made for purposeful activities which are suited to the needs and interests of patients.

(a) The activity leader shall use, to the fullest possible extent, community, social and recreational opportunities.

(b) Patients shall be encouraged but not forced to participate in such activities. Suitable activities are provided for patients unable to leave their rooms.

(c) Patients who are able and who wish to do so shall be assisted to attend religious services.

(d) Patients' request to see their clergymen shall be honored and space shall be provided for privacy during visits.

(e) Visiting hours shall be flexible and posted to permit and encourage visiting friends and relatives.

(f) The facility shall make available a variety of supplies and equipment adequate to satisfy the individual interests of patients. Examples of such supplies and equipment are: books and magazines, daily newspapers, games, stationery, radio and television and the like.

(10) Transportation.

(a) If transportation of patients is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for patients who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting patients to and from the facility if necessary for the patient's safety.

(b) The facility shall arrange for appropriate transportation in case of medical emergencies.

(11) Residential services.

(a) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician.

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When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this administrative regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and all menus shall be kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department, that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories and participation in rounds and conference.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals. Records of food purchased for preparation shall be on file for thirty (30) days.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8).

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or left over food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted within a reasonable length of time.

b. Adaptive self-help devices shall be provided to contribute to the

patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 [(Kentucky's Food Service Establishment Act and Food Service Code)].

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Hand-washing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Patients' personal clothing shall be laundered as often as is necessary. Laundering of patients' personal clothing shall be the responsibility of the facility unless the patient or the patient's family accepts this responsibility. Patient's personal clothing laundered by or through the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Room accommodations.

1. Each patient shall be provided a standard size bed or the equivalent at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unap-

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proved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: March 11, 1998

FILED WITH LRC: March 12, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1998, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by April 14, 1998, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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, in which case the person requesting the transcript shall be responsible for payment. 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: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently fourteen (14) licensed nursing homes.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings,

since reprinting of regulations is provided for in the continuing budget.

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

(b) Reporting and paperwork requirements: No additional paperwork.

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments addressing this issue were received.

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication. No 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?

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

CABINET FOR HEALTH SERVICES

Office of Inspector General

Division of Licensing and Regulation
(Amendment)

902 KAR 20:051. Operation and services; intermediate care.

RELATES TO: KRS 216B.010 to 216B.130 [~~216B.131~~], 216B.990
STATUTORY AUTHORITY: KRS 216B.042, 216B.105,
314.011(8), 314.042(8), 320.210(2), EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 mandate that the Cabinet for Health Services [~~Human Resources~~] regulate health facilities and health services. This administrative regulation establishes licensure requirements for the operation of and services provided by intermediate care facilities. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Activities of daily living" means activities of self-help (e.g., being able to feed, bathe and/or dress oneself), communication (e.g., being able to place phone calls, write letters and understanding instructions) and socialization (e.g., being able to shop, being considerate of others, working with others and participating in activities).

(2) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(3) [~~"Board"~~] means the Commission on Health Economics Control

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in Kentucky:

(4)) "Facility" means an intermediate care facility.

(4) [(5)] "License" means an authorization issued by the cabinet for the purpose of operating an intermediate care facility and offering intermediate care services.

(5) [(6)] "PRN medications" means medications administered as needed.

[(7)] "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.]

(6) [(8)] "Qualified dietician" or "nutritionist" means:

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

(b) A person who has a master's degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

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

[(7)] [(9)] "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

Section 2. Scope of Operations and Services. Intermediate care facilities are establishments with permanent facilities including inpatient beds. Services provided include twenty-four (24) hour supervision of patients, services including physician, nursing, pharmaceutical, personal care, activities and residential services. Patients in an intermediate care facility must have a physical or mental condition that requires intermittent nursing services along with continuous supervision of the activities of daily living.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator.

(a) All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence. The administrator shall not be the nursing services supervisor in a facility with more than sixty (60) beds.

(b) The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the patient. The contract shall be in writing.

(3) Administrative records.

(a) The facility shall maintain a bound, permanent, chronological patient registry showing date of admission, name of patient, and date of discharge.

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

(c) Menu and food purchase records shall be maintained.

(d) A written report of any incident or accident involving a patient (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing service supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(4) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Patient care and services to include physician, nursing, pharmaceutical (including medication stop orders policy), and residential services.

(b) Adult and child protection. The facility shall have written

policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children [to the Department for Human Resources] pursuant to KRS Chapters 209 and 620.

(c) Use of restraints. The facility shall have a written policy that addresses the use of restraints and a mechanism for monitoring and controlling their use.

(d) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(5) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission.

(a) Patients shall be admitted only upon the referral of a physician. The facility shall admit only persons who have a physical or mental condition which requires intermittent nursing services and continuous supervision of activities of daily living. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. Within seventy-two (72) hours after admission the facility shall obtain a medical evaluation from the patient's physician including current medical findings, medical history and physical examination. The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital or long-term facility if done within fourteen (14) days prior to admission.

(c) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility including fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) The facility shall provide and maintain a system for identifying each patient's personal property and facilities for safekeeping of his declared valuables. Each patient's clothing and other property shall be reserved for his own use.

(7) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(8) Transfer and discharge. The facility shall comply with the requirements of 900 KAR 2:050 when transferring or discharging residents. [Transfer procedures and agreements.]

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for from another community resource.

(c) When changes and progress occur which would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for patients to be transferred to facilities providing appropriate services.

(d) Except in an emergency, the patient, his next of kin, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(e) When a transfer is to another level of care within the same

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facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(f) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(9) Tuberculosis testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(10) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel, to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, records of in-service training and ongoing education, and the employee's name, address and social security number.

(c) Staffing requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by this administrative regulation.

2. When the staff to [f] patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergencies.

4. Volunteers shall not be counted to make up minimum staffing requirements.

5. Supervision of nursing services shall be by a registered nurse or licensed practical nurse employed on the day shift seven (7) days per week. The supervisor shall have training in rehabilitative nursing. When a licensed practical nurse serves as the supervisor, consultation shall be provided by a registered nurse at regular intervals, not less than four (4) hours weekly. The responsibilities of the nursing services supervisor shall include:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel.

b. Recommending to the administrator the number and levels of nursing personnel to be employed, participating in their recruitment and selection and recommending termination of employment when necessary.

c. Assigning and supervising all levels of nursing care.

d. Participating in planning and budgeting for nursing care.

e. Participating in the development and implementation of patient care policies.

f. Coordinating nursing services with other patient care services.

g. Participating in the screening of prospective patients in terms of required nursing services and nursing skills available.

h. Assuring that a written monthly assessment of the patient's general condition is completed.

i. Assuring that the establishment, review and modification of nursing care plans for each patient is done by licensed nursing personnel.

j. Assuring that all medications are administered by licensed personnel or by other personnel who have completed a state-approved training program.

k. Assuring that a monthly review of each patient's medications is completed and notifying the physician when changes are appropriate.

6. The facility shall employ a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

7. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and on duty a minimum of thirty-five (35) hours each week.

8. Each facility shall designate a person for the following areas who will be responsible for:

a. Medical records;

b. Arranging for social services; and

c. Developing and implementing the activities program and therapeutic recreation.

9. Supportive personnel, consultants, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(d) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(e) Orientation program. The facility shall conduct an orientation program for all new employees to include review of all facility policies (that relate to the duties of their respective jobs), services and emergency and disaster procedures.

(f) In-service training.

1. All employees shall receive in-service training and ongoing education to correspond with the duties of their respective jobs.

2. All nursing personnel shall receive in-service or continuing education programs at least quarterly.

(11) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation by a physician including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, skilled nursing facility if done within fourteen (14) days prior to admission.)

3. [The physician's] Dated and signed orders for medication, diet, and therapeutic services.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication dosage, name of prescribing physician or advanced registered nurse practitioner or therapeutically-certified optometrist and name of person who administered the medication.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, mode and frequency of PRN medications administered, condition necessitating administration of PRN medication, reaction following PRN medication, visits by physician and phone calls to the physician, medically prescribed diets and preventive, maintenance or rehabilitative nursing measures.

8. Written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services (if applicable).

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or, in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) General requirements.

(a) Patient care equipment. There shall be a sufficient quantity of patient care equipment of satisfactory design and in good condition to carry out established patient care procedures. The equipment shall include:

1. Wheelchairs with brakes;
2. Walkers;
3. Bedside rails;
4. Bedpans and urinals (permanent or disposable);
5. Emesis basins and wash basins (permanent or disposable);
6. Footstools;
7. Bedside commodes;
8. Foot cradles;
9. Foot boards;
10. Under-the-mattress bed boards;
11. Trapeze frames;
12. Transfer board; and

13. An autoclave for sterilization of nursing equipment and supplies or an equivalent alternate method of sterilization.

(b) Infection control and communicable diseases.

1. There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

a. Policies which address the prevention of disease transmission to and from patients, visitors and employees, including:

(i) Universal blood and body fluid precautions;

(ii) Precautions for infections which can be transmitted by the airborne route; and

(iii) Work restrictions for employees with infectious diseases.

b. Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

2. The facility shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections for all personnel responsible for direct patient care.

3. Sharp wastes.

a. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

b. Needles shall not be recapped by hand, purposely bent or broken, or otherwise manipulated by hand.

c. The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Health Services [Human Resources] and the Natural Resources and Environmental Protection Cabinet.

4. Disposable waste.

a. All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

b. The facility shall establish specific written policies regarding handling and disposal of all wastes.

c. The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

d. Any wastes conveyed to a sanitary sewer shall comply with

applicable federal, state, and local pretreatment regulations [pursuant to 40 CFR 403 and 401 KAP 5:055, Section 9].

5. Patients infected with the following diseases shall not be admitted to the facility unless the patient's attending physician certifies in writing that the condition of the patient is not communicable to others in the long-term care environment: anthrax, campylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus. If an attending physician is in doubt regarding the communicability of a patient's condition, he may contact the Department for Health Services.

6. A facility may admit a noninfectious tuberculosis patient under continuing medical supervision for his tuberculosis disease.

7. Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

8. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(c) Use of restraints [or protective devices].

1. [If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care.

2.] No [form of] restraints [or protective devices] shall be used except as permitted by KRS 216.515(6). [upon written orders of the attending physician:

a. Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.

b. Physical restraint.]

2. Restraints that require lock and key shall not be used. [In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours.]

3. Restraints shall be applied only by appropriately trained personnel [trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such records shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others].

4. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. [Restraints shall be comfortable and easily removed in case of an emergency.

c. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.]

(2) Physician services. All patients shall be under the medical supervision of a licensed physician. These services shall include:

(a) Physician's visit for medical evaluation as often as necessary and in no case less often than every sixty (60) days, unless justified and documented by the attending physician in the patient's medical report.

(b) Physician services for medical emergencies available on a twenty-four (24) hour, seven (7) days-a-week basis.

(3) Nursing services. Nursing services shall include:

(a) The establishment of a nursing care plan for each patient. Each plan shall be reviewed and modified as necessary, or at least quarterly. Each plan shall include goals and nursing care needs;

(b) Rehabilitative nursing care to achieve and maintain the highest degree of function, self-care and independence. Rehabilitative measures shall be practiced on a twenty-four (24) hour, seven (7) day week basis. Those procedures requiring medical approval shall be ordered by the attending physician. Rehabilitative measures shall include:

1. Positioning and turning. Nursing personnel shall encourage and assist patients in maintaining good body alignment while standing, sitting, or lying in bed.

2. Exercises. Nursing personnel shall assist patients in maintaining maximum joint range of motion or active range of motion.

3. Bowel and bladder training. Nursing personnel shall make every effort to train incontinent patients to gain bowel and bladder control.

4. Training in activities of daily living. Nursing personnel shall encourage and when necessary teach patients to function at their maximum level in appropriate activities of daily living for as long as, and to the degree that, they are able.

5. Ambulation. Nursing personnel shall assist and encourage patients with daily ambulation unless otherwise ordered by the physician.

(c) Administration of medications including oral, rectal, hypodermic, and intramuscular;

(d) Written monthly assessment of the patient's general condition by licensed nursing personnel;

(e) Treatments such as: enemas, irrigations, catheterizations, applications of dressings or bandages, supervision of special diets;

(f) The recording of any changes, as they occur, in the patient's condition, actions, responses, attitudes, appetite, etc.

(g) Implementing a regular program to prevent decubiti with emphasis on the following:

1. Procedures to maintain cleanliness of the patient, his clothes and linens shall be followed each time the bed or the clothing is soiled. Rubber, plastic, or other type of linen protectors shall be properly cleaned and completely covered to prevent direct contact with the patient.

2. Special effort shall be made to assist the patient in being up and out of bed as much as his condition permits, unless medically contraindicated. If the patient cannot move himself, he shall have his position changed as often as necessary but not less than every two (2) hours.

(4) Pharmaceutical services.

(a) The facility shall provide appropriate methods and procedures for obtaining, dispensing, and administering drugs and biologicals, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists.

(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the pharmacy department.

(c) If the facility does not have a pharmacy department, it shall have provision for promptly obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(e) Medication requirement and services.

1. ~~[Conformance with physician's orders.]~~ All medications administered to patients shall be ordered in writing by the prescribing physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrist in the practice of optometry as defined in KRS 320.210(2). Oral orders shall be given only to a licensed nurse or pharmacist, immediately reduced to writing, and signed. Medications not specifically limited as to time or number of doses, when ordered, shall be

automatically stopped in accordance with the facility's written policy on stop orders. A registered nurse or the pharmacist shall review each patient's medical profile monthly. Medications shall be reviewed at least quarterly by the attending or staff physician. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications shall be released to patients on discharge or visits only after being labeled appropriately and on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed nurses or personnel who have completed a state-approved training program, from a state approved training provider. Each dose administered shall be recorded in the medical record. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician or registered nurse.

a. The nursing station shall have items required for the proper administration of medications.

b. Medications prescribed for one (1) patient shall not be administered to any other patient.

c. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician and a predischarge program under the supervision of a licensed nurse.

d. Medication errors and drug reactions shall be immediately reported to the patient's physician and pharmacist and an entry thereof made in the patient's medical record as well as on an incident report.

3. The facility shall provide up-to-date medication reference texts for use by the nursing staff (e.g., Physician's Desk Reference).

4. Labeling and storing medications. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

5. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient; the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed Schedule II controlled substances count daily, and Schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with ~~[KRS 218A.230, or] 21 CFR 1307.21[-, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources].~~

(5) Personal care services.

(a) All facilities shall provide services to assist patients to achieve and maintain good personal hygiene including the level of assistance necessary with:

1. Bathing of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with bathing, the facility shall

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provide soap, clean towels, and wash cloths for each patient. Toilet articles such as brushes and combs shall not be used in common.

2. Shaving.

3. Cleaning and trimming of fingernails and toenails.

4. Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All patients shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable.

5. Washing, grooming, and cutting of hair.

(b) The staff shall encourage and assist the patients to dress in their own street clothing (unless otherwise indicated by the physician).

(6) Dental services. The facility shall assist patients in obtaining dental services. Conditions necessitating dental services shall be noted and such dental procedures and services provided shall be recorded in the patient's record.

(7) Social services. The facility shall provide or arrange for social services as needed by the patient.

(a) Social services shall be integrated with other elements of the plan of care.

(b) A plan for such care shall be recorded in the patient's record and periodically evaluated in conjunction with the patient's total plan of care.

(c) Social services records shall be maintained as an integral part of case record maintained on each patient.

(8) Activities and therapeutic recreation.

(a) All facilities shall provide a program to stimulate physical and mental abilities to the fullest extent, to encourage and develop a sense of usefulness and self respect and to prevent, inhibit or correct the development of symptoms of physical and mental regression due to illness or old age. The program shall provide sufficient variety to meet the needs of the various types of patients in the facility. When possible, the patient shall be included in the planning of activities.

(b) All facilities shall meet the following program requirements:

1. Staff. A person designated by the administrator shall be responsible for the program.

2. A program shall be developed for each patient and shall be incorporated in the patient's plan of care and revised according to the patient's needs. Changes in his response to the program shall be recorded in the medical record.

3. There shall be a planned and supervised activity period each day. The schedule shall be current and posted.

4. The program shall be planned for group and individual activities, both within and outside of the facility, weather permitting.

5. The person responsible for activities shall maintain a current list of patients on which precautions are noted regarding a patient's condition that might restrict or modify his participation in the program.

6. A living or recreation room and outdoor recreational space shall be provided for patients and their guests.

7. The facility shall provide supplies and equipment for the activities program.

8. Reading materials, radios, games and TV sets shall be provided for the patients.

9. The program may include religious activities for each patient if it is the desire of the patient to participate. Requests from a patient to be seen by a clergyman shall be acted upon as soon as possible, and an area of private consultation shall be made available.

10. The facility shall allow the patient to leave the facility to visit, shop, attend church, or other social activities provided this does not endanger his health or safety.

(9) Transportation.

(a) If transportation of patients is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for patients who use wheel-chairs.

2. An escort or assistant to the driver shall be provided in transporting patients to and from the facility if necessary for the patient's safety.

(b) The facility shall arrange for appropriate transportation in case of medical emergencies.

(10) Residential care services. All facilities shall provide residential care services to all patients including: room accommodations, housekeeping and maintenance services, and dietary services. All facilities shall meet the following requirements relating to the provision of residential care services.

(a) Room accommodations.

1. Each patient shall be provided a standard size bed at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Hand-washing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Patients' personal clothing shall be laundered by the facility as often as is necessary. Patients' personal clothing shall be laundered by the facility unless the patient or the patient's family accepts this responsibility. Patients capable of laundering their own personal

clothing and wishing to do so may, instead, be provided the facilities to do so. Patient's personal clothing laundered by the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this administrative regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department, that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories and participation in rounds and conferences.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8).

c. At least three (3) meals per day shall be served with not more

than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or leftover food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 [~~(Kentucky's Food Service Establishment Act and Food Service Code)~~].

Section 5. Separability. If any clause, sentence, paragraph, section or part of these administrative regulations shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof, directly involved in the controversy in which the judgment was rendered.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: March 11, 1998

FILED WITH LRC: March 13, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1998, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by April 14, 1998, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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, in which case the person requesting the transcript shall be responsible for payment. 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: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently seven (7) licensed intermediate care facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent

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available from the public comment received: No public comments addressing this issue were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

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

(b) Reporting and paperwork requirements: No additional paperwork.

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments addressing this issue were received.

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication. No 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?

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, MARCH 13, 1998

GENERAL GOVERNMENT CABINET
State Board of Examiners and Registration of Architects
(New Administrative Regulation)

201 KAR 19:087. Continuing education.

RELATES TO: KRS 323.120(1)(g), 323.210(3)

STATUTORY AUTHORITY: KRS 323.210(2), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(3) authorizes the board to establish continuing education requirements. This administrative regulation establishes continuing education requirements for board licensees.

Section 1. Definitions. (1) "Professional development unit" (PDU) means a unit equal to fifty (50) minutes contact (clock) time. If a vendor of such units prescribes a customary time for completion, then such prescribed time shall, unless the board finds the time to be unreasonable, be accepted as the PDU.

(2) "Structured activities" means a college or university sponsored courses; seminars, tutorials, short courses; programs and courses, including self-study courses and monographs sponsored by professional or technical organizations.

(3) "Self-directed activities" means unstructured self-study visits to architecturally significant sites, professional service to the public which draws on a registrant's expertise as an architect; business practice courses or courses related to new technology offered by persons qualified by education or experience.

(4) "Relevant topics" means areas which are particularly focused on the health, safety and welfare of the public.

(5) "Elective topics" means additional topics of interest to the registrant, but related to the practice of architecture.

Section 2. Purpose. The purpose of this continuing education program is to insure that all registered architects remain informed on technical and professional subjects which the board deems appropriate to safeguard life, health, property and welfare of the public.

Section 3. Scope and Exemptions. (1) Scope. This program shall apply to every architect registered in Kentucky and compliance will be a condition for renewal of license on an annual basis.

(2) Exemptions. A registrant may be exempt from the requirements of the continuing education program for one (1) of the following reasons:

(a) A first time registrant by examination or a first time registrant by reciprocity shall be exempt for his first license period.

(b) Registrant is an emeritus status architect. The requirements for emeritus status architect are:

1. The registrant must be sixty-five (65) years old;

2. The registrant must request emeritus status at the beginning of a license renewal period; and

3. The registrant must be retired from practice.

(c) Registrant is a civilian who serves on active duty in the Armed Forces of the United States for a period of time exceeding ninety (90) consecutive days during the annual report period.

(d) Registrant of another, National Council of Architectural Registration Boards (NCARB), jurisdiction with a required continuing education program, provided that same jurisdiction accepts the Kentucky requirements as satisfying their continuing education requirements, and the registrant certifies that all requirements of that jurisdiction for current continuing education compliance and registration have been met.

(e) Hardship cases will be considered by the board on an individual basis.

Section 4. Requirements. (1) Each registered Kentucky architect shall obtain a total of twelve (12) PDU's per year. This requirement must be satisfied during the period which begins July 1 and ends June 30 of the following year. Reporting of continuing education credits is a condition for registration renewal.

(2) A minimum of eight (8) PDU's shall consist of structured activities, dealing with relevant topics. A maximum of four (4) PDU's may consist of self-directed activities. Topics for the twelve (12) PDU's shall meet the following requirements:

(a) Relevant topics (eight (8) PDU's required):

1. Study of the codes, statutes and regulations governing the practice of architecture;

2. Environmental issues;

3. Code of ethics;

4. State registration law;

5. Design proficiency;

6. New technology (construction materials, methods, systems, or concepts);

7. Interface with other design disciplines (planners, consultants, specialists, (financiers) other than normal day-to-day contact;

8. Legal aspects (contract documents, insurances, bonds, project administration);

9. Specialization (presentation, adaptive reuse, building types); or

10. Studies/consultation opportunities.

(b) Electives (four (4) PDU's maximum):

1. Business or practice efficiency;

2. Business development;

3. Personal skills;

4. New skills; or

5. General education.

Section 5. Reporting and Recordkeeping. (1) The Continuing Education Annual Report Form must be received with the renewal form in order to process the registration renewal. If one (1) form is received without the other, it will be returned to the registrant. The registrant must supply enough detail on the form to permit verification, must sign and certify the Continuing Education Annual Report Form, and submit it with the appropriate renewal application and fee. A random sample of all annual reports will be reviewed to ensure accuracy and compliance.

(2) The registrant is responsible for retaining proof of participation in continuing education activities. These records must be retained for a period of two (2) years from date of submittal of report to the board. Copies must be furnished to the board for audit purposes, if requested. Supporting documents may include but are not limited to:

(a) A log showing activity claimed, sponsoring organizations, location, duration, etc.;

(b) Attendance certificates;

(c) Signed attendance receipts;

(d) Paid receipts; and

(e) Sponsor's list of attendees (signed by a person in responsible charge of the activity).

(3) Disallowances. If continuing education credits are disallowed, the registrant shall have 180 calendar days after notification to substantiate the original claim or earn other continuing education credits to meet the minimum requirements.

Section 6. Noncompliance and Sanctions. Failure to fulfill the continuing education requirements or file the required annual report, properly completed and signed, shall result in nonrenewal of the architect's certificate of registration.

Section 7. Incorporation by Reference. (1) The following form is

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incorporated by reference: The Continuing Education Annual Report Form.

(2) This form may be inspected, copied, or obtained at State Board of Examiners and Registration of Architects, 841 Corporate Drive, Suite 200B, Lexington, Kentucky 40503 Monday through Friday, 9 a.m. to 5 p.m.

DAVID MOHNEY, President

JIM GRAWE, Assistant Attorney General

APPROVED BY AGENCY: January 28, 1998

FILED WITH LRC: March 13, 1998 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on April 22, 1998 at 3 p.m. at 841 Corporate Drive, Suite 200B, Lexington Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 17, 1998, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this 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 to: Jerry W. Herndon, Executive Director, State Board of Examiners and Registration of Architects, 841 Corporate Drive, Suite 200B, Lexington, Kentucky 40503, (606) 246-2069, or fax your request to (606) 246-2431.

REGULATORY IMPACT ANALYSIS

Contact person: Jerry W. Herndon

(1) Type and number of entities affected: Approximately 2400 licensees.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation:

2. Second and subsequent years:

(3) 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

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public

health would result if not implemented: No effect.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) 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:

(10) Any additional information or comments: This regulation establishes requirements for continuing education.

(11) TIERING: Is tiering applied? No (Explain why tiering was or was not used) Tiering is not required because:

(a) This administrative regulation governs one class of person, applicants for examination, for which uniform standards are required; and

(b) There is not rational basis for the establishment of different requirements for members of the class.

DEPARTMENT OF AGRICULTURE Division of Regulation and Inspections (New Administrative Regulation)

302 KAR 10:100. Refrigeration of eggs and temperature requirements.

RELATES TO: KRS 260.620

STATUTORY AUTHORITY: KRS 260.620

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation prescribes refrigeration of eggs and temperature requirements.

Section 1. The refrigeration and temperature requirements in the standards of quality for shell eggs shall be governed by the following specifications:

(1) To prevent undue deterioration, all shell eggs packed in containers for the purpose of resale to consumers shall be stored and transported under refrigeration at an ambient temperature of forty-five (45) degrees Fahrenheit or seven and two-tenths (7.2) degrees Centigrade or less provided; however, any different temperature standard adopted by the United States Department of Agriculture or the Food and Drug Administration shall prevail.

(2) Eggs, which are shipped across the state line into Kentucky, shall be transported under refrigerated conditions at the temperature as required by subsection (1) of this section.

(3) All shell eggs that are packed into containers for the purpose of resale to the consumer shall be labeled with the following statement: "Keep refrigerated at or below forty-five (45) degrees Fahrenheit" or any temperature as mandated by the United States Department of Agriculture or the Food and Drug Administration.

(4) The person that takes possession of these eggs after receiving them in this state shall be liable for compliance with subsections (1) and (2) of this section. Upon receiving eggs, it is this person's responsibility to ensure that supplier complies with the labeling requirements of the Kentucky Egg Marketing Law.

(5) Eggs that do not meet the refrigeration requirements either in transit, storage or display can be seized or destroyed by the Department of Agriculture inspectors.

BILLY RAY SMITH, Commissioner

MARK FARROW, General Counsel

APPROVED BY AGENCY: March 9, 1998

FILED WITH LRC: March 9, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on April 22, 1998 at 1 p.m. at the Department of Agriculture, 7th floor Conference Room, Capital Plaza Tower Frankfort, Kentucky 40601. Individuals interested in attending this

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hearing shall notify this agency in writing by April 15, 1998, five (5) 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 canceled. 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 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: Mark Farrow, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696, Fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS

Contact Person: Larry Hatfield, Director

(1) Type and number of entities affected: Egg producers, processors and wholesalers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: N/A

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

N/A

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing personnel will be used for implementation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: Same as (a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: A risk exists for deterioration of shell eggs not refrigerated at or below forty-five (45) degrees Fahrenheit or any temperature as mandated by the USDA or the FDA.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: The public is at health risk when eggs not properly stored at an ambient temperature of forty-five (45) degrees Fahrenheit or any temperature as mandated by the USDA or the FDA.

(9) 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: N/A

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions:

(10) Any additional information or comments: The specifications for Kentucky consumer grades for marketing shell eggs, as prescribed in KRS 260.620, will be brought into conformity with federal specifications in accordance with KRS 260.620.

(11) TIERING: Is tiering applied? No. All producers of eggs will be treated the same.

DEPARTMENT OF AGRICULTURE Division of Pesticides (New Administrative Regulation)

302 KAR 31:040: Storage and handling of pesticides and bulk fertilizer.

RELATES TO: KRS Chapter 217B, 40 CFR, 49 CFR, 7 USCA 135 et seq., 42 USCA 9601

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY, FUNCTION, AND CONFORMITY: To regulate the storage and handling of pesticides and bulk fertilizers at commercial facilities.

Section 1. Definitions. (1) "Approved" means approval by an agent of the Kentucky Department of Agriculture, except where otherwise stated.

(2) "Best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. Best management practices also includes treatment requirements, operating procedures, practices to control facility run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(3) "Bulk fertilizer" means either dry or liquid fertilizer in any unpacked quantity.

(4) "Bulk pesticide" means any pesticide that is held in a nonmobile container in undivided quantities of greater than 300 U.S. gallons of liquid measure or 300 U.S. pounds of net dry weight.

(5) "Bulk repackaging" means the transfer of a pesticide from one (1) bulk container containing undivided quantities of greater than fifty-five (55) U.S. gallons liquid measure or 100 U.S. pounds net dry weight to an approved mobile container containing undivided quantities of greater than fifty-five (55) U.S. gallons liquid measure or 100 U.S. pounds net dry weight in an unaltered state in preparation for sale or distribution.

(6) "Commercial purposes" means selling pesticides or fertilizer for compensation or other consideration.

(7) "Commercial storage facility" means any site used for commercial purposes that sells, uses, stores, mixes, repackages, or transfers from one (1) container to another more than 300 U.S. gallons of liquid pesticide, 300 U.S. pounds of any dry pesticide, 5,000 gallons of liquid bulk fertilizer, or twenty-five (25) tons of dry bulk fertilizer in any year.

(8) "Elephant ring" means a temporary operational containment device with an open top that has storage capacity of no less than U.S. gallons nor more than 100 U.S. gallons and is used for recovering spillage and leakage from transfer connections and pumps.

(9) "Fertilizer" has the same meaning as defined in KRS 217B.040 except it does not include anhydrous ammonia fertilizer material or fertilizer packaged for household use.

(10) "Impervious" means restricting the passage of water at a rate greater than 1×10^{-6} centimeters per second (cm/sec).

(11) "Impregnation" means the application of pesticides onto fertilizer.

(12) "Lead agency" means the governing agency that will be responsible for the enforcement of these administrative regulations.

(13) "Liquid pesticide" means any pesticide in fluid form.

(14) "Liquid fertilizer" means fertilizer in fluid form, and includes solutions, emulsions, suspensions, and slurries.

(15) "Load" means the transfer of pesticides, or bulk fertilizer from the storage facility to transport vehicles, application equipment, or mobile containers.

(16) "Low pressure nitrogen solutions" means an aqueous solution of ammonium nitrate or urea or other nitrogen carriers, containing various quantities of free ammonia exceeding two (2) percent by weight. It does not include aqua ammonia and non-pressure nitrogen solutions commonly referred to as twenty-eight (28) percent, thirty (30) percent, or thirty-two (32) percent nitrogen solutions.

(17) "Minibulk pesticides" means an amount of liquid pesticide greater than fifty (55) U.S. gallons but not greater than 299 U.S. gallons, or an amount of dry pesticide greater than 100 U.S. pounds but not greater than 299 U.S. pounds that is held in undivided quantities in a mobile container designed for handling and transport.

(18) "Mobile containers" means containers designed and used for transporting pesticides or fertilizer.

(19) "New" means a storage facility not in existence at the time of adoption of this administrative regulation.

(20) "Operational area" means any site at a facility where operational activities including the loading, unloading, repackaging, mixing, impregnation and transferring of pesticides or fertilizers and the rinsing, washing or cleaning of pesticide and fertilizer application equipment occur.

(21) "Operational area containment" means any structure or system designed and constructed to effectively intercept and contain operational spills of fertilizer and pesticides including rinsate, or rain water resulting from any operational activity in an operational area.

(22) "Package pesticides" means all other pesticides not defined as bulk or minibulk pesticides.

(23) "Pesticide" has the same meaning as defined in KRS 217B.040(2) but does not include pesticides packaged for household use.

(24) "Primary containment" means any storage container or device used to contain bulk pesticides, fertilizer or rinsate in storage containers at a storage facility.

(25) "Reportable release" means an uncontrolled release of a reportable substance outside an operational area containment or secondary containment structure that equals or exceeds the reportable quantity for that substance.

(26) "Reportable quantity" means a quantity that equals or exceeds the reportable quantity for substances listed in the Appendix to 49 CFR 172.101 or in Appendix A of 40 CFR 355.

(27) "Reportable substance" means any substance listed in the Appendix to 49 CFR 172.101 or in Appendix A of 40 CFR 355.

(28) "Rinsate" means water or other liquid resulting from the washing of equipment, operational areas, or containers used in the application, loading, unloading, mixing, transferring or storing of any fertilizer or pesticide.

(29) "Roofed" means protected from precipitation.

(30) "Storage container" means a container used for the storage of fertilizer or pesticides. A storage container includes a rail car, nurse tank, or other mobile container used for the storage of bulk fertilizers or pesticides. The definition of a "storage container" does not include:

(a) A mobile container storing fertilizer or pesticide at a storage facility for less than fifteen (15) days, if this storage is incidental to the loading or unloading of a storage container at the storage facility.

(b) A container used solely for temporary emergency storage of leaking fertilizer or pesticide containers.

(31) "Secondary containment" means any structure, including dikes, liners, or other devices used to contain product spills from primary bulk storage containers, and to prevent run-off or leaching.

(32) "Storage facility" means commercial storage facilities.

(33) "Temporary operational containment" means any structure or system designed and constructed with the capability of movement

between operational areas and to intercept and contain discharges from operational activities including the loading, unloading, repackaging, impregnation, and transfer of pesticides or fertilizer or the rinsing, washing or cleaning of pesticide and fertilizer application equipment.

(34) "Unload" means the transfer of pesticide, or bulk fertilizer from the transport vehicle into the storage facility.

Section 2. Scope and Application. (1) The Kentucky Department of Agriculture Division of Pesticides is the designated lead agency.

(2) All commercial facilities shall comply with these administrative regulations.

(3) All commercial storage facilities shall have a written emergency response plan in effect to be followed in cases of emergency. Emergency response plans required by other regulatory programs may be substituted.

(4) All commercial storage facilities subject to SARA Title III (42 USCA 9601) shall be in full compliance by the required dates, and each facility shall promptly and accurately complete the required annual reporting forms.

(5) All commercial storage facilities shall register within ninety (90) days after the adoption of this administrative regulations with the Kentucky Department of Agriculture, Division of Pesticides, defining the scope of the existing operations and facilities pursuant to procedures established by the department.

Section 3. Compliance Schedule. (1) Commencing upon the date of the adoption of this administrative regulation, all new facilities shall come under immediate compliance of this administrative regulation and there will be no compliance schedule in effect.

(2) Commencing upon the date of the adoption of these regulations, all dry bulk fertilizer materials shall be stored and handled using best management practices.

(3) Commencing one (1) year after the adoption date of this administrative regulation, all nonmobile bulk pesticide storage containers shall be located within impervious secondary containment.

(4) Commencing two (2) years after the adoption date of this administrative regulation, all impregnation unless performed in the field of application, shall be performed within an impervious operational area containment.

(5) Commencing three (3) years after the adoption date of this administrative regulation, all loading, unloading, repackaging, or transferring of bulk pesticides or minibulk pesticides or liquid bulk fertilizer, unless performed in the field of application, shall be performed within an impervious operational area containment.

(6) Commencing three (3) years after the adoption of this administrative regulation, all rinsing, washing or cleaning of pesticide or fertilizer application equipment, unless performed in the field of application, shall be performed within an impervious operational area containment.

(7) Commencing four (4) years after the adoption of this administrative regulation, all nonmobile bulk liquid fertilizer storage containers shall be located within an impervious secondary containment.

(8) Commencing five (5) years after the adoption of this administrative regulation, all loading, unloading, mixing and handling of dry bulk fertilizer, unless performed in the field of application, shall be performed on an impervious operational containment area.

Section 4. Operational Area Site Specifications. (1) New permanent operational area containment located in a flood plain shall be protected from inundation by floods.

(2) New permanent operational area containment shall be located a minimum of 100 feet from on-site wells and sinkholes, 200 feet from private domestic wells, and 400 feet from any community wells used as a public water source.

Section 5. Primary Containment of Liquid Pesticides and Liquid

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Fertilizer. (1) Basic requirements.

(a) Storage containers and appurtenances shall be constructed, installed and maintained so as to prevent the release of liquid fertilizer or pesticides.

(b) Storage containers and appurtenances shall be constructed of materials, which are resistant to corrosion, puncture, or cracking and compatible with the product being stored.

(c) Metals used for valves, fittings, repairs on metal containers shall be compatible with the materials used in the construction of the storage container, so that the combination of metals does not cause or increase corrosion which may weaken the storage container or its appurtenances, or create a risk of release.

(d) Storage containers and appurtenances shall be designed to handle all operating stresses, taking into account static head, pressure buildup from pumps and compressors, and any other mechanical stresses to which the storage containers and appurtenances may be subjected to in the foreseeable course of operations.

(e) Storage containers must be properly labeled according to state and federal regulations for fertilizers and pesticides during active use of the container.

(2) Prohibition against underground storage and plumbing.

(a) The storage of liquid fertilizer or pesticide in an underground storage container is prohibited unless an impervious catch basin is used for the temporary collection of run-off or rinsate from containment or operational areas and it is emptied within seventy-two (72) hours of use.

(b) Underground plumbing shall be restricted to the use of concentric piping.

(3) Abandoned containers.

(a) Storage containers and other containers used at a storage facility to hold liquid bulk fertilizer or pesticide, or pesticide and fertilizer rinsate are considered abandoned if they have been out of service for more than six (6) months because of a weakness or leak, or have been out of service for any reason for more than two (2) years and no integrity tests have been performed.

(b) Abandoned aboveground containers shall be thoroughly cleaned. All hatches on the containers shall be secured, and all valves or connections shall be severed or sealed.

(c) A secondary containment facility is not considered abandoned for the sole reason that there have been no releases into the secondary containment.

(4) Prohibited materials.

(a) Storage containers and appurtenances may not be constructed of copper, brass, zinc, or copper base alloys.

(b) Storage containers and appurtenances used for the storage of liquid fertilizers containing phosphate or chlorides shall not be constructed of aluminum alloys.

(c) Storage containers and appurtenances used for the storage of low pH (<5) liquid fertilizers may not be constructed of ferrous materials other than stainless steel unless the materials are coated or treated with protective substances.

(d) Storage containers and appurtenances used for the storage of low-pressure nitrogen solutions may not be constructed of mild steel, fiberglass, polyolefins, or plastic. This prohibition does not extend to nonpressure solutions commonly referred to as twenty-eight (28) percent, thirty (30) percent, or thirty-two (32) percent nitrogen solutions. This prohibition against the use of mild steel does not extend to aqua ammonia.

(e) Storage containers and appurtenances used for the storage of phosphoric acid shall not be constructed of ferrous materials other than stainless steel unless the container is lined with a suitable substance.

(f) Storage containers and appurtenances used for the storage of liquid fertilizers containing potassium chloride (muriate of potash) may be constructed of ferrous materials unless the following provisions are met:

1. The containers and appurtenances are coated or treated with

protective substances; and

2. The container or appurtenance is used for storage periods of not more than six (6) months, and is completely emptied between storage periods, and the empty containers and appurtenances are cleaned and inspected for leaks prior to being refilled for any subsequent period.

(5) Filling storage containers. Storage containers may not be filled beyond the capacity for which they are designed.

(6) Pipes and fittings. Pipes and fittings shall be adequately supported to prevent sagging and possible breakage because of gravity and other forces, which may be encountered in the ordinary course of operations. Underground plumbing is prohibited except as specified in subsection (2)(b) of this section.

(7) Liquid level gauging device.

(a) Every storage container shall be equipped with a liquid level-gauging device by which the level of liquid in the storage container can be readily and safely determined. A liquid level-gauging device is not required if the level of liquid in a storage container can be readily and reliably measured by other means.

(b) Liquid level gauging devices shall be secured, in a safe manner, to protect against breakage or vandalism.

(c) External sight gauges shall be prohibited.

(8) Venting. Storage containers are to be vented to manufacturer's specifications for the product being stored in the container.

(9) Facility inspection and maintenance by owner or operator. Inspections by the operator shall be conducted quarterly to assure the early detection of cracks and other defects that may compromise the integrity of the primary containment. Repairable defects that occur in a primary containment must be sealed or repaired immediately.

Section 6. Secondary Containment of Liquid Bulk Pesticide and Liquid Bulk Fertilizer. (1) All nonmobile storage containers for liquid bulk pesticides and liquid bulk fertilizer shall be located within a secondary containment.

(2) Basic requirements include:

(a) Floors and walls of secondary containment structures shall be constructed of concrete, concrete block, that has been capped and filled with concrete, steel or other impervious materials, which are compatible with the product being stored.

(b) Floors and walls of secondary containment structures, which contain pesticides, shall be constructed of materials, which will maintain their structural integrity under fire conditions.

(c) Secondary containment structures shall not have relief outlets or release valves.

(d) Underground plumbing shall be prohibited except as provided in Section 5(2)(b) of this administrative regulation.

(e) Secondary containment may provide for the separation between bulk pesticides and bulk fertilizer to the extent that a common wall or curbing exists between the fertilizer and pesticide areas and shall provide for the interception and recovery including clean-up of pesticide releases. The entire secondary containment area shall meet or exceed the total capacity requirements specified in this section.

(g) Secondary containment structures shall be cleaned and rinsed within seventy-two (72) hours after any release into the secondary containment.

(h) Inspections shall be conducted quarterly by the owner or operator to assure the early detection of cracks or other defects that may compromise the integrity of the secondary containment. Repairable defects that occur in a secondary containment shall be sealed or repaired immediately. Inspections shall be documented in a legible and accurate form.

(i) Containers, pipes, hoses and valves must be protected against reasonably foreseeable risks of damage by trucks and other moving vehicles.

(j) Clay, natural soil clay mixtures, or clay or bentonite mixtures shall not be used to contain any bulk pesticide.

(k) Temporary operational containment or elephant rings shall not be used as secondary containment for any bulk pesticide.

(l) Secondary containment structures shall include a sump or collection point for collection of spillage, leakage, rinsate or other residues. No sump or collection point shall be greater than two (2) feet deep and shall not contain more than 109 U.S. gallons. All sumps shall be cleaned and rinsed within seventy-two (72) hours of use.

(3) Secondary containment structures shall provide the following capacity:

(a) When not roofed, the containment shall have a minimum containment volume of a six (6) inch rain storm, plus 100 percent of the capacity of the largest tank, and the volume displaced by the bases of the other tanks located within the secondary containment structure.

(b) When roofed, the containment shall have a minimum containment volume of 100 percent of the capacity of the largest tank, plus the volume displaced by the bases of the other tanks located within the secondary containment structure.

(4) Basic requirements for the secondary containment of liquid fertilizer.

(a) Secondary containment shall be provided which meets or exceeds the requirements in subsection (2) of this section.

(b) Secondary containment shall be constructed to a water permeability rate of 1×10^{-6} centimeters per second and maintained so that liquid movement through the walls and base does not exceed a rate of 1×10^{-5} centimeters per second permeability rate. The secondary containment structure shall be designed and maintained to withstand a full hydrostatic head of any contained liquid.

(c) Synthetic materials or liners may be used as secondary containment provided they are compatible with the substances being contained and are installed according to manufacturer's recommendations. These directions and recommendations shall be maintained at the storage facility.

(d) Earthen walls used for secondary containment of fertilizer shall be protected against erosion. Side slopes shall not exceed a three (3) to one (1) ratio of horizontal to vertical. The top width of earthen walls shall be no less than two and one-half ($2 \frac{1}{2}$) feet.

(e) Provisions shall be made for safe emergency access and exit to and from the secondary containment structure.

(f) Floors shall be constructed to allow the safe and expeditious removal of precipitation or any spilled liquid to a collection point.

(g) Soil liners used for secondary containment of fertilizer may be constructed of suitable soil or soil treated with bentonite clay or other comparable material, with a minimum depth of twelve (12) inches provided the other requirements stated in this section are met. The liner shall be covered by a soil or smooth aggregate layer not less than six (6) inches thick and shall be maintained to prevent cracking or puncture.

(h) Prefabricated secondary containment devices shall be constructed of a rigid prefabricated basin having both a base and walls constructed of steel, reinforced concrete or synthetic liner or synthetic materials which are resistant to corrosion, puncture or cracking.

(5) Exemptions from secondary containment.

(a) A liner is not required to be installed directly under a storage container having a capacity of 100,000 gallons or more which has been constructed on site and put into use prior to the effective date of these regulations, provided that all the following conditions are met:

1. A second bottom made of steel shall be constructed for the storage container. The second bottom shall be placed over the original bottom and a layer of smooth fine gravel or coarse sand having a minimum thickness of three (3) inches shall be installed between the layers; and

2. The original bottom of the storage container is tested for leaks before the sand layer or second bottom is installed. A record of the test shall be maintained at the storage facility; and

3. The newly constructed bottom is tested for leaks before any

liquid fertilizer is stored on the newly constructed bottom. A record of the test shall be maintained at the storage facility; and

4. There is a method by which leaks from the newly constructed bottom into the sand layer may be readily detected unless the storage containers are constructed of nonferrous materials which have a protection system in place consisting of synthetic liners and monitoring system.

(b) The secondary containment requirements under this section do not apply to railcars, which are periodically transferred to and from storage.

(6) Storage facilities with existing secondary containment on site and in place on the date of adoption of these administrative regulations shall be exempt from this section if the following conditions are met:

(a) All requirements specified in Section 5 of this administrative regulation are met; and

(b) All requirements specified in subsection (2) of this section are met; and

(c) A minimum secondary containment capacity of 110 percent of the largest container, plus the volume displaced by the other tanks located within the secondary containment structure exists.

Section 7. Operational Containment For Pesticides and Liquid Fertilizer. (1) All transfer of pesticides and liquid fertilizer between storage containers including loading, unloading, repackaging, impregnating, mixing, or equipment cleaning performed at a commercial facility shall be performed on an impervious operational containment designed to intercept, retain and recover accidental releases, leakage, rinsate and residues.

(2) Temporary operational area containment may be used in lieu of impervious operational containment for loading or unloading of rail cars or barges.

(3) The basic requirements for permanent operational containment structures for and liquid fertilizers include:

(a) Materials of construction and the design of containment structures shall be compatible with the products handled and be maintained in a condition to retain recovered material until it is used or properly disposed of.

(b) Operational containment shall be constructed of reinforced concrete or other impervious materials compatible with the products being handled.

(c) The owner or operator to assure the early detection of cracks and other defects that may compromise the integrity of the operational containment structure shall conduct inspections at least quarterly. Repairable defects that occur in an operational containment structure shall be sealed or repaired immediately. Inspections shall be documented in a legible and accurate form.

(d) Stormwater drainage shall be diverted away from any operational containment structure.

(e) Operational containment shall include a sump or collection point for the temporary collection of spillage, leakage, rinsate, or other residues. No sump or collection point shall be greater than two (2) feet deep nor contain more than 109 U.S. gallons. All sumps shall be cleaned and rinsed within seventy-two (72) hours of use.

(f) Operational containment shall not have relief outlets or release valves.

(g) Operational containment shall be large enough in area to prevent spillage onto unprotected areas and to prevent any release to the surrounding environment.

(h) The use of underground plumbing is prohibited except as provided in Section 5(2)(b) of this administrative regulation.

(4) Operational containment shall provide the following capacity:

(a) Operational area containment for roofed permanent structures shall have a volume sufficient to contain a minimum of 1,000 U.S. gallons. Containment capacity of the sump shall be figured in addition to the containment capacity of the structure.

(b) Operational area containment for unroofed permanent

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structures shall have a volume sufficient to contain a minimum of 1,250 U.S. gallons. Containment capacity of the sump shall be figured in addition to the containment capacity of the structure.

(c) Temporary operational containment may be utilized to meet the requirements of this section if the following conditions are met:

1. The capacity of temporary operational containment is no less than 1,250 U.S. gallons; and

2. The temporary operational containment is constructed of materials which are compatible with products handled and a written copy of the manufacturer's installation directions, compatibility statement, and expected life expectancy is maintained at the storage facility; and

3. All requirements specified in subsection (2) of this section are met.

(d) An elephant ring shall be utilized to meet the requirements of this section if a minimum capacity of twenty-five (25) U.S. gallons is provided for the use of recovering spillage and leakage from the transfer connections and pumps associated with the unloading of trucks, barges or rail cars into a storage facility.

(e) A combination of an elephant ring and concentric piping may be utilized to meet the requirements of this section if a minimum capacity of twenty-five (25) U.S. gallons is provided for the use of recovering spillage and leakage from the transfer connections and pumps associated with the loading or unloading of rail cars or barges.

Section 8. Containment of Dry Bulk Pesticides. (1) All nonmobile storage containers for dry bulk pesticides shall be located within secondary containment.

(2) Dry bulk pesticide storage shall be segregated from other containment areas and be segregated by a six (6) inch curb of an area that extends at least two (2) feet beyond the perimeter of the walls of the storage container.

Section 9. Dry Bulk Fertilizer Storage and Handling. (1) Dry bulk fertilizer materials shall be stored and handled using best management practices.

(2) Dry bulk fertilizers shall be stored inside a structure or device having a cover or rooftop, sidewalls and base sufficient to prevent contact with precipitation and surface waters.

(3) All loading, unloading, mixing or handling of dry bulk fertilizer, unless performed in the field of application, shall be conducted in a manner to provide for the total collection and reuse of any spilled fertilizer.

Section 10. Containment Management. (1) Pesticides, fertilizer, pesticide or fertilizer residues, or rinsates recovered from secondary or operational containment shall be field applied at agronomic rates, used in a liquid mixing operation, or otherwise recycled or disposed of in accordance with these regulations. Any pesticide residues or rinsates that are to be land applied shall be handled in accordance with the product's labels. Rinsates may be used to make up the total spray mixture if the mixture does not exceed the pesticide label application rates.

(2) Best management practices shall be used to keep rinsate, and other recovered material segregated by compatible uses.

(3) Uncontaminated precipitation collected shall be discharged from containment areas. Contaminated precipitation shall be field applied pursuant to subsection (1) of this section.

(4) Recovered or rinsate material collected in a containment system is not a hazardous waste unless it is determined that the rinsate or other recovered material can not be applied to a labeled target area.

Section 11. Field Mixing and Transferring. (1) Field mixing, or transferring, of pesticides or fertilizers or the rinsing of pesticide containers shall be performed at the field site or within operational area containment.

(2) No mixing or transferring of pesticides or fertilizer or rinsing of pesticide or fertilizer equipment shall be conducted on public highways, roads, and streets.

Section 12. Distribution. (1) Sale by weight or meter shall be the approved method of resale for pesticides and fertilizer. Either method shall meet the specifications, tolerances and other technical requirements for weighing and measuring devices as determined by the Kentucky Department of Agriculture.

(2) A separate meter shall be required for each product distributed for sale if the product is sold through a meter.

BILLY RAY SMITH, Commissioner

MARK FARROW, General Counsel

APPROVED BY AGENCY: March 9, 1998

FILED WITH LRC: March 9, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Wednesday, April 22, 1998 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, April 15, 1998, five (5) days prior to the hearing, of this 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 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: Mark Farrow, General Counsel/Chief of Staff, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696, Fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS

Contact Person: John McCauley, Director

(1) Type and number of entities affected: All commercial storage facilities engaged in the storage and handling of liquid bulk pesticides and bulk pesticides.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There is a compliance schedule set forth in Section 3. All facilities have to come into compliance within five (5) years.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be cost involved for the facilities who store bulk fertilizer.

2. Continuing costs or savings: There will be additional cost for the five (5) year period.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

1. All commercial facilities are required to have a written contingency/response plan in effect to be followed in case of an emergency. Contingency/response plans required by other regulatory

programs may be substituted.

2. All commercial facilities shall register with the Kentucky Department of Agriculture, Division of Pesticides, defining the scope of the existing operations and facilities, on a form provided by the Department.

(4) Assessment of anticipated effect on state and local revenues: Current perennial will be used to insure compliance.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing personnel will be used for enforcement.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: It is difficult to determine the economic impact and who will be effected.

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation has been discussed extensively for several years. This is the most reasonable regulation possible.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: A spill of these bulk fertilizers or pesticides could potentially be a hazard to the environment and other health. This regulation will help to prevent a hazardous spill.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Same

(c) If detrimental effect would result, explain detrimental effect: None

(9) 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: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All commercial storage facilities engaged in the storage and handling of liquid bulk pesticides and bulk fertilizers will be treated the same.

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance
(New Administrative Regulation)

806 KAR 6:100. Actuarial opinion and memorandum.

RELATES TO: KRS 304.3-240, 304.6-070, 304.6-150, 304.6-155, 304.6-171, 304.6-180

STATUTORY AUTHORITY: KRS 304.2-110, 304.6-171

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.6-171 requires every life insurance company doing business in this state to annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner are computed appropriately. KRS 304.6-171 requires the commissioner to define, by administrative regulation, the specifics of the actuarial opinion and to broaden the scope of the opinion if necessary. This administrative regulation is necessary for the commissioner to determine whether reserves and related actuarial items are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with the applicable laws of this state.

Section 1. Definitions. (1) "Actuarial opinion" means the opinion of an appointed actuary regarding the calculation and adequacy of reserves and related actuarial items prepared in accordance with

presently accepted actuarial standards and this administrative regulation which may require an asset adequacy test pursuant to Section 5 of this administrative regulation.

(2) "Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

(3) "Annual statement" means that statement required by KRS 304.3-240.

(4) "Appointed actuary" means a qualified actuary who is appointed or retained to prepare and provide the statement of actuarial opinion and supporting memorandum required by this administrative regulation; either directly or by the authority of the board of directors through an executive officer of the company.

(5) "Asset adequacy analysis" means an analysis that conforms to presently accepted actuarial standards and methods of analysis as promulgated by the Actuarial Standards Board and this administrative regulation and which forms the basis of the statement of actuarial opinion in accordance with Section 6 of this administrative regulation.

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

(7) "Company" means a life insurance company; fraternal benefit society doing business in this state; or a life insurance company and fraternal benefit society which is authorized to reinsure life insurance, annuities, or accident and health insurance business.

(8) "Noninvestment grade bond" means a bond that is designated as a class 3, 4, 5, or 6 by the National Association of Insurance Commissioners Securities Valuation Office.

(9) "Qualified actuary" means any individual who is qualified to sign a statement of actuarial opinion for a life and health insurance company annual statement and who meets the qualifications of Section 2 of this administrative regulation.

(10) "Specified reserve" means assets held in support of reserves which are the subject for specific analysis pursuant to Section 8(3) of this administrative regulation.

Section 2. Actuarial Qualifications. In order to be considered a qualified expert for the purposes of this administrative regulation, a person shall:

(1) Be a member in good standing of the American Academy of Actuaries;

(2) Be qualified to sign a statement of actuarial opinion for a life and health insurance company annual statement in accordance with the qualification standards for actuaries established by the American Academy of Actuaries for actuaries signing such statements;

(3) Be familiar with the valuation requirements applicable to life and health insurance companies;

(4) Not been found by the commissioner, or if so found has subsequently been reinstated as a qualified actuary, following appropriate notice and hearing to have:

(a) Violated any provision of, or any obligation imposed by, any law in the course of his or her dealings as a qualified actuary;

(b) Been found guilty of fraudulent or dishonest practices;

(c) Demonstrated incompetence, lack of cooperation, or untrustworthiness to act as a qualified actuary;

(d) Submitted to the commissioner during the past five (5) years, pursuant to this administrative regulation, an actuarial opinion or memorandum that the commissioner rejected because it did not comply with this administrative regulation or standards established by the Actuarial Standards Board; or

(e) Resigned or been removed as an actuary within the past five (5) years as a result of an act or omission indicated in any adverse report on examination or as a result of the failure to adhere to generally acceptable actuarial standards; and

(5) Not have failed to notify the commissioner of any action taken by any commissioner of any other state which action was based on a disqualification standard outlined in subsection (4) of this section.

Section 3. General Requirements. (1) The actuarial opinion shall:

(a) Be included on or attached to Page 1 of the annual statement for each year beginning with the year in which this administrative regulation becomes effective;

(b) Be entitled "Statement of Actuarial Opinion"; and

(c) Be the statement of an appointed actuary setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts;

(2) The commissioner may accept the statement of actuarial opinion filed by a foreign or alien company with the insurance supervisory regulator of another state if the commissioner determines that the opinion meets the requirements applicable to a company domiciled in this state.

(3) The commissioner may grant an extension of the date for submission of the statement of actuarial opinion upon written request by the company.

(4) The company shall give the commissioner timely written notice:

(a) In the event of the appointment or retention of an appointed actuary which notice shall state:

1. The name of the appointed actuary;

2. The title of the appointed actuary;

3. If the actuary is a consulting actuary, the name of the firm;

4. The manner of appointment or retention by the company of each appointed actuary; and

5. That the person appointed or retained by the company meets the requirements of a qualified actuary pursuant to Section 2 of this administrative regulation.

(b) In the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements of a qualified actuary; and

(c) In the event that any person appointed or retained as an appointed actuary replaces a previously appointed actuary, which notice shall state the reason for replacement.

(5) The actuarial opinion shall set forth an opinion relating to reserves and related actuarial items held in support of policies and contracts and be based on an asset adequacy analysis in accordance with Section 6 of this administrative regulation.

(6) Any company exempted pursuant to Section 4 of this administrative regulation from submitting a statement of actuarial opinion based on an asset adequacy analysis shall include on or attach to page 1 of the annual statement a statement of actuarial opinion rendered by an appointed actuary that does not include an asset adequacy analysis in accordance with Section 5 of this administrative regulation.

(7) If in the previous year a company provided a statement of actuarial opinion in accordance with Section 5 of this administrative regulation that does not include an asset adequacy analysis, and in the current year fails the exemption criteria of Section 4 of this administrative regulation to again provide an actuarial opinion that does not include an asset adequacy analysis, the statement of actuarial opinion in accordance with Section 6 of this administrative regulation which is based on an asset adequacy analysis shall not be required until August 1 following the date of the annual statement. In this instance, the company shall provide a statement of actuarial opinion in accordance with Section 5 of this administrative regulation noting the intent to subsequently provide a statement of actuarial opinion in accordance with Section 6 of this administrative regulation.

Section 4. Required Actuarial Opinion. (1) Every company doing business in this state shall annually submit the opinion of an appointed actuary as provided for by this administrative regulation.

(2) For the purposes of this administrative regulation, companies shall be classified as follows based on the admitted assets as of the end of the calendar year for which the actuarial opinion is applicable:

(a) Category A shall include a company whose admitted assets do not exceed \$20 million;

(b) Category B shall include a company whose admitted assets

exceed \$20 million but do not exceed \$100 million;

(c) Category C shall include a company whose admitted assets exceed \$100 million but do not exceed \$500 million; and

(d) Category D shall include a company whose admitted assets exceed \$500 million.

(3) Any Category A company that, for any year beginning with the year in which this administrative regulation becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion based on an asset adequacy analysis in accordance with Section 6 of this administrative regulation for the year in which these criteria are met. Each ratio in paragraphs (a), (b), and (c) of this subsection shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to one-tenth (.10);

(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than three-tenths (.30);

(c) The ratio of the book value of the noninvestment grade bonds to the sum of capital and surplus is less than five-tenths (.50); and

(d) With respect to priority status:

1. The Examiner Team for the National Association of Insurance Commissioners has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable;

2. The Examiner Team for the National Association of Insurance Commissioners has not designated the company as a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable; or

3. The company has resolved any first or second priority status established by the Examiner Team for the National Association of Insurance Commissioners to the satisfaction of the commissioner of the state of domicile and the commissioner has so notified the Chair of the Life and Health Actuarial Task Force and the Staff and Support Office of the National Association of Insurance Commissioners.

(4) Any Category B company that, for any year beginning with the year in which this administrative regulation becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion based on an asset adequacy analysis in accordance with Section 6 of this administrative regulation for the year in which the criteria are met. Each ratio in paragraphs (a), (b), and (c) of this subsection shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .07;

(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than four-tenths (.40);

(c) The ratio of the book value of the noninvestment grade bonds to the sum of capital and surplus is less than five-tenths (.50); and

(d) With respect to priority status:

1. The Examiner Team for the National Association of Insurance Commissioners has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable;

2. The Examiner Team for the National Association of Insurance Commissioners has not designated the company as a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable; or

3. The company has resolved any first or second priority status established by the Examiner Team for the National Association of Insurance Commissioners to the satisfaction of the commissioner of the state of domicile and the commissioner has so notified the Chair of the Life and Health Actuarial Task Force and the Staff and Support Office of the National Association of Insurance Commissioners.

(5) Any Category A or Category B company that meets all of the

criteria set forth in subsections (3) or (4) of this section is exempted from submission of a statement of actuarial opinion in accordance with Section 6 of this administrative regulation unless the commissioner specifically indicates to the company that the exemption is not to be taken.

(6) Any Category A or Category B company that, for any year beginning with the year in which this administrative regulation becomes effective, is not exempted under subsections (3) or (4) of this section shall be required to submit a statement of actuarial opinion in accordance with Section 6 of this administrative regulation for the year for which it is not exempt.

(7) Any Category C company that, after submitting an opinion in accordance with Section 6 of this administrative regulation, meets all of the following criteria shall not be required, unless required in accordance with subsection (8) of this section, to submit a statement of actuarial opinion in accordance with Section 6 of this administrative regulation more frequently than every third year. Any Category C company which fails to meet all of the following criteria for any year shall submit a statement of actuarial opinion in accordance with Section 6 of this administrative regulation for that year. The ratios in paragraphs (a), (b), and (c) of this subsection shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .05;

(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than five-tenths (.50);

(c) The ratio of the book value of the noninvestment grade bonds to the sum of the capital and surplus is less than five-tenths (.50); and

(d) With respect to priority status:

1. The Examiner Team for the National Association of Insurance Commissioners has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable;

2. The Examiner Team for the National Association of Insurance Commissioners has not designated the company as a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable; or

3. The company has resolved the first or second priority status established by the Examiner Team for the National Association of Insurance Commissioners to the satisfaction of the commissioner of the state of domicile and the commissioner has so notified the Chair of the Life and Health Actuarial Task Force and the Staff and Support Office of the National Association of Insurance Commissioners.

(8) Every Category D company shall submit a statement of actuarial opinion in accordance with Section 6 of this administrative regulation for each year beginning with the year in which this administrative regulation becomes effective.

(9) Every company exempted by this section from filing an actuarial opinion in accordance with Section 6 of this administrative regulation must file a statement of actuarial opinion in accordance with Section 5 of this administrative regulation except that the commissioner may require any company otherwise exempt to submit a statement of actuarial opinion and to prepare a memorandum in support thereof in accordance with Sections 6 and 7 of this administrative regulation if, in the opinion of the commissioner, an asset adequacy analysis is necessary with respect to the company.

Section 5. Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis. (1) The statement of actuarial opinion required by this section shall contain an opening paragraph which shall:

- (a) Identify the name and title of the appointed actuary;
- (b) Identify the name of the consulting firm, if applicable;
- (c) Identify the name of the company;
- (d) Identify the qualifications of the appointed actuary;
- (e) Identify the manner in which the actuary was appointed or retained to render the actuarial opinion; and

(f) Include language identical or substantially similar to the following:

1. For a company actuary: "I, (name of actuary), am (title) of (name of company) and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."; or

2. For a consulting actuary: "I, (name and title of actuary), a member of the American Academy of Actuaries, am associated with the firm of (insert name of consulting firm). I have been appointed by, or by the authority of, the Board of Directors of (name of company) to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

(2) The statement of actuarial opinion required by this section shall contain a regulatory authority paragraph which shall:

(a) State that the company is exempt pursuant to this administrative regulation from submitting a statement of actuarial opinion based on an asset adequacy analysis;

(b) State that the opinion, which is not based on an asset adequacy analysis, is rendered in accordance with Section 5 of this administrative regulation; and

(c) Include language identical or substantially similar to the following: "Said company is exempt pursuant to administrative regulation (insert designation) of the Kentucky Department of Insurance from submitting a statement of actuarial opinion based on an asset adequacy analysis. This opinion, which is not based on an asset adequacy analysis, is rendered in accordance with Section 5 of the administrative regulation."

(3) The statement of actuarial opinion required by this section shall contain a scope paragraph which shall:

(a) Identify subjects on which the opinion is to be expressed;

(b) Describe the scope of the work of the appointed actuary;

(c) List each item and amount with respect to which the appointed actuary is expressing an opinion including:

1. The aggregate reserve and deposit funds for policies and contracts included in Exhibit 8 of the annual statement;

2. The aggregate reserve and deposit funds for policies and contracts included in Exhibit 9 of the annual statement;

3. Deposit funds, premiums, dividend and coupon accumulations, and supplementary contracts not involving life contingencies included in Exhibit 10 of the annual statement; and

4. Policy and contract claims - liability end of current year included in Exhibit 11, Part I of the annual statement.

(d) Include language identical or substantially similar to the following: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, (year).";

(e) If the appointed actuary has examined the underlying records, include language identical or substantially similar to the following: "My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic records and such tests of the actuarial calculations as I considered necessary."; and

(f) If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force prepared by the company or a third party, include language identical or substantially similar to the following:

1. "I have relied upon listings and summaries of policies and contracts and other liabilities in force prepared by (name and title of company officer certifying in force records) as certified in the attached statement. (See accompanying affidavit by a company officer.) In

other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."; or

2. "I have relied upon (name of accounting firm) for the substantial accuracy of the in force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

(4) The statement of actuarial opinion required by this section shall contain an opinion paragraph which shall:

(a) Express the opinion of the appointed actuary;

(b) State that the amounts carried in the balance sheet on account of the actuarial items identified in subsection (3)(c) of this section:

1. Are computed in accordance with those presently accepted actuarial standards which specifically relate to the opinion required under this section;

2. Are based on actuarial assumptions which produce reserves at least as great as those required by any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

3. Meet the requirements of the insurance law and administrative regulations of the state of domicile and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

4. Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end with any exceptions as noted; and

5. Include provision for all actuarial reserves and related statement items which ought to be established; and

(c) Include language identical or substantially similar to the following: "The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Compliance Guidelines as promulgated by the Actuarial Standards Board, which guidelines form the basis of this statement of opinion."

(5) The statement of actuarial opinion required by this section shall contain a concluding paragraph which shall:

(a) State that the opinion is being provided in accordance with Section 5 of this administrative regulation and does not include an opinion regarding the adequacy of reserves and related actuarial items when considered in light of the assets which support them;

(b) Confirm and document the eligibility for the company to provide an opinion as provided by this section by stating that:

1. The ratio of the sum of capital and surplus to the sum of cash and invested assets is (insert specific amount), which is equal to or in excess of the applicable criterion based on the admitted assets of the company;

2. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is (insert amount), which is less than the applicable criteria based on the admitted assets of the company;

3. The ratio of the book value of the noninvestment grade bonds to the sum of capital and surplus is (insert amount), which is less than the applicable criteria of five-tenths (.50);

4. To the best of the knowledge of the appointed actuary, with respect to priority status:

a. The Examiner Team of the National Association of Insurance Commissioners has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable;

b. The Examiner Team of the National Association of Insurance Commissioners has not designated the company as a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable; or

c. The company has resolved the first or second priority status

established by the Examiner Team of the National Association of Insurance Commissioners to the satisfaction of the commissioner of the state of domicile; and

5. To the best of the knowledge of the appointed actuary, there is not a specific request from any commissioner requiring an asset adequacy analysis opinion; and

(c) Contain the signature, address, and telephone number of the appointed actuary.

(6) The statement of actuarial opinion shall describe any change in actuarial assumptions from that previously employed by supplementing the language required by subsection (4)(b)4 of this section with the following language: "...with the exception of the change described on page () of the annual statement (or in the preceding paragraph)." A change in actuarial assumptions shall not include the adoption for a new issue, a new claim, or other new liability of an actuarial assumption which differs from a corresponding assumption used for a prior new issue, new claim, or other new liability.

(7) If the appointed actuary is unable to form an opinion, the actuary shall refuse to issue a statement of actuarial opinion.

(8) If the opinion of the appointed actuary is adverse or qualified, the actuary shall issue an adverse or qualified actuarial opinion explicitly stating the reason for such opinion. This statement shall follow the scope paragraph and precede the opinion paragraph.

(9) If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force, there shall be attached to the opinion, the statement of a company officer or accounting firm who prepared such underlying data which shall:

(a) Include language identical or substantially similar to the following: "I (name of officer), (title) of (name and address of company or accounting firm), hereby affirm that the listings and summaries of policies and contracts in force as of December 31, (year), prepared for and submitted to (name of appointed actuary), were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete"; and

(b) Include the signature, address, and telephone number of the officer of the company or accounting firm.

Section 6. Statement of Actuarial Opinion Based on an Asset Adequacy Analysis. (1) The statement of actuarial opinion required by this section shall contain an opening paragraph which shall:

(a) Identify the name and title of the appointed actuary;

(b) Identify the name of the consulting firm, if applicable;

(c) Identify the name of the company;

(d) Identify the qualifications of the appointed actuary;

(e) Identify the manner in which the actuary was appointed or retained to render the actuarial opinion; and

(f) Include language identical or substantially similar to the following:

1. For a company actuary: "I, (name of actuary), am (title) of (name of company) and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies.; or

2. For a consulting actuary: "I, (name and title of actuary), a member of the American Academy of Actuaries, am associated with the firm of (insert name of consulting firm). I have been appointed by, or by the authority of, the Board of Directors of (name of company) to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

(2) The statement of actuarial opinion required by this section shall contain a scope paragraph which shall:

(a) Identify the subjects on which an opinion is to be expressed;
 (b) Describe the scope of the work of the appointed actuary;
 (c) Include a tabulation delineating the reserves and related actuarial items which have been analyzed for asset adequacy and the method of analysis;

(d) Identify the reserves and related actuarial items covered by the opinion which have not been so analyzed; and

(e) Include language identical or substantially similar to the following: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, (year). Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis."

(3) The statement of actuarial opinion required by this section shall contain a reliance paragraph which shall:

(a) Describe each area where the appointed actuary has deferred to another expert in developing data, procedures, or assumptions;

(b) Include a supporting statement from each expert to whom the appointed actuary has deferred in the form prescribed by subsection (8) of this section;

(c) If the appointed actuary has relied on other experts to develop certain portions of the analysis, include a statement identical or substantially similar to the following and contain a statement in the form prescribed by subsection (8) of this section:

1. "I have relied on (name), (title) for (e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios) and, as certified in the attached statement, . . ."; or

2. "I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement."

(d) If the appointed actuary has examined the underlying asset and liability records, include a statement identical or substantially similar to the following: "My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary."; and

(e) If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force or asset records prepared by the company or a third party, include a statement identical or substantially similar to the following and be accompanied by the form prescribed by subsection (8) of this section:

1. "I have relied upon listings and summaries (of policies and contracts, of asset records) prepared by (name and title of company officer certifying in-force records) as certified in the attached statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."; or

2. "I have relied upon (name of accounting firm) for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary."

(4) The statement of actuarial opinion required by this section shall contain an opinion paragraph which shall:

(a) Express the opinion of the appointed actuary with respect to the adequacy of the supporting assets to mature the liabilities;

(b) State that reserves and related actuarial values concerning the identified statement items:

1. Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

2. Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to

reserve basis and method, and are in accordance with all other contract provisions;

3. Meet the requirements of the insurance laws and regulations of the state of domicile and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

4. Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end with any exception noted; and

5. Include provision for all actuarial reserves and related statement items which ought to be established.

(c) Express an opinion as to the adequate provision for the anticipated cash flow by including language identical or substantially similar to the following: "The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.";

(d) State that the actuarial methods, considerations and analyses used in forming the actuarial opinion conforms to the appropriate standards of practice as promulgated by the Actuarial Standards Board, which standards form the basis of the statement of opinion;

(e) State whether or not there has been a material change from the applicable date of the annual statement to the date of the rendering of the actuarial opinion which should be considered in reviewing the opinion and include language identical or substantially similar to the following:

1. "This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion"; or

2. "The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (describe the change or changes)";

(f) Include a statement regarding unanticipated events which is identical or substantially similar to the following: "The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis"; and

(g) Contain the signature, address, and telephone number of the appointed actuary.

(5) A change in actuarial assumptions shall not include the adoption for a new issue, a new claim, or other new liability of an actuarial assumption which differs from a corresponding assumption used for a prior new issue, new claim, or other new liability.

(6) If the appointed actuary is unable to form an opinion, he shall refuse to issue a statement of actuarial opinion.

(7) If the opinion of the appointed actuary is adverse or qualified, the actuary shall issue an adverse or qualified actuarial opinion explicitly stating the reason for such an opinion. This statement shall follow the scope paragraph and precede the opinion paragraph.

(8) If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force or asset oriented information, there shall be attached to the opinion, the statement of a company officer or accounting firm who prepared such underlying data which shall:

(a) Include language identical or substantially similar to the following:

1. "I (name of officer), (title), of (name of company or accounting firm), hereby affirm that the listings and summaries of policies and

contracts in force as of December 31, (year), and other liabilities prepared for and submitted to (name of appointed actuary) were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete."; or

2. "I, (name of officer), (title) of (name of company, accounting firm, or security analyst), hereby affirm that the listings, summaries and analyses relating to data prepared for and submitted to (name of appointed actuary) in support of the asset-oriented aspects of the opinion were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete."; and

(b) Include the signature, address, and telephone number of the officer of the company, accounting firm, or security analyst, whichever is applicable.

(9) A company shall include additional paragraphs:

(a) If the appointed actuary considers it necessary to state a qualification of the opinion of the actuary;

(b) If the appointed actuary must disclose the method of aggregation for reserves different products or lines of business for asset adequacy analysis;

(c) If the appointed actuary must disclose reliance upon any portion of the assets supporting the asset valuation reserve (AVR), interest maintenance reserve (IMR), or other mandatory or voluntary statement of reserves for asset adequacy analysis;

(d) If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion;

(e) If the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release; or

(f) If the appointed actuary chooses to briefly describe the assumptions which form the basis for the actuarial opinion.

Section 7. Description of Actuarial Memorandum Including an Asset Adequacy Analysis. (1) In accordance with KRS 304.6-171, the appointed actuary shall prepare a memorandum to the company which shall describe the actuarial analysis accomplished in support of the actuarial opinion which is based on an asset adequacy analysis pursuant to Section 6 of this administrative regulation.

(2) The memorandum shall:

(a) Be made available to the commissioner, upon request, for examination;

(b) Be returned to the company after an examination by the commissioner; and

(c) Not be considered a record of the insurance department or subject to automatic filing with the commissioner.

(3) The commissioner may designate a qualified actuary to review the actuarial opinion and prepare a supporting memorandum, which reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the commissioner, if:

(a) The commissioner requests a memorandum and no such memorandum exists;

(b) The commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board; or

(c) The commissioner finds that the analysis described in the memorandum fails to meet the standards of this administrative regulation.

(4) In preparing the memorandum, the appointed actuary may rely on, and include as a part of the actuarial memorandum, memoranda prepared and signed by another actuary who is qualified in accordance with Section 2 of this administrative regulation with respect to the subjects covered in the memorandum.

(5) If the appointed actuary relies on the memoranda of another qualified actuary pursuant to subsection (4) of this section, the appointed actuary shall state the subject matter upon which another expert opinion was relied.

(6) The reviewing actuary shall have the same status as an examiner for the purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the commissioner.

(7) Any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the commissioner and shall be kept confidential to the same extent as other material provided by the company to the commissioner pursuant to KRS 304.6-171.

(8) The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this administrative regulation for any one of the current year or the preceding three (3) years.

(9) When an actuarial opinion based on an asset adequacy analysis in accordance with Section 6 of this administrative regulation is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in this administrative regulation.

(10) The actuarial memorandum referred to in this section shall specify:

(a) For reserves:

1. Product descriptions including a market description, underwriting and any other aspect of a risk profile and the specific risks the appointed actuary deems significant;

2. Source of liability in force;

3. Reserve method and basis;

4. Investment reserves; and

5. Reinsurance arrangements.

(b) For assets:

1. Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;

2. Investment and disinvestment assumptions;

3. Source of asset data; and

4. Asset valuation bases.

(c) Analysis basis:

1. Methodology;

2. Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;

3. Rationale for degree of rigor in analyzing different blocks of business;

4. Criteria for determining asset adequacy; and

5. Effect of federal income tax, reinsurance, and any other relevant factor.

(d) Summary of results; and

(e) Conclusion.

(11) The memorandum shall include a statement which indicates that the memorandum conforms to the appropriate standards of practice and which shall include language identical or substantially similar to the following: "Actuarial methods, considerations, and analyses used in the preparation of this memorandum conform to the appropriate standards of practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

Section 8. Additional Considerations for Analysis. (1) For the asset adequacy analysis for the statement of actuarial opinion provided in accordance with Section 6 of this administrative regulation, reserves and assets may be aggregated by either of the following methods:

(a) Aggregate the reserves and related actuarial items, and the supporting assets, for different products or lines of business, before analyzing the adequacy of the combined assets to mature the combined liabilities. The appointed actuary must be satisfied that the assets held in support of the reserves and related actuarial items so aggregated are managed in such a manner that the cash flow from the aggregated assets are available to help mature the liabilities from the blocks of business that have been aggregated; or

(b) Aggregate the results of asset adequacy analysis of one or more products or lines of business, the reserves for which prove through analysis to be redundant, with the results of one or more products or lines of business, the reserves for which prove through analysis to be deficient. The appointed actuary shall determine that the asset adequacy results for the various products or lines of business for which the results are so aggregated:

1. Are developed using a consistent economic scenario; or
2. Are subject to mutually independent risks, i.e., the likelihood of events impacting the adequacy of the assets supporting the redundant reserves is completely unrelated to the likelihood of events impacting the adequacy of the assets supporting the deficient reserves.

(2) In the event of any aggregation, the actuary shall disclose that such reserves were aggregated on the basis of either of the methods outlined in subsection (1)(a) or (b) of this section, and describe the aggregation in the supporting memorandum.

(3) The appointed actuary shall analyze only those assets held in support of the reserves which are the subject for specific analysis. A particular asset or portion of asset which supports a group of specified reserves cannot support any other group of specified reserves. An asset may be allocated over several groups of specified reserves. The annual statement value of the assets held in support of the reserves shall not exceed the annual statement value of the specified reserves, except as specified in subsection (4) of this section. If the method of asset allocation is not consistent from year to year, the extent of inconsistency shall be described in the supporting memorandum.

(4) An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the asset valuation reserve (AVR). AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets used for the AVR shall be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum. The Table of Reserves and Liabilities is provided in Appendix A of this administrative regulation.

(5) For the purpose of performing the asset adequacy analysis required by this administrative regulation:

(a) The qualified actuary shall follow standards adopted by the Actuarial Standards Board; and

(b) The appointed actuary shall consider in the analysis the effect of at least the following interest rate scenarios:

1. Level with no deviation;
2. Uniformly increasing over ten (10) years at one-half (1/2) percent per year and then level;
3. Uniformly increasing at one (1) percent per year over five (5) years and then uniformly decreasing at one (1) percent per year to the original level at the end of ten (10) years and then level;

4. An immediate increase of three (3) percent and then level;
5. Uniformly decreasing over ten (10) years at one-half (1/2) percent per year and then level;

6. Uniformly decreasing at one (1) percent per year over five (5) years and then uniformly increasing at one (1) percent per year to the original level at the end of ten (10) years and then level; and

7. An immediate decrease of three (3) percent and then level.

(6) For the interest rate scenarios outlined in subsection (5) of this section and any other interest rate scenario, projected interest rates for a five (5) year Treasury Note need not be reduced beyond the point where the five (5) year Treasury Note yield would be at fifty (50) percent of its initial level.

(7) The beginning interest rates may be based on the following:

(a) The interest rates for new investments as of the valuation date similar to recent investments allocated to support the product being tested; or

(b) On an outside index, such as Treasury yields, for assets of the appropriate length on a date close to the valuation date.

(8) The method used to determine the beginning yield curve and associated interest rates described in subsection (7) of this section shall be specifically defined. The beginning yield curve and associated interest rates shall be consistent for each interest rate scenario.

(9) The appointed actuary shall retain on file, for at least seven (7) years, sufficient documentation to determine:

- (a) The procedures followed;
- (b) The analyses performed;
- (c) The bases for assumptions; and
- (d) The results obtained.

Section 9. Liabilities to be Covered. (1) The statement of actuarial opinion shall apply to all in force business on the statement date regardless of when or where issued, including, but not limited to, the following:

- (a) Reserves of Exhibits 8, 9, and 10 of the annual statement;
- (b) Claim liabilities of Exhibit 11, Part I of the annual statement; and

(c) Any equivalent item in a separate account statement.

(2) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with KRS 304.6-070, 304.6-150, 304.6-155, 304.6-171, and 304.6-180, the company shall establish the additional reserve.

(3) For years ending prior to December 31, 1998, the company may, in lieu of establishing the full amount of the additional reserve in the annual statement for that year, set up an additional reserve in an amount not less than the following:

(a) For December 31, 1997, the additional reserve divided by three (3);

(b) For December 31, 1998, two (2) times the additional reserve divided by three (3).

(4) Additional reserves established pursuant to subsection (2) or (3) of this section and deemed not necessary in subsequent years may be released. Any amounts released shall be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation.

(See Appendix A on following page)

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APPENDIX A TABLE OF RESERVES AND LIABILITIES

Asset Adequacy Tested Amounts		Reserves and Liabilities			
Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	Total Amount (1)+(2)+(3) (4)
Exhibit 8					
A Life Insurance					
B Annuities					
C Supplementary Contracts Involving Life Contingencies					
D Accidental Death Benefit					
E Disability - Active					
F Disability - Disabled					
G Miscellaneous					
Total (Exhibit 8, Item 1, Page 3)					
Exhibit 9					
A Active Life Reserve					
B Claim Reserve					
Total (Exhibit 9, Item 2, Page 3)					
Exhibit 10					
1 Premiums and Other Deposit Funds					
1.1 Policyholder Premiums (Page 3, Line 10.1)					
1.2 Guaranteed Interest Contracts (Page 3, Line 10.2)					
1.3 Other Contract Deposit Funds (Page 3, Line 10.3)					
2 Supplementary Contracts Not Involving Life Contingencies (Page 3, Line 3)					
3 Dividend and Coupon Accumulations (Page 3, Line 5)					
Total Exhibit 10					
Exhibit 11, Part 1					
1 Life (Page 3, Line 4.1)					
2 Health (Page 3, Line 4.2)					
Total Exhibit 11, Part 1					
Separate Accounts (Page 3, Line 27)					
TOTAL RESERVES					

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IMR (Page ___, Line ___)	
AVR (Page ___, Line ___)	(c)

Table Notes:

(a) The additional actuarial reserves are the reserves established under Section 9(2) or (3) of this administrative regulation.

(b) The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis of this administrative regulation by means of symbols which should be defined in footnotes to the table.

(c) Allocated amount.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

SUETTA W. DICKINSON, General Counsel

APPROVED BY AGENCY: February 13, 1998

FILED WITH LRC: February 17, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, April 21, 1998, at 10 a.m. (ET) at the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, April 14, 1998, 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 canceled. 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.

CONTACT PERSON: Sharron Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number: (502) 564-6032, Ext. 249, Fax Number: (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation will apply to all life insurance companies, fraternal benefit societies, and to life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance, annuities, or accident and health insurance business in the state of Kentucky. There are approximately 607 life insurance companies, 20 fraternal benefit societies, and 35 reinsurers to which this administrative regulation will apply.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There have been no public comments received regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There have been no public comments received regarding this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Each entity to which this

administrative regulation applies will be required to draft and submit to the department an actuarial opinion and, if applicable, an actuarial memorandum.

2. Second and subsequent years: Each entity to which this administrative regulation applies will be required to draft and submit to the department an actuarial opinion and, if applicable, an actuarial memorandum for the second and subsequent years following the effective date of this administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department will receive and evaluate all actuarial opinions and memorandums submitted by the entities to which this administrative regulation applies. The opinions and memorandums will be based on actuarial standards and will contain an actuarial analysis of the companies' reserves and liabilities. Therefore, the review and evaluation of the actuarial opinion and memorandum by the department will require the expertise of a qualified actuary.

2. Continuing costs and savings: A departmental review of the actuarial opinions and memorandums submitted by the companies will require the expertise of a qualified actuary on a yearly basis.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Each entity to which this administrative regulation applies will be required to draft and submit to the department an actuarial opinion and, if applicable, an actuarial memorandum which is based on generally accepted actuarial standards and which includes the information specified by this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: There have been no public comments received regarding this issue.

(b) Kentucky: There have been no public comments received regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: In order to maintain its accreditation status, the Department of Insurance is required by the National Association of Insurance Commissioners to promulgate this administrative regulation. Accreditation assures that all financial examinations and statistics have been produced using uniform procedures and standards. Accreditation status also assures that the financial examinations and statistics produced in the state of Kentucky are reliable and conform with the baseline guidelines established by the National Association of Insurance Commissioners. Absent this administrative regulation, the department's accreditation status is in jeopardy. The department promulgated an emergency regulation which incorporated certain portions of the model regulation by reference. Comments received from the public indicated that the industry preferred that the incorporated material be included within the body of the regulation. The department agreed to eliminate the incorporated material and place the information in the body of the administrative regulation. Therefore,

the ordinary regulation does not contain any material incorporated by reference as does its emergency counterpart.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No, tiering is not applied since this administrative regulation applies to all life insurance companies, fraternal benefit societies, and to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance, annuities, or accident and health insurance business in the state of Kentucky.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(New Administrative Regulation)

806 KAR 17:110. Establishment of the Kentucky Risk Assessment and Risk Adjustment System.

RELATES TO: KRS 304.17A-130

STATUTORY AUTHORITY: KRS 304.17A-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.17A-130 requires the Department of Insurance to promulgate administrative regulations for the establishment of a risk adjustment process to be used in equalizing risk between insurers which participate within and outside of the Kentucky Health Purchasing Alliance.

Section 1. Definitions. (1) "Age" means a policyholder's attained age for the purpose of attributing age to a family unit.

(2) "Department" shall be governed by KRS 304.1-050(2).

(3) "Continuation coverage" means continuation coverage provided by the Consolidated Omnibus Budget Reconciliation Act of 1987 or provided through the Kentucky Health Purchasing Alliance.

(4) "Demographic Risk Adjustment Fund" means the risk adjustment fund established under Section 7 of this administrative regulation, including any amount owed to the fund by an insurer plus any interest accrued on the amount paid by the insurer prior to the pay-out of any amount due from the fund in accordance with Section 7 of this administrative regulation.

(5) "Diagnosis" means any diagnosis listed in the high cost case in Table 2 and Table 2A of this administrative regulation.

(6) "Eligible insurer" means an insurer eligible for a payment from the High Cost Case Fund as defined in Section 12 of this administrative regulation.

(7) "Family composition category" means one (1) of the four (4) categories of family types (single, couple, single parent family and dual parent families) distinguished in the modified community rating structure established pursuant to KRS 304.17A-120.

(8) "Health benefit plan" shall be governed by KRS 304.17A-100(4).

(9) "High Cost Case Fund" means the risk adjustment fund referred to under Section 10 of this administrative regulation, including the contributions required under Section 12 of this administrative regulation plus any accrued interest.

(10) "Insurer" shall be governed by KRS 304.17A-100(5) but, for the purpose of this administrative regulation, shall be limited to an insurer which issues or renews a health benefit plan for the following:

(a) An employer with fifty (50) or less employees;

(b) An individual; and

(c) A member of the Kentucky Health Purchasing Alliance.

(11) "MCRC" means modified community rating cell which is a premium rating cell classification based on:

(a) Age;

(b) Family composition category;

(c) Geographic area;

(d) Benefit plan;

(e) Alliance status;

(f) Group versus nongroup.

(12) "Member of months of enrollment" means the number of policyholders enrolled in a health benefit plan subject to this administrative regulation multiplied by the number of months of such enrollment over the reporting periods defined in Section 7 of this administrative regulation for demographic risk adjustment and Section 11 of this administrative regulation for high cost case adjustment.

(13) "Months of exposure" means the date of diagnosis or the performance of a procedure listed in Table 2 and Table 2A of this administrative regulation through the end of the reporting period or episode of illness, whichever comes first. Except in the case of transplantation, the episode of illness shall be considered to begin with the provision of preoperative care and end with immediate postoperative follow up care.

(14) "Policyholder" means:

(a) For individual policy health insurance of a commercial insurance company - the policyholder;

(b) For a health maintenance organization - a subscriber;

(c) For small group health insurance other than that provided by a health maintenance organization - the certificate holder.

(15) "PRAF" means the prospective risk adjustment factor which is the factor in Table 1 of this administrative regulation associated with a demographic and coverage status category or cell which include gender, age, COBRA status, and retiree status.

(16) "Procedure" means any procedure listed in the high cost case Table 2 and Table 2A of this administrative regulation.

(17) "Retiree" means a former employee covered under a group insurance policy sponsored by the employer, excluding a former employee receiving continuation coverage. Retirement status shall be determined for an individual by the group sponsor.

(18) "Risk adjustment administrator" or "administrator" means the contractor retained by the department pursuant to Section 13 of this administrative regulation.

(19) "Risk assessment cell" means the classification base referred to in Table 1 of this administrative regulation.

(20) "Standardized health benefit plan" means a health benefit plan established pursuant to KRS 304.17A-160.

Section 2. Applicability. (1) This administrative regulation shall apply to:

(a) A health benefit plan, enrollment for which is either within or outside the Kentucky Health Purchasing Alliance, that is subject to KRS 304.17A-120(1); and

(b) Each insurer as defined in Section 1(10) of this administrative regulation.

(2) The risk adjustment system established pursuant to this administrative regulation shall be applied on an insurer-by-insurer basis.

(3) Each risk covered by a health benefit plan and offered by a single insurer shall be cumulated across the plan for the purpose of determining the insurer's relative risk and adjusting the insurer's premium income accordingly.

Section 3. Demographic Risk Assessment. The first stage of the risk adjustment system is demographic risk assessment which represents the development stage of the system. In demographic risk assessment, the variation in health care costs among a specified

population group is analyzed and weighted to adjust for these differences.

(1) To calculate an insurer's composite PRAF the insurer shall:

(a) Determine the number of policyholders in each risk assessment cell (Table 1) for all health benefit plans;

(b) Multiply the sum of policyholders for each risk assessment cell determined in paragraph (a) of this subsection by the PRAF associated with each cell in Table 1, or in a schedule of factors subsequently developed as provided for in Section 4 of this administrative regulation;

(c) Sum the products of paragraph (b) of this subsection for all cells and divide by the total number of policyholders to get the composite PRAF.

(2) Each insurer shall calculate their composite PRAF using the PRAF provided in Table 1 of this administrative regulation.

(3) On or before the 15th day of the final month of each calendar quarter, each insurer shall file with the administrator:

(a) Its current composite PRAF;

(b) The total number of policyholders included in calculating the composite PRAF as specified in Section 7(3) of this administrative regulation; and

(c) Its member months of enrollment for that calendar quarter.

(4) Based on the quarterly filing by the insurer as required by subsection (3) of this section, the administrator shall calculate a statewide composite PRAF, weighted by the number of policyholders, to be used in calculating the quarterly adjustment amounts required by Section 7(1) of this administrative regulation.

Section 4. Schedule of PRAFs and Updates. The administrator shall, on an annual basis, generate a revised PRAF table for each family composition category based on information about the actual distribution of policyholders across risk adjustment cells and available data on the relative benefit cost for that population.

Section 5. Reference Premium. (1) On a quarterly basis, the administrator shall determine a reference premium to be used in calculating the quarterly adjustment amounts in Section 7(1) of this administrative regulation.

(2) On or before the 15th day of the final month of each calendar quarter, each insurer shall file with the administrator its total annualized premium for all policyholders enrolled in the month specified in Section 7(2) of this administrative regulation.

(3) The reference premium shall equal the statewide average annualized premium per policyholder.

Section 6. Insurer-specific Rated Risk Ratio. (1) No later than March 1 and September 1 of each year, the administrator shall estimate the enrollment weighted average monthly premium of each MCRC cell.

(2) The administrator shall calculate the average rated risk factor for all insurers as a whole. This factor shall represent the average premium across all MCRC weighted by the enrollment in each cell.

(3) To calculate the average rated risk factor, the administrator shall multiply the number of policyholders enrolled in each MCRC by the value calculated in subsection (1) of this section and divide the sum of the product by the total number of policyholders insured by all insurers.

(4) To calculate each insurer's specific rated risk factor, the administrator shall multiply the number of policyholders in each MCRC by the value calculated in subsection (1) of this Section and divide the sum of the product by the total number of policyholders insured by the insurer.

(5) The insurer-specific rated risk ratio to be used to calculate the quarterly adjustment amount in Section 7(1) of this administrative regulation shall be determined by the administrator according to the formula: insurer-specific rated risk ratio = insurer specific rated risk factor/average rated risk factor.

(6) The insurer-specific rated risk ratio based on the March 1 MCRC annual premium estimate shall be used to determine the quarterly adjustment amount in Section 7 of this administrative regulation for the March 20 and June 20 calculation for that year.

(7) Each ratio based on the September 1 MCRC annual cell premium estimate shall be used to determine the quarterly adjustment amount for the September 20 and December 20 calculation for that year.

Section 7. Demographic Risk Adjustment. (1) On a quarterly basis, the administrator shall calculate and inform each insurer of the amount owed to the demographic risk adjustment fund (-) or the amount due from the fund (+) for each insurer no later than ten (10) days following the dates specified in subsection (2) of this section by applying the following formula in which "i" represents a unique value for each insurer participating in the risk adjustment system: quarterly adjustment amount_i = (composite PRAF_i - statewide average composite PRAF) * reference premium * rated risk ratio_i * member months of enrollment_i * .0833.

(2) The quarterly calculation dates shall be:

(a) First quarter - March 20;

(b) Second quarter - June 20;

(c) Third quarter - September 20; and

(d) Fourth quarter - December 20.

(3) For each quarterly calculation date through June 20, 1996, composite PRAF and reference premium information shall be based on enrollment in the final month of the calendar quarter. Subsequently, composite PRAF and reference premium information shall be based on enrollment in the final month of the immediately preceding calendar quarter. The member months of enrollment shall always be based on enrollment with the insurer over the current calendar quarter.

(4) In the case of an insurer for which the adjustment amount is negative, the insurer shall make the full payment to the administrator within twenty (20) days following the date provided in subsection (2) of this Section and subject to Section 8 of this administrative regulation. Any insurer which fails to make a payment will be subject to decertification by the department, or such intermediate sanction as allowed by law.

(5) In the case of an insurer for which the adjustment amount is positive, the insurer is entitled to receive a payment for that amount from the administrator subject to Section 8 of this administrative regulation. This amount shall be paid on a quarterly basis, subsequent to the collection of a payment owed to the Demographic Risk Adjustment Fund pursuant to subsection (4) of this section.

Section 8. Fund Equalization. (1) In the event that the Demographic Risk Adjustment Fund is in deficit because the amount of money due an insurer exceeds the amount of payment an insurer owes, the payment due an eligible insurer shall be reduced proportionately.

(2) In the event that the Demographic Risk Adjustment Fund is in surplus because the amount due an insurer is less than the amount of money an insurer owes, a payment owed by an insurer shall be reduced proportionately.

Section 9. Reporting Requirements. (1) Each insurer shall collect such information from an enrollee and group sponsor as may be necessary to classify a risk in accordance with Section 3 of this administrative regulation including, but not limited to, the active/retiree status of each policyholder.

(2) Each insurer shall provide the administrator with any information required by the administrator in a form and content determined by the administrator, to:

(a) Verify the calculation of the composite PRAF as described in Section 3 of this administrative regulation;

(b) Calculate the average weighted premium as described in

Section 5 of this administrative regulation;

(c) Calculate the rated risk factor as required by Section 6 of this administrative regulation;

(d) Manage the Demographic Risk Adjustment Fund pursuant to this section and Section 8 of this administrative regulation; and

(e) Perform any other duty specified in Section 13 of this administrative regulation.

Section 10. High Cost Case Fund. Each insurer shall be eligible for a payment from the High Cost Case Fund on the basis of the number of months of exposure during a year for enrollees having a diagnosis or receiving a procedure listed in Table 2 and Table 2A of this administrative regulation. Payment shall be subject to any additional condition established in Section 12(10) of this administrative regulation.

Section 11. High Cost Reports. (1) Each insurer shall file with the administrator detailed information about each enrollee with a procedure/diagnosis on the high cost case list. Initial information regarding a case shall be filed by an insurer as soon as it is available in order for the administrator to confirm its probable eligibility as a high cost case.

(2) The initial filing shall include:

(a) The number assigned to the insurer by the National Association of Insurance Commissioners (NAIC) or an insurer identification number assigned by the department;

(b) The name of the enrollee (patient) and policyholder;

(c) The effective date of the case;

(d) The procedure/diagnosis classification; and

(e) Any medical record which would support confirmation of the case's eligibility.

(3) The administrator shall assign a claim number to the case for future reference after the initial review for determination as to possible eligibility as a high cost case. Subsequently, the insurer shall file with the administrator, on a quarterly basis, detail information relative to each case which shall include:

(a) The claim number;

(b) The patient's name;

(c) The effective date of the case;

(d) The termination date of the case (if terminated); and

(e) An abstract of the patient's record which shall include:

1. Medical record;

2. Case management record;

3. Utilization record;

4. Any itemized bill;

5. Date of service; and

6. Proof of each payment.

(4) On an annual basis, each insurer shall file a high cost case annual summary report with the administrator. For each procedure/diagnosis on the high cost case list the report shall indicate:

(a) The claim number;

(b) The patient's name;

(c) The effective date of the case;

(d) The termination date of the case (if terminated);

(e) The number of months of exposure during year; and

(f) The total payments made by the insurer during the year for health care services on the case.

(5) The months of exposure referenced in subsection (2)(e) of this section and the total payments referenced in subsection (2)(f) of this section shall be totaled for each procedure/diagnosis.

(6) An insurer certification in accordance with Section 12(10) of this administrative regulation shall be filed with each annual report required by subsection (2) of this section.

(7) The annual summary report required by subsection (2) of this section shall:

(a) Cover each high cost case treated during the period of January 1 through December 31 each year; and

(b) Be due on or before March 1 immediately following the end of the calendar year for which the information is being reported.

(8) Each health maintenance organization shall impute costs based on a standard accounting methodology established by the administrator if such plans are unable to identify the cost of services for an individual with a high cost case in a manner otherwise consistent with the requirements of this section.

Section 12. Payment Adjustment for High Cost Cases. (1) On a quarterly basis, each insurer shall remit to the administrator an amount equal to one (1) percent of the total premium received during a calendar quarter for each health benefit plan subject to this administrative regulation. This payment shall be received by the administrator no later than the 15th day of the month immediately following the end of the calendar quarter.

(2) Any payment to an insurer from the High Cost Case Fund shall be based on the amount that each insurer's per enrollee payment for high cost cases, adjusted for statewide average payments per month of exposure, exceeds the statewide average per enrollee payments for high cost cases, subject to subsection (9) of this section.

(3) Based on the high cost case information reported by an insurer for the reporting period, the administrator shall compute the statewide average payment per month of exposure for each procedure/diagnosis described in Table 2 and Table 2A of this administrative regulation. This calculation will determine the value for each procedure/diagnosis category that shall be used to calculate the statewide average high cost case score described in subsection (4) of this section and each insurer-specific high cost case score described in subsection (5) of this section.

(4) The administrator shall calculate a "statewide average high cost case score" as follows:

(a) Multiply the statewide average payment per month of exposure derived in subsection (3) of this section for each procedure/diagnosis on the high cost case list by the total number of months of exposure reported for each respective procedure/diagnosis over the reporting period by all insurers;

(b) Divide the sum of the product generated in paragraph (a) of this subsection by the total number of member months of enrollment over the reporting period in all health benefit plans subject to this administrative regulation.

(5) The administrator shall calculate an "insurer-specific high cost case score" for each insurer as follows:

(a) Multiply the statewide average cost per month of exposure derived in subsection (3) of this section for each procedure/diagnosis on the high cost case list by the number of months of exposure reported for each respective procedure/diagnosis by the insurer over the reporting period;

(b) Divide the sum of the product in paragraph (a) of this subsection by the number of member months of enrollment over the reporting period in all health benefit plans in effect with the insurer. Each of these calculations is expressed below, where " p " represents medical procedure/diagnosis specific values and " i " represents insurer-specific values:

1. Average payment per month of exposure _{p} = total high cost case payments _{p} /months of exposure _{p} ;

2. Statewide average high cost case score = \sum_p (average payment per month of exposure _{p} * months of exposure _{p})/total member months of enrollment;

3. Insurer-specific high cost case score _{i} = \sum_p (average payment per month of exposure _{p} * months of exposure _{p})/member months of enrollment.

(6) Each insurer with a high cost case score in excess of the statewide average high cost case score shall be eligible for payment from the High Cost Case Fund, and shall be deemed an eligible insurer for the purposes of this section.

(7) Each eligible insurer shall receive a payment from the High

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Cost Case Fund equal to the unadjusted payment amount described in subsection (8) of this section multiplied by the fund equalization factor described in subsection (9) of this section. This amount shall be calculated by the administrator and remitted to each eligible insurer not later than May 1 of each year.

(8) The unadjusted payment amount of each eligible insurer is equal to the product of:

(a) The insurer-specific high cost case score described in subsection (5) of this section minus the statewide average high cost case score described in subsection (4) of this section;

(b) The insurer's total member months of enrollment over the reporting period; and

(c) .75;

(9) The fund equalization factor is equal to the lesser of:

(a) One (1); and

(b) The result of the total amount of payments remitted to the High Cost Fund by insurers over the reporting period divided by the sum of unadjusted payment amounts for the reporting period for all insurers.

(10) The equation used by the administrator to make the calculation described in this section shall be as follows, where "x" designates eligible insurer-specific values:

(a) Amount of payment_i = unadjusted payment amount_i * pool equalization factor;

(b) Unadjusted payment amount_i = (high cost case score_i - statewide average high cost case score) * member months of enrollment_i * .75; and

(c) Fund equalization factor = (High Cost Case Fund contributions + fund interest) / Σ_i unadjusted payment amount.

(11) In order to receive a payment, an insurer shall certify that:

(a) Every service for a procedure/diagnosis reported under this section is a service that is covered by the insurer in accordance with the coverage requirements for a standardized health benefit plan;

(b) Each patient for whom payment is being sought:

1. Is enrolled in an applicable health benefit plan during the applicable reporting period;

2. Has received a primary diagnosis or procedure on the high cost case list, as reported by the insurer;

3. Is not covered by another insurer or third-party payor for the course of treatment related to the reported medical procedure/diagnosis for the episode of illness period reported.

(12) In the event that the High Cost Case Fund is in surplus because the fund equalization factor is determined to be one (1) in accordance with subsection (9) of this section, the surplus shall be rebated to each insurer proportionate to the amount of the insurer's contribution, and the department shall approve any reduction in the contribution rate for each subsequent quarter.

(13) The administrator shall notify each insurer of its estimated payment amount by May 1 of each year.

(14) In the event that the administrator disqualifies a high cost case claim, the insurer may appeal to the department.

Section 13. Administrator. (1) The department will contract with an administrator to manage the day-to-day operations of the risk adjustment system in accordance with this administrative regulation. Each insurer subject to this administrative regulation, and any parent company or subsidiary of any insurer, shall be disqualified from being selected as the administrator.

(2) The administrator shall:

(a) Perform and publish each calculation required under this administrative regulation except for a calculation to be performed by an insurer in accordance with the appropriate section of this administrative regulation;

(b) Collect data from each insurer or other party necessary to administer the risk adjustment system;

(c) Collect payment from each insurer for the Demographic Risk Adjustment Fund and the High Cost Case Fund and make an applicable risk adjustment payment to each insurer eligible for such a payment;

(d) Audit an insurers' submission of the high cost claim report;

(e) On or before August 1 of each year, report to the department information regarding trends in enrollment and experience overall, in addition to experience regarding the Demographic Risk Adjustment Fund and the High Cost Case Fund; and

(f) Perform any other duty delegated to the administrator pursuant to this administrative regulation or by the department subsequent to the issuance of this administrative regulation.

(3) The cost of administering the risk adjustment system, exclusive of the cost of making a risk adjustment payment, shall be financed through a surcharge imposed on each health benefit plan subject to this administrative regulation. The amount of the surcharge shall be ten (10) cents per policyholder per month and adjusted annually in accordance with KRS 304.17A-130 and this administrative regulation.

TABLE 1
DEMOGRAPHIC RISK ASSESSMENT CELL FACTOR MATRIX
Adjusted for "50%" Regulation

SINGLE COVERAGE			POLICYHOLDER AND SPOUSE COVERAGE		SINGLE PARENT FAMILY COVERAGE		TWO PARENT FAMILY COVERAGE		Attained Age
Active Policyholders	Active Policyholders	Active Policyholders	Active Policyholders	Active Policyholders	Active Policyholders	Active Policyholders	Active Policyholders	Active Policyholders	
Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
<30	0.724	1.274	1.000	1.000	0.892	1.052	1.000	1.000	<30
30-39	0.815	1.187	1.000	1.000	0.953	1.025	1.000	1.000	30-39
40-49	0.919	1.057	1.000	1.000	1.000	1.000	1.000	1.000	40-49
50-54	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	50-54
55-59	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	55-59
60-64	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	60-64
65+	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	65+
COBRA Policyholders			COBRA Policyholders		COBRA Policyholders		COBRA Policyholders		Attained Age
Under 30	Under 30	Under 30	Under 30	Under 30	Under 30	Under 30	Under 30	Under 30	
30-39	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	30-39
40-49	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	40-49

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50-54	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	50-54
55-59	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	55-59
60-64	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	60-64
65+	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	65+
	Early Retiree Policyholders		Early Retiree Policyholders		Early Retiree Policyholders		Early Retiree Policyholders			
Under 50	1.247	1.247	1.076	1.076	1.155	1.155	1.053	1.053	Under 30	
50-54	1.119	1.119	1.073	1.073	1.080	1.080	1.035	1.035	50-54	
55-59	1.132	1.132	1.075	1.075	1.085	1.085	1.039	1.039	55-59	
60-64	1.171	1.171	1.075	1.075	1.097	1.097	1.049	1.049	60-64	

PRAF.XLS

Revised 10/28/97

TABLE 2: HIGH COST CASE LIST

Procedure/Diagnosis	Payment Conditions and Limitations
Liver transplantation	Payment limited to the cost of preoperative care, transplantation and immediate follow-up care
Heart transplantation	
Bone marrow transplantation	
Kidney transplantation	
End State Renal Disease with dialysis	
Ventilator support for at least 30 days	
Neonates with a birth weight of less than 1,500 grams or respiratory distress syndrome requiring at least 30 days of ICU care	
HIV/AIDS	With specified opportunistic infections and disease designated in Table 2A of this administrative regulation
Leukemia	

*The administrator will identify code number annually.

TABLE 2A: SPECIFIC OPPORTUNISTIC INFECTIONS AND OTHER DISEASES FOR HIV/AIDS

HIV/AIDS with the following specified conditions:

Candidiasis of lung; coccidiosis; cryptosporidiosis; isosporiasis; pneumocystosis; progressive multifocal leukoencephalopathy; toxoplasmosis, malignant neoplasms including only: Karposi's sarcoma, lymphosarcoma and reticulosarcoma, primary lymphoma of the brain.

The following specified conditions when due to HIV/AIDS:

Specified infections including only: candidiasis: disseminated, of the mouth, of the skin and nails, other and unspecified sites; coccidioidomycosis; cytomegalic inclusion disease; acute or subacute endocarditis; herpes simplex; herpes zoster; histoplasmosis; microsporidiosis, mycobacteriosis, other and unspecified; acute or subacute myocarditis; Nocardia infection; opportunistic mycoses; pneumonia NOS, other bacterial pneumonia, pneumococcal, viral NES and NOS; Salmonella infections; septicemia; strongyloidiasis; tuberculosis; Specified diseases of the central nervous system including only: demylenating disease NOS, disorders NOS, other and unspecified nonarthropod-borne viral disease, other and unspecified slow virus infections, dementia NOS, organic dementia, presenile dementia, encephalitis,

encephalopathy myelopathy, nonpsychotic or psychotic organic brain syndrome NOS: Other specified conditions including only: abnormal weight loss; abnormality, respiratory; agranulocytosis, anemia: NOS, aplastic, other and unspecified, deficiency, hemolytic, acquired; arthritis, pyogenic, infective; blindness or low vision; blood and blood-forming organs, unspecified disease; cachexia; dermatomycosis, dermatophytosis; diarrhea (non-infectious), infectious; disease or disorder NOS: blood and blood-forming organs, salivary gland, skin and subcutaneous tissue; fever; gastroenteritis (infectious); hepatomegaly; hyperhidrosis; hypersplenism; infection: intestinal, ill-defined; lack of expected physiological development in infant; leukoplakia of oral mucosa (tongue); malabsorption, intestinal; malaise; nephritis & nephropathy; neuralgia NOS; neuritis NOS; pneumonitis, lymphoid, interstitial; polyneuropathy pyrexia; radiculitis NOS; retinal vascular changes; retinopathy, background; secondary cardiomyopathy; splenomegaly; thrombocytopenia, secondary and unspecified.

HIV/AIDS with other conditions which evidence severe immune system compromise subject to case-by-case review and approval.

GEORGE NICHOLS III, Commissioner
LAURA M. DOUGLAS, Secretary
SUETTA W. DICKINSON, General Counsel

ADMINISTRATIVE REGISTER - 2262

APPROVED BY AGENCY: February 13, 1998

FILED WITH LRC: February 17, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, April 21, 1998, at 10 a.m. (ET) at the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, April 14, 1998, 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 canceled. 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.

CONTACT PERSON: Sharron Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number: (502) 564-6032, Ext. 249, Fax Number: (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact Person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation applies to all insurers defined by KRS 304.17A-100(5) which issue or renew health benefit plans for employers with 50 employees or less, for individuals, or for members of the Kentucky Health Purchasing Alliance. There are approximately 27 insurers to which this administrative regulation applies.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments regarding this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Health insurers are required to pay into the Risk Assessment and Adjustment System in accordance with the formula established by the administrative regulation. Health insurers also must report various information regarding policyholders who are considered high risk.

2. Second and subsequent years: The assessment and reporting requirements for the first year will continue for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department will bear the cost of monitoring the Kentucky Risk Assessment and Adjustment System.

2. Continuing costs or savings: For subsequent years, the department will continue to bear the cost of monitoring the Kentucky Risk Assessment and Adjustment System.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department is required to contract with an administrator to manage the day-to-day operations of the risk adjustment system in accordance with the administrative regulation. On an annual basis, the administrator will be required to report specified information to the department regarding the Demographic Risk Adjustment Fund, the High Cost Case Fund, and trends in enrollment and experience overall.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement this administrative regulation and monitor the Risk Adjustment System. The cost of administering the Risk Adjustment System will be financed through a surcharge imposed on each health benefit plan subject to the administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The department has not received public comments regarding this issue.

(b) Kentucky: The department has not received public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 304.17A-130 establishes specific guidelines regarding the implementation of the risk adjustment process. This administrative regulation incorporates these guidelines into the administrative regulation in a manner in which the department is able to implement the statutory mandates.

(8) Assessment of expected benefits: The department expects that this administrative regulation will equalize risk between insurers which participate in the modified community rated market, both within and outside of the Kentucky Health Purchasing Alliance.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is applied for the purposes of this administrative regulation. This administrative regulation does not require insurers who issue or renew health benefit plans to large groups or to eligible trusts and associations that meet the requirements of KRS 304.17A-120(5) to contribute to the Kentucky Risk Assessment and Adjustment System. Such insurers are excluded from an assessment because the assessment only applies to those carriers participating in the modified community rated market. Large groups and eligible trusts and associations are not included in the modified community rated market.

PUBLIC PROTECTION & REGULATION CABINET

Department of Financial Institutions
(New Administrative Regulation)

808 KAR 10:141. Repeal of 808 KAR 10:140, 808 KAR 10:190, 808 KAR 10:220, 808 KAR 10:230, 808 KAR 10:270

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: The administrative regulations are no longer required because their provisions are addressed in other administrative regulations or federal law has preempted or rendered the administrative regulations unnecessary.

Section 1. 808 KAR 10:140, 808 KAR 10:190, 808 KAR 10:220, 808 KAR 10:230, and 808 KAR 10:270 are repealed.

ADMINISTRATIVE REGISTER - 2263

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Individuals or entities required to register securities or securities transactions with the department. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Should result in savings because registration with the department is no longer required.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. The provisions of the repealed regulations are now incorporated in other regulations or have been preempted by federal law.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Not applicable.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

a. States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

b. States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25 million;

c. States must increase the uniformity of their regulation. Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

PUBLIC PROTECTION & REGULATION CABINET

Department of Financial Institutions

(New Administrative Regulation)

808 KAR 10:310. Broker-dealer agent de minimis rules.

RELATES TO: KRS 292.330

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To exempt agents of broker-dealers from the registration requirement when the agents only engage in certain described transactions in Kentucky.

Section 1. Registration shall not be required for agents of broker-dealers who engage in "described transactions" as such term is defined in Section 2 of this administrative regulation, if:

(1) The agent is not ineligible to register in Kentucky for any reason other than engaging in the described transaction;

(2) The agent is registered with a registered securities association and at least one (1) state; or

(3) The broker-dealer with which the agent is employed is registered with that same state in subsection (2) of this section.

Section 2. Described Transactions. (1) A transaction is a described transaction for purposes of this provision if:

(a) The transaction is effected:

1. On behalf of a customer that, for thirty (30) days prior to the day of the transaction, maintained an account with the broker-dealer; and

2. By an agent of the broker-dealer:

a. To which the customer was assigned for fourteen (14) days prior to the day of the transaction; and

b. Who is registered with a state in which the customer was a resident or was present for at least thirty (30) consecutive days during the one (1)-year period prior to the day of the transaction;

(b) The transaction is effected:

1. On behalf of a customer that, for thirty (30) days prior to the day of the transaction, maintains an account with the broker-dealer; and

2. During the period beginning on the date on which the agent files an application for registration with the Commonwealth of

Kentucky and ending on the earlier of:

a. Sixty (60) days after the date on which the application is filed; or

b. The date on which the department notifies the agent that it has denied the application for registration or has stayed or suspended the pendency of the application for cause.

(2) For purposes of subsection (1)(a)2 of this section:

(a) Each of up to three (3) agents of a broker-dealer who are designated to effect transactions during the absence or unavailability of the principal agent for a customer may be treated as an agent to which the customer is assigned; and

(b) If the customer is present in another state for thirty (30) or more consecutive days or has permanently changed his or her residence to another state, a transaction is not described in this paragraph, unless the agent of the broker-dealer files an application for registration with the other state not later than ten (10) business days after the later of the date of presence of the customer in the other state for thirty (30) or more consecutive days or the change in the customer's residence.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Broker-dealers agents subject to registration by the department. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Should reduce costs because this amendment adopts the federal de minimis exemption for agents of broker-dealers who only engage in the described transactions.

2. Second and subsequent years: Cost savings should continue after the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. Federal law mandates this change.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: Pursuant to NSMIA, states may not require registration of broker-dealer agents who only engage in the described transactions.

(11) TIERING: Is tiering applied? Yes. Tiering is mandated by federal law.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

a. States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

b. States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25 million;

c. States must increase the uniformity of their regulation. Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

PUBLIC PROTECTION & REGULATION CABINET

Department of Financial Institutions

(New Administrative Regulation)

808 KAR 10:320. Broker-dealer books and records requirements.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.330(11)(a), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To insure that all broker-dealers maintain sufficient records for the efficient operation of their business and for the protection of their clients.

Section 1. Pursuant to KRS 292.330(12)(a), all broker-dealers shall meet the recordkeeping requirements of Section 17(a) of the

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Securities Exchange Act of 1934 (15 USC 78q), and maintain their books and records in accordance with the rules enacted thereunder by the United States Securities and Exchange Commission. Such rules, which are expressly incorporated by reference as if set out herein, shall include but not necessarily be limited to 17 CFR 240.17a-3 and 240.17a-4. This administrative regulation shall apply to broker-dealers subject to the Securities Act of Kentucky regardless of whether they are subject to the Securities Exchange Act of 1934 (15 USC 78q). The commissioner may upon application for good cause shown relieve a broker-dealer of compliance with this administrative regulation in part, but only if such action is necessary or appropriate in the public interest or for the protection of investors.

ARTHUR FREEMAN, Commissioner
COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998
FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Broker-dealers who are required to be licensed by the department. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: May reduce costs because of increased uniformity with SEC and other states.

2. Second and subsequent years: May reduce costs because of increased uniformity with SEC and other states.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. Federal law mandates this change.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: This change adopts existing federal requirements and is intended to increase uniformity among the states pursuant to federal mandate.

(11) TIERING: Is tiering applied? No. Different treatment of individuals within the regulated class is not justified and would raise constitutional issues.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

a. States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

b. States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25 million;

c. States must increase the uniformity of their regulation. Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

PUBLIC PROTECTION & REGULATION CABINET Department of Financial Institutions (New Administrative Regulation)

808 KAR 10:330. Notice filing requirements for covered advisers.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To provide for notice filing by covered advisers doing business in Kentucky who otherwise need not register with the department.

Section 1. A covered adviser, except a person that is exempt from the notice filing requirements pursuant to KRS 292.330(2)(b), (c), or (d), doing business in this state shall file with the department for notice purposes, a copy of Form ADV and any additional documents filed with the United States Securities and Exchange Commission, a consent to service of process, and a filing fee for same in the amount of \$200. A covered adviser shall file with the department a copy of any amendments to the covered adviser's Form ADV as and when such amendments are filed with the Securities and Exchange Commission.

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ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Investment advisers doing business in Kentucky who are federal covered advisers. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: May reduce costs because these persons will no longer need to register with the department.

2. Second and subsequent years: Savings should continue after first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. Federal law mandates this change.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: Federal law preempts state regulation of covered advisers but does allow states to require notice filings by these persons.

(11) TIERING: Is tiering applied? Yes, required by federal law.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

a. States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

b. States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25 million;

c. States must increase the uniformity of their regulation. Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

PUBLIC PROTECTION & REGULATION CABINET

Department of Financial Institutions
(New Administrative Regulation)

808 KAR 10:340. Registration exemption for certain limited offerings made exclusively to accredited investors.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To allow a transactional exemption from registration for sales of securities to accredited investors and to provide a definition for accredited investor.

Section 1. Any offer or sale of a security by an issuer in a transaction that meets the requirements of this administrative regulation is exempted from KRS 292.340 through 292.390.

(1) Sales of securities shall be made only to persons who are or the issuer reasonable believes are accredited investors. "Accredited investor" is defined in the Rules of the United States Securities and Exchange Commission (Rule CFR 230.501(a) or the version currently in effect).

(2) The exemption is not available to an issuer that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(3) The issuer reasonably believes that all purchasers are purchasing for investment and not with a view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within twelve (12) months of sale, except a resale to an accredited investor or pursuant to a registration statement effective under KRS 292.340 through 292.390, shall be presumed to be with a view to distribution and not for investment. Securities issued under this exemption may only be resold pursuant to registration or an exemption under the Securities Act of Kentucky.

(4) This exemption is not available to an issuer if:

(a) The issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten (10) percent or more of any class of its equity

securities, any of the issuer's promoters, promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

1. Within the last five (5) years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

2. Within the last five (5) years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

3. Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or

4. Is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(b) Paragraph (a) of this subsection shall not apply if:

1. The party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party; or

2. Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification.

(5) A general announcement of the proposed offering may be made by any means and shall include only the following information, unless additional information is specifically permitted by the commissioner:

(a) The name, address and telephone number of the issuer of the securities;

(b) The name, a brief description and price (if known) of any security to be issued;

(c) A brief description of the business of the issuer in twenty-five (25) words or less;

(d) The type, number and aggregate amount of securities being offered;

(e) The name, address and telephone number of the person to contact for additional information; and

(f) A statement that:

1. Sales will only be made to accredited investors;

2. No money or other consideration is being solicited or will be accepted; and

3. The securities have not been registered with or approved by any state securities agency or the United States Securities and Exchange Commission and are being offered and sold pursuant to exemption from registration.

(6) The issuer, in connection with an offer, may provide information in addition to the general announcement under subsection (5) of this section, if such information:

(a) Is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(b) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(7) No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(8) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.

(9) The issuer shall file with the commissioner a notice transaction, a consent to service of process, a copy of the general announcement, and a fee in the amount of \$250 within fifteen (15) days after

the first sale in this state.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Issuers, generally small or start-up companies, required to register offerings with the department. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Reduction in costs associated with complying with registration requirements.

2. Second and subsequent years: Savings should continue after first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. Federal law mandates this change.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Designed to facilitate capital raising efforts of small businesses.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None expected.

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: Provides an exemption from registration for offerings made only to accredited investors which should ease the registration process for small business offerings. Also adopts the federal definition of "accredited investor." Pursuant to federal mandate, this should increase uniformity of regulation of these offerings among the states.

(11) TIERING: Is tiering applied? Yes, this regulation only applies to offerings made to accredited investors. Tiering is justified because these type of offerings do not raise the same regulatory concerns as offerings made to the general public. In addition, it is in the public interest to ease the registration process for these offerings because registration requirements have a disproportionately adverse impact on the entities making these offerings resulting in disincentives for small businesses.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

a. States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

b. States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25 million;

c. States must increase the uniformity of their regulation. Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Financial Institutions
(New Administrative Regulation)

808 KAR 10:350. Internet advertising.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To allow Internet use by securities professionals which might otherwise be deemed a violation of Kentucky law.

Section 1. Broker-dealers, investment advisers, broker-dealer agents or investment adviser representatives (individually and collectively, "securities industry personnel") who use the Internet to distribute information on available products and services shall not be deemed to be subject to the registration provisions of KRS 292.330 provided that:

(1) The Internet communication contains a legend clearly stating that the securities industry personnel in question may only transact business in those states where they are registered or otherwise excluded or exempted from state registration requirements;

(2) The Internet communication contains a mechanism which reasonably ensures that any subsequent interaction between prospective customers or clients residing in states where the securities industry personnel are not registered is limited so as to not trigger state registration or licensing requirements or securities

registration requirements. Nothing in this paragraph shall be construed to relieve state registered securities industry personnel from their obligation to observe applicable securities registration requirements in any state in which they transact business;

(3) The Internet communication does not involve the actual offering of securities trades, or the rendering of personalized investment advice for compensation over the Internet, but is limited to the dissemination of information on products and services; and

(4) In case of a broker-dealer agent or investment adviser representative:

(a) The agent's or investment adviser representative's affiliation with the broker-dealer or investment adviser is prominently disclosed within the Internet communication;

(b) The broker-dealer or investment adviser with whom the agent or investment adviser representative is associated retains responsibility for reviewing and approving the content of the agent's or investment adviser representative's Internet communication;

(c) The broker-dealer or investment adviser with whom the agent or investment adviser representative is associated authorizes the agent's or representative's Internet distribution of information on the particular products and services; and

(d) In disseminating information on the Internet, the agents or investment adviser representatives are acting within the scope of their authority with the broker-dealer or investment adviser.

Section 2. This administrative regulation extends to registration requirements only, and does not excuse compliance with applicable antifraud provisions of KRS 292.320.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Broker-dealers, investment advisers, broker-dealer agents, and investment adviser representatives who use the Internet to disseminate information on products and services. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon

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competition) for the:

1. First year following implementation: Should reduce costs associated with complying with registration requirements.

2. Second and subsequent years: Cost savings should continue after the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. Federal law mandates this change.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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.

(10) Any additional information or comments: Adopts NASAA model language to permit Internet use by securities professional without having to register in Kentucky. Intended to increase uniformity of regulation among the states pursuant to federal mandate.

(11) TIERING: Is tiering applied? Yes. Tiering is justified because the activities which are permitted by the regulation do not raise the regulatory concerns that merit registration.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

a. States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

b. States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25 million;

c. States must increase the uniformity of their regulation. Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (New Administrative Regulation)

808 KAR 10:360. Safe harbor for limited liability company membership interests.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To incorporate the no action position of the department that membership interests in certain limited liability companies are not securities.

Section 1. A membership interest in a limited liability company is not a "security" when the following requirements are met:

(1) The articles of organization of the limited liability company do not vest management of the limited liability company in one (1) or more managers; and

(2) The aggregate number of members of the limited liability company, after the membership interest is sold, does not exceed fifteen (15).

Section 2. If a membership interest in a limited liability company does not meet the requirements set forth in Section 1 of this administrative regulation:

(1) Such membership interest nonetheless shall be presumed not to be a "security" if the following requirements are met:

(a) The articles of organization of the limited liability company do not vest management of the limited liability company in, nor does the operating agreement of the limited liability company delegate the essential managerial responsibilities of the limited liability company to, one (1) or more managers who are not members; and

(b) The aggregate number of members of the limited liability company, after the membership interest is sold, does not exceed thirty-five (35).

(2) Such membership interest shall be presumed to be a "security" if:

(a) The articles of organization of the limited liability company vest management of the limited liability company in, or the operating agreement of the limited liability company delegates the essential managerial responsibilities of the limited liability company to, one (1) or more managers who are not members; or

(b) The aggregate number of members of the limited liability company, after the membership interest is sold, exceeds thirty-five (35).

Section 3. The presumptions set forth in Section 2 of this administrative regulation are rebuttable, based upon an analysis of all facts and circumstances relevant to determining whether the limited liability company membership interest constitutes an "investment contract".

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on

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the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Issuers of limited liability membership interest. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: May result in long-term efficiency gains because longstanding no-action position of the department is expressly set forth in the regulation.

2. Continuing costs or savings: May result in long-term efficiency gains because longstanding no-action position of the department is expressly set forth in the regulation.

(b) Reporting and paperwork requirements: May reduce paperwork because issuers will no longer need to request no action position from department.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. Federal law mandates this regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: Indeterminable

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: This regulation tracks the position of other states with respect to limited liability company interests and is intended to increase uniformity of regulation among the states pursuant to federal mandate.

(11) TIERING: Is tiering applied? Yes. Tiering is justified because LLC interests which meet the specified requirements do not meet the definition of a security and should not be regulated as such.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

a. States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

b. States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25 million;

c. States must increase the uniformity of their regulation. Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (New Administrative Regulation)

808 KAR 10:370. Securities offered on the Internet but not sold in Kentucky.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To clarify that transmission of information via the Internet concerning securities offerings does not require registration under certain circumstances.

Section 1. Any attempt to offer or dispose of, or a solicitation of an offer to purchase, a security, or an interest in a security for value, made via a communication on a proprietary or "common carrier" electronic delivery system, the World Wide Web or the Internet (to all of which the term "Internet" applies for purposes of this rule) is an "offer" of a security under this Act.

Section 2. It is not necessary or appropriate in the public interest or for the protection of Kentucky investors to require the registration of securities which will be offered by an issuer on the Internet, but not sold in Kentucky. Furthermore, registration in Kentucky of securities which will be offered on the Internet, but not sold here, would be an undue burden on an issuer.

Section 3. The exemption from registration of securities offered by an issuer on the Internet is conditioned on the following:

(1) The offer indicates, directly or indirectly, that the securities will not be sold to persons in Kentucky; and

(2) An offer is not otherwise specifically directed to any person in Kentucky by, or on behalf of, the issuer; and

(3) No sales of the issuer's securities are made in Kentucky as a result of the offer until the offering has been registered and declared effective and the final prospectus or Form U-7 has been delivered to investors prior to such sale or the sales are exempt from registration.

Section 4. Reliance on the exemption from registration provided under this rule does not preclude an issuer from relying on any other exemption available under the Kentucky Securities Act.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administra-

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tive regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Issuers who use the Internet to disseminate information about securities offerings. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Should reduce costs associated with complying with registration requirements.

2. Second and subsequent years: Cost savings should continue after the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. Federal law mandates this change.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: Clarifies the

department's position that registration is not necessary for securities offerings made through the Internet so long as the securities are not sold in Kentucky.

(11) TIERING: Is tiering applied? Yes. Tiering is justified because the activities which are permitted by the regulation do not raise the regulatory concerns that necessitate registration.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Financial Institutions
(New Administrative Regulation)

808 KAR 10:380. Solicitations of interest prior to the filing of a registration statement.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To allow issuers to "test the waters" for interest in a contemplated offering before incurring the expense of registration.

Section 1. Pursuant to KRS 292.410(1)(q), the commissioner having found that registration is not necessary or appropriate in the public interest or for the protection of investors, the transaction in subsection (1) of this section is determined to be exempt from the registration provisions of KRS 292.340 through 292.390.

(1) Any written document, oral communication, Internet communication, or the dissemination of any scripted radio or television broadcast, made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving an offering circular (or its equivalent) for an offering of securities in this state if all of the following conditions are satisfied:

(a) The issuer is or will be a business entity organized under the laws of one (1) of the states or possessions of the United States or one (1) of the provinces or territories of Canada, is engaged in or proposes to engage in a business other than petroleum or natural gas exploration or production or mining or other extractive industries and is not a development stage company that either has no specific business plan or purpose, or has indicated that its business plan is to merge with an unidentified company or companies.

(b) The solicitation of interest is not for a "blind pool" offering or other offering for which the specific business in which to be engaged or property to be acquired cannot be described at the time of the solicitation.

(c) The issuer intends to register the securities in this state and conduct its offering pursuant to Section 3(a)(11) of the Securities Act of 1933, as amended, or Rule 147, Regulation A or Rule 504 of Regulation D, as promulgated by the Securities and Exchange Commission.

(d) The written document, Internet communication, or script of the broadcast:

1. States that the solicitation is not an offering of securities for sale, and that any public offering to be made will be made by means of an offering circular that may be obtained from the issuer and that will contain detailed information about the company and management, as well as financial statements.

2. States that no money or other consideration is being solicited, and if sent in response, will not be accepted.

3. States that no sale of the securities will be made or commitment to purchase accepted until a registration statement is filed with the commissioner and becomes effective, or an appropriate exemption from registration is available and utilized.

4. States that an indication of interest made by a prospective investor involves no obligation or commitment of any kind.

5. Identifies the chief executive officer of the issuer and briefly and in general describes its business and products.

(e) Five (5) business days prior to the initial solicitation of interest

under this rule, the issuer submits a copy of any written document, a written transcript of the Internet communication, or the script of any broadcast to be used in reliance upon this section to the commissioner. The document, transcript, or broadcast script shall either contain or be accompanied by the name and telephone number of a person able to answer questions about the document or the broadcast. Note: Only solicitation of interest material that contains substantive changes from or additions to previously submitted material need be submitted.

(f) Oral communications with prospective investors and other broadcasts are not made until after submission of the written document or script of the broadcast to the commissioner as provided in paragraph (e) of this subsection.

(g) No written document, script, advertisement or other material which the issuer has been notified by the commissioner not to distribute is used to solicit indications of interest.

(h) Except for scripted broadcasts and except to the extent necessary to obtain information needed to provide a solicitation of interest document, the issuer does not communicate with a prospective investor about the contemplated offering unless the prospective investor is provided with a written document containing the disclosures set forth in paragraph (d) of this subsection at or before the time of the communication or within five (5) calendar days after the communication.

(i) During the solicitation of interest period, the issuer does not solicit or accept money or other consideration, or any commitment, binding or otherwise, to purchase securities from any prospective investor in reliance upon this section.

(j) No sale is made until a registration statement is effective pursuant to KRS Chapter 292 with respect to the offering, or an appropriate exemption from registration is available and utilized.

(k) The issuer does not know, and in the exercise of reasonable care could not know, that the issuer, any of the issuer's officers, directors, general partners or beneficial owners of ten (10) percent or more of any class of its equity securities, any promoter presently connected with the issuer in any capacity, or any person paid or given, directly or indirectly, a commission, fee or other remuneration for soliciting any indication of interest pursuant to this rule:

1. Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five (5) years prior to the submission of the written document or broadcast script to the commissioner as provided in paragraph (e) of this subsection.

2. Has been convicted within five (5) years prior to the submission of the written document or broadcast script to the commissioner as provided in paragraph (e) of this subsection of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretense, larceny or conspiracy to defraud.

3. Is currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the Securities and Exchange Commission within five (5) years prior to the submission of the written document or broadcast script to the commissioner as provided in paragraph (e) of this subsection, or is subject to any federal or state administrative enforcement order or judgment entered within five (5) years prior to the submission of the written document or broadcast script to the commissioner as provided in paragraph (e) of this subsection in which fraud or deceit, including, but not limited to, making untrue statements of material facts or omitting to state material facts, was found.

4. Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities.

5. Is currently subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restraining

or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five (5) years prior to the submission of the written document or broadcast script to the commissioner as provided in paragraph (e) of this subsection.

The prohibitions listed in subparagraphs 1 through 5 of this paragraph shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed or registered in this state and the Form BD filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this paragraph may act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by this paragraph shall be automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied. It is a defense to a violation of this paragraph if the issuer sustains the burden of proof that it did not know, and in the exercise of reasonable care could not have known, that a disqualification under this paragraph existed.

(2) No communications with prospective investors are made in reliance on this rule after a registration statement is filed in this state, and no sale may be made pursuant to an effective registration statement until at least twenty (20) calendar days after the last communication made in reliance on this rule.

(3) A failure to comply with any condition of this section will not result in the loss of the exemption from the requirements of KRS 292.340 through 292.390 for any offer to a particular individual or entity if the issuer shows:

- (a) The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity;

- (b) The failure to comply was insignificant with respect to the offering as a whole; and

- (c) A good faith and reasonable attempt was made to comply with all applicable conditions of this section. Where an exemption is established only through reliance upon this section, the failure to comply shall nonetheless be actionable as a violations of this chapter by the commissioner under KRS 292.470 and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

(4) Any written document or Internet communication used in reliance upon this administrative regulation may include a coupon returnable to the issuer or Internet e-mail link to the issuer, indicating interest in a potential offering, revealing the name, address and telephone number of the prospective investor, and stating clearly and separately that the indication of interest is not binding and that no money should be sent. Such coupon or Internet link may not request information about the financial profile of the investor, such as income, assets or investment history.

(5) The commissioner may waive any condition of this exemption in writing, upon application by the issuer and good cause having been shown. Neither compliance nor attempted compliance with this administrative regulation, nor the absence of any objection or order by the commissioner with respect to any offer of securities undertaken pursuant to this administrative regulation, shall be deemed to be a waiver of any condition of the rule or deemed to be a confirmation by the commissioner of the availability of this administrative regulation.

(6) Offers made in reliance on this administrative regulation will not result in a violation of KRS 292.340 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

(7) Where an issuer has a bona fide change of intention and decides to pursue an exempt offering pursuant to KRS 292.410(1)(i)

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or 808 KAR 10:210 after following the process permitted by this administrative regulation without having filed a registration statement, the issuer may proceed with such exempt offering if at least thirty (30) calendar days have elapsed between the last solicitation of interest pursuant to this administrative regulation and the first sale of a security pursuant to the exempt offering, and the issuer has complied with all of the conditions of the applicable exemption, including but not limited to the provision of all solicitation of interest documents submitted to the commissioner.

(8) All communications made in reliance on this administrative regulation are subject to the antifraud provisions of this chapter.

(9) No commission, fee or other remuneration may be paid or given, directly or indirectly, to any person for soliciting any prospective investor in this state unless such person is appropriately registered in this state pursuant to KRS 292.330.

Section 2. Where indications of interest are solicited in reliance upon this administrative regulation by agents of the issuer, those persons shall be exempt from the agent registration requirements of KRS 292.330 if all of the conditions set forth in this section are satisfied.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Issuers contemplating securities offerings in Kentucky. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Should produce savings to issuers because they will be able to assess the interest in a contemplated offering before incurring the expenses associated with registration.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative would be to require these issuers to register their offerings from the outset. This would be very costly and even prohibitive for smaller companies when the success of an offering is unknown. This alternative was rejected because allowing the issuers to solicit interest in a contemplated offering can be achieved by imposing conditions on the solicitation without defeating the protections afforded by the registration requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Designed to facilitate capital raising efforts of small businesses.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Indeterminable

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. This regulation only applies to certain types of transactions. Tiering is justified because these types of transactions do not raise the same regulatory concerns as other transactions.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Financial Institutions
(New Administrative Regulation)

808 KAR 10:390. Confidentially disclosed documents.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To elaborate on the circumstances when the department may disclose confidential documents in the performance of its official function.

Section 1. Notwithstanding the provisions of KRS 292.500(18), the commissioner may disclose documentation otherwise deemed to be confidential at the time of such disclosure as follows:

(1) The commissioner may in his discretion disclose the content of any investigation, examination report, preliminary examination report or results, or any other matter relating to any of the preceding, to another governmental or regulatory authority, including but not limited to the U.S. Securities and Exchange Commission, the NASD, any state securities regulator, any state or federal criminal agency, and any criminal prosecutorial body, if the agency receiving such information agrees in writing to hold it confidential or the commissioner reasonably believes a legitimate governmental purpose is served by such disclosure regardless of the ability of such other agency to ensure the confidentiality of the disclosed material.

(2) Such materials, documentation or other information referred to in subsection (1) of this section, lose their confidential status upon

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the termination of any investigation and/or enforcement action where such information has been utilized by this or any other regulatory body against or with respect to the entity and/or person that initially provided such materials to the department.

(3) Notwithstanding subsections (1) and (2) of this section, except as necessary for the department to enforce the provisions of this chapter, a consumer complaint or other information relative to an investigation or examination shall remain confidential pursuant to the provisions of KRS 292.500(18) and exempt from public disclosure after such documents would otherwise lose their confidential status pursuant to the provisions of subsections (1) or (2) of this section, if such public disclosure would:

(a) Jeopardize the integrity of another active investigation, examination or proceeding;

(b) Reveal the name, address, telephone number, Social Security number, or any other identifying number or information of any complainant, customer, or account holder;

(c) Disclose the identity of a confidential source;

(d) Disclose investigative techniques or procedures; or

(e) Reveal a trade secret.

(4) After five (5) years the commissioner may destroy discarded or obsolete materials, documentation or other information.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for April 29, 1998 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by April 22, 1998 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to April 22, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: All entities and individuals regulated by the department and who are subject to investigation or examination by the department. The number is indeterminable.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable, no comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: May result in long-term efficiency gains because

expressly sets forth when department may disclose documents and allows for increased cooperation with other regulatory bodies.

2. Continuing costs or savings: May result in long-term efficiency gains because expressly sets forth when department may disclose documents and allows for increased cooperation with other regulatory bodies.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative would be to not share information as permitted by this regulation. This alternative would hinder the enforcement efforts of the department and would subject the public to risks against which the securities laws were intended to protect.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Intended to benefit public welfare by better enabling the department to coordinate enforcement efforts with other regulatory bodies.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Indeterminable.

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Different treatment of individuals within the regulated class is not justified and would raise constitutional issues.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of March 11, 1998

The March meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, March 11, 1998 at 8:30 a.m. in Room 125 of the Capitol Annex. Representative John Arnold, Chairman, called the meeting to order, and the roll call was taken. The minutes of the February 11, 1998 meeting were approved.

Present were:

Members: Representative John Arnold, Chairman; Senators Joey Pendleton, Nick Kafoglis, and Dick Roeding; Representatives Jimmie Lee, Woody Allen and James Bruce.

LRC Staff: Greg Karambellas, Donna Little, Stephen Lynn, Susan Wunderlich, Angela Phillips, Donna Valencia, Veronica Power, Biff Baker.

Guests: Bob Bowman, Personnel Board; Jeff Blair, Real Estate Commission; Nathan Goldman, Board of Nursing; Mark Cramer, Tom Bennett, Department of Fish and Wildlife Resources; Mark Farrow, Doug Rathbun, Bobbie Butler, Department of Agriculture; Mark York, Peter Goodmann, Carl Campbell, James E. Bickford, Mark Mangeot, Jim Villines, John Hornback, Martha Hall, Ronald Mills, Roy A. Massey, R. Bruce Scott, Brad Stone, Natural Resources and Environmental Protection Cabinet; Brenda Buchwald, Keith Horn, Department of Juvenile Justice; Sandra Pullen-Davis, Transportation Cabinet; Starr Lewis, Cindy Owen, Scott Trimble, Department of Education; Kevin Noland, Board of Education; Eddie B. Smith, Gerald Wuetcher, Public Service Commission; David Klee, John Gray, Ellen Heslen, Ralph Von Derau, Anne B. Satterwhite, Ruth Friedheim, Eric Friedlander, Joni Cracraft, Rosanne Barkley, Charles Kendall, Michael Littlefield, Cabinets for Health Services and Families and Children; John Brazel, Kentucky Chamber of Commerce; Andrew Bird, Anderson County Farm Bureau; David S. Beck, Laura Knoth, Ronny Pryer, Roger Nesbitt, J.K. Henshaw, Gary Huddleston, Sam Crawford, Kentucky Farm Bureau; Karol Welch, Hopkins County; Joan D. Denton, Jean True, KFTC; Judy C. Willett, farmer; Larry Thomas, BLT Farms; Bonnie Jolly, Gilberta Riggs, Kentucky Pork Producers; Tom Willett, CFA; Dan Weatherspoon, Fulton County farmer; James R. Kerr, Coalition to Save River Counties; John H. Porter, KTC; Mike Ovesen, pork producers; Richard Coffey; Doug Corbin, Community Farm Alliance; Doug Corbin; D.C. Samuel, farmer; Modell T. Richards; William J. Bongess; David M. Carter; Mark Reding and family, pork producers; Ray Allan Mackey, farmer; Bobby Carter, Coalition for Family Farmers; Dennis O. Liptrap, pig farmer; Wayne Salley, citizen of Dublin; Kathy Lyons, Maple Grove Farm; Betsy Bennett, Sierra Club; John Cooper, Kentucky bankers; Mike Musulin, Bill Caylor, Kentucky Coal Association; Michael Baker, Newberry, Hargrove and Rambicure; Carole D. Christian, Wyatt, Tarrant and Combs; Dewey Hensley, Karen Mann, Writing Advisory Commission; LeeAnn Willett, Murray State University; Charles Whitaker, Eastern Kentucky University Writing Project; Cindy Rausch; Martin Cothran, The Family Foundation; Karen Hinkle, Marie Alagia Cull, Kentucky Home Health Association; Ruby Jo Cummins, Dandridge F. Walton, KAHCF; Michael Rust, Nancy Galvagni, Kentucky Hospital Association; Cindy Dunn, Bluegrass Orthopaedics; Todd Lyles, Caretenders Health Corporation; Robert Steven, Rosanne Nields, St. Elizabeth Medical Center and Baptist Healthcare; Bill Doll, Kentucky Medical Association; Susan Downs, Samuel G. Carneal, Lisa Hinkle, Samaritan Hospital; Andrew Melnykoryth, The Courier-Journal; Tom Fitzgerald, Kentucky Resources Council.

The Subcommittee determined that the following administrative regulations did not comply with statutory requirements:

Natural Resources and Environmental Protection Cabinet:
Department for Environmental Protection: Division of Water:
Water Quality

401 KAR 5:001. Definitions of terms used in 401 KAR Chapter 5.

401 KAR 5:008 & E. Swine feeding operations.

James E. Bickford, Secretary; Bob Ware, Assistant Director, Division of Water; Mark York; Peter Goodman, Manager, Groundwater Branch; Martha Hall, Division of Water; Bruce Scott, Manager, Permitting; and Brad Stone represented the Cabinet.

The following people attended the meeting in support of this administrative regulation: Betsy Bennett, Sierra Club; William J. Bongess; Bobby Carter, Coalition for Family Farms; David M. Carter; Tom Fitzgerald, Kentucky Resources Council; James R. Kerr, Coalition to Save River Counties; John H. Porter, Kentuckians for the Commonwealth; Modell T. Richards; D. C. Samuel, hog farmer; Dan Weatherspoon, Farmer, Fulton County; Karol Welch, Hopkins County; and Tom Willett, Community Farm Alliance.

The following people attended the meeting in opposition to this administrative regulation: David S. Berk, Kentucky Farm Bureau; Richard Coffey; Doug Corbin, Community Farm Alliance; Sam Crawford, J.K. Henshaw, Gary Huddleston, Laura Knoth, Roger Nesbitt, and Ronny Pryer, Kentucky Farm Bureau; Andrew Bird, Anderson County Farm Bureau, farmer; Dennis O. Liptrap, Pig Farmer; Ray Allan Mackey, farmer; Mike Ovesen, Kentucky Pork Producers Association; Mark Reding, self, family, pork producers; Wayne Salley; Larry Thomas, BLT Farms; Judy C. Willett, Farmer; and LeeAnn Willett, Murray State University.

The following people attended the meeting to speak regarding this administrative regulation, and did not indicate a position on this administrative regulation: John Brazel, Kentucky Chamber of Commerce; Joan D. Deaton and Jean True, Kentuckians for the Commonwealth; Bonnie Jolly and Roberta Riggs, Kentucky Pork Producers Association; Kathy Lyons, Maple Grove Farm; Mark York.

Secretary Bickford stated that: (1) 401 KAR 5:001 was essentially a definitions administrative regulation; (2) the main definition was the definition of swine unit; (3) he did not believe there was a particular problem with the definition of swine unit.

Secretary Bickford stated that: (1) he appreciated the opportunity to appear before the Subcommittee; (2) the administrative regulations relating to swine feeding operations were the result of hundreds of letters from Kentuckians who did not want unregulated large hog farms in the Commonwealth; (3) after a massive outcry by Kentuckians against large unregulated hog farms, last summer, the Governor charged the Cabinet to develop reasonable administrative regulations to prevent this from happening; (4) the administrative regulations before the Subcommittee were reasonable and would protect Kentuckians from unregulated large hog farms; (5) all permitted hog farms in Kentucky: (a) would be grandfathered; and (b) could continue to operate as they have been without being required to make any additional changes, so long as they did not exceed 1,000 swine units; (6) there were a lot of hogs in 1,000 swine units, and 1,000 swine units totaled: (a) 10,000 nursery pigs; (b) 2,500 finishing pigs; (c) 3,500 animals, farrow to finish; and (d) farrow to feeders, 1,333 animals; (7) currently, we have about 40 hog farms in the state that exceed 1,000 swine units; (8) while some farmers argued that the Cabinet's administrative regulations would not allow them to expand if they want to, or if their children want to stay home and go into the hog business, there was no prohibition in the administrative regulations that would prevent a farmer from expanding; (9) the Cabinet's administrative regulations: (a) permitted an expansion or new operation that exceeded 1,000 swine units; and (b) required an expansion or new operation that exceeded 1,000 swine units to comply with the proposed administrative regulation; (10) there had been a lot of discussion about how much compliance would cost; (11) a study, by a professor from Ohio State University who is a noted agri-economist and has taught several years at U.K., was commissioned by the Cabinet; (12) his conclusions were that compliance with these administrative regulations would cost from 1/5 to 1/4 cent per

pound of pork marketed; (13) the Cabinet felt that this was a very small cost to help protect our water and land; (14) while there had been a lot of talk in the General Assembly this year about private property rights, he hoped Subcommittee members would consider the fact that the Cabinet and public was concerned about the private property rights of the people who lived near these hog farms; (15) since the first of January, the Cabinet had received a number of complaints; (16) a few examples of the problems and things that gave rise to complaints and the need for Cabinet action are: (a) since 1993, a total of 31 lagoons that failed in this state; (b) 69 problems with people who have land applied the waste in such a manner that it got into creeks, wells, or sinkholes; and (c) a number of people who have pumped waste into sinkholes; (17) while the Cabinet did not want, and has never wanted, to hurt the small farmer, administrative regulations are need to prevent these problems; (18) another problem was the problem with odor; (19) during a discussion of House Bill 709, we heard testimony Mr. Jesse Stengberger from Allen County, who stated that: (a) he had owned a farm for 52 years; (b) it had taken him a long time to save the money to build his new home; (c) 6 months after his house was built, a large hog company bought and built a boar operation less than 1,000 feet from his house; (d) on many, if not most days, neither he nor his family can go out on the porches or the yards because it smells so bad; (e) the new carpet that he had just put in the house, had absorbed the smell; and (f) he could not even sell the house now even to recover what he had added to it; (19) the Cabinet had verified his complaints and the conditions created by the large hog farm; (20) while the administrative regulations might not solve every problem, they would limit the amount of waste by limiting the number of hogs that could be confined without proper controls; (21) he could provide many more examples; (22) that the Cabinet was not alone in its concerns was shown by the list he had with him of 2,000 names of people in Western Kentucky that were concerned about large hog operations; (23) this number of violations was typical for practically every county in Western Kentucky; (24) if the Subcommittee wished, he and could go through this in detail, and would provide the Subcommittee members with the names; (24) the Cabinet was concerned because the people of Kentucky did not want large hog farms; (25) if the 1,000 swine unit limit was exceeded, the result would be to allow contract hog farms in Kentucky; and (26) was willing to answer any questions the Subcommittee members have.

In response to a question by Chairman Arnold, Secretary Bickford stated that: (1) he did not believe that there was any way to keep the contract hog farmers out of Kentucky and prohibit their entry into the state; (2) while he did not believe they should be kept out, if we should have them, they certainly should be made to comply with administrative regulations; and (3) the Cabinet was concerned that they comply with administrative regulations.

Chairman Arnold stated that he agreed.

In response to questions by Representative Allen relating to family hog farms and the ability of children to succeed to their parents' farm or part of the parents' farm, Secretary Bickford stated that: (1) that depended on the: (a) amount of land on which waste application was made; (b) the swine lagoon; and (c) distances from houses, churches, etc., and (2) a new permit would not be required if a parent: (a) retired and the child began operation; or (b) deeded the farm to his child

In response to a question by Representative Allen relating to regulation of farms under 1,000 swine units, Secretary Bickford stated that: (1) existing permitting requirements, rather than the administrative regulation: (a) applied; and (b) primarily related to water; and (2) the Cabinet would take action against pumping hog waste in a creek or other such polluting activities.

In response to a question by Senator Pendleton, Secretary Bickford stated that the administrative regulation applied only to confined hog operations.

In response to questions by Senator Pendleton, Mr. Scott stated

that: (1) Senator Pendleton was correct; (2) no administrative regulation prohibited a 100 acre farm operation from turning loose all the hogs it wanted; (3) as a free range operation, it would not be governed by either the old permitting or new regulatory requirements.

Senator Pendleton asked agency personnel whether they had ever known a hog that would not go to the creek and wallow? Secretary Bickford stated that 1,000 hogs would probably not go to the creek and wallow. Senator Pendleton asked Secretary Bickford if he wanted to bet on that. Secretary Bickford stated that 1,000 hogs wallowing in a creek would be a sight.

Senator Pendleton stated that he: (1) certainly appreciated what the Secretary had done and the hard work that has been put into this issue; (2) knew Mr. Massey had aged considerably, and had to spend time at a hearing on the night of his birthday; (3) while he felt the Secretary had done a magnificent job in its attempt to solve issues raised by swine feeding operations, his only problem was the fact that Kentucky was sending a message out that the state was not friendly toward agriculture and hog operations; (4) when he was in Atlanta last weekend, although it was pretty obvious that Kentucky was pretty hard on hogs last Thursday night and weekend in Atlanta, he believed Kentucky had to decide which hogs it was going to be rough on; (5) while he did not mind being hard on Razorbacks, he did not want to be rough on Kentucky farmers with hog operations; (6) he believed a bill this Session was on the agriculture community had pretty much agreed on; (7) while he was sure the Cabinet had not agreed on it yet, he would like all parties to wait until this bill passed; and (8) these administrative regulations would be found deficient and not needed when the legislation was enacted.

Chairman Arnold: (1) thanked Secretary Bickford, and stated that he agreed with Senator Pendleton, that the Secretary and his staff had done a lot of hard work; and (2) stated that he believed that: (a) the misperception of the industry was the major problem with this issue; (b) the media did not help correct the misperception; (c) limiting our hog producing farmers to 1,000 swine units was the wrong policy, and would harm their ability to make a living, because most of them were at that threshold now and would not be allowed to expand.

Karol Welch: (1) thanked Subcommittee members for the opportunity to appear before the Subcommittee and address the issue; (2) stated that she: (a) was a magistrate in Hopkins County, and represented her county on these issues; (b) believed that everybody understood the difficult job the Subcommittee had; (c) a poll in Hopkins county: 1. showed that over 80 per cent of county residents did not want a hog facility to locate in the county; and 2. had been taken before the citizens of the county were told that a facility had decided not to locate in the county because of the emergency administrative regulation; (d) believed she spoke for the majority of people who would be concerned over even the thought that might be living with a major hog facility in their backyard; (e) when they vote, each Subcommittee member should think for a moment whether he would want a hog facility in his backyard for the rest of his life and, possibly, for the rest of his children's and grandchildren's lives; and (f) Hopkins County residents: 1. want to live in their county; and 2. were in the county for the duration, and did not have the money to get up and move because they did not like what was going on. Ms. Welch asked if Subcommittee members would want to smell hog, or have their water ruined, or wonder or know that hog excrement was seeping in their wells. Ms. Welch stated that she: (1) believed the administrative regulations were very, very lax; (2) had a well for which she was concerned; (3) lived on a farm on which her daddy had raised hogs; (3) as a farmer, and a magistrate, represented the people; and (4) had taken a petition around, and in three days had over 1,000 names on it, because people wanted to sign and have everyone know they did not want a hog facility. Ms. Welch: (1) requested that the Subcommittee improve the administrative regulation; and (2) stated that: (a) 1500 feet from a lagoon full of waste was inadequate and could be smelled over a 5 mile distance; (b) if Subcommittee members believed 1500 feet was adequate, they

should go to a hog facility; (c) she had been to hog facilities in Oklahoma and been made aware of the consequences; and (d) knew from the operation of her family's small family operation of 50 hogs in the past that the odors could be smelled it all the way down the line. Ms. Welch stated that: (1) her objections and requests were made on behalf of the people of Hopkins county and the Subcommittee members' districts; (2) these people could not be present today, and depended on Subcommittee members to protect them, their water, air, and families; (3) protection of the people they represent was why people voted for the Subcommittee members and herself; (4) she had appeared before the Subcommittee as a citizen and because of her obligation to her constituents and their expressed objections and desire for protection; and (5) she wanted to express her appreciation for the opportunity and their consideration. Chairman Arnold thanked Ms. Welch for attending and testifying before the Subcommittee.

Mr. Porter stated that he: (1) represented Kentuckians for the Commonwealth; (2) was from Hopkins County; (3) was a small land owner, of about 40 acres in three tracts; (4) had been concerned this past summer when a large farm wanted to come into the southern part of Hopkins County, about 20 miles from where he lived, because he was aware that if the operation located in that area, it could locate in his; (5) as other people were, was concerned about his property rights; (6) had read in an interview in the Madison Messenger, that the company operated in Texas and Oklahoma, states that were increasing their regulatory requirements against their operations; (7) believed that Kentucky was a possible windfall for them, because Kentucky: (a) did not have comprehensive administrative regulations governing such operations; and (b) had regulatory requirements primarily restricted to water quality; (8) believed that the absence of strong regulatory requirements meant that the state: (a) needed these administrative regulations; (b) did not need serious modification or weakening of these administrative regulations. Mr. Porter stated that: (1) the setbacks established by the administrative regulation established an inadequate distance; (2) the setbacks relating to property would permit a lagoon or a hog farm within 150 feet of the property line; (3) if a lagoon were permitted within 150 feet of the property line of adjoining landowners, the adjoining landowner would be restricted in the use of his property, and would be prevented from using it for a house or a business; (4) the operation should have a greater setback; and (5) while he appreciated what the Cabinet had done, he believed the members of the General Assembly did not need to further weaken the administrative regulations promulgated by the Cabinet. Chairman Arnold thanked Mr. Porter for his appearance before the Subcommittee.

Mr. Carter stated that: (1) he was a member of the Coalition for Family Farms; (2) had attended and spoken at the meeting of the House Standing Committee On Agriculture and Small Business meeting last week; (3) what stuck in my mind more than anything else that was discussed at that meeting was the tear-jerking story told by Jesse Stengberger about the giant hog factory that had been established within 1000 feet of his house; (4) after having heard this heart-breaking story, he had been amazed to learn that House Bill 709 had been passed by the Standing Committee by a vote of 15-1; (5) felt that passage was a reckless disregard for this man and his family; (6) had been informed by members of his organization of a trip to went to hog country in North Carolina, during which: (a) from the highway, they saw a house downwind about a half-mile from a large hog factory; (b) they stopped and interviewed the owner, Mr. R.T. Walston, who told them that: 1. the hog factory had ruined his life; 2. his wife had to mow the yard with a mask; 3. he could not sell his house, because no one wanted a house downwind from a hog factory; 4. he could not even get help to work in his tobacco because of the smell; 5. he had been hospitalized for headaches and nausea; 6. he had built a deck a couple of years ago, and when his daughter and family came for a barbecue, they had to eat with one hand and fan blow flies with the other; 7. after flies had laid maggots on his sandwich, his family had never eaten a meal on that deck again; 8.

his daughter would not visit, for which he could not blame her because he did not want his grandchildren exposed to that kind of filth; (7) he did not think the people of Kentucky deserved this kind of abuse; (8) believed that, under House Bill 709, if he had a pot belly pig as a pet, he could raise hogs; (8) if House Bill 709 was enacted, he would be allowed to establish a hog factory in an area and, if neighbors complained, state that their representatives stated it was permitted; (9) believed the emergency administrative regulations that the Governor had promulgated were a lot closer to what he and his organization wanted; (10) felt that 1,000 swine units and monitoring wells were better because there are more lakes and streams in Kentucky than in any other state except for Alaska; (11) when the residents of Dublin decided to try to stop the hog factory from locating there: (a) Harold Foods sent an enforcer to take care of them; (b) Buckman employees kept passing it around and one of his best friends, Michael Blunt, had been shot four times by the enforcer, and after he had collapsed and fallen to the ground, had been shot two more times in the face; and (c) Mr. Blunt and his wife had put a sign in their yard that stated: "Harold Foods: environmentally safe but they'll shoot you four times"; (12) he wondered if these were the type of people the people wanted to set up shop in their neighborhood; (13) he believed that the passage of House Bill 709 would ensure that; (13) the incidents in Dublin resulted in: (a) almost the whole town of Dublin packing guns; (b) the deafening of Mr. Blunt's left ear, the blurring of his vision, and the loss of his sense of balance; (14) while Mr. Blunt will suffer for life, he considered him his hero, and thanked God that he was still alive; and (15) thanked the Subcommittee for its consideration, and requested the Subcommittee to approve the Cabinet's administrative regulations.

Mr. Liptap stated that: (1) he was a pig producer from Nelson County; (2) like everything, agriculture and food production, in particular the hog industry is in a state of change; (3) the change was very rapid; (4) he was highly concerned about the negativism and alarmism that appeared in our media; (5) while our media, itself, had undergone consolidation in order to meet changing conditions, it attacked consolidation in agriculture and pig production; (6) if, indeed, mega-hog farms were bad in themselves, perhaps mega-media also was bad; (7) we no longer had locally owned newspapers and radio and TV stations; (8) Secretary Bickford spoke about lagoons that had spilled, not failed; (9) while the Secretary spoke about 69 in 5 years, there were 306 raw sewage discharges from municipal waste treatment plants in one year alone; (10) those attending the meeting should concentrate on these 306 discharges; (11) farmers needed to expand, and did not grow in huge increments; (12) what was required and what we were trying to do was to allow farmers to build the next building in their expansion plan close to their core facility, even if it was within the setbacks; (12) farmers and those who opposed these administrative regulations and supported House Bill 709 have: (a) already embraced regulation; (b) been regulated for some time; (c) accepted setbacks and did not oppose them; (13) the Cabinet has established standards to determine what farms are related; (14) he believed that relatedness between farms was: (a) determined by the amount of waste and the amount of land available to distribute; and (b) the only factor that truly related to or established that farms were related was the sharing of land base or lagoons and facilities for treating and handling the waste; (15) to base relatedness on common ownership or family ownership is unacceptable because these factors do not establish related operations; (16) the requirements relating to monitoring wells require drilling to water; (17) he had 12 lagoons on his farm, underlaid with rock without a bit of groundwater in the area; (18) although the requirements established by the administrative regulation require drilling: (a) he did not know how far he would have to drill to find water through solid rock; and (b) they did not contain a provision that would not require monitoring wells in this case; (19) having been a consultant, the Cabinet's hiring of a consultant was not persuasive since one usually gets what one wants from a consultant; (20) he had an expert who could challenge the assumptions made by

the Cabinet's consultant; (21) with regard to the Cabinet's figures relating to a fifth of a cent cost a pound for a 1,000 swine unit operation, Kentucky does not have 1,000 swine unit operations: (a) operations were either 990 or 2,000 swine units and above; and (b) for a 1,000 swine unit operation, the cost is 2 to 4,000 dollars per farm additional cost of production that a farmer cannot pass on to the consumer; (22) everyone was aware that, last year, the average household in this country spent only \$2,500 total for its food; (23) the state's farmers were increasing to a modest size hog operation at a cost of production equal to or greater than what the average consuming household paid for food, an expenditure that cannot be recovered; and (24) paraphrasing Franklin Roosevelt who said that the only thing we have to fear is fear itself, farmers have attempted to counter the fear on the issue of hog farms that has been propagated by those opposing hog farms and reasonable regulation of them.

Mr. Mackey stated that he was: (1) a hog farmer and general grain and livestock farmer from Hardin and Larue County; and (2) opposed to the administrative regulations.

Mr. Bird stated that: (1) he represented the Anderson County Farm Bureau; (2) was a farmer in Anderson County; (3) he believed these administrative regulations were a monstrosity; (4) while he would not wish to insult the intelligence of the Subcommittee members by defining a monstrosity, he liked Webster's definition of extremely ugly; (5) while everyone at the meeting was for clean water, clean air, motherhood, and apple pie, whether it was motherhood or clean water, how it was protected or achieved was the issue; (6) in the development of these administrative regulations, he did not believe that the Cabinet had established its requirements in the correct manner, because it: (a) did not listen to: 1. our land grant university; 2. farm organizations; or 3. even the Kentucky Department of Agriculture; (7) a lot of progress had been made over the last few years with clean water and clean air, and he knew that a lot more progress would be made under the Clean Water Act that would go into effect in a few years; (8) before the members of the Subcommittee voted on these administrative regulations, he hoped they would: (a) read them through word for word; and (b) at the same time, think about what they would require of their farmer friends or family members who want to go into the hog business; (9) he was against the administrative regulations because they: (a) were too detailed; (b) too technical; (c) too expensive; (d) too hard to interpret; and (e) a great hindrance to the farm family; (10) adoption of these administrative regulations would mean that people at this meeting will return in two years to talk about the regulation of cattle manure and poultry manure; (11) he believed that the Subcommittee should enact House Bill 709 and find these administrative regulations deficient; (12) was reminded of Bill Natcher, former Chairman of the Appropriations Committee in Congress, and his regulation of an unreasonable federal agency's unreasonable regulations by cutting its appropriation in half, and the need to regulate the Cabinet; (13) everyone was aware of the clouds of doom that hang over our tobacco farms; (14) if these administrative regulations hastened imposing disadvantages or the demise of our swine industry and the resulting placement of our grain industry at a comparative disadvantage, along with similar constraints on cattle and swine, he wondered who would pay the taxes to support our schools and run our government; (15) the Cabinet has promulgated these detailed and expensive administrative regulations, even though it and its employees cannot or do not even follow existing regulatory requirements; and (16) an illustration of its inability to enforce was to be found in Monday's edition of the Lexington Herald Leader which reported that, although two legal options were required and permitted, Cabinet personnel illegally disposed of a dead cow by dragging it up to the back of the farm where it would rot. Mr. Bird submitted the article to the Cabinet.

Chairman Arnold thanked those who spoke on the administrative regulations.

The Subcommittee unanimously approved a motion by Representative Lee to find 401 KAR 5:001 and 401 KAR 5:008 deficient.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Personnel Board

101 KAR 1:325. Probationary periods. Bob Bowman, Personnel Board, represented the Cabinet.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1(4), 2(2), and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

101 KAR 1:335. Employee actions. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 2(3) was amended to clarify that an appointing authority may assign an employee to work at a site other than his work station, if the: (a) site is within the county of employment; and (b) the assignment is not a transfer, demotion, or reinstatement; (4) Sections 3(2)(a) and 4(6)(a) were amended to clarify which form was required to request a voluntary transfer or demotion; (5) Section 4(4)(a) was amended to include an appropriate cross-reference to an administrative regulation; (6) a new Section 6 was created to incorporate by reference the required form; and (7) Sections 2(1), 3, 4, and 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Kentucky Real Estate Commission

201 KAR 11:011. Definitions. Jeff Blair, General Counsel, represented the Commission.

This administrative regulation was amended as follows: (1) the TITLE was amended to state that the definitions were established for 201 KAR Chapter 11, as required by KRS 13A.222(4)(e); (2) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (4) Sections 1 through 7 were amended to: (a) place the definitions in one section in alphabetical order, as required by KRS 13A.222(4)(e); and (b) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4).

Board of Nursing

201 KAR 20:070. Licensure by examination. Nathan Goldman, General Counsel, represented the Board.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 4, and 6 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (3) Sections 1(1) and 4(1) were amended to include appropriate cross-references to applicable administrative regulations; and (4) Section 4(2) were amended to clarify that an applicant shall not take the examination more than one (1) time during a three month period.

201 KAR 20:110. Licensure by endorsement. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Section 1(1) was amended to include appropriate cross-references to applicable administrative

regulations; (3) Section 3 was amended to clarify the continuing education requirements; and (4) Sections 1, 2, and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

201 KAR 20:162. Procedures for disciplinary hearings pursuant to KRS 314.091. Applications for licensure and registration. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct a statutory citation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1 was amended to clarify that an administrative hearing shall be conducted in accordance with KRS Chapter 13B; (4) Sections 3, 4, 5, 6, 8, and 9 were amended to delete language that repeated or summarized KRS Chapter 13B, as required by KRS 13A.120(2)(e) and (f); and (5) Sections 2 through 11 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

201 KAR 20:370 & E. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (2) Section 3 was amended to clarify the application requirements; (3) Section 4 was amended to: (a) clarify the provisions relating to reporting felony convictions; and (b) comply with KRS 314.091(1)(b); (5) Section 1(1) was amended to include the names of the required application forms; and (6) a new Section 5 was created to incorporate by reference the required application forms.

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:240. Special bobcat harvest season. Tom Bennett, Commissioner, and Mark Cramer represented the Department.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2(1)(c) and 4(2)(b) were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

Department of Agriculture: Division of Regulation and Inspection: Egg Marketing

302 KAR 10:070. Consumer grade quality standards. Mark Farrow, General Counsel; Doug Rathbun, and Bobbie Butler, Program Administrator, represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to: (a) clarify the requirements for classification of eggs offered for sale in Kentucky as Kentucky consumer grade AA, A, or B; (b) comply with the federal requirements established in 7 C.F.R. 56.200 through 56.209; and (c) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4).

Natural Resources and Environmental Protection Cabinet: Division for Air Quality: General Administrative Procedures

401 KAR 50:032. Prohibitory rule for hot mix asphalt plants. John Hornbeck, Director, represented the Division.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; and (2) Sections 3(1), 3(2), 3(3), and 4(1) were amended to comply with the: (a) drafting requirements of KRS 13A.222(4); and (b) format requirements of KRS 13A.220(4).

New Source Performance Standards

401 KAR 60:750. Standards of performance for municipal solid waste landfills. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) Sections 1 and 2 were amended to comply with the drafting requirements of KRS 13A.222(4).

Existing Source Standards

401 KAR 61:036. Emission guidelines and compliance. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 1 was amended to delete the Definitions section of the administrative regulation because a definitions administrative regulation for 401 KAR Chapter 61 exists, as required by KRS 13A.222(4)(e); and (3) Section 2 was amended to comply with the drafting requirements of KRS 13A.222(4).

Justice Cabinet: Department of Juvenile Justice: Child Welfare

505 KAR 1:040 & E. Policies and procedures manual. Brenda Buchwald and Keith Horn represented the Department.

This administrative regulation was amended as follows: (1) DJJ 102 and 104 were amended to delete provisions that repeated the statute, as required by KRS 13A.120(2)(e); (2) DJJ 127, 425, and 429 were amended to delete provisions that exceeded statutory authority, as required by KRS 13A.120(2)(d); (3) DJJ 147 was amended to comply with the requirements of KRS 72.020, pursuant to KRS 13A.120(2)(i); (4) DJJ 422 was amended to correct statutory citations; (5) DJJ 500 was amended to properly cross reference the ACA Standards manual; (6) DJJ 125 was amended to incorporate by reference the inventory control manual; and (7) DJJ 106.3, 106.4, 110, 133, and 206 were amended to comply with the drafting requirements of KRS 13A.222(4).

Board of Education: Department of Education: Bureau for District Support Services: School Administration and Finance

702 KAR 3:110. Document filing dates. Kevin Noland, General Counsel, represented the Department.

Mr. Noland stated that this administrative regulation modified the current practice for school districts that now turn in financial information electronically by computers and referred only to the kinds of documents they used to record that information.

In response to questions by Senator Roeding, Mr. Noland stated that this administrative regulation: (1) did not impose extra work on school districts; and (2) made their work easier because it permitted electronic submission.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Bureau of Learning Results Services: Assistance and Intervention Services

703 KAR 3:060. Procedures for determining rewards and sanctions. In response to questions by Senator Roeding, Mr. Noland stated that: (1) this administrative regulation was amended to address one specific problem; (2) last summer, there had been a data error and some more teachers had become eligible for rewards; (3) this related to the test that had been given in 1995 and 1996 in Accountability Cycle 2; (4) this necessitated giving out some more reward money to some teachers; (5) but to do that, this administrative regulation needed to be amended to allow for that calculation; (6) this related to a prior test and did not relate to what was going on this year or next year; and (7) even Sen. Gex Williams did not have a problem with this.

This administrative regulation was amended as follows: Sections 1, 6, 7, 8, 9, 10, and 12 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of

KRS 13A.222(4).

Learning Results Services

703 KAR 4:110. Code of ethics for state required testing. Kevin Noland, General Counsel; Starr Lewis, Manager, Writing Project Branch; Scott Trimble, Director, Division of Assessment Implementation; and Cindy Owen represented the Department.

The following people attended the meeting in support of this administrative regulation: Dewey Hensley, Writing Advisory Committee; Karen Mann, Writing Advisory Committee; and Charles Whitaker, ECU Writing Project.

The following people attended the meeting in opposition to this administrative regulation: Martin Cothran, The Family Foundation; and Cindy Rausche, Parent.

Mr. Noland stated that: (1) the Code of Ethics had been: (a) incorporated by reference in this administrative regulation two years ago; and (b) created by Kentucky teachers in 1992; (2) the amendment to the Code of Ethics: (a) was necessary to respond to criticism received last summer regarding the requirement that cheating allegations be sent to the local superintendent for investigation; (b) required allegations of cheating to be investigated by a panel within the Department of Education with the help and cooperation of the local superintendent; and (c) was not controversial; (3) he understood that someone was at the Subcommittee meeting to oppose an existing provision in the Code of Ethics, which: (a) was included in the: 1. guidelines since 1992; and 2. administrative regulation two years ago; (b) was created by Kentucky teachers; (c) established the do's and don'ts for a teacher helping a student prepare writing portfolios; (d) was not being changed in this administrative regulation; (e) did not affect the majority of student activities, including: 1. spelling tests; 2. math tests; 3. quizzes; and 4. fill in the blank assignments; and (f) concerned essay writing assignments that a student could include in his writing portfolio; (4) while a teacher was authorized to mark all over a writing assignment, the teacher was prohibited from fixing the specific errors, including punctuation and spelling; (5) he had examples of his fifth grade daughter's work that had errors marked, but not corrected, by her teachers; and (6) four Kentucky teachers, who were involved with writing, were present at the Subcommittee meeting to: (a) support the administrative regulation; and (b) answer questions regarding the administrative regulation.

Chairman Arnold stated that: (1) while some teachers had been told that the teachers were not allowed to mark on portfolio papers, he had also heard that a teacher was: (a) allowed to: 1. circle in red a misspelled word; and 2. mark the word as misspelled; and (b) not allowed to correct the mistake; and (2) he wanted to know how the misinformation had been released.

Mr. Noland stated that Starr Lewis, who directed the Kentucky Writing Project, would answer Chairman Arnold's question.

Ms. Lewis stated that: (1) she was the director of the Kentucky Writing Program; (2) cluster leaders: (a) were provided training in Kentucky about the requirements; and (b) shared that information with cluster teachers at their schools; (3) while a two-day institute for all cluster leaders across the state had used examples of student papers showing a range of teacher markings, the institute could not show every possible marking on student writing papers; (4) a videotape had been shared with teachers and was made available to schools; (5) when the Department became aware of the confusion, workshops were held across the state; and (6) articles explaining the requirements had been published in both: (a) "Kentucky Teacher"; and (b) "Regionally Speaking", which had been sent to every teacher in Kentucky.

Mr. Noland stated that the Department would be glad to answer questions or offer more training if that was needed.

Representative Bruce asked if the Department: (1) was willing to defer consideration of this administrative regulation to work out the problems; or (2) wanted the Subcommittee to consider the administrative regulation today..

Mr. Noland stated that he preferred that this administrative

regulation be voted on today because the Department had conducted training and sent out newsletters to resolve the confusion and would continue to do the same.

In response to questions from Chairman Arnold, Mr. Noland stated that the Department would: (1) try to correct this error; and (2) correct this error.

Martin Cothran stated that: (1) he wanted to follow up on Mr. Noland's comments; (2) he represented the Family Foundation of Kentucky, a nonprofit organization based in Lexington; (3) the Code of Ethics included a section on portfolios, which stated that teachers: (a) shall not at any time make direct corrections or revisions on a student's work; and (b) may indicate the position of errors and ask the student questions about errors without making direct corrections; and (4) the language used in the Code of Ethics regarding corrections: (a) was confusing; and (b) affected the reliability and validity of assessments, because different teachers in different schools used entirely different testing practices.

In response to a question by Chairman Arnold as to whether it the Department's agreement to clear up the confusion was acceptable, Mr. Cothran stated it was.

Ms. Rausche stated that: (1) she: (a) was a parent; and (b) had monitored education for the last six years; (2) the amendment to this administrative regulation had been made to address cheating allegations; (3) someone who cheated should be held accountable for cheating; (4) while the Code of Ethics did not include provisions holding the Department of Education accountable, she thought the Department should be held accountable for its part in KIRIS; (5) page 8 of the Code of Ethics should be deleted because: (a) it addressed performance events; and (b) performance events were no longer a component of KIRIS; (6) she had excerpts available from a KIRIS preparation packet that: (a) showed an emphasis on how to take the test, rather than on the content or material of the test; and (b) stated that items could be placed on classroom walls to help students take the test if the items were on the walls the entire year; (7) allowing these materials to be present during the examination was an inappropriate testing practice; (8) it was also inappropriate that the Code of Ethics allowed use of dictionaries, thesauruses, and calculators by students; (9) items in the Code of Ethics addressed instructional methodology, which was the responsibility of the local school districts; and (10) the administrative regulation should be found deficient because it violated KRS 13A.030(2)(a).

Senator Roeding stated that: (1) because the Code of Ethics was incorporated by reference in this administrative regulation, he: (a) had not seen the material; and (b) was not able to vote on material which he had not seen; (2) if an item is incorporated by reference, a copy should be sent to the legislators; and (3) the administrative regulation should be found deficient because the Code of Ethics had not been sent to legislators and was not seen.

Chairman Arnold stated that the confusion regarding corrections needed to be addressed.

Senator Pendleton moved that this administrative regulation be approved. Representative Lee seconded the motion. The vote on the motion was 3-4, with: (1) Senators Kafoglis and Pendleton, and Representative Lee voting to approve this administrative regulation; and (b) Senator Roeding, and Representatives Allen, Bruce, and Arnold voting not to approve this administrative regulation.

In order to find an administrative regulation deficient, a motion to find an administrative regulation deficient was required. Because the motion before the Subcommittee was not a motion to find this administrative regulation deficient, this administrative regulation: (1) was not found deficient; and (2) will become effective after: (a) the expiration of 30 days from assignment by LRC to the appropriate legislative subcommittee, if the appropriate legislative subcommittee does not meet to consider this administrative regulation; or (b) review by the appropriate legislative subcommittee within the 30 day period, if the appropriate legislative subcommittee does not find the administrative regulation deficient.

Senator Roeding stated that he wanted to make a motion to find this administrative regulation deficient.

Chairman Arnold stated that, rather than find this administrative regulation deficient, the Subcommittee should give the Department should an opportunity to address the issue that was raised.

This administrative regulation was amended as follows: Section 1 was amended to: (1) clarify that school and district personnel are required to comply with the Code of Ethics; and (2) comply with the (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Public Service Commission: Utilities

807 KAR 5:069. Filing requirements and procedures for federally-funded construction projects of water associations, commissions, or districts or combined water, gas or sewer districts. Gerald Wuetcher and Eddie Smith, Manager, Water and Sewer Branch, represented the Commission.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the TITLE, the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1, 3, and 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Cabinet for Health Services: Department for Public Health: State Health Plan

902 KAR 17:041 & E. State health plan for facilities and services. (Compiler's Note: The discussion of this administrative regulation also includes discussion of 900 KAR 6:050, which was not amended at the Subcommittee meeting.)

Samuel Carneal, and Susan Downs, Samaritan Hospital; Carole D. Christian, Wyatt Tarrant & Combs; Marie Alagia Cull, Kentucky Home Health Association; Ruby Jo Cummins, Kentucky Association of Health Care Facilities; Joni Cracraft; Nancy Galvagni, Kentucky Hospital Association; Rosanne Nields, St. Elizabeth Medical Center; Robert Stevens, St. Elizabeth Medical Center and Baptist Healthcare; and Eric Friedlander, Cabinet for Health Services, attended.

Michael Baker, representing home health agencies; Bill Doll, Kentucky Medical Association; Cindy Dunn, Administrator, Bluegrass Orthopaedics; John Gray, Director, Certificate of Need Office, Ellen Heslen, General Counsel, Charles Kendell, Branch Manager, Health Policy Development Branch, Cabinet for Health Services; Karen Hinkle, Executive Director, Kentucky Home Health Association; Lisa Hinkle, Samaritan Hospital; Todd Lyles, Senior Vice President, Caretenders Health Corp., Louisville; Mike Rust, President, Kentucky Hospital Association; Dan Walton, Kentucky Association of Health Care Facilities testified.

Ms. Heslen stated that: (1) as agreed at last month's Subcommittee meeting, the Cabinet met on a couple of occasions with: (a) members of the groups who had appeared before the Subcommittee at last month's meeting; and (b) other interested parties in order to hear everyone's concerns relative to the Certificate of Need ("CON") and State Health Plan administrative regulations; (2) the issues raised by the CON administrative regulation related to: (a) whether new buyers of St. John's beds in Northern Kentucky had to be mandated as Medicaid beds; and (b) whether a definition of the term, "physician office" needed to be established by administrative regulation; (3) the objection relating to St. John's beds has been withdrawn; (4) by agreement with the Kentucky Hospital Association ("KHA") and the Kentucky Medical Association ("KMA"): (a) the term, "physician office" will not be defined by administrative regulation; and (b) a compromise of the issue raised by ambulatory surgery service language in the administrative regulation was reached; and (5) with regard to the State Health Plan administrative regulation: (a) after several meetings, the proposed amendment reflects the agreement reached by KHA and KMA on the ambulatory surgery service; (b) Ms. Hinkle and Ms.

Dunn would prefer that all criteria relating to ambulatory surgery service be removed.

In response to a question by Representative Bruce, Ms. Gray stated that: (1) a CON was required to establish ambulatory surgery centers; and (2) while, previously, the Cabinet had provided that ambulatory surgery centers would not be subject to substantive review, the State Health Plan contains review criteria for their establishment.

In response to a question by Senator Roeding: (1) Mr. Gray stated that requirements relating to ambulatory surgery centers were on pages 11 and 12 of the State Health Plan; and (2) Ms. Heslen stated that was the language proposed by KHA, and reflected revisions made after comments by KHA, KMA, the Cabinet, and other interested parties.

In response to a question by Representative Bruce, Ms. Heslen stated that: (1) the language relating to ambulatory surgery centers was not removed; and (2) the objective of the meetings held after last month's Subcommittee meeting was to develop a compromise that would be acceptable to interested parties.

In response to a question by Senator Roeding, Ms. Heslen stated that, as part of the compromise that the administrative regulation would not establish a definition of "physician office", the language relating to ambulatory surgery centers had been agreed to by KHA and KMA.

Ms. Heslen stated that: (1) with regard to personal care beds: (a) the State Health Plan remains as originally proposed in the administrative regulation; (b) the Kentucky Health Care Association ("KHC") would prefer that personal care beds be restored to formal review; and (c) a case which should resolve the issues raised by personal care beds is before the Franklin Circuit Court; and (2) with regard to home health services: (a) the proposed language reflects the compromise reached between KHC and KHA; and (b) Mr. Baker and Mr. Miles would prefer that the requirement established for an expansion of home health service, a need for 75 patients in a county, be substantially lowered.

In response to a question by Representative Bruce, Mr. Gray stated that a CON was required to expand.

Ms. Heslen stated that with regard to neonatal beds: (1) issues remained; (2) the Cabinet had proposed that the criteria, 80% occupancy level, not be changed; (3) Ms. Hinkle would prefer that the criteria be removed; (4) while KHA had not been notified by its members that there was an interest in changing the criteria during its meetings with the Cabinet, yesterday, she had received faxes from Frankfort Regional Medical, Springview, and Columbia South West stating that they agreed with Good Samaritan's request that the criteria be removed; and (5) the proposed amendment contained the criteria.

Ms. Heslen stated that: (1) with regard to rehabilitation beds, megavoltage radiation, MRI's, and open heart procedures, a consensus had been reached; and (2) expressed her appreciation for the efforts of all parties to reach an agreement on issues raised by these administrative regulations that was acceptable to most parties.

In response to questions by Senator Roeding, Mr. Gray stated that, with regard to home health services: (1) a CON was required; (2)(a) in order to receive a CON, consistency of the application for a CON with the State Health Plan was required; and (b) consistency was shown by demonstrating that 75 more people in the county were in need of home health services; and (3) the administrative requirements relating to a CON, filing an application, the public hearing requirements, and approval of the application were required for an expansion of services. Senator Roeding stated that the: (1) only way to lower the costs of home health care was to increase competition; and (2) the requirements established by this administrative regulation certainly would not increase competition. Ms. Heslen stated that, after hard work, the Kentucky Home Health Association ("KHHA") and KHA had reached the settlement reflected in the compromise proposed to the Subcommittee.

Mr. Doll stated that: (1) the medical market place was undergoing a great deal of change; (2) in response to the difficult issues in the medical market place, the Subcommittee had requested that all interested parties attempt to reach a compromise; (3) KMA attempted to reach a compromise; (4) he believed the following compromise had been reached: (a) KMA had agreed with KHA that with regard to Senator Pendleton's bill, Senate Bill 306, elements that would have codified review criteria would be deleted because, being established by administrative regulation, codification was not required or needed; (b) the first portion of Senate Bill 306 would place hospitals and those who were interested in free standing centers on a more level playing field; (c) there is a case that indicates that if hospitals want to expand existing services, they can expand in an unfettered manner; and (d) the compromise would require hospitals to meet the same requirements others are required to meet; (2) KMA would agree to modify the language existing language in the administrative regulations; (3) while some of those interested in free standing centers might believe that the compromise was not adequate, KMA had agreed that under the stewardship of the Cabinet during the Interim, the parties and Subcommittee staff would investigate the issues further and address the many concerns that had been raised; (4) KMA had agreed to refrain from addressing the issue of physician office within the legislative or the regulatory process; (5) KMA and KHA had agreed to address some of KHA's concerns about high tech and other services that might be proposed for a physician's office; and (6) while KMA would live up to its bargain, KMA would be concerned if the administrative regulations contained language that resulted in a departure from the agreement that had been reached.

In response to a question by Representative Bruce, Mr. Doll stated that KMA could live with the agreement contained in the proposed amendments.

Mr. Baker stated that: (1) with regard to home health, he supported approval of these administrative regulations; (2) the Cabinet had come a long way in working with interested parties; (3) home health agencies he represented believed that: (a) the proposed agreement erred in that it did not allow competition across county lines by existing agencies at no increase in fixed costs; (b) their proposal would: 1. require completion of the CON process; 2. not totally preclude approval as the current formula would; 3. the current formula precludes approval because it requires a need for 75 patients in a county for the expansion of home health service; 4. the current formula is inapplicable to most counties; 5. provide that the methodology not preclude approval of the expansion of an existing agency in one county in the next county; and (3) requested that the Subcommittee strongly suggest to the Cabinet that, either today or in the next few months, seriously consider the proposal relating to expansion.

Ms. Karen Hinkle stated that: (1) the Cabinet proposals were better than no criteria; (2) while she supported the Cabinet proposals, she believed the Cabinet needed to seriously study the need for home health services; (3) those she represented would cooperate with the Cabinet in this study, and provide it with the information and people needed for the study; (4) this is supported by the membership she represented which includes 90 to 95% of the licensed agencies in the state; (5) while the association recognized that any particular client or agency might want it to be different to better mesh with its corporate plan, it recognized the need for criteria; (6) with regard to Senator Roeding's questions relating to competition: (a) a great deal of competition existed; (a) there are: 1. two agencies in 97% of Kentucky counties; 2. three or more agencies in 77% of Kentucky counties; 3. many of the latter have 4 or 5; and 4. in some there are 10 or 12 agencies; (7) in the last year and a half, one-third of the counties have had new providers included; (8) some of these counties have had 4 or 5 providers added to their base of providers; (9) the requirement for 75 identified: (a) does not mean that people are not receiving service; (b) means that there is at least a number of individuals who may not now be served by existing providers; (10) even with 2 providers in a county, to say there is a need for 75 means

only that they would need to add 2 patients a month to enable them to take care of the need for which the capacity for these patients exists; (11) in some situations, that another provider might well be appropriate is taken into account; (12) the attention on the federal level about concerns relating to over utilization, increased costs, as well as HCFA's reports during the last 2 years, have indicated that the problem areas are in states that do not exercise good control over who may enter the market; (13) Kentucky is not cited as one of these states; and (14) the compromise reflected in the proposed amendments is feasible and economically sound.

Ms. Dunn stated that: (1) her comments were restricted to the surgical services requirements on pages 11 and 12 of the State Health Plan; (2) she agreed that the issues related to heal care cost containment and competition; (3) nothing in the criteria permitted cost containment or competition; (4) she represented a group of physicians who wanted: (a) only to compete fairly in the business world; and (b) to have a successful business based on: 1. quality; 2. cost containment; and 3. patient satisfaction; (4) none of these factors is listed in the criteria; (5) while she agreed with Mr. Doll's statement that KMA the proposal would place hospitals and others on a level playing field, she noted that the physicians she represented did not have the ability to do anything more than remain in their offices; (6) asked the Subcommittee to: (a) review the criteria; and (b) realize that while basing it on need is admirable and helpful in some areas, it was not helpful in urban areas; (7) the physicians she represented had been charged by major employees in their area, at the U.K. Economic Roundtable, to lower costs; (8) the current proposal would not result in the lowering of costs, because the physicians she represented could not compete with hospitals or even put up their facilities; and (9) requested that the Subcommittee look at the review criteria for surgical services and realize that, in Kentucky, under these criteria the services would be obtained only from a hospital or another existing center because there would not be any new providers.

Mr. Lyles stated that Caretenders: (1) had a number of agencies in Kentucky and the region; (2) was concerned over home health care requirements and the three areas in which home health providers could not expand: (a) new providers were required to meet a need threshold of 125 patients; (b) to expand across county lines, existing providers were required to meet a need criteria of 75 patients; and (c) a rural hospital that wants to establish an agency would be required to meet a need criteria of 50 patients; (3) believed that an existing home health agency was the most cost efficient provider of home health services; and (4) believed that to be required to meet a higher threshold than a hospital that would establish a new provider that was inexperienced and would be required to hire new people, computers, etc. was unfair.

Ms. Lisa Hinkle stated that: (1) a compromise had not been reached in the criteria for neonatal nurseries; (2) the proposed amendments established a prohibition against approval of additional Level 2 programs in a Medicaid regional partnership, if an existing provider of Level 2 beds in the partnership has an occupancy of less than 80%; (3) this prohibition meant that, while 25 hospitals in Kentucky had Level 2 neonatal nurseries, 150 do not; (4) consequently, there is no place in Kentucky where a hospital can add a Level 2 neonatal bed; (4) this was not good for consumers or hospitals, because: (a) documents submitted to the Subcommittee relating to research and safety issues inherent in this subject substantiate that this requirement is adverse to research and safety issues relating to babies; (b) the 25 hospitals have a monopoly, which is detrimental to the 150 hospitals without nursery beds; and (c) more mothers, 35 and over, were giving birth; (d) such a mother would not choose to deliver at a hospital that did not have access to a Level 2; and (5) requested the Subcommittee to: (a) retain the formula that requires proof of need; and (b) delete the prohibition.

Mr. Rust stated that KHA: (1) supported the: (a) State Health Plan; and (b) review criteria for ambulatory surgery centers, (2) agreed to address an issue by law to ensure that there is a level

playing field for hospitals and providers and individuals who want to establish a new surgery center; (3) agreed not to advocate the establishment of a definition of physician office; and (4) believed that certain high level procedures should be restricted to a licensed health care facility.

Mr. Walton stated that: (1) he had a problem with the personal care criteria, which was the subject of litigation; (2) the Cabinet's action exceeded statutory authority because it has violated legislative intent and, in effect, amended existing statutes; (3) KRS Chapter 216B, governing CON: (a) defined long-term care beds and included personal care beds; and (b) required a valid needs assessment in the State Health Plan to control the growth of long-term care beds; (4) the Cabinet exceeded its statutory authority when it: (a) removed from the State Health Plan one phase of long-term care beds, personal care beds; and (b) placed it under nonsubstantive review; and (5) while litigation was an option, the forum for the solution of the issues raised by Cabinet action was the Subcommittee which had the authority to review administrative regulations for compliance with statutory authority.

Representative Lee stated that he: (1) believed Mr. Walton raised a valid issue of compliance with statutory authority, whether Cabinet action violated applicable statutes and was contrary to legislative intent; and (2) wanted the Cabinet to respond.

Mr. Gray stated that: (1) the CON process was intended to serve three purposes: (a) increase access; (b) improve quality; and (c) control costs; (2) the Cabinet had held a series of public hearings on all services and facilities in the State Health Plan, or in the State Health Plan when authority over the State Health Plan was transferred to the Cabinet; (3) personal care beds was one of these services in facilities where there was no evidence that having review criteria in the State Health Plan in any way increased access, improved quality, or controlled costs; (4) therefore, the Cabinet determined that there was no reason for review criteria in the State Health Plan for a service or facility that did not accomplish any of the goals of the CON process; and (5) other services or facilities were also deleted from the State Health Plan, if review criteria did not appear to have any relationship to access, quality, or costs.

Mr. Walton stated that: (1) while he understood Mr. Gray's reasoning, because of the clear requirements of applicable statutes, determinations that amended these statutes could be made only by an amendment of statutes enacted by the General Assembly; and (2) the Cabinet did not have the constitutional authority to take action that violated statutory requirements or, in effect, amended existing statutes governing the subject matter.

Representative Lee: (1) stated that: (a) there were a lot of unanswered questions relating to the action taken by the Cabinet and its compliance with applicable statutes; and (b) the Subcommittee had the authority and duty to reconsider any administrative regulation whenever issues relating to compliance with statutory authority were raised; and (2) made a motion that: (a) Subcommittee staff: 1. review issues raised at the meeting in order to assist the Subcommittee in its determination of whether the Cabinet had complied with statutory authority and legislative intent; and 2. report to the Subcommittee; and (b) the Subcommittee recall these administrative regulations for further consideration, if it determined it was required.

The Subcommittee approved Representative Lee's motion.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Department of Agriculture: Division of Regulation and Inspection: Livestock Sanitation

302 KAR 20:077. Repeal of 302 KAR 20:076, Identification of "farm fresh" cattle. Mark Farrow, General Counsel; Doug Rathbun, and Bobbie Butler, Program Administrator, represented the Department.

Cabinet for Health Services: Office of Certificate of Need: Certificate of Need

900 KAR 6:050 & E. Certificate of need administrative regulations. (Compiler's Note: See discussion of this administrative regulation under discussion of 902 KAR 17:041 & E.)

Cabinet for Families and Children: Department for Social Insurance: Food Stamp Program

904 KAR 3:025 & E. Technical requirements. Ruth Friedheim and Rosanne Barkley represented the Department.

The agencies agreed to the Subcommittee's request to defer consideration of the following administrative regulations to the April, 1998 meeting of the Subcommittee:

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:221E. Waterfowl seasons and limits.
301 KAR 2:222E. Waterfowl hunting requirements.

Department of Agriculture: Division of Regulation and Inspection: Livestock Sanitation

302 KAR 20:240. Mycobacterium paratuberculosis (John's).

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: Permits

405 KAR 8:001. Definitions for 405 KAR Chapter 8.
405 KAR 8:030. Surface coal mining permits.
405 KAR 8:040. Underground coal mining permits.

Performance Standards for Surface Mining Activities

405 KAR 16:001. Definitions for 405 KAR Chapter 16.
405 KAR 16:060. General hydrologic requirements.
405 KAR 16:090. Sedimentation ponds.
405 KAR 16:100. Permanent and temporary impoundments.
405 KAR 16:160. Coal mine waste dams and impoundments.

Performance Standards for Underground Mining Activities

405 KAR 18:001. Definitions for 405 KAR Chapter 18.
405 KAR 18:060. General hydrologic requirements.
405 KAR 18:090. Sedimentation ponds.
405 KAR 18:100. Permanent and temporary impoundments.
405 KAR 18:160. Coal mine waste dams and impoundments.
405 KAR 18:210. Subsidence control.

Justice Cabinet: Kentucky Parole Board

501 KAR 1:030E. Determining parole eligibility.

Office of the Secretary

501 KAR 6:020E. Department of Corrections' policies and procedures.
501 KAR 6:080E. Department of Corrections' manuals

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Vehicle Enforcement: Division of Motor Carriers

601 KAR 1:146. Fair market rental or lease value of vehicles operated pursuant to a U-drive-it permit.
601 KAR 1:147. Auditing of U-drive-it permit holders.

Education Professional Standards Board

704 KAR 20:015E. Rank I classification.
704 KAR 20:021E. Planned Fifth-year Program.
704 KAR 20:022E. Continuing education alternative to Planned Fifth-year Program.
704 KAR 20:045E. Recency and certification fees.
704 KAR 20:060E. Renewals.

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Department of Insurance: Assets and Liabilities

806 KAR 6:100E. Actuarial opinion and memorandum.

Health Insurance Contracts

806 KAR 17:110E. Establishment of the Kentucky Risk Assessment and Risk Adjustment System.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:018. Medication; testing procedures.

810 KAR 1:026. Racing associations.

Harness Racing

811 KAR 1:085. Conduct of racing.

811 KAR 1:220. Harness racing at county fairs.

Cabinet for Health Services: Office of Inspector General: Division of Licensing and Regulation: Health Services and Facilities

902 KAR 20:008. License procedures and fee schedule.

902 KAR 20:091. Facilities specifications, operation and services; community mental health-mental retardation center.

Division for Public Health Protection and Safety: Milk and Milk Products

902 KAR 50:031. Standards for producer eligibility for manufacturing grade milk.

902 KAR 50:032. Standards for farm requirements for manufacturing grade milk.

902 KAR 50:033. Standards for enforcement procedures for manufacturing grade milk.

Cabinet for Families and Children: Department for Social Insurance: Division of Management and Development: Public Assistance

904 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.

904 KAR 2:410E. Child support collection and distribution.

Department for Social Services: Child Welfare

905 KAR 1:360E. Private child care levels of care.

Day Care

905 KAR 2:150E. Child Day Care Assistance Program.

Cabinet for Health Services: Department for Medicaid Services: Division of Administration and Development: Medicaid Services

907 KAR 1:151E. Repeal of 907 KAR 1:140 and 907 KAR 1:150.

Payment and Services

907 KAR 3:030E. Coverage and payments for Impact Plus services.

The Subcommittee adjourned at 10 a.m. until April 14, 1998, at 10 a.m. in Room 149 of the Capitol Annex.

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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.

SENATE TRANSPORTATION COMMITTEE Meeting of February 18, 1998

The following administrative regulations were available for consideration by the Senate Transportation Committee during its meeting of February 18, 1998, having been referred to the Committee on February 13, 1998, pursuant to KRS 13A.290(6):

600 KAR 4:010
600 KAR 6:010
600 KAR 6:040
600 KAR 6:070
601 KAR 1:025
601 KAR 11:040

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 18, 1998 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE TRANSPORTATION COMMITTEE Meeting of February 19, 1998

The following administrative regulations were available for consideration by the Senate Transportation Committee during its meeting of February 18, 1998, having been referred to the Committee on February 13, 1998, pursuant to KRS 13A.290(6):

600 KAR 4:010
600 KAR 6:010
600 KAR 6:040
600 KAR 6:070
601 KAR 1:025
601 KAR 11:040

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 19, 1998 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS Meeting of February 19, 1998

Administrative regulations were available for consideration by the House Committee on Agriculture and Small Business during its meeting of February 19, 1998, having been referred to the Committee on February 13, 1998, pursuant to KRS 13A.290(6):

The following administrative regulation was found to comply with KRS Chapter 13A: Department of Agriculture: 302 KAR 10:060

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulation was deferred pursuant to KRS 13A.300: None

The following administrative regulation was reviewed but no action was taken: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 19, 1998 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

SENATE STANDING COMMITTEE ON LICENSING AND OCCUPATIONS Meeting of February 19, 1998

The following administrative regulations were available for consideration by the Senate Standing Committee on 201 KAR 12:200 and 201 KAR 12:210 during its meeting of 2/19/98, having been referred to the Committee on January 16, 1998,

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pursuant to KRS 13A.290(6): Board of Hairdressers & Cosmetologists: 201 KAR 12:200; 201 KAR 12:210.

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: Board of Hairdressers & Cosmetologists: 201 KAR 12:200; 201 KAR 12:210.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the 2/19/98 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON LICENSING AND OCCUPATIONS Meeting of March 11, 1998

The following administrative regulations were available for consideration by the House Standing Committee on Licensing and Occupations during its meeting of 3/11/98, having been referred to the Committee on February 11, 1998, pursuant to KRS 13A.290(6):

Kentucky State Board of Registration for Professional Engineers and Land Surveyors:
201 KAR 18:132
201 KAR 18:150
201 KAR 18:162.

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

Kentucky State Board of Registration for Professional Engineers and Land Surveyors:
201 KAR 18:132
201 KAR 18:150
201 KAR 18:162.

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the 11/8/96 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

SENATE STANDING COMMITTEE ON LICENSING AND OCCUPATIONS Meeting of March 12, 1998

The following administrative regulations were available for consideration by the Senate Standing Committee on Licensing and Occupations during its meeting of 3/12/98, having been referred to the Committee on February 11, 1998, pursuant to KRS 13A.290(6):

Kentucky State Board of Registration for Professional Engineers and Land Surveyors:
201 KAR 18:132
201 KAR 18:150
201 KAR 18:162

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

Kentucky State Board of Registration for Professional Engineers and Land Surveyors:
201 KAR 18:132
201 KAR 18:150
201 KAR 18:162

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

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CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates J2

The Locator Index lists all administrative regulations published in VOLUME 24 of the Administrative Register from July, 1997 through June, 1998. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 23 are those administrative regulations that were originally published in Volume 23 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1997 bound Volumes were published.

KRS Index J11

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 24 of the Administrative Register.

Subject Index J20

The Subject Index is a general index of administrative regulations published in VOLUME 24 of the Administrative Register, and is mainly broken down by agency.

ADMINISTRATIVE REGISTER - J2

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
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VOLUME 23

The administrative regulations listed under VOLUME 23 are those administrative regulations that were originally published in Volume 23 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1997 bound Volumes were published.

EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

101 KAR 3:045E	3533	2-28-97
Expired		9-18-97
106 KAR 1:091E	3709	3-31-97
Expires		10-17-97
505 KAR 1:020E	3208	2-14-97
Expired		8-18-97
505 KAR 1:030E	3713	3-25-97
Withdrawn		9-15-97
806 KAR 13:130E	3714	3-24-97
Replaced		10-13-97
806 KAR 13:140E	3715	3-24-97
Replaced	896	10-13-97
806 KAR 38:090E	3541	3-11-97
Replaced		9-15-97
811 KAR 1:090E	3717	4-15-97
Replaced		9-12-97
900 KAR 6:015E	2954	12-18-96
Withdrawn		7-21-97
904 KAR 2:006E	4079	4-30-97
Withdrawn		8-14-97
904 KAR 2:016E	4088	4-30-97
Withdrawn		8-14-97
904 KAR 2:370E	3728	3-27-97
Withdrawn		7-11-97
904 KAR 3:020E	3542	2-27-97
Replaced		8-20-94
904 KAR 3:042E	3548	2-27-97
Replaced		8-20-97
905 KAR 1:180E	3735	3-19-97
Expired		10-17-97
907 KAR 1:022E	3294	1-17-97
Withdrawn		8-14-97
907 KAR 1:025E	3299	1-17-97
Withdrawn		8-14-97
907 KAR 1:160E	3736	4-15-97
Expired		10-17-97
907 KAR 1:170E	3739	4-15-97
Expired		10-17-97
907 KAR 1:720E	3741	3-18-97
Expired		10-17-97
908 KAR 2:200E	3742	3-18-97
Expired		10-17-97

ORDINARY ADMINISTRATIVE REGULATIONS:

200 KAR 17:070	4246	(See Volume 24)
201 KAR 13:080	4250	(See Volume 24)
201 KAR 23:011	4251	10-13-97
201 KAR 23:020		
Amended	4201	10-13-97
201 KAR 23:060		
Amended	4202	(See Volume 24)
201 KAR 23:070		
Amended	4203	(See Volume 24)
201 KAR 23:080		
Amended	4206	(See Volume 24)
201 KAR 23:140	4252	(See Volume 24)
302 KAR 40:010		
Amended	3885	(See Volume 24)
401 KAR 8:030		
Amended	3079	
Amended	3808	(See Volume 24)
501 KAR 6:020		
Amended	3892	(See Volume 24)
501 KAR 6:060		
Amended	4210	9-15-97
501 KAR 6:130		
Amended	1007	
As Amended	1941	10-14-97
Amended	1678	11-14-97
780 KAR 3:070		
Amended	3096	
Amended	3588	(See Volume 24)
780 KAR 3:080		
Amended	3102	
Amended	3594	(See Volume 24)
780 KAR 6:060		
Amended	3104	(See Volume 24)
805 KAR 1:180	3658	(See Volume 24)
807 KAR 5:063	3659	
Amended	4185	(See Volume 24)
902 KAR 100:040		
Amended	3988	8-20-97
907 KAR 1:645	4033	(See Volume 24)
907 KAR 1:655	4035	(See Volume 24)
907 KAR 1:665	4039	(See Volume 24)
907 KAR 1:710	4285	(See Volume 24)

*Statement of Consideration Not Filed by Deadline

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LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
VOLUME 24					
EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)			902 KAR 17:041E	517	7-23-97
			902 KAR 20:016E	32	6-12-97
			Reprint	269	6-12-97
			Replaced	1268	11-19-97
			902 KAR 55:095E	41	6-12-97
			Expired		12-18-97
200 KAR 14:011E	485	8-15-97	904 KAR 2:006E	518	8-14-97
Replaced	1645	2-10-98	Replaced	1884	3-16-98
200 KAR 14:081E	487	8-15-97	904 KAR 2:015	1634	1-12-98
Replaced	1647	2-10-98	904 KAR 2:016E	528	8-14-97
200 KAR 14:200E	489	8-15-97	Replaced	1724	3-16-98
Replaced	1649	2-10-98	904 KAR 2:017E	311	7-14-97
200 KAR 23:010E	307	6-25-97	Expired		2-15-98
Replaced	1055	10-22-97	904 KAR 2:035E	42	5-30-97
201 KAR 20:370E	1481	12-9-97	Expired		12-18-97
301 KAR 2:221E	1219	10-15-97	904 KAR 2:040E	45	5-30-97
301 KAR 2:222E	1221	10-15-97	Expired		1-18-98
301 KAR 2:225E	842	8-21-97	904 KAR 2:046E	47	5-30-97
Replaced	1670	2-17-98	Expired		1-18-98
301 KAR 2:290E	1482	12-5-97	904 KAR 2:050E	49	5-30-97
Withdrawn		1-21-98	Withdrawn		8-14-97
401 KAR 5:008E	1029	9-18-97	Resubmitted	538	8-14-97
501 KAR 1:030E	1625	1-8-98	Expired		2-18-98
501 KAR 6:020E	1631	1-8-98	904 KAR 2:055E	52	5-30-97
501 KAR 6:080E	1633	1-8-98	Expired		1-18-98
501 KAR 6:180E	1225	11-13-97	904 KAR 2:060E	55	5-30-97
Replaced	1878	3-16-98	Expired		12-18-97
502 KAR 31:010E	2076	2-27-98	904 KAR 2:370E	320	7-11-97
502 KAR 45:145E	26	6-3-97	Expired		2-15-98
Replaced	1076	11-14-97	904 KAR 2:410E	1233	10-31-97
505 KAR 1:040E	844	9-15-97	904 KAR 3:025E	1041	10-1-97
601 KAR 2:020E	1863	2-13-98	905 KAR 1:360E	1044	10-1-97
603 KAR 5:070E	27	5-19-97	905 KAR 2:150E	1947	10-1-97
Expired		12-18-97	906 KAR 1:120E	540	7-25-97
704 KAR 20:015E	1484	12-12-97	Replaced	1687	2-17-98
704 KAR 20:021E	1486	12-12-97	907 KAR 1:022E	542	8-14-97
704 KAR 20:022E	1487	12-12-97	Withdrawn		2-18-98
704 KAR 20:045E	1489	12-12-97	Resubmitted	2080	2-18-98
704 KAR 20:060E	1490	12-12-97	907 KAR 1:025E	547	8-14-97
704 KAR 20:305E	491	8-11-97	Withdrawn		2-18-98
Replaced	1508	1-12-98	Resubmitted	2086	2-18-98
780 KAR 2:130E	308	7-14-97	907 KAR 1:145E	845	9-11-97
Expired		1-16-98	907 KAR 1:151E	848	9-11-97
787 KAR 1:200E	310	6-27-97	907 KAR 1:155E	849	9-11-97
Replaced	1510	1-12-98	907 KAR 1:560E	2093	2-18-98
787 KAR 1:210E	2078	3-10-98	907 KAR 1:563E	2097	2-18-98
803 KAR 2:301E	493	8-14-97	907 KAR 1:725E	1238	11-14-97
Replaced	1148	1-12-98	Withdrawn		2-24-98
803 KAR 2:320E	495	8-14-97	907 KAR 1:755E	554	8-14-97
Replaced	1512	1-12-98	Withdrawn		2-18-98
803 KAR 2:403E	501	8-14-97	Resubmitted	2100	2-18-98
Replaced	1156	1-12-98	907 KAR 1:765E	557	8-14-97
803 KAR 2:411E	503	8-14-97	Expired		2-18-98
803 KAR 2:425E	504	8-14-97	907 KAR 3:030E	1639	12-19-97
Replaced	1159	1-12-98			
803 KAR 2:500E	506	8-14-97			
Replaced	1161	1-12-98			
806 KAR 6:100E	1227	10-24-97			
806 KAR 17:110E	1492	12-12-97			
815 KAR 8:045E	2079	2-27-98			
900 KAR 6:050E	510	7-21-97			
			ORDINARY ADMINISTRATIVE REGULATIONS:		
			11 KAR 5:130		
			Amended	1538	
			As Amended	1865	3-16-98

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LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
11 KAR 6:010			201 KAR 8:400		
Amended	914		Amended	934	
As Amended	1241	12-4-97	As Amended	1243	
13 KAR 2:045			Withdrawn		12-3-97
Amended	2136		201 KAR 8:410		
13 KAR 2:060			Repealed	991	11-19-97
Amended	916		201 KAR 8:411	991	11-19-97
Amended	1291		201 KAR 10:010		
As Amended	1498	1-12-98	Amended	131	
31 KAR 4:020			As Amended	561	11-14-97
Amended	128		201 KAR 10:040		
As Amended	559	9-15-97	Amended	132	
101 KAR 1:325			As Amended	561	11-14-97
Amended	1749		201 KAR 10:070		
As Amended	2105		Amended	133	
101 KAR 1:335			As Amended	563	11-14-97
Amended	1751		201 KAR 10:080		
As Amended	2106		Amended	134	
101 KAR 1:365			As Amended	563	11-14-97
Amended	387		201 KAR 11:011		
As Amended	852	10-13-97	Amended	1539	
102 KAR 1:175			As Amended	2108	
Amended	129		201 KAR 12:200		
As Amended	559	9-4-97	Amended	1357	
103 KAR 15:050			As Amended	1653	
Amended	388		Reprinted	2061	2-26-98
As Amended	853	9-25-97	201 KAR 12:210	1423	
103 KAR 31:030			As Amended	1654	2-26-98
Amended	920		201 KAR 13:080		
Amended	1522		As Amended	858	10-13-97
As Amended	1643	2-10-98	201 KAR 16:060		
106 KAR 2:010			Amended	641	
Recodified as 201-37:010		10-20-97	As Amended	1055	11-14-97
200 KAR 2:006			201 KAR 16:070		
Amended	922	11-11-97	Repealed	791	11-14-97
200 KAR 5:021			201 KAR 16:071	791	11-14-97
Amended	926		201 KAR 18:130		
Amended	1294	1-12-98	Repealed by 201-18:1621	1581	3-12-98
200 KAR 5:302			201 KAR 18:132	1581	3-12-98
Amended	927	11-11-97	201 KAR 18:150		
200 KAR 5:306			Amended	1540	
Amended	929	11-11-97	As Amended	1866	
200 KAR 14:011			Reprint	2062	3-12-98
Amended	1353		201 KAR 18:160		
As Amended	1645	2-10-98	Repealed by 201-18:1621	1581	3-12-98
200 KAR 14:081			201 KAR 18:162	1581	3-12-98
Amended	1355		201 KAR 19:087	2241	
As Amended	1647	2-10-98	201 KAR 19:095		
200 KAR 14:200	1422		Amended	2141	
As Amended	1649	2-10-98	201 KAR 20:070		
200 KAR 17:070			Amended	1752	
As Amended	855	9-25-97	As Amended	2108	
200 KAR 22:040			201 KAR 20:110		
Repealed	789	11-14-97	Amended	1754	
200 KAR 22:041	789	11-14-97	As Amended	2110	
200 KAR 23:010	790		201 KAR 20:162		
As Amended	1055	10-22-97	Amended	1755	
201 KAR 2:030			As Amended	2111	
Amended	1115		201 KAR 20:240		
As Amended	1865	3-16-98	Amended	391	
201 KAR 8:390			As Amended	1057	11-14-97
Amended	931		201 KAR 20:370		
As Amended	1650	2-17-98	Amended	1757	
			As Amended	2112	

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LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
201 KAR 20:390			301 KAR 1:192	1424	
Amended	1116		As Amended	1669	2-17-98
As Amended	1502	1-12-98	301 KAR 1:201		
201 KAR 20:411	425		Amended	392	
As Amended	859		As Amended	866	10-8-97
201 KAR 23:010			301 KAR 1:300	1583	
Repealed		10-13-97	As Amended	1872	3-16-98
201 KAR 23:030			301 KAR 1:310	1584	
Repealed		10-13-97	As Amended	1872	3-16-98
201 KAR 23:040			301 KAR 2:082	427	
Repealed		10-13-97	As Amended	869	10-8-97
201 KAR 23:060			301 KAR 2:111		
As Amended	860	10-13-97	Amended	138	
201 KAR 23:070			As Amended	567	9-10-97
As Amended	861	10-13-97	301 KAR 2:125		
201 KAR 23:080			Amended	140	
As Amended	864	10-13-97	As Amended	568	9-10-97
201 KAR 23:100			301 KAR 2:140		
Repealed	10-13-97		Amended	643	
201 KAR 23:110			As Amended	1058	11-12-97
Repealed		10-13-97	301 KAR 2:142	792	
201 KAR 23:140			As Amended	1060	11-12-97
As Amended	866	10-13-97	301 KAR 2:144	794	
201 KAR 26:145			As Amended	1061	11-12-97
Amended	1117		301 KAR 2:221		
As Amended	1655	2-17-98	Amended	1914	
201 KAR 26:155			301 KAR 2:222		
Amended	1121		Amended	1916	
As Amended	1658	2-17-98	301 KAR 2:225		
201 KAR 26:160			Amended	1359	
Amended	1123		As Amended	1670	2-17-98
As Amended	1660	2-17-98	301 KAR 2:240		
201 KAR 26:171			Amended	1762	
Amended	1124		As Amended	2114	
As Amended	1661	2-17-98	301 KAR 3:022		
201 KAR 26:175			Amended	646	11-12-97
Amended	1127		302 KAR 10:060		
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201 KAR 26:180			As Amended	1873	3-16-98
Amended	1129		302 KAR 10:070		
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201 KAR 26:185			As Amended	2115	
Amended	1130		302 KAR 10:100	2242	
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Amended	1131		302 KAR 31:040	795	
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As Amended	1669	2-17-98	Amended	1547	
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Amended	1544		401 KAR 46:010	223	
As Amended	1871	3-16-98	Died*		9-12-97
301 KAR 1:085			401 KAR 46:020	225	
Amended	1759		Died*		9-12-97
Withdrawn		3-10-98			

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401 KAR 46:040	230		Amended	1325	
Died*		9-12-97	405 KAR 16:001		
401 KAR 46:050	234		Amended	704	
Died*		9-12-97	405 KAR 16:060		
401 KAR 46:060			Amended	710	
Amended	142		Amended	1341	
Died*		9-12-97	405 KAR 16:090		
401 KAR 46:070			Amended	716	
Amended	145		405 KAR 16:100		
Died*		9-12-97	Amended	719	
401 KAR 47:150			405 KAR 16:160		
Amended	149		Amended	723	
Died*		9-12-97	405 KAR 18:001		
401 KAR 50:012			Amended	725	
Amended	648	11-12-97	405 KAR 18:060		
401 KAR 50:032	1425		Amended	732	
Amended	1911		Amended	1347	
As Amended	2116		405 KAR 18:090		
401 KAR 50:066	800		Amended	738	
As Amended	1244	11-12-97	405 KAR 18:100		
401 KAR 51:010			Amended	741	
Amended	650	11-12-97	405 KAR 18:160		
401 KAR 58:001	2039		Amended	745	
401 KAR 58:005			405 KAR 18:210		
Amended	1920		Amended	747	
401 KAR 58:025			500 KAR 11:001		
Amended	1927		Amended	151	
401 KAR 59:174	802		As Amended	871	9-12-97
Amended	1295		500 KAR 11:025		
As Amended	1503	1-12-98	Amended	152	
401 KAR 60:750	1427		As Amended	873	9-12-97
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401 KAR 61:036	1429		Amended	154	
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401 KAR 63:060			501 KAR 1:030		
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401 KAR 63:100			501 KAR 6:020		
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401 KAR 63:104	1798		Amended	755	
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401 KAR 63:560	1801		Amended	1361	
401 KAR 63:640	1803		As Amended	1873	3-16-98
401 KAR 63:680	1805		Amended	2149	
401 KAR 63:741	1806		501 KAR 6:030		
401 KAR 63:780	1808		Amended	1364	3-16-98
401 KAR 63:800	1810		501 KAR 6:040		
401 KAR 63:820	1811		Amended	935	12-15-97
401 KAR 63:900	1813		Amended	1366	3-16-98
401 KAR 63:920	1814		501 KAR 6:050		
401 KAR 63:940	1816		Amended	156	9-15-97
401 KAR 63:960	1818		501 KAR 6:060		
401 KAR 65:010			Amended	1134	2-17-98
Amended	656		501 KAR 6:080		
Amended	1302	1-12-98	Amended	2152	
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Amended	667		Amended	757	12-15-97
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Amended	1368		Amended	1527	
As Amended	1875	3-16-98	As Amended	1675	1-22-98
501 KAR 6:120			702 KAR 3:110		
Amended	1370		Amended	1565	
As Amended	1876	3-16-98	As Amended	2118	
Amended	1929		702 KAR 7:065		
501 KAR 6:170			Amended	174	
Amended	1136		As Amended	573	9-4-97
As Amended	1506	1-12-98	703 KAR 3:060		
Amended	1372	3-16-98	Amended	1566	
501 KAR 6:180	1597		As Amended	2118	
As Amended	1878	3-16-98	703 KAR 4:110		
501 KAR 6:999	1431		Amended	1570	
As Amended	1879	3-16-98	As Amended	2122	
Amended	1932		704 KAR 3:303		
502 KAR 31:010	429		Amended	1941	
Withdrawn		10-13-97	704 KAR 3:455		
502 KAR 45:145			Amended	760	
Amended	759		As Amended	1093	11-6-97
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505 KAR 1:020	236		704 KAR 20:015		
As Amended	572	9-15-97	Amended	1942	
505 KAR 1:040	1598		704 KAR 20:021		
600 KAR 4:010			Amended	1944	
Amended	1559		704 KAR 20:022	2040	
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600 KAR 6:010			Amended	1946	
Amended	1373		704 KAR 20:060		
Amended	1689	2-19-98	Amended	1947	
600 KAR 6:040			704 KAR 20:084		
Amended	1375		Amended	937	
Amended	1691	2-19-98	As Amended	1245	12-4-97
600 KAR 6:070			704 KAR 20:165		
Amended	1378		Amended	176	
Amended	1693	2-19-98	As Amended	574	9-4-97
601 KAR 1:005			704 KAR 20:210		
Amended	1932		Amended	1140	
601 KAR 1:025			As Amended	1507	1-12-98
Amended	1384		704 KAR 20:305		
Amended	1699	2-19-98	Amended	1141	
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Amended	1524		704 KAR 20:420		
601 KAR 1:147	1185		Amended	1949	
Amended	1525		704 KAR 20:475		
601 KAR 9:135			Amended	1950	
Amended	398		704 KAR 20:670		
Amended	909	11-4-97	Amended	404	
601 KAR 11:040			As Amended	892	10-2-97
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Amended	1702	2-19-98	Amended	1952	
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Amended	157		Amended	1958	
Amended	612		704 KAR 20:710		
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603 KAR 4:040			750 KAR 2:010		
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603 KAR 5:050			As Amended	576	9-4-97
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Withdrawn		12-2-97	806 KAR 13:140	432	
780 KAR 3:080			As Amended	896	10-13-97
As Amended	1253		806 KAR 17:110	2257	
Withdrawn		12-2-97	806 KAR 38:090	239	9-15-97
780 KAR 6:060			806 KAR 39:070		
As Amended	1255	12-4-97	Amended	764	
785 KAR 1:010			As Amended	1264	12-15-97
Amended	407		806 KAR 40:020	433	10-13-97
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Amended	409		As Amended	367	
As Amended	895	10-2-97	As Amended	896	8-27-97
787 KAR 1:200			807 KAR 5:069		
Amended	1144		Amended	1774	
As Amended	1510	1-12-98	As Amended	2122	
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Amended	1145		Amended	2172	
As Amended	1510	1-12-98	808 KAR 10:020		
803 KAR 2:301			Amended	2173	
Amended	1148	1-12-98	808 KAR 10:030		
Amended	2152		Amended	2174	
803 KAR 2:320			808 KAR 10:040		
Amended	1150		Amended	2176	
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Amended	2154		Amended	2177	
803 KAR 2:403			808 KAR 10:090		
Amended	1156	1-12-98	Amended	2178	
803 KAR 2:411			808 KAR 10:110		
Amended	1158		Amended	2179	
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803 KAR 2:425			Amended	2180	
Amended	1159	1-12-98	808 KAR 10:141	2262	
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Amended	1161	1-12-98	Amended	2181	
Amended	2160		808 KAR 10:160		
803 KAR 3:050			Amended	2182	
Amended	2163		808 KAR 10:170		
803 KAR 25:012			Amended	2183	
Amended	939		808 KAR 10:200		
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Amended	1571	3-16-98	Amended	2186	
803 KAR 25:096			808 KAR 10:225		
Amended	942	12-15-97	Amended	2188	
Amended	2166		808 KAR 10:240		
803 KAR 25:101			Amended	2190	
Amended	2169		808 KAR 10:260		
803 KAR 25:120			Amended	2190	
Amended	1395		808 KAR 10:310	2263	
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803 KAR 25:130	1187		808 KAR 10:330	2265	
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Amended	1113		808 KAR 10:360	2269	
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805 KAR 1:180			Amended	1776	
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811 KAR 1:090			902 KAR 17:041	1433	
Amended	180		Amended	1714	
As Amended	577	9-12-97	902 KAR 20:008		
811 KAR 1:220			Amended	1786	
Amended	1784		902 KAR 20:016		
815 KAR 7:013			Amended	969	
Repealed by 815-7:014	1679	2-17-98	As Amended	1268	11-19-97
815 KAR 7:014	1433		902 KAR 20:026		
As Amended	1679	2-17-98	Amended	2218	
815 KAR 7:070			902 KAR 20:036		
Amended	945	12-15-97	Amended	190	8-20-97
815 KAR 7:105			902 KAR 20:048		
Amended	949		Amended	410	
As Amended	1267	12-15-97	Died*		9-5-97
815 KAR 8:010			Amended	2226	
Amended	950	12-15-97	902 KAR 20:051		
815 KAR 8:020			Amended	418	
Amended	952	12-15-97	Died*		9-5-97
815 KAR 15:027			Amended	2233	
Amended	954	12-15-97	902 KAR 20:058		
815 KAR 15:080			Amended	1959	
Amended	956	12-15-97	902 KAR 20:091		
815 KAR 20:020			Amended	1788	
Amended	957	12-15-97	902 KAR 20:180		
815 KAR 20:030			Amended	1962	
Amended	960		902 KAR 20:320		
Withdrawn		12-9-97	Amended	1966	
815 KAR 20:130			902 KAR 20:330		
Amended	962	12-15-97	Amended	1978	
815 KAR 30:060			902 KAR 50:031		
Amended	1397		Amended	1573	
As Amended	1679	2-17-98	902 KAR 50:032		
815 KAR 35:015			Amended	1575	
Amended	767		902 KAR 55:033		
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900 KAR 6:050	1188		902 KAR 55:095		
Amended	1706		Amended	1165	1-12-98
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Amended	2192		Amended	1982	
902 KAR 8:060			902 KAR 100:073		
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902 KAR 8:070			As Amended	580	8-20-97
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902 KAR 8:090			Amended	1400	
Amended	2204		Amended	1715	
902 KAR 8:100			As Amended	1884	3-16-98
Amended	2206		904 KAR 2:016		
902 KAR 8:110			Amended	1409	
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902 KAR 8:130			Amended	1733	3-16-98
Amended	2215		904 KAR 2:035		
902 KAR 8:140			Amended	978	
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Amended	1531		As Amended	1276	11-19-97
As Amended	1683	2-17-98	907 KAR 1:720	809	
904 KAR 2:050			As Amended	1108	11-14-97
Amended	1419	3-16-98	908 KAR 1:380	1824	
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Amended	1533		908 KAR 2:200	811	
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Amended	988				
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292.470	808 KAR 10:225		201 KAR 20:370
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319.064	201 KAR 26:155	342.395	803 KAR 25:130
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321.351	201 KAR 16:060		405 KAR 16:090
321.360	201 KAR 16:060		405 KAR 16:100
322.020	201 KAR 18:162		405 KAR 18:060
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323.210	201 KAR 19:087		405 KAR 18:100
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324.410	201 KAR 11:011	350.421	405 KAR 16:060
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