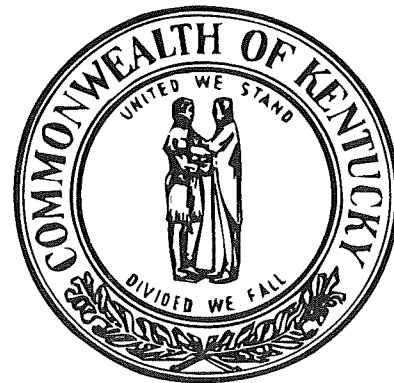


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 26, NUMBER 11
MONDAY, MAY 1, 2000

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on May 9, 2000, at 10 a.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 1891-1892 of this Administrative Register.

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KENTUCKY ADMINISTRATIVE REGULATIONS are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

| Title | | Chapter | Regulation |
|---|-----|--|------------------------|
| 806 | KAR | 50: | 155 |
| Cabinet, Department, Board or Agency | | Office, Division, or Major Function | Specific Regulation |

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA – May 9, 2000 at 10 a.m., Room 149, Capitol Annex**

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101 KAR 3:015E. Leave administrative regulations for the unclassified service. (Deferred from January) ("E" expires 5/19/00)

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Board of Pharmacy (Deferred from April)

201 KAR 2:045. Technicians.

201 KAR 2:230. Special limited pharmacy - central refill pharmacy.

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201 KAR 15:030. Fees.

Board of Licensure for Professional Engineers and Land Surveyors

201 KAR 18:191. Repeal of 201 KAR 18:190.

FINANCE AND ADMINISTRATION CABINET

Commercial Mobile Radio Service Emergency Telecommunications Board (Deferred from February) ("Es" expire 6/19/00)

202 KAR 6:010E. Definitions for 202 KAR Chapter 6.

202 KAR 6:020E. CMRS carrier cost recovery.

202 KAR 6:030E. Confidential and proprietary information.

202 KAR 6:040E. Dispute resolution.

202 KAR 6:050E. PSAP certification.

202 KAR 6:060E. PSAP Pro Rata Fund disbursement.

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Department of Fish and Wildlife Resources

Game

301 KAR 2:221E. Waterfowl seasons and limits. (Deferred from April) ("E" expires 8/18/00)

301 KAR 2:222E. Waterfowl hunting requirements. (Deferred from February) ("E" expires 6/19/00)

301 KAR 2:226E. Youth waterfowl hunting season. (Deferred from February) ("E" expires 6/19/00)

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Department of Corrections

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501 KAR 3:010. Definitions.

501 KAR 3:040. Personnel.

501 KAR 3:060. Security; control.

501 KAR 3:070. Safety; emergency procedures.

501 KAR 3:110. Classification.

501 KAR 3:120. Admission; release.

501 KAR 3:140. Inmate rights.

Division of Adult Institutions

Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory.

501 KAR 6:080. Department of Corrections manuals.

Restricted Custody Center (Deferred from August)

501 KAR 7:010. Definitions.

501 KAR 7:020. Administration; management.

501 KAR 7:040. Personnel.

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501 KAR 7:060. Security; control.

501 KAR 7:080. Sanitation; hygiene.

501 KAR 7:120. Admission; release.

501 KAR 7:140. Inmate rights.

Direct Supervision for Full-Service Jails (Deferred from August)

501 KAR 10:010. Definitions.

501 KAR 10:040. Personnel.

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501 KAR 10:120. Admission; release.

501 KAR 10:140. Inmate rights.

Department of Juvenile Justice

Child Welfare

505 KAR 1:090 & E. Supervised placement revocation. ("E" expires 6/19/00)

WORKFORCE DEVELOPMENT CABINET

Department for Adult and Technical Education

Personnel System for Certified and Equivalent Employees (Deferred from April) ("Es" expire 8/18/00)

780 KAR 3:065E. Certified and equivalent service administrative regulations.

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780 KAR 3:071E. Repeal of 780 KAR 3:070.

780 KAR 3:072E. Attendance, compensatory time, and leave for certified and equivalent service.

780 KAR 3:075E. Sick leave sharing procedures for certified and equivalent service.

780 KAR 3:100E. Employee actions.

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780 KAR 6:061E. Repeal of 780 KAR 6:060.

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787 KAR 1:010. Application for employer account; reports.

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Department of Mines and Minerals**

Miner Training, Education and Certification

805 KAR 7:030. Annual retraining. (Deferred from April)

Kentucky Racing Commission

Thoroughbred Racing

810 KAR 1:060. Chemical dependency. (Amended After Hearing) (Deferred from April)

Harness Racing

811 KAR 1:090E. Stimulants and drugs. Will not be replaced by ordinary regulation.

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Department for Medicaid Services**

Medicaid Services

907 KAR 1:025E. Payment for services provided by a cost-based nursing facility, a nursing facility with an all inclusive rate unit, and a hospital with federally-defined swing beds. (Deferred from April) ("E" expires 8/18/00)

907 KAR 1:044E. Mental health center services. (Deferred from January) ("E" expires 5/19/00)

907 KAR 1:065E. Payments for price-based nursing facility services. (Deferred from April) ("E" expires 8/18/00)

907 KAR 1:070 & E. Homecare waiver services. ("E" expires 7/20/00)

907 KAR 1:072 & E. Payments for homecare waiver services. ("E" expires 7/20/00)

907 KAR 1:090 & E. Personal care assistance waiver services. ("E" expires 7/20/00)

907 KAR 1:092 & E. Payments for personal care assistance waiver services. ("E" expires 7/20/00)

907 KAR 1:671. Conditions of Medicaid provider participation; withholding overpayments, appeals process, and sanctions.

907 KAR 1:999. Repeal of 907 KAR 1:002.

Kentucky Children's Health Insurance Program

907 KAR 4:030 & E. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act. ("E" expires 5/19/00)

**CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development**

K-Tap, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability. (Deferred from March) ("E" expires 7/20/00)

921 KAR 2:016 & E. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP). (Amended After Hearing) ("E" expires 4/19/00)

921 KAR 2:017 & E. Kentucky Works supportive services. (Amended After Hearing) ("E" expires 4/19/00)

921 KAR 2:370 & E. Technical requirements for Kentucky Works. (Amended After Hearing) ("E" expires 4/19/00)

**Department for Social Insurance
Division of Management & Development**

Food Stamp Program

921 KAR 3:020E. Financial requirements. (Deferred from March) ("E" expires 7/20/00)

921 KAR 3:030E. Application process. (Deferred from March) ("E" expires 7/20/00)

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.

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS
RECEIVED AS OF NOON, APRIL 14, 2000

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

March 31, 2000

(1) **11 KAR 3:100**, Administrative wage garnishment.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, adoption of the latest available figures reflecting annual consumer expenditures published by the United States Department of Labor, Bureau of Labor Statistics and adoption of the latest available poverty guidelines published by the United States Department of Health and Human Services in order to determine the validity of a borrower's claim of undue financial hardship.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, May 22, 2000, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

(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 Monday, May 22, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX (502) 696-7293.

(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 Kentucky Higher Education Assistance Authority 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 this administrative regulation is KRS 164.748(10) and (19).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend 11 KAR 3:100, as follows: Section 4(6) of the above cited administrative regulation establishes economic standards for evaluating a borrower's assertion that issuance of an administrative wage garnishment would pose an extreme financial hardship. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to include the most current figures published by the federal government to accurately reflect current poverty guidelines and consumer spending figures to assure an accurate standard for determining the validity of a claim of extreme financial hardship.

(c) The necessity and function of the proposed administrative regulation is as follows: Current poverty level and consumer expenditure figures are necessary to assure a current and accurate standard for determining the validity of a claim of extreme financial hardship.

(d) The benefits expected from the administrative regulation are: To establish an objective standard for extreme financial hardship that will be based on current economic data as established by the federal government.

(e) The administrative regulation will be implemented as follows: Upon notice of the authority's intent to issue an administrative wage garnishment, a borrower contesting the garnishment and asserting a claim of extreme financial hardship will submit financial data to be evaluated in comparison to the data contained in the administrative regulation. Expenditures reported by the borrower which exceed amounts specified in the administrative regulation will be presumed to be unnecessary. Thus the most current figures relating to consumer expenditures must be utilized in the administrative regulation.

March 31, 2000

(1) **11 KAR 5:001**, Definitions pertaining to 11 KAR Chapter 5.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, definitions for the grant programs administered by Kentucky Higher Education Assistance Authority.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 2000 at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

(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 May 22, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.

(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 Kentucky Higher Education Assistance Authority 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 this administrative regulation is KRS 165.748(4) and 164.753(4).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend 11 KAR

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5:001, as follows: Section 1 of the above cited administrative regulation currently provides for definitions for terms used throughout the regulations dealing with the grant programs administered by the Kentucky Higher Education Assistance Authority. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to add 2 new definitions, for "correspondence course" and for "part-time student". In addition, as the existing definition for "full-time student" will be amended as follows: First, correspondence courses will be excluded for determining full-time status, and second, for those students enrolled in an institution using the quarter system, the requirement that the student must attend in each of 2 quarters, will be deleted.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants.

(d) The benefits expected from the administrative regulation are: To eliminate any confusion on the part of institutions or students as to whether correspondence courses may count towards eligibility for grant aid, and to allow students attending quarter-based institutions equivalent eligibility for receiving aid as students attending institutions that use a semester system.

(e) The administrative regulation will be implemented as follows: Grant awards will be calculated pursuant to the amended regulation. Award determinations will be made, disregarding any correspondence course in which a student may be enrolled, and allowing equivalency for institutions based on the quarter system.

March 31, 2000

(1) **11 KAR 5:034**, College Access Program grant student eligibility.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, the qualifications for disbursement of a college access program grant.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 2000, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

(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 May 22, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.

(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 Kentucky Higher Education Assistance Authority 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 this administrative regulation is KRS 164.748(4) and 164.753(4).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend 11 KAR 5:034, as follows: Section 1(4) of the above cited administrative regulation currently provides that for purposes of a college access program ("CAP") grant, a student enrolled in a 2 year institution is limited to 5 semesters of grant program eligibility and a student enrolled in a 4 year institution is limited to nine semesters of grant program eligibility. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to provide that these grant limits apply to students who are enrolled full-time in each academic term of either a 2 year or 4 year eligible program of study. The proposed amendment would add a new Section 1(10) to provide for CAP grant disbursements to a student who meets the requirements of this section and is enrolled as at least a part-time student in 2 quarters of the fall academic term to receive a disbursement in the fall and is enrolled as at least a part-time student in 2 quarters of the spring academic term to receive a disbursement in the spring.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7535 authorizes the authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky. This administrative regulation establishes student eligibility requirements for the college access program.

(d) The benefits expected from the administrative regulation are: The CAP would be extended to students who would receive a disbursement if they meet the requirements of this section and are enrolled as at least a part-time student in 2 quarters of the fall academic term to receive a disbursement in the fall and be enrolled as at least a part-time student in 2 quarters of the spring academic term to receive a disbursement in the spring.

(e) The administrative regulation will be implemented as follows: Students will receive disbursements if they meet the requirements of this section and are enrolled as at least a part-time student in 2 quarters of the fall academic term to receive a disbursement in the fall and be enrolled as at least a part-time student in 2 quarters of the spring academic term to receive a disbursement in the spring.

March 31, 2000

(1) **11 KAR 5:140**, Kentucky Tuition Grant (KTG).

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, the KTG grant amount awarded.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 2000, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

(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 May 22, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General

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Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.

(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 Kentucky Higher Education Assistance Authority 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 this administrative regulation is KRS 164.748(4) and 164.753(4).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend 11 KAR 5:140, as follows: Section 1 of the above cited administrative regulation currently provides a definition for "Pell grant." The Kentucky Higher Education Assistance Authority proposes to delete this definition in this administrative regulation and move it to the definitional regulations in 11 KAR 5:001. Section 3(4) of the above cited administrative regulation currently requires that a KTG shall not exceed \$1,500 for an academic year. The Kentucky Higher Education Assistance Authority proposes to increase the amount to \$1,600 for an academic year.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation sets for the award determination procedures for the KTG.

(d) The benefits expected from the administrative regulation are: Students eligible for a KTG would receive additional assistance in order to meet the increasing costs of higher education, thus making higher education more accessible to Kentuckians.

(e) The administrative regulation will be implemented as follows: KTG recipients will receive \$1,600 per academic year.

March 31, 2000

(1) **11 KAR 5:145**, Kentucky College Access Program (CAP) grand award determination procedure.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, increase the number of applicants eligible to receive CAP grants by increasing the expected family contribution levels allowed for an applicant to be eligible for a CAP award and increase the amount of the CAP grant awarded.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 2000, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

(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 May 22, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.

(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 Kentucky Higher Education Assistance Authority 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 this administrative regulation is KRS 164.748(4) and 164.753(4).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend 11 KAR 5:145, as follows: Section 2(1) of the above cited administrative regulation currently requires that to qualify for a CAP award based on financial need, the applicant's expected family contribution shall be \$1,500 or less. The Kentucky Higher Education Assistance Authority proposes to amend this administrative regulation to allow applicants to qualify for a CAP award based on financial need if the expected family contribution is \$3,100 or less. Further, the Kentucky Higher Education Assistance Authority proposes to amend Section 2(5) of this administrative regulation by adding a new section to allow for \$50 to be added to the maximum CAP grants awarded for academic year 2000-2001.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation establishes the award determination procedures for the CAP grant program.

(d) The benefits expected from the administrative regulation are: Applicants eligible for a CAP grant would receive additional assistance in order to meet the increasing costs of higher education. Further, additional applicants would qualify for a CAP award based on financial need, thus making higher education more accessible to Kentuckians.

(e) The administrative regulation will be implemented as follows: The expected family contribution necessary for an applicant to qualify for a CAP award will be increased from \$1,500 or less to \$3,100 or less. For academic year 2000 - 20001, \$50 will be added to the maximum CAP grant awarded.

March 31, 2000

(1) **11 KAR 5:160**, Disbursement procedures for the College Access Program ("CAP") grants and the Kentucky Tuition Grant ("KTG") Program.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, procedures for disbursements of KTG and CAP grants to educational institutions that use an academic quarter system.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 2000 at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

- (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 May 22, 2000, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.
- (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 Kentucky Higher Education Assistance Authority 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 this administrative regulation is KRS 164.748(4) and 164.753(4).
- (b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend 11 KAR 5:160, as follows: Section 4 of the above cited administrative regulation currently provides for disbursements of KTG awards. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation by adding a new Section 4(b) to allow an educational institution using an academic quarter system to apply to the recipient's account or deliver to the recipient a KTG for an academic term so that the first disbursement occurs in the second quarter of enrollment as a full-time student and the second disbursement occurs in the third quarter of enrollment as a full-time student. Section 4 of the above cited administrative regulation currently requires that a CAP grant must always be disbursed in the amount of 1/2 for the fall academic term and 1/2 for the spring academic term. The Kentucky Higher Education Assistance Authority intends to create in that section of the administrative regulation a new Section 5(a) to specify that the current disbursement requirement is for students enrolled in each academic term as full-time students. It is proposed that a new Section 5(b) be added to allow for a CAP grant for an academic year to be divided by the number of semesters, trimesters or quarters in the academic year of the educational institution and to allow for an CAP grant amount to be adjusted for enrollment as a part-time student during an academic term. It is also proposed to add a new Section 5(c) to allow an educational institution that uses an academic quarter system to apply to the student's account or deliver to the student a CAP grant for an academic term so that the disbursement occurs in the second quarter of enrollment as at least a part-time student in the fall and spring academic terms. The maximum CAP grant amount proposed to be applied by the educational institution to a student's account or delivered to a student attending a business school, school of nursing, or vocational school in 1 quarter would not exceed 1/2 of the tuition charges for 1 academic term at publicly operated vocational-technical schools in the Commonwealth. Section 5 of the above cited administrative regulation currently provides disbursement procedures for educational institutions that use short winter terms in combination with longer fall and spring terms. The Kentucky Higher Education Assistance Authority intends to specify the short winter term must be in combination with a longer fall and spring term. It is proposed that enrollment in the short winter term will not qualify a student for grant assistance during the short winter term but the student may add credit hours from the winter term to credit hours of enrollment in the fall and spring academic terms to establish enrollment as a full-time student during the fall or spring academic terms.
- (c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation establishes the award determination procedures for KHEAA grant programs.
- (d) The benefits expected from the administrative regulation are: The amendment establishes disbursement procedures for educational institutions that use an academic quarter system thus making financial aid more accessible by a greater number of Kentucky residents.
- (e) The administrative regulation will be implemented as follows: KHEAA will disburse grant proceeds to educational institutions that use an academic quarter system in a manner equivalent to the disbursement process for institution's using a semester system.

March 31, 2000

- (1) **11 KAR 8:030**, Teacher scholarships.
- (2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Section 2 of the administrative regulation governing the subject matter listed above, particularly, procedures for awarding renewal teacher scholarships.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, May 22, 2000 at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.
- (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 Monday, May 22, 2000, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U. S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX (502) 696-7293.
- (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 Kentucky Higher Education Assistance Authority 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 teacher scholarships is KRS 164.769(6)(f).
- (b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to amend will specify that a person who previously received a teacher scholarship pursuant to KRS 164.769 after July 1, 1996, shall be eligible to apply for and be considered for a renewal teacher scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward

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completion of the eligible program of study in accordance with standards prescribed by the participating institution.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program. The proposed amendment is a necessary change to clarify the procedure for awarding renewal scholarships to students who received initial scholarships after July 1, 1996.

(d) The benefits expected from the administrative regulation are: This administrative regulation is intended to assist individuals preparing to teach in Kentucky by delineating selection criteria, disbursement procedures, cancellation of repayment procedures, repayment obligations and award maximums for each academic year, semester, and summer session related to scholarships provided under the program.

(e) The administrative regulation will be implemented as follows: A person who received an initial scholarship after July 1, 1996, will be eligible to apply for and be considered for a renewal teacher scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.

March 31, 2000

(1) **11 KAR 12:010**, Definitions for 11 KAR Chapter 12.

(2) The Kentucky Educational Savings Plan Trust intends to promulgate an administrative regulation governing the subject matter listed above, particularly, the definitions for 11 KAR Chapter 12.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 2000 at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

(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 May 22, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.

(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 Kentucky Higher Education Assistance Authority 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 this administrative regulation is KRS 164A.325(9).

(b) The administrative regulation that the Kentucky Educational Savings Plan Trust intends to promulgate will delete the definitions for "notice to delay benefits under participation agreement," "notice to extend payments under participation agreement," and "payment book" currently found in 11 KAR 12:010(18), (19) and (28).

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164A.325(9) authorizes the Kentucky Higher Education Assistance Authority board to promulgate administrative regulations to implement the Kentucky Educational Savings Plan Trust. This administrative regulation establishes the definitions for 11 KAR Chapter 12.

(d) The benefits expected from the administrative regulation are: Statutory changes approved by the 2000 General Assembly have eliminated the need for defining "notice to delay benefits under participation agreement" and "notice to extend payments under participation agreement." Payment books are no longer utilized by the Savings Plan Trust for participant contributions to accounts; therefore, there is no need for these definitions in regulation. The regulatory definitions will be in conformance with statutory changes made by the legislature and administration of the program will be consistent with the legislative intent for the program.

(e) The administrative regulation will be implemented as follows: KRS 164A.330 was amended by the 2000 General Assembly to delete the requirement that benefits be paid to the beneficiary beginning not later than the first full academic semester at an institution of higher education following the 18th birthday of the beneficiary unless notice was given by the participant to the program administrator. Notice by the participant to delay benefits or to extend payments will no longer be required by the program administrator. Likewise, payment books will no longer be utilized by the program administrator.

March 31, 2000

(1) **11 KAR 12:030**, Eligibility of beneficiary and participant.

(2) The Kentucky Educational Savings Plan Trust intends to promulgate an administrative regulation governing the subject matter listed above, particularly, elimination of the requirement that a participant designate a beneficiary who is under the age of 15 and provide proof of the beneficiary's age. The proposed amendment provides that participants other than individuals would submit to the program administrator either a valid Social Security number or federal identification number. The proposed amendment also would allow a participant who awards a trust account as part of a scholarship program to submit to the program administrator the Social Security number of the beneficiary upon designation of the scholarship recipient.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 2000, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

(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 May 22, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General

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Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.

(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 Kentucky Higher Education Assistance Authority 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 this administrative regulation is KRS 164A.325(9).

(b) The administrative regulation that the Kentucky Educational Savings Plan Trust intends to promulgate will amend 11 KAR 12:030, as follows: Section 1 of the above-cited administrative regulation currently provides that the beneficiary must not have attained the age of 15 at the time of designation. Section 2 of the above-cited administrative regulation currently requires that the participant submit proof of the beneficiary's age at the time of designation. The Kentucky Educational Savings Plan Trust intends to amend that section of the administrative regulation to delete these requirements in accordance with statutory changes that deleted the age requirements for beneficiaries. Kentucky Educational Savings Plan Trust intends to amend that section of the administrative regulation to provide that Section 4 of the above-cited administrative regulation currently requires a participant to submit a Social Security number for the beneficiary and the participant. The Kentucky Educational Savings Plan Trust intends to amend that section of the administrative regulation to acknowledge that all participants are not individuals and to require the participant to submit either a valid Social Security number or a federal identification number. This section would also be amended to allow a qualified participant under 26 USC Section 501(c)(3) who awards a trust account as part of a scholarship program to submit to the program administrator the Social Security number of the beneficiary upon designation of the scholarship recipient.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164A.325(9) authorizes the Kentucky Higher Education Assistance Authority board to promulgate administrative regulations necessary for the administration of the savings plan trust. Statutory changes approved by the 2000 General Assembly have eliminated the age requirement for beneficiaries and the proposed amendment would make the regulations consistent with the statute. The proposed amendment also acknowledges that all participants are not individuals and allows a qualified participant under 26 USC Section 501(c)(3) who awards a trust account as part of a scholarship program to submit to the program administrator the Social Security number of the beneficiary upon designation of the scholarship recipient.

(d) The benefits expected from the administrative regulation are: Kentucky families with older children will now be allowed to invest for education even for short periods of time prior to graduation. Further, procedures would be established to allow a qualified participant under 26 USC Section 501(c)(3) to establish a trust account as a scholarship award and to allow participants other than individuals to contribute towards the educational savings of Kentucky students.

(e) The administrative regulation will be implemented as follows: Participants will no longer be limited to saving for the education of children under the age of 15 and participants who are not individuals will be required to submit either a valid Social Security number or a federal identification number. Qualified participants under 26 USC Section 501(c)(3) who award a trust account as part of a scholarship program will be required to submit to the program administrator the Social Security number of the beneficiary upon designation of the scholarship recipient.

March 31, 2000

(1) **11 KAR 12:040**, Residency classification for Kentucky Educational Savings Plan Trust vested participation agreements.

(2) The Kentucky Educational Savings Plan Trust intends to promulgate an administrative regulation governing the subject matter listed above, particularly the requirements for establishing a vested participation agreement in which the beneficiary shall be considered a resident of the Commonwealth for tuition purposes. In accordance with statutory changes made by the 2000 General Assembly, Kentucky Educational Savings Plan Trust proposes to delete the phrase "prior to enrollment in another educational institution".

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 2000, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

(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 May 22, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX (502) 696-7293.

(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 Kentucky Higher Education Assistance Authority 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 this administrative regulation is KRS 164A.325(9).

(b) The administrative regulation that the Kentucky Educational Savings Plan Trust intends to promulgate will amend 11 KAR 12:040, as follows: The necessity and function provision of the above cited administrative regulation currently provides that "KRS 164A.330(9) requires that each participation agreement provide that for a vested participation agreement, the beneficiary shall be considered a resident of the Commonwealth for tuition purposes if the beneficiary enrolls in an institution of higher education in Kentucky prior to enrollment in another educational institution." The Kentucky Educational Savings Plan Trust intends to amend that section of the administrative regulation to delete "prior to enrollment in another educational institution" in accordance with statutory changes made by the 2000 General Assembly.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation establishes the standards for proof of residency of a beneficiary for a vested educational savings plan trust participation agreement. The proposed change is necessary to clarify that pursuant to statutory changes, for a vested participation agreement, the beneficiary is considered a resident of the Commonwealth for tuition purposes if the beneficiary enrolls in an institution of higher education in Kentucky, regardless of prior enrollment in an

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other educational institution.

(d) The benefits expected from the administrative regulation are: If an educational savings plan trust participation agreement is vested, the beneficiary will be considered a resident of the Commonwealth for tuition purposes if the beneficiary enrolls in an institution of higher education in Kentucky, regardless of prior enrollment in another educational institution.

(e) The administrative regulation will be implemented as follows: If an educational savings plan trust participation agreement is vested, the beneficiary will be considered a resident of the Commonwealth for tuition purposes if the beneficiary enrolls in an institution of higher education in Kentucky, regardless of prior enrollment in another educational institution.

March 31, 2000

(1) **11 KAR 12:050**, Substitution of a beneficiary.

(2) The Kentucky Educational Savings Plan Trust intends to promulgate an administrative regulation governing the subject matter listed above, particularly, deletion of the an administrative fee for multiple substitutions of a beneficiary to an educational savings plan trust agreement.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 2000, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

(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 May 22, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.

(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 Kentucky Higher Education Assistance Authority 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 this administrative regulation is KRS 164A.325(5) and (9).

(b) The administrative regulation that the Kentucky Educational Savings Plan Trust intends to promulgate will amend 11 KAR 12:050, as follows: Section 1(2) of the above cited administrative regulation currently provides that if an educational savings plan trust participant substitutes a beneficiary under a participation agreement more than twice, the participant is required to pay an administrative fee of \$25 per substitutive fee for any substitution of beneficiary.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation establishes the requirements for the substitution of a beneficiary and permits a participant with more than 1 account and beneficiaries to substitute a beneficiary from 1 account to another in lieu of canceling 1 of the accounts.

(d) The benefits expected from the administrative regulation are: Participants in the Kentucky Educational Savings Plan Trust will no longer be required to pay an administrative fee for the third or subsequent substitution of a beneficiary.

(e) The administrative regulation will be implemented as follows: The trust will no longer require an administrative fee for the third or subsequent substitution of a beneficiary to a participation agreement.

March 31, 2000

(1) **11 KAR 12:070**, Benefits payable from the Kentucky Educational Savings Plan Trust Program fund.

(2) The Kentucky Educational Savings Plan Trust intends to promulgate an administrative regulation governing the subject matter listed above, particularly, deletion of the requirement that the balance of an account be returned in accordance with KRS 164A.350 if the beneficiary does not enroll in an institution of higher education by the first academic period of the academic year following the beneficiary's 18th birthday, if the beneficiary interrupts enrollment and the trust does not receive a notice to delay benefits. This amendment is necessary to conform to statutory changes made by the 2000 General Assembly. It is further proposed that Section 4 of the administrative regulation be amended to delete the requirement that upon graduation of the beneficiary, any remaining payments and earnings from the investments in the program fund remaining in the account be automatically returned to the participant. The administrative regulation would be amended to allow the participant to request in writing the return of any payments and earnings from the investments in the program fund remaining in the account.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 2000, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

(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 May 22, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.

(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 Kentucky Higher Education Assistance Authority 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 this administrative regulation

is KRS 164A.325(9).

(b) The administrative regulation that Kentucky Educational Savings Plan Trust intends to promulgate will amend 11 KAR 12:070, as follows: (1) Section 3 of the above cited administrative regulation currently provides that if the trust beneficiary does not enroll in an institution of higher education by the first academic period of the academic year following the beneficiary's 18th birthday, or if the beneficiary interrupts enrollment and the trust does not receive a notice to delay benefits, then the program administrator is to refund the balance of payments and the earnings from the investments in the program fund remaining the account in accordance with KRS 164A.350. The Kentucky Educational Savings Plan Trust will amend the administrative regulation to eliminate this requirement to conform with statutory changes made by the 2000 General Assembly. Section 4(2) of the above cited administrative regulation currently provides that upon graduation of the beneficiary, any remaining payments and earnings from the investments in the program fund remaining in the account is automatically returned to the participant. The Kentucky Educational Savings Plan Trust will amend this administrative regulation to provide that the participant request the refund in writing.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164A.325(9) authorizes the board to promulgate administrative regulations to implement the Kentucky Educational Savings Plan Trust. The proposed amendment to this administrative regulation would establish the procedures for refunds of unused benefits from the program fund.

(d) The benefits expected from the administrative regulation are: By deleting Section 3 of the administrative regulation, participants in the Kentucky Educational Savings Plan Trust will be allowed to maintain their account, without notice to the trust, until such time as the beneficiary wishes to enroll in an institution of higher education. The proposed amendment to Section 4 of the administrative regulation will allow participants to maintain their account, without notice to the trust, after the graduation of the beneficiary in the event the beneficiary chooses to continue at a higher education institution at a later date.

(e) The administrative regulation will be implemented as follows: The trust will no longer automatically refund trust account proceeds for nonuse or unused benefits from the program fund.

March 31, 2000

(1) **11 KAR 15:060.** Commonwealth Merit Scholarship overaward and refund and repayment procedure.

(2) The Kentucky Higher Education Assistance Authority intends to amend this administrative regulation governing the subject matter listed above, particularly, setting forth under what circumstances refunds from students and repayments from institutions are owed under the Kentucky Educational Excellence Scholarship Program.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, May 22, 2000, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

(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 Monday, May 22, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.

(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 Kentucky Higher Education Assistance Authority 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 this administrative regulation is KRS 164.7885(7).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend 11 KAR 15:060, as follows: Section 1 of the above-cited administrative regulation currently provides that participating institutions shall refund KEES monies to the student in accordance with the individual institution's refund policy. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to provide that institutions are required to refund KEES monies to KHEAA only when the student failed to enroll. Otherwise, the institution is required to deliver funds to the eligible student. Section 2 of the above-cited administrative regulation currently provides that a student does not owe a repayment of KEES monies, unless an error or misrepresentation is made. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to provide that if a student receives an overpayment of KEES monies or the institution disbursed funds to a student that never earned KEES monies, then the student and the institution are jointly and severally liable for the repayment. Section 3 currently provides what steps must be taken when a repayment is due from an eligible student. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to conform that provision with changes made in prior sections. Section 4 currently provides that an institution's refund and repayment policy must in accordance with the pertinent federal regulations. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation by deleting this section. Refund and repayment policies pertaining to the KEES Program are not governed by federal law.

(c) The necessity and function of the proposed administrative regulation is as follows: To clarify how the KEES Program is implemented, and to amend the regulations to reflect the way in which institutions are supposed to be dealing with KEES monies.

(d) The benefits expected from the administrative regulation are: To streamline administration of the KEES Program so that institutions are not required to reverify the enrollment status of students when funds are received from the authority. Students also benefit from receipt of funds that they earned even if they change enrollment status, but forfeit a semester of eligibility.

(e) The administrative regulation will be implemented as follows: KHEAA will monitor the program and the institutions to ensure compliance with the revised requirements.

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COUNCIL ON POSTSECONDARY EDUCATION

April 12, 2000

(1) **13 KAR 2:090.** Kentucky Educational Excellence Scholarship (KEES) Program. The subject matter of the proposed amendment to the administrative regulation is a scholarship program for high school students.

(2) The Council on Postsecondary Education (CPE) is charged by KRS 164.7871-164.7885 with responsibility for determining minimum admissions to the state-supported postsecondary education institutions. The current administrative regulation needs to be revised to recognize the new minimum high school graduation requirements and the new programs of study.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 25, 2000, at 1 p.m., in Conference Room A, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601.

(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 5 persons, or an administrative body or association, request this public hearing and agree in writing to be present at the public hearing, it will be held as scheduled.

(c) 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 calendar days prior to May 25, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request no later than May 15, 2000, to the following address: Council on Postsecondary Education, Attn: Ken Walker, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Phone: (502) 573-1555; Fax (502) 573-1535.

(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 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 Council on Postsecondary Education at the address listed above.

(7) The following information relates to the proposed administrative regulation:

(a) The statutory authority for the promulgation of 13 KAR 2:090, Kentucky Educational Excellence Scholarship (KEES) Program is KRS 164.7871-164.7885.

(b) The administrative regulation the CPE intends to promulgate is an amendment to an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: In order to implement effectively the provisions of the Kentucky Educational Excellence Scholarship Program, the council needs to revise the administrative regulation to address a number of issues that have risen in the first year of the program.

(d) The benefit expected from the administrative regulation is to ensure that students are able to understand the requirements for admission to state-supported postsecondary education institutions.

(e) This administrative regulation will be implemented as follows: By the CPE, KHEAA and KDE with participation by local education agencies and, by public and private postsecondary education institutions.

PERSONNEL CABINET

April 14, 2000

(1) **101 KAR 2:140,** Workers' Compensation Fund and Program.

(2) The Personnel Cabinet intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for May 22, 2000 at 9:30 a.m. at 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601.

(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 May 22, 1999, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, e-mail: Dan.Egbers@mail.state.ky.us.

(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 Personnel 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 101 KAR 2:140, Workers' Compensation Fund and Program is KRS 18A.030, 18A.110 and 18A.370.

(b) The administrative regulation that the Personnel Cabinet intends to promulgate will amend 101 KAR 2:140, Workers' Compensation Fund and Program. The amendment would provide that if an agency included in the fund as a result of the employment of individuals defined in KRS 18A.370 desires to withdraw from the program, the agency may elect to withdraw at the end of the current fiscal year. Any agency withdrawing from the program shall only be readmitted to the program at the discretion of the Personnel Cabinet. As a condition of withdrawal, the agency would be required to reimburse the Commonwealth for any and all claims for services incurred by its employees, but not reported to the fund, prior to the effective date of withdrawal, without regard to the length of time after the withdrawal date that such claims are actually received by the Personnel Cabinet. The Commonwealth would bill the agency on a quarterly basis for such claims until all such claims have been submitted and been accounted for, and the agency would be required to reimburse the Commonwealth within 30 calendar days of receipt of the itemized statement of payments made on the agency's behalf. If an agency that has withdrawn from the program sought readmis-

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sion to the fund, the Personnel Cabinet, in the exercise of its discretionary authority, would reserve the right to review and evaluate the agency's claims history and, if deemed acceptable, assess a premium based on claims experience over the preceding 3 years, and the current number of employees in the agency.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The amended regulation will govern the Workers' Compensation program as required by law.

(d) The benefits expected from administrative regulation are: Creation of reasonable rules governing the withdrawal and readmission of covered state agencies from the fund.

(e) The administrative regulation will be implemented as follows: Upon review by the State Personnel Board, the proposed changes will amend the regulation governing the Workers' Compensation Fund and Program as soon as administratively feasible.

BOARD OF PHARMACY

March 22, 2000

(1) **201 KAR 2:015.** Continuing education.

(2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:015 relating to continuing education.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 25, 2000 at 9:05 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, Frankfort, Kentucky 40601.

(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 May 25, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Michael A. Moné, Exécutive Director, Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601, (502) 573-1580, FAX (502) 573-1582.

(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 Board of Pharmacy 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 continuing education is found at KRS 315.191(1)(a).

(b) The amendment to the administrative regulation that the Board of Pharmacy intends to promulgate will address the manner by which a pharmacist receives continuing education from a provider.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 315.065 and 315.191(1)(a) authorize and require the Board of Pharmacy to promulgate administrative regulations to establish the parameters by which program approval shall be granted and to set forth the minimum requirements of courses to be completed to maintain a license to practice the profession of pharmacy.

(d) The benefit expected from the amendment to the administrative regulation is a greater certainty that the provider will meet minimum standards and clarification of the conditions that must be met by a licensee upon reinstatement of a lapsed license.

(e) The amendment to the administrative regulation will be implemented as follows: The board proposes to clarify the method of approval of providers of continuing education and to clarify its position regarding testing and continuing education required to reinstate a lapsed license.

(8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than May 11, 2000.

March 22, 2000

(1) **201 KAR 2:205.** Pharmacist-in-charge.

(2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:205 relating to the establishment and duties of a pharmacist-in-charge of a pharmacy in the Commonwealth.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 25, 2000 at 9:15 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, Frankfort, Kentucky 40601.

(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 May 25, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601, voice: (502) 573-1580; fax (502) 573-1582.

(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 Board of Pharmacy 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 establishment and duties of a pharmacist-in-charge is found at KRS 315.020(1), 315.035(1) and 315.191(1)(a).

(b) The amendment to the administrative regulation that the Board of Pharmacy intends to promulgate will address the time period within which notification must be provided whenever a change of pharmacist-in-charge occurs.

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(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations governing pharmacists and pharmacies. KRS 315.020(1) establishes the requirement that an owner of a pharmacy shall place a pharmacist in charge of the supervision of the pharmacy and KRS 315.035(1) requires an operator of a pharmacy to obtain a pharmacy permit.

(d) The benefit expected from the amendment to the administrative regulation is the adoption of a functionally practical time frame within which a pharmacy permittee and its pharmacist-in-charge can notify the board of a change in the designated pharmacist-in-charge.

(e) The amendment to the administrative regulation will be implemented as follows: The board proposes to establish a 10 day window within which notice to the board of a change in pharmacist-in-charge is accomplished.

(8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than May 11, 2000.

March 22, 2000

(1) **201 KAR 2:240.** Special limited pharmacy - charitable pharmacy.

(2) The Kentucky Board of Pharmacy intends to promulgate an administrative regulation, 201 KAR 2:240 relating to the requirements for the establishment of a charitable pharmacy in the Commonwealth.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 25, 2000 at 9 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, Frankfort, Kentucky 40601.

(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 May 25, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601, voice: (502) 573-1580; fax (502) 573-1582.

(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 Board of Pharmacy 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 establishment of a charitable pharmacy is found at KRS 315.020, 315.030, and 315.191(1)(a).

(b) The promulgation of this administrative regulation that the Board of Pharmacy intends to promulgate will address the procedures and requirements for the establishment of a charitable pharmacy for the preparation of prescriptions and the dispensing from manufacturer samples.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 315.020, 315.030 and 315.191(1)(a) requires the board to promulgate administrative regulations to prescribe the criteria for obtaining a pharmacy permit to dispense legend drugs and the procedures for the safe dispensing of legend drugs to citizens of the Commonwealth. This administrative regulation will identify the manner by which a charitable pharmacy can be permitted in the Commonwealth.

(d) The benefit expected from the amendment to the administrative regulation is the ability for pharmacists to develop a charitable pharmacy to dispense manufacturer samples to the indigent. The establishment of this permit will allow the 501(c)(3) entity that operates the pharmacy to receive manufacturer samples without violating the Prescription Drug Marketing Act of 1996.

(e) The new administrative regulation will be implemented as follows: The board proposes to establish a new permit for the establishment of a charitable pharmacy.

(8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than May 11, 2000.

KENTUCKY BOARD OF LICENSURE FOR SPECIALISTS IN HEARING AID INSTRUMENTS

March 31, 2000

(1) **201 KAR 7:040.** Examinations. This proposed amended administrative regulation amends the examination process required of initial applicants for licensure.

(2) The Kentucky Board of Licensure for Specialists in Hearing Aid Instruments 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 May 26, 2000, at 4 p.m., Kentucky Board of Licensure for Specialists in Hearing Aid Instruments, Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

(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 business days prior to May 26, 2000, on May 16, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Nancy L. Black, Director, Division of Occupations and Professions Executive Director, Kentucky Licensing Board for Specialists in Hearing Instruments, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601, Phone (502) 564-3296, ext. 224, Fax (502) 564-4818.

(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.

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- (b) Persons who wish to file this request may obtain a request form from Gary Munsie at the address above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to examinations are KRS 334.060(1), 334.070, 334.080, 334.090(4), 334.150(2), (7), (8), (9).
- (b) The administrative regulation the Kentucky Licensing Board for Specialists in Hearing Instruments intends to promulgate will amend the examination process for applicants for initial licensure.
- (c) The necessity and function of the proposed administrative regulation is as follows: This regulation will amend the examination process for applicants for initial licensure.
- (d) The benefit expected from this administrative regulation is the increased flexibility in allowing applicants to sit for the examination required for initial licensure.
- (e) The regulation will be implemented by the executive director and board administrator who are charged with overseeing the license application and examination process.

KENTUCKY BOARD OF LICENSURE AND CERTIFICATION FOR DIETITIANS AND NUTRITIONISTS

March 23, 2000

- (1) **201 KAR 33:050.** Complaint procedure.
- (2) The Kentucky Board of Licensure and Certification for Dietitians and Nutritionists intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 30, 2000 at 10 a.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, 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 May 30, 2000 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.
- (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 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 an administrative body.
- (b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.
- (7) Information relating to the proposed regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the complaint procedure is KRS 310.041(1), (3), and (8).
- (b) The administrative regulation the Board of Licensure and Certification for Dietitians and Nutritionists intends to promulgate will establish a complaint procedure for dietitians and nutritionists.
- (c) The necessity and function of the proposed administrative regulation is to establish the procedures for the filing, evaluation, and disposition of administrative complaints involving dietitians and nutritionists, as required by KRS 310.042.
- (d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Licensure and Certification for Dietitians and Nutritionists.
- (e) The Division of Occupations and Professions will implement the regulation. The implementing body will merely adhere to the standards as outlined in the regulation.

KENTUCKY BOARD OF CERTIFICATION OF ALCOHOL AND DRUG COUNSELORS

April 13, 2000

- (1) **201 KAR 35:020.** Fees.
- (2) The Kentucky Board of Certification of Alcohol and Drug Counselors 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 May 22, 2000, at 1 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, 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 May 22, 2000, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Nancy Black, Director, Division of Occupations and Professions, P.O. Box 1360, Frankfort, Kentucky 40602-0456, Telephone No. (502) 564-3296, Telefax No. (502) 564-4818.
- (b) On 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 by writing to Nancy Black at the above address, or by calling (502) 564-3296 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

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- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating fees is KRS 309.0813(1) and (12).
- (b) The administrative regulation that the Kentucky Board of Certification of Alcohol and Drug Counselors intends to promulgate will be amend an existing regulation. It will detail all fees necessary for certification from the board.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 309.0813(1) and (12) require the board to set out in administrative regulations certain fees. This administrative regulation amendment will set forth these fees.
- (d) The benefit expected from this administrative regulation is that the fees will enable the board to cover expenses associated with administering KRS Chapter 309.
- (e) This administrative regulation will be implemented as follows: applicants for certification and renewals will be required to remit the fee with their application.

KENTUCKY BOARD OF CERTIFICATION FOR PROFESSIONAL COUNSELORS

April 13, 2000

- (1) **201 KAR 36:070**. Educational requirements.
- (2) The Kentucky Board of Certification for Professional Counselors 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 May 22, 2000, at 2 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, 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 May 22, 2000, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Nancy Black, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602-0456, Telephone No. (502) 564-3296, Telefax No. (502) 564-4818.
- (b) On 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 by writing to Nancy Black at the above address, or by calling (502) 564-3296 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of administrative regulations relating to the subject matter is KRS 335.515(1), (3) and 335.525(1).
- (b) The administrative regulation that the Kentucky Board of Certification for Professional Counselors intends to promulgate will create 201 KAR 36:060 to specify the educational requirements necessary to qualify for certification.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 335.525(1)(c) identifies that applicants must have received a master's or doctoral degree in counseling. This regulation shall identify the courses which are included within a degree in counseling.
- (d) The benefit expected from these administrative regulations is that the requirements for a degree in counseling will be identified.
- (e) The administrative regulations will be implemented as follows: The board will refer to the criteria of the regulation when determining if an applicant's degree qualifies under KRS 335.525(1)(c).

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

April 14, 2000

- (1) **301 KAR 1:201**. Fishing limits.
- (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 May 22, 2000 at 10 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 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 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 May 22, 2000 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to Jennifer Fetter Fields, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3400 or FAX (502) 564-6508.
- (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).
- (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 1:201 as follows: It will size limits for state

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lakes.

- (c) The necessity and function of the proposed administrative regulation is to establish size, daily and possession limits for fishing.
- (d) The benefits expected from the administrative regulation are best management of the state's waters for recreational fishing.
- (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.

April 14, 2000

- (1) **301 KAR 2:251.** Hunting and trapping seasons and limits for furbearers and small game.
- (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 May 22, 2000 at 10 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 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 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 May 22, 2000, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to Jennifer Fetter Fields, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3400; FAX (502) 564-6508.
- (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 13A.350 and 150.025.
- (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 1:130 as follows: It will adjust the small game seasons and establish new hunt parameters.
- (c) The necessity and function of the proposed administrative regulation is to establish the permissible seasons for small game.
- (d) The benefits expected from the administrative regulation are: Increased opportunities for those hunting small game and better biological status.
- (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.

CABINET FOR ECONOMIC DEVELOPMENT

April 14, 2000

- (1) **306 KAR 1:010,** Kentucky Enterprise Zone Program.
- (2) The Cabinet for Economic Development intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral or written comments on the proposed administrative regulation has been scheduled for May 22, 2000, at 10 a.m. (Eastern Standard Time), at the Cabinet for Economic Development Conference Room, 24th 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 5 persons, or an administrative body, or an association having at least 5 members; and
 - 2. A minimum of 5 persons, or 1 person representing an administrative body or association, agrees, 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 May 22, 2000, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Phyllis Bruning, Director, Enterprise Zone Program, Cabinet for Economic Development, Capital Plaza Tower, 24th Floor, Frankfort, Kentucky 40601, (502) 564-7670, fax (502) 564-7697.
- (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 Cabinet for Economic Development 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 the administrative regulation is KRS 154.45-070(1).
- (b) The administrative regulation that the Cabinet for Economic Development intends to promulgate will amend an existing administrative regulation.
- (c) The necessity and function of the proposed administrative regulation is as follows: The necessity and function of the proposed regulation is to establish the conditions for which a business obtains and maintains certification as a qualified business. The Cabinet for Economic Development will monitor the qualified business. This administrative regulation also incorporates the forms that must be completed and submitted to the Kentucky Enterprise Zone Authority for application and monitoring purposes.
- (d) The benefits expected from administrative regulation are: The benefits expected from the administrative regulation are to establish procedures for submitting an application and the process for monitoring the qualified business and maintaining certification as a qualified business. The administrative regulation will provide notice to applicants of the procedures.
- (e) The administrative regulation will be implemented as follows: The staff of the Kentucky Enterprise Zone Authority will implement the

administrative regulation.

JUSTICE CABINET
Department of Corrections

April 11, 2000

- (1) **501 KAR 6:020**, Department of Corrections.
- (2) The Justice Cabinet, Department of Corrections, 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 May 22, 2000, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, 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 May 22, 2000, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Tamela Biggs, Staff Attorney, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.
- (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 Department of Corrections at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 196.035 and 197.020.
 - (b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:020, as follows: Offender Registration (CPP 27-30-01) shall be amended to conform with recent statutory amendments including registration in the event of change of address, lifetime registration, registration for individuals convicted of a crime in another jurisdiction and the penalties for noncompliance.
 - (c) The necessity and function of the proposed administrative regulation is as follows:
 1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner 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.
 2. This administrative regulation updates operating procedures at the Department of Corrections to comply with KRS Chapter 13A and to reflect current operating procedures.
 - (d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.
 - (e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

April 11, 2000

- (1) **501 KAR 6:190**, Certification procedures for mental health professionals performing sex offender risk assessment.
- (2) The Justice Cabinet, Sex Offender Risk Assessment Advisory Board, intends to promulgate an administrative regulation to establish provider certification requirements.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 2000, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky.
- (4)(a) The public hearing shall 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 May 22, 2000, the public hearing shall be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Tamela Biggs, Staff Attorney, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Phone (502) 564-2024, FAX (502) 564-6494.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I shall 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 of Corrections at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 17.554 and 17.564.
 - (b) The administrative regulation that the Sex Offender Risk Assessment Advisory Board intends to promulgate shall establish 501 KAR 6:190, as follows: The establishment of the requisite qualifications of and a certification procedure for, sex offender risk assessment providers.
 - (c) The necessity and function of the proposed administrative regulation is as follows:
 1. KRS 17.554 authorizes the Sex Offender Risk Assessment Advisory Board to promulgate administrative regulations to establish certification standards for mental health professionals performing a comprehensive sex offender presentence evaluation for sex offenders.
 2. This administrative regulation establishes provider certification requirements and updates operating procedures to assure the quality of

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comprehensive sex offender presentence evaluations.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to establish procedures to implement new statutory requirements.

(e) This administrative regulation will be implemented as follows: The Sex Offender Risk Assessment Advisory Board shall establish the qualifications, duties and certification procedures for providers who shall be performing the court ordered risk assessments.

April 11, 2000

(1) **501 KAR 6:200**, Comprehensive sex offender presentence evaluation procedure.

(2) The Justice Cabinet, Sex Offender Risk Advisory Board, intends to promulgate an administrative regulation to establish a risk assessment procedure for court ordered risk assessments of sex offenders.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 2000, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky.

(4)(a) The public hearing shall 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 May 22, 2000, the public hearing shall be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Tamela Biggs, Staff Attorney, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Phone (502) 564-2024, FAX (502) 564-6494.

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

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

2. "I shall 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 of Corrections at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 17.554 and 17.564.

(b) The administrative regulation that the Sex Offender Risk Assessment Advisory Board intends to promulgate shall establish 501 KAR 6:200, as follows: Sex Offender Risk Advisory Board procedure shall be established to assure a comprehensive sex offender presentence evaluation for court ordered evaluations of sex offenders.

(c) The necessity and function of the proposed administrative regulation is as follows:

1. KRS 17.554 authorizes the Sex Offender Risk Assessment Advisory Board to promulgate administrative regulations to establish a risk assessment procedure for comprehensive sex offender presentence evaluation of sex offenders.

2. This administrative regulation shall assure the quality of these evaluations.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to establish procedures to implement new statutory requirements.

(e) This administrative regulation shall be implemented as follows: Providers shall be instructed in the proper standards and procedures in order to perform a risk assessment.

KENTUCKY BOARD OF EDUCATION

April 12, 2000

(1) **701 KAR 5:110**, Use of local monies to reduce unmet technology need

(2) The Kentucky Board of Education 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 May 26, 2000 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to May 26, 2000 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

(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 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 Education at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority is KRS 156.070 and 156.160.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 701 KAR 5:110.

(c) The necessity, function, and conformity of the proposed administrative regulation is KRS 156.670(1) requires the development of the master plan for education technology to outline Commonwealth activities related to the purchase, development, and use of technology.

(d) The benefits expected from this administrative regulation are that local public school districts will be able to access education technology trust funds to support local implementation of the master plan for education technology.

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April 12, 2000

- (1) **703 KAR 5:140**. Requirements for school and district report cards.
- (2) The Kentucky Board of Education 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 May 26, 2000, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.
- (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.
- (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 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 Education at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority is KRS 158.6453 (7).
 - (b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 703 KAR 5:140.
 - (c) The necessity, function, and conformity of the proposed administrative regulation is KRS 158.6453(7) and requires the Kentucky Board of Education to promulgate an administrative regulation to define the implementation and the components of a school and district report card that clearly communicates with parents and the public about school and district performance.
 - (d) The benefit expected from this administrative regulation is that it establishes the standards for a school and district report card.
 - (e) The administrative regulation will be implemented as follows: Information about the regulation will be disseminated to all local school districts.

CABINET FOR WORKFORCE DEVELOPMENT

March 27, 2000

- (1) **780 KAR 3:035**, Employee evaluations administrative regulation.
- (2) The Cabinet for Workforce Development 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 amendment to the administrative regulation has been scheduled for May 31, 2000 at 1 p.m. in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601.
- (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 May 31, 2000, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sherry R. Deatrick, General Counsel, Kentucky Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-6606, Fax: (502) 564-9990, e-mail: SherryR.Deatrick@mail.state.ky.us.
- (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 Cabinet for Workforce Development at the address listed above.
- (7) Information relating to the proposed amendment to the administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to employee evaluations is KRS 151B.035.
 - (b) The administrative regulation that the Cabinet for Workforce Development, intends to promulgate will not amend an existing regulation. It will incorporate by reference the "Performance Evaluation Criteria and Procedures" for certified, equivalent and central office staff.
 - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation is necessary to conform with KRS 151B.035.
 - (d) The benefits expected from administrative regulation are: See answer to (c) above.
 - (e) The Cabinet for Workforce Development will be responsible for implementing the proposed administrative regulation.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

March 17, 2000

- (1) The subject matter of this administrative regulation amendment, **804 KAR 4:015**, Interlocking interest between licensees prohibited, is to:
 - (a) Amend the definition of "manufacturers" to include in-state and out-of-state manufacturers; and
 - (b) Amend the definition of "wholesalers" to include wholesalers located only within this state.
- (2) The Department of Alcoholic Beverage Control intends to amend an existing administrative regulation governing the subject matter

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listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation amendment has been scheduled for Tuesday, May 23, 2000, at 10 a.m., EDT, in the Hearing Room of the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601.

(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 Tuesday, May 23, 2000, at 10 a.m., EDT, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Rebecca W. Goodman, Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-1442.

(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 Kentucky Department of Alcoholic Beverage Control at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the administrative regulation relating to the subject matter of the administrative regulation is KRS 241.060.

(b) The administrative regulation that the Department of Alcoholic Beverage Control intends to promulgate will amend an existing administrative regulation. The proposed administrative regulation amendment will clarify the intent of the law without interfering with any current ownership interests within the industry. Under the revised language, both an in-state and out-of-state manufacturer would be barred from having any interest in an in-state wholesaler, while still permitting an in-state manufacturer to have an interest in an out-of-state wholesaler.

(c) The necessity, function and conformity of the proposed administrative regulation amendment is as follows: The control of alcoholic beverages in the Commonwealth of Kentucky, as codified in Chapters 241-244 of the Kentucky Revised Statutes, has been established by the Kentucky legislature as a "3 tiered" system. The 3 tiers of this system are designated as producer, wholesale/distributor, and retail. Each of these 3 levels operate separately and apart from each other for the purpose of control. In order for this control to be effectively administered by this board, it is necessary to prevent any type of interlocking interest by and between the 3 separate levels. The purpose of this regulation is to clarify the interlocking interests which will be prohibited by this board.

(d) The benefits expected from the administrative regulation amendment are: This administrative regulation amendment will bar both an in-state and out-of-state manufacturer from having any interest in an in-state wholesaler, while still permitting an in-state manufacturer from having an interest in an out-of-state wholesaler.

(e) The administrative regulation amendment will be implemented as follows: It shall be implemented by having staff comply with operational procedures and standards noted in the regulation.

DEPARTMENT OF FINANCIAL INSTITUTIONS

April 13, 2000

(1) **808 KAR 1:150.** Establishment and relocation of bank branches or offices.

(2) The Department of Financial Institutions intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for Monday, May 22, 2000 at 9 a.m., at the offices of the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601.

(3) This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in the public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 calendar days prior to May 22, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request(s) to the following person and address: J. Rick Jones, General Counsel, Department of Financial Institutions, Public Protection and Regulation Cabinet, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, (502) 573-3390, fax (502) 573-8787.

(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 Department of Financial Institutions at the address listed above.

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is Senate Bill 169, which, when effective, will amend KRS 287.180 and 287.185.

(b) This administrative regulation will be a new regulation section to designate those banks that will not have to apply for approval of the commissioner for permission to establish a branch or to relocate its principal office or branch.

(c) The necessity and function of this administrative regulation is as follows: The Department of Financial Institutions is authorized pursuant to Senate Bill 169, which, when effective, will amend KRS 287.180 and 287.185, to designate those banks that do not have to apply for

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approval of the commissioner for permission to establish a branch or to relocate its principle office or branch. This administrative regulation will set forth the criteria that such banks will have to meet in order to be designated as not having to obtain commissioner approval to establish a branch or relocate a principal office or branch.

(d) The benefits expected from this administrative regulation are: Designating banks that will not require commissioner approval to establish branches or relocate principal offices or branches will reduce administrative costs associated with such activities, from both an industry and governmental standpoint, and eliminate administrative delays in completing such activities. At the same time, by designating only banks that have met defined compliance criteria, the department can continue to exercise appropriate levels of oversight over the activities of those institutions that have not exhibited the same level of compliance.

(e) The administrative regulation will be implemented as follows: Appropriate staff and banks will be notified of this administrative regulation, and the department's examination branch will be largely responsible for its enforcement and implementation.

March 27, 2000

(1) **808 KAR 10:410**, Viatical settlement interests.

(2) The Department of Financial Institutions 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 May 22, 2000 at 10 a.m. at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, 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 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 May 22, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Colleen Keefe, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Phone (502) 573-3390, Fax (502) 573-8787.

(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 person 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 of Financial Institutions at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the proposed administrative regulation is KRS 292.500(1) and (3) and 292.410(1)(q).

(b) The proposed administrative regulation will not amend an existing regulation. It provides an exemption from registration for the sale of interests in viatical settlements provided that certain information is provided to the investor and the agents are registered with the department.

(c) The necessity and function of the proposed administrative regulation is as follows: The statutes authorizing this regulation provide that the commissioner may exempt from registration any transactions which he finds that registration is not necessary or appropriate in the public interest or for the protection of investors. Registration does not provide any additional protection to the public so long as disclosure of all material information is provided to the investor. Registration of the agent is necessary to ensure that the agent is qualified to sell the securities product.

(d) The benefits expected from the proposed administrative regulation are: The regulation will provide protection to investors by improving the content of disclosures related to the investment.

(e) The proposed administrative regulation will be implemented as follows: It will be published in financial institution law publications that are available to the regulated entities and the public.

DEPARTMENT OF HOUSING, BUILDINGS AND CONSTRUCTION

March 31, 2000

(1) **815 KAR 7:105**; Kentucky Building Code/1997.

(2) The Board of Housing, Buildings and Construction 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 Tuesday, May 23, 2000, 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 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 May 23, 2000, 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, Telephone: (502) 564-8044, Fax: (502) 564-6799.

(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.040(7) and 198B.050.

(b) The department intends to amend 815 KAR 7:105, Kentucky Building Code/1997 to comply with House Bill 244 relating to the establishment of a building inspectors training program to be funded by increasing the department's plan review fees collected for each occupancy classification under KRS 198B.060 by one-half cent (\$.005) per calculated square foot.

(c) The necessity and function of the proposed administrative regulation is as follows: The intended amendment is necessary to implement

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changes approved in House Bill 244 of the 2000 General Assembly to establish a trust and agency fund known as the "Building Inspectors' Financial Incentive Training Program Fund."

(d) The benefits expected from this administrative regulation are: To assist in the establishment of a certification program for building inspectors to enforce the state building code. This program will encourage local governments to establish an inspection program, improve building code enforcement programs and encourage building inspectors to upgrade their competency levels.

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

CABINET FOR HEALTH SERVICES Office of Certificate of Need

March 16, 2000

(1) **900 KAR 6:030**, Certificate of need expenditure minimums.

(2) The Cabinet for Health Services, Office of Certificate of Need, intends to promulgate an administrative regulation 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 May 31, 2000, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, 1st 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 public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 31, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Selina R. Riley, Cabinet Regulation Coordinator, Cabinet for Health Services, 275 East Main Street, 4 West, (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 Public Health, Commissioner's Office, 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 the Cabinet for Health Services regulations may call toll free 1-800-372-2973. (V/TDD).

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of is administrative regulation relating the subject matter listed above is found at KRS 216B.040 and 216B.130.

(b) The administrative regulation that the Cabinet for Health Services intends to promulgate involves the annual adjustment of the capital and medical expenditure minimums as required by KRS 216B.103.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 216B.040 authorizes the Cabinet for Health Services to promulgate administrative regulations. KRS 216B.103 requires the cabinet to annually adjust expenditure minimums set forth in KRS Chapter 216B. This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment for the period beginning July 15, 2000 and ending July 14, 2001.

(d) The benefits expected from the administrative regulation are: Compliance with the requirements of KRS 216B.130 that certificate of need expenditure minimums be adjusted annually.

(e) The administrative regulation will be implemented as follows: The Office of Certificate of Need will be responsible for the implementation of this administrative regulation.

March 31, 2000

(1) **900 KAR 6:050**, Certificate of need administrative regulation.

(2) The Cabinet for Health Services, Office of Certificate of Need, intends to promulgate an administrative regulation governing the subject matter cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for, May 31, 2000, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, 1st 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 public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 31, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Selina B. Riley, Cabinet Regulation Coordinator, Cabinet for Health Services, 275 East Main Street, 4 West, (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 Public Health, Commissioner's Office, 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 the Cabinet for Health Services regulations may call toll free 1-800-372-2973. (V/TDD).

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of is administrative regulation relating the subject matter listed above is found at KRS

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216B.040(2)(a) and (3).

(b) The administrative regulation that the Cabinet for Health Services, intends to promulgate concerns the certificate of need process.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: The Cabinet for Health Services is required by statute to administer Kentucky's certificate of need program and to promulgate administrative regulations as necessary. This administrative regulation amends the existing certificate of need administrative regulation to address the certification of continuing care retirement communities as required by HB 452 and to make amendments to existing certificate of need forms.

(d) The benefits expected from the administrative regulation are that the administrative requirements for continuing care retirement communities will be promulgated in a timely fashion.

(e) The administrative regulation will be implemented as follows: The Office of Certificate of Need will be responsible for the implementation of this administrative regulation.

Department for Medicaid Services

March 16, 2000

(1) **907 KAR 1:012**, Inpatient hospital 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 May 31, 2000, at 9 a.m., in the Cabinet 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 May 31, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Selena Riley, 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 Member and Provider Services, 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 1:012, Inpatient hospital services, are KRS 194.050, 42 CFR 440.10, 42 USC 1396a, b, d, r-4.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:012 to remove length of stay durational limits.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation establishes provisions relating to inpatient hospital services for which payment shall be made by the Medicaid Program.

(d) The benefits expected from this administrative regulation are: Recipients will receive medically necessary inpatient hospital services without durational limits.

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

March 16, 2000

(1) **907 KAR 1:013**, Payments for hospital inpatient 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 May 31, 2000 at 9 a.m., in the Cabinet 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 May 31, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Selena Riley, 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 Member and Provider Services, 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.

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cordance 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 907 KAR 1:013E, Payments for hospital inpatient services, are KRS 194A.030, 194A.050, 205.560(2), 205.637, 205.640, 216.380(10), 20 CFR 405.402-405.488, 42 CFR 440.10, 440.140, 447.250-447.280, 42 USC 1395f(l), x(mm), 1396a, b, d, r-4, 902 KAR 20:180; 902 KAR 20:240.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:013, Payment for hospital inpatient services, to comply with provisions of 42 USC 1396a, b, and d, to adjust the payments made for inpatient hospital services for those hospitals who serve a disproportionate share of low income patients, to clarify the payment methodology for out of state hospitals, and establish payment for critical access hospital services.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation establishes the method for determining the amount payable by the Medicaid program for a hospital inpatient service.

(d) The benefits expected from this administrative regulation are: Recipients will receive medically necessary inpatient hospital services without durational limits and providers will be reimbursed equitable payments.

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

Department for Mental Health and Mental Retardation Services

April 17, 2000

(1) **908 KAR 2:210**, Domestic violence offender treatment certification standards.

(2) The Department for Mental Health/Mental Retardation Services intends to promulgate an administrative regulation to specify requirements for provider certification and program standards for the assessment and treatment of offenders mandated by a court to obtain treatment.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 31, 2000 at 9 a.m. in the Department for Public Health 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, agrees, 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 prior to May 22, 2000, the public hearing will be canceled:

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

(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 persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations 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 Administrative Regulation Coordinator, Department for Mental Health and Mental Retardation Services, Division of Administration and Financial Management, 100 Fair Oaks Drive (4th Floor), 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 American With Disabilities Act. Persons requesting assistance with 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 establishing domestic violence offender treatment certification standards is KRS 403.7505. That statute authorizes the Cabinet for Health Services to promulgate regulations establishing certification standards for mental health professionals providing court-mandated treatment services for domestic violence offenders.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will specify application requirements including requirements for documentation of qualifications, add a standard application form, add advanced registered nurse practitioners to the professionals who may be certified as an autonomous provider, specify grounds for denial or revocation of certification, add requirements for notifying offenders of confidentiality requirements and limits thereon, specify requirements for notifying clients of program procedures including procedures for contact between a provider and a victim, notifying courts of the status of clients, establish procedures for informal resolution of disputes and for administrative hearings to settle disputes, add citations of applicable statutes throughout the regulation, and make various language and format changes in accordance with KRS Chapter 13A.

(c) The necessity and function of the administrative regulation is as follows: To establish provider certification requirements and standards for services. This administrative regulation is necessary to assure the quality of court ordered services and reduce the danger of physical injury or death for victims of ineffectively treated domestic violence perpetrators.

(d) The benefits expected from this administrative regulation are: Offenders mandated by a court to participate in treatment will have access to providers who have specialized qualifications, and the risk of violence to victims of domestic violence will be reduced.

(e) The administrative regulation will be implemented as follows: By the Department for Mental Health and Mental Retardation Service, Cabinet for Health Services.

March 16, 2000

(1) **908 KAR 3:050**. Per diem rate pursuant to the Patient Liability Act of 1978.

(2) The Department for Mental Health/Mental Retardation Services intends to promulgate an amendment to 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 May 31, 2000 at 9 a.m. in the Department for Public Health 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

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2. A minimum of 5 persons or the administrative body, or association, agrees 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 working days prior to May 31, 2000, the public hearing will be canceled:
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Selina R. Riley, Cabinet Regulation Coordinator, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).
- (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 persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations 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 Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 100 Fair Oaks Dr. (4th Floor), 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 American With Disabilities Act. Persons requesting assistance with 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 related to charge rates for state psychiatric hospitals is KRS 210.720(2).
- (b) The administrative regulation that the Department for Mental Health/Mental Retardation Services intends to promulgate will fix the patient cost per day for board, maintenance and treatment at facilities controlled by the cabinet.
- (c) The necessity and function of the administrative regulation is as follows: To establish standardized rates for the patient cost per day for board, maintenance, and treatment at psychiatric facilities controlled by the Cabinet for Health Services.
- (d) The benefits expected from the amendments to this administrative regulation are: To limit the amounts deemed payable for in-patient care by all consumers within the mental health system. Setting rates in relation to cost will maximize reimbursement from all sources and off-set cost to the Commonwealth.
- (e) The administrative regulation will be implemented as follows: By the Department for Mental Health and Mental Retardation, Cabinet for Health Services.

April 15, 2000

- (1) **908 KAR 4:020.** Dispute resolution procedures.
- (2) The Department for Mental Health/Mental Retardation Services intends to promulgate an administrative regulation to establish procedures for informal resolution of disputes and administrative hearings in accordance with KRS Chapter 13B.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 31, 2000 at 9 a.m. in the Department for Public Health 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 prior to May 22, 2000, the public hearing will be canceled:
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Selina Riley, Cabinet Regulation Coordinator, Cabinet for Health Services, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).
- (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 persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations 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 Administrative Regulation Coordinator, Department for Mental Health and Mental Retardation Services, Division of Administration and Financial Management, 100 Fair Oaks Drive (4th Floor), 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 American With Disabilities Act. Persons requesting assistance with 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 establishing informal resolution procedures is KRS 13B.070(3). The statutory authority for the promulgation of an administrative regulation establishing administrative hearing procedures is KRS 13B.170. Those statutes authorize an agency head to promulgate a regulation establishing informal resolution procedures and administrative hearing procedures. KRS 194A.030 establishes the Department for Mental Health and Mental Retardation Services within the Cabinet for Health Services. KRS 194A.050 authorizes the cabinet to promulgate administrative regulations to implement its responsibilities.
- (b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will specify requirements for a person to request an informal resolution to settle a dispute of a determination made or an action taken by the department. It will also specify procedures for an administrative hearing.
- (c) The necessity and function of the administrative regulation is as follows: To establish a method for resolution of disputes about cabinet determinations and actions in accordance with KRS Chapter 13B, and to assure that persons who dispute department determinations or actions are afforded due process.
- (d) The benefits expected from this administrative regulation are: The department will have a standardized process that meets the requirements of KRS Chapter 13B for resolving disputes. This will expedite and standardize resolution of disputes; will enhance the cabinet's ability to administer programs in accordance with applicable laws and regulations; and will assure due process to citizens who dispute department actions.
- (e) The administrative regulation will be implemented as follows: By the Department for Mental Health and Mental Retardation Service, Cabinet for Health Services.

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, APRIL 14, 2000

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

STATEMENT OF EMERGENCY
501 KAR 6:020E

In order to continue to operate the Department of Corrections in accordance with KRS Chapters 196, 197, 439, and 501 KAR 1:050, the department needs to implement this emergency administrative regulation. An ordinary administrative regulation will not suffice as this administrative regulation shall be effective immediately. I am requesting that this administrative regulation be declared an emergency so the Department of Corrections may implement the registration requirements imposed by the recently amended KRS 17.500 and 17.510. The changes in registration requirements are intended to provide comprehensive tracking of offenders from Kentucky as well as offenders entering Kentucky from another jurisdiction. This emergency administrative regulation shall be replaced by the ordinary administrative regulation in accordance with KRS Chapter 13A. The Notice of Intent for the ordinary administrative regulation is being filed with the Regulations Compiler at the same time the emergency administrative regulation is being filed.

PAUL E. PATTON, Governor
DOUG SAPP, Commissioner

JUSTICE CABINET
Kentucky Department of Corrections

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
EFFECTIVE: April 11, 2000
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 is incorporated by reference:

(a) "Department of Corrections Policies and Procedures, Volume I, June 14, 1999":

- 1.1 Legal Assistance for Corrections Staff
- 1.2 News Media
- 1.4 The Monitoring and Operation of Private Prisons [(Amended 6/14/99)]
- 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
- 3.1 Code of Ethics
- 3.3 Holding of Second Jobs by Corrections' Employees
- 3.5 Sexual Harassment
- 3.6 Criminal History Checks on All Personnel and the Employment of Exoffenders
- 3.7 Shifts, Posts and Days Off Assignment
- 3.12 Institutional Staff Housing
- 3.20 Communication and Recording Devices

- 4.2 Staff Training and Development
- 4.3 Firearms and Chemical Agents Training
- 4.7 Uniformed Employee Dress Code
- 6.1 Open Records Law
- 6.5 E-mail
- 7.2 Asbestos Abatement
- 8.1 Occupational Exposure to Bloodborne Pathogens
- 8.2 Fire Safety
- 8.6 Extraordinary Occurrence Report [(Added 6/14/99)]
- 8.7 Notification of Extraordinary Occurrence [(Added 6/14/99)]
- 9.4 Transportation of Inmates to Funerals or Bedside Visits
- 9.5 Execution
- 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
- 13.6 Sex Offender Treatment Program
- 13.7 Involuntary Psychotropic Medication Policy
- 13.8 Substance Abuse Treatment Program
- 13.9 Dental Services
- 13.10 Serious Infectious Disease
- 13.11 Employee Tuberculosis Program
- 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
- 15.1 Hair and Grooming Standards
- 15.2 Offenses and Penalties
- 15.3 Meritorious Good Time
- 15.5 Restoration of Forfeited Good Time [(Amended 6/14/99)]
- 15.6 Adjustment Procedures and Programs [(Amended 6/14/99)]
- 15.7 Inmate Account Restriction
- 15.8 Unauthorized Substance Abuse Testing
- 16.1 Inmate Visits
- 16.2 Inmate Correspondence
- 16.3 Telephone Calls
- 16.4 Inmate Packages
- 17.1 Inmate Personal Property [(Amended 6/14/99)]
- 17.2 Assessment Center Operations
- 17.3 Controlled Intake of Inmates

(b) "Department of Corrections Policies and Procedures, Volume II, June 14, 1999":

- 18.1 Classification of the Inmate [(Amended 6/14/99)]
- 18.2 Central Office Classification Committee [(Added 6/14/99)]
- 18.5 Custody and Security Guidelines
- 18.7 Transfers [(Amended 6/14/99)]
- 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

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|--|--|--|---|
| 18.13 | Merit Pay III | 27-20-03 | Prisoner Status Change |
| 18.15 | Population Categories | 27-21-01 | Apprehension and Transportation of Probation and Parole Violators |
| 18.17 | Protective Custody | 27-23-01 | In-state Transfer |
| 18.18 | Interstate Agreement on Transfers | 27-24-01 | Closing Supervision Report |
| 19.1 | International Transfer of Inmates | 27-24-02 | Reinstatement of Clients to Active Supervision |
| 19.2 | Government Services Projects | 27-26-01 | Assistance to Former Clients and Dischargees |
| 19.3 | Community Services Projects | 27-27-01 | Restoration of Civil Rights |
| 20.1 | Inmate Wage Program | 27-28-01 | Firearms/Explosives: Application for Relief from Disability |
| 21.2 | Educational Programs and Educational Good Time | 27-29-01 | Parole Review Dates Modification |
| 21.2 | Boot Camp Program [(Amended 6/14/99)] | 27-30-01 | [Sex] Offender Registration (Amended 4/11/00) |
| 22.1 | Privilege Trips | 27-30-02 | Conditional Discharge of Sex Offenders [(Added 6/14/99)] |
| 23.1 | Religious Programs | 27-31-01 | Use of Chemical Agents in Probation and Parole [(Added 6/14/99)] |
| 25.1 | Gratuities | 28-01-01 | Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments) |
| 25.2 | Public Official Notification of Release of an Inmate | 28-01-02 | Probation and Parole Investigation Reports (Administrative Responsibilities) |
| 25.3 | Prerelease Program | 28-01-03 | Presentence, Postsentence, Supplemental and Partial Investigations |
| 25.4 | Institutional Inmate Furloughs [(Amended 6/14/99)] | 28-01-08 | Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule) |
| 25.6 | Community Center Program | 28-01-09 | Release of Information of Factual Content on Presentence/Postsentence Investigation Reports |
| 25.7 | Expedient Release | 28-02-01 | Expedient Release Program |
| 25.8 | Extended Furloughs | 28-03-01 | Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release |
| 25.10 | Administrative Release of Inmates | 28-04-01 | Furlough Verifications |
| 25.11 | Victim Notification | 28-05-01 | Out-of-state Investigations |
| (c) "Department of Corrections Policies and Procedures, Volume III, April 11, 2000 [June 14, 1999]": | | | |
| 27-01-01 | Probation and Parole Procedures | (2) This material may be inspected, copied, or obtained at the Office of General Counsel, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky 40601, (502) 564-2024, facsimile (502) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m. | |
| 27-02-01 | Duties of Probation and Parole Officers | DOUG SAPP, Commissioner | |
| 27-03-01 | Workload Formula Supervisor/Staff Ratio | TAMELA BIGGS, Staff Attorney | |
| 27-05-01 | Testimony, Court Demeanor and Availability of Legal Services | APPROVED BY AGENCY: April 11, 2000 | |
| 27-06-01 | Availability of Supervision Services [(Amended 6/14/99)] | FILED WITH LRC: April 11, 2000 at 2 p.m. | |
| 27-06-02 | Equal Access to Services | REGULATORY IMPACT ANALYSIS | |
| 27-07-01 | Cooperation with Law Enforcement Agencies | Agency Contact Person: Tamela Biggs | |
| 27-08-01 | Use of Force | (1) Type and number of entities affected: 310 employees of the Division of Probation and Parole, and approximately 20,000 parolees and probationers. | |
| 27-09-01 | Kentucky Community Resources Directory [(Amended 6/14/99)] | (2) Direct and indirect costs or savings on the: | |
| 27-10-01 | Pretrial Diversion | (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None | |
| 27-11-01 | Intensive Supervision | (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None | |
| 27-11-02 | Prerelease Probation | (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: | |
| 27-12-01 | Supervision: Case Classification | 1. First year following implementation: None | |
| 27-12-02 | Risk Assessment | 2. Second and subsequent years: None | |
| 27-12-03 | Initial Interview [(Amended 6/14/99)] | (3) Effects on the promulgating administrative body: | |
| 27-12-04 | Conditions of Supervision and Request for Modification [(Amended 6/14/99)] | (a) Direct and indirect costs or savings: | |
| 27-12-05 | Releasee's Report [(Amended 6/14/99)] | 1. First year: None | |
| 27-12-06 | Grievance Procedures for Offenders | 2. Continuing costs or savings: None | |
| 27-12-07 | Employment, Educational and Vocational Referrals [(Amended 6/14/99)] | 3. Additional factors increasing or decreasing costs: None | |
| 27-12-08 | Supervision Plan [(Amended 6/14/99)] | (b) Reporting and paperwork requirements: Policy revisions. | |
| 27-12-09 | Casebook | (4) Assessment of anticipated effect on state and local revenues: | |
| 27-12-10 | Guidelines for Monitoring Supervision Fee | None | |
| 27-12-11 | Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority | (5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998-2000 biennium. | |
| 27-12-12 | Other Financial Obligations (Not Ordered by Releasing Authority) | (6) Economic impact, including effects of economic activities arising from administrative regulation, on: | |
| 27-12-13 | Community Service Work [(Amended 6/14/99)] | (a) Geographical area in which administrative regulation will be implemented: None | |
| 27-12-14 | Offender Travel [(Amended 6/14/99)] | | |
| 27-13-01 | Drug and Alcohol Testing of Offenders | | |
| 27-13-02 | Alcohol Detection [(Amended 6/14/99)] | | |
| 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 | | |
| 27-15-02 | Community Confinement Program Subject: Electronic Monitoring | | |
| 27-16-01 | Search; Seizure; Chain of Custody; Disposal of Evidence | | |
| 27-17-01 | Absconder Procedures [(Amended 6/14/99)] | | |
| 27-18-01 | Probation and Parole Issuance of Detainer or Warrant [(Amended 6/14/99)] | | |
| 27-19-01 | Preliminary Revocation Hearing | | |
| 27-20-01 | Division of Probation and Parole Controlled Intake Program | | |
| 27-20-02 | Prisoner Intake Notification | | |

- (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 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.

STATEMENT OF EMERGENCY
501 KAR 6:190E

In order to implement the new statutory requirements pertaining to sex offenders, the Sex Offender Risk Assessment Advisory Board needs to implement this emergency administrative regulation. An ordinary administrative regulation shall not suffice as this administrative regulation shall be effective immediately. The Sex Offender Risk Assessment Advisory Board has established this administrative regulation to comply with the recently enacted KRS 17.510-17.991. This administrative regulation establishes procedures for certifying providers to perform a comprehensive sex offender presentence evaluation or treatment. I am requesting that this administrative regulation be declared an emergency so the Sex Offender Risk Assessment Advisory Board may immediately begin using the criteria for certifying providers to perform these evaluations. This emergency administrative regulation shall be replaced by the ordinary administrative regulation in accordance with KRS Chapter 13A. The Notice of Intent for the ordinary administrative regulation is being filed with the Regulations Compiler at the same time the emergency administrative regulation is being filed.

GARY L. DENNIS, Ph.D., Chairman
PAUL E. PATTON, Governor

JUSTICE CABINET
Sex Offender Risk Assessment Advisory Board

501 KAR 6:190E. Approval process [Certification procedures] for mental health professionals performing comprehensive sex offender presentence evaluations [risk assessments].

RELATES TO: KRS 17.550 to 17.991

STATUTORY AUTHORITY: KRS 17.554(1), 17.564

EFFECTIVE: April 12, 2000

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.554(1) authorizes the Sex Offender Risk Assessment Advisory Board to promulgate administrative regulations to establish certification standards for mental health professionals providing court-ordered comprehensive sex offender presentence evaluations [risk assessments] for sex offenders. This administrative regulation establishes approval [certification] requirements to assure the quality of court-ordered comprehensive sex offender presentence evaluation [risk assessments].

Section 1. Definitions. (1) "Approved provider" is defined by KRS 17.550(3).

- (2) "Board" is defined by KRS 17.550(1).
- ~~(2) "Certified provider" is defined by KRS 17.550(8);~~
- (3) "Comprehensive sex offender presentence evaluation" means a comprehensive mental, health evaluation by an approved provider that includes a focus on the clinical data necessary to address the four (4) factors listed in KRS 17.554(2).
- (4) "Corrective action plan" means a plan submitted by the approved provider and accepted or imposed by the board that requires an approved [a-certified] provider to take specific steps to be in compliance with this administrative regulation. [The plan shall be:
 - ~~(a) Submitted by the certified provider and approved by the board; or~~
 - ~~(b) Imposed by the board;]~~
- (5) ~~[(4)]~~ "Court ordered" means by order of any circuit court judge for an offender to be evaluated [assessed] by an approved [a-certified] provider to determine the offender's risk of recommitting a sex crime, amenability to sex offender treatment, and the nature of the required sex offender treatment, and the threat posed to public safety.
- ~~[(5) "High risk sex offender" is defined by KRS 17.550(3);~~
- ~~(6) "Low risk sex offender" is defined by KRS 17.550(5);~~
- ~~(7) "Mental or behavioral abnormality" is defined by KRS 17.550(6);~~
- ~~(8) "Moderate risk sex offender" is defined by KRS 17.550(4);~~
- ~~(9) "Personality disorder" is defined by KRS 17.550(7);~~
- ~~(10) "Risk assessment" means:~~
 - ~~(a) The evaluation of the sex offender's characteristics, using:~~
 - ~~1. The factors listed in KRS 17.554(2); and~~
 - ~~2. The factors addressed by the following instruments:~~
 - ~~a. Rapid Risk Assessment for Sex Offender Recidivism (RRA-SOR), (1997 Edition), Solicitor General of Canada;~~
 - ~~b. Minnesota Sex Offender Screening Tool - Revised (MnSOST-R), (1998 Edition), Minnesota Department of Corrections;~~
 - ~~c. Violence Risk Appraisal Guide (VRAG), (1998 Edition), American Psychological Association; including the Hare Psychopathy Checklist Revised: Interview and Information Schedule (PCL-R), (1991 edition), Multi-Health Systems, Inc.~~
 - ~~(b) To reach a recommendation of the:~~
 - ~~1. Level or risk that an offender will recommit a sex crime; and~~
 - ~~2. Threat posed to public safety;]~~
 - ~~(6) [(11)] "Sex crime" is defined by KRS 17.500(4).~~
 - ~~(7) [(12)] "Sex offender" is defined by KRS 17.550(2).~~
 - ~~(8) [(13)] "Supervised provider" means an approved [a-certified] provider who has been approved [certified] under Section 2(2) of this administrative regulation to provide comprehensive sex offender presentence evaluations [risk assessments] under the direct supervision of a supervisor.~~
 - ~~(9) [(14)] "Supervisor" means an approved [a-certified] provider who has been approved [certified] under Section 2(1) of this administrative regulation and who examines and approves the evaluations [risk assessments] of a supervised provider.~~
 - ~~(10) [(15)] "Victim" is defined by KRS 421.500(1).~~

Section 2. Qualifications of Approved [Certified] Providers and Supervised Providers. (1) To qualify as an approved [a-certified] provider, an applicant shall:

- (a) Have completed forty (40) [thirty-two (32)] hours of specialty training provided or approved by the board under Section 8 of this administrative regulation including the following:
 - 1. Characteristics and offense patterns of sex offenders;
 - 2. Treatment modalities used with sex offenders;
 - 3. Legal and ethical issues in the risk assessment of sex offenders;
 - 4. Victim's issues, not to exceed two (2) hours of credit against the total requirement;
 - 5. Issues related to the assessment of juvenile and female sex offenders; and
 - 6. Use of the actuarial instruments and risk assessment guides listed in Section 1(10)(a)2 of this administrative regulation;
- (b) Be in compliance with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which he has [qualified mental health] professional status; and
- (c) Have one (1) year documented experience conducting sex

offender evaluations or assessments or he shall complete a thirty (30) hour practicum administered by the board within the first year of practice after certification[-; and

~~(d) Be a qualified mental health professional as defined by KRS 202A.011(12).~~

(2) To qualify as a supervised provider, an applicant shall:

(a) Meet ~~[Have met]~~ the requirements of subsection (1)(a) of this section;

(b) Be in compliance with the ethical standards promulgated by the appropriate employing agency listed in paragraph (c) of this subsection;

(c) Be an employee of the Department of Corrections, Division of Mental Health; Department of Juvenile Justice; or Department of Mental Health and Mental Retardation Services, including an employee of a community mental health center;

(d) Have applied for approval [certification] with the board by March 31, 1999;

(e) Maintain full-time employment with one (1) of the departments listed in paragraph (c) of this subsection as of March 31, 1999; and

(f) Have met one (1) of the following requirements:

1. Have a master's degree in psychology, social work, counseling, social gerontology, education, or marriage and family therapy and one (1) year of counseling experience; or

2. Have a bachelor's degree in a psychology, social work, counseling, social gerontology, education, or marriage and family therapy and two (2) years counseling experience.

Section 3. Duties. (1) If an approved [a-certified] provider performs a comprehensive sex offender presentence evaluation [risk assessment] for a sex offender, he shall not provide treatment for personal financial gain for the sex offender for six (6) months following that assessment.

(2) If an approved [a-certified] provider is not a supervised provider, he shall:

(a) Submit the first four (4) evaluations [risk-assessments] prepared after board approval [certification] for review by the board;

(b) Comply with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which he has ~~[qualified mental health]~~ professional status; and

(c) Complete eight (8) hours of continuing education approved or provided by the board on an annual basis.

(3) A supervised provider shall:

(a) Comply with the requirements of subsection (2)(a) and (c) of this section;

(b) Comply with the ethical standards promulgated by the employing agency listed in Section 2(2)(c) of this administrative regulation; and

(c) Comply with the ethical standards of professional practice as promulgated by the licensing or certifying body under which he is licensed or certified in a mental health profession.

Section 4. Approval [Certification] Procedures. (1) The board shall approve [certify] an applicant as an approved [a-certified] provider if he meets the applicable qualifications specified in Section 2 of this administrative regulation and is not otherwise disqualified by the provisions of Section 5 of this administrative regulation.

(2) An individual may apply to the board for approval status [certification] as an approved [a-certified] provider by submitting:

(a) A written request for approval [certification], which shall include the following:

1. Full name;
2. Business address;
3. Home address;
4. Daytime telephone number;
5. Fax number, if available; and
6. Social Security number;

(b) Documentary evidence of his qualifications; and

(c) Evidence that he has remedied the cause for the denial or revocation, if approval [certification] is denied or revoked under Section 5 of this administrative regulation.

(3) The board shall determine that an application is incomplete if:

(a) The documentation of qualifications is insufficient to meet the required qualifications in Section 2 of this administrative regulation;

(b) The board is unable to verify the authenticity of the documentation of qualifications; or

(c) Any of the information required in subsection (2) of this section is not submitted.

(4) If the board determines that an application is incomplete, the application shall be returned to the applicant, specifying additional documentation that is required or identifying the information that cannot be verified.

(5) The board shall approve or deny the application for approval [certification] in writing no later than sixty (60) days after receiving a complete application for approval [certification].

(6) Approval [Certification] shall be effective for two (2) years.

(7) Unless approval [certification] has been revoked in accordance with Section 5 of this administrative regulation, the board shall renew the approval status [certification] of an approved [a-certified] provider upon request if he submits documentation of completion of at least eight (8) hours per year of continuing education provided or approved by the board under Section 8 of this administrative regulation.

(8) The board shall maintain a list of approved [certified] providers to be submitted to the Administrative Office of the Courts annually.

Section 5. Denial or Revocation of Approval [Certification]. (1) The board shall deny, suspend or revoke approval [certification] if an applicant or an approved [a-certified] provider:

(a) Has been convicted of or pled guilty to a felony criminal offense or a misdemeanor offense against a person;

(b) Has had a domestic violence protective order issued against him within the previous five (5) years;

(c) Has failed to meet the qualifications for approval [certification] set forth in Section 2 of this administrative regulation;

(d) No longer maintains full-time employment with one (1) of the departments listed in Section 1(2)(c) of this administrative regulation, and is a supervised provider;

(e) Has developed a relationship with the sex offender being assessed other than that necessary to adequately perform a risk assessment;

(f) Has an alcohol or drug abuse problem as defined in KRS 222.005(12);

(g) Has falsified any information or documentation, or has concealed a material fact, in his request for approval [certification];

(h) Has failed to implement a corrective action plan imposed by the board in accordance with Section 7 of this administrative regulation;

(i) Has three (3) or more evaluations [risk-assessments] which the board finds are below standard upon review;

(j) Has failed to comply with the comprehensive sex offender presentence evaluation [risk-assessment] procedure established in 501 KAR 6:200, Section 2(1) through (6) [(7)];

(k) Has shown an inability to adequately conduct an evaluation [a-risk-assessment] with reasonable skill;

(l) Has accepted a gift or favor from a sex offender being assessed, from the family of the sex offender being assessed, or from their agent; or

(m) Has provided a gift or favor to a sex offender being assessed, to the family of the sex offender being assessed, or to their agent..

(2) The board may deny, suspend or revoke approval [certification] if an applicant or an approved [a-certified] provider has:

(a) Been convicted of or pled guilty to any misdemeanor criminal offense that is not against a person;

(b) Had a sanction applied against his mental health professional licensure or certification at any time in the past two (2) years;

(c) Performed evaluations [risk-assessments] without supervision, if supervision is required by this administrative regulation;

(d) Failed to comply with the duties set forth in Section 3 of this administrative regulation;

(e) Less than three (3) evaluations ~~that~~ [risk-assessments] which the board finds are below standard upon review; or

(f) Failed to comply with the evaluation [risk-assessment] procedure.

dures established in 501 KAR 6:200, Section 2(1) through (6) ~~(f) through (12)~~; or

(g) Failed to comply with the requirements set forth by the board for the practicum or to successfully complete the practicum, if so required by Section 2(1)(c) of this administrative regulation.

(3) If the board intends to deny, suspend or revoke approval [certification], it shall:

(a) Serve a notice of intent to deny, suspend, or revoke approval [certification] to the applicant or approved [certified] provider; and

(b) Notify the applicant or approved [certified] provider of his hearing rights, in accordance with KRS 17.560.

(4) An approved [A-certified] provider who has had his approval [certification] revoked shall be ineligible for approval [certification] or renewal of approval [certification] until the second anniversary of the date his approval [certification] was revoked.

Section 6. Scope of Supervision Requirements. A supervisor shall:

(1) Not supervise more than six (6) supervised providers concurrently;

(2) Directly observe the supervised provider's clinical practice in person or through video or audio tape;

(3) Conduct at least one (1) hour per week of face-to-face supervision, including case discussion, review of reading assignments, skill building, and review of audio or video tape of actual clinical practice with the supervised provider;

(4) Examine and approve all comprehensive sex offender pre-sentence evaluations [risk-assessments] performed by the supervised provider; and

(5) Give written notice to the board if he determines that the supervised provider's performance does not comply with the provisions of this administrative regulation.

Section 7. Monitoring. (1) The board shall:

(a) Investigate a formal complaint, verified by affidavit, concerning an approved [a-certified] provider, if the complaint alleges a failure to comply with the provisions of this administrative regulation; and

(b) Refer a complaint against an approved [a-certified] provider, which relates to an unethical practice or practice which may be outside the approved [certified] provider's scope of practice, to the appropriate Kentucky licensure or certification board.

(2) The board may investigate and evaluate an approved [a-certified] provider's adherence to the provisions of this administrative regulation on its own initiative.

(3) Board staff may monitor by the following activities:

(a) Interviewing a sex offender or victim, if consent is given by the sex offender or victim for the interview;

(b) Reviewing assessment records maintained by an approved [a-certified] provider on a sex offender;

(c) Direct observation of the evaluation [risk-assessment] of a sex offender; or

(d) Interviewing judicial, correctional, law enforcement officials or other agency personnel that interact with an approved [a-certified] provider in relation to comprehensive sex offender presentence evaluations [sex-offender risk assessments].

(4) If an approved [a-certified] provider fails to comply with provisions of this administrative regulation, the board shall notify him in writing of its determination and may:

(a) Require the approved [certified] provider to submit a corrective action plan for approval by the board;

(b) Impose a corrective action plan; or

(c) Revoke approval [certification] in accordance with Section 5 of this administrative regulation.

(5) If the board requires an approved [a-certified] provider to comply with a corrective action plan, it shall review plan compliance within sixty (60) days.

(6) If the board determines that a supervisor fails to conduct the required supervision of a supervised provider, the board shall notify the supervisor, the supervised provider, and the supervised provider's employer in writing of its determination and may:

(a) Require the supervisor to submit a corrective action plan;

(b) Impose a corrective action plan upon the supervisor;

(c) Prevent the supervisor from continuing to supervise; or

(d) Suspend the approval [certification] of the supervised provider.

(7) If the corrective action plan does not correct the supervision problem within sixty (60) days, or if the supervisor notifies the board that he shall no longer be supervising the supervised provider, then the board shall suspend the approval [certification] of the supervised provider until another supervisor is available and willing to provide the supervision required in Section 6 of this administrative regulation.

Section 8. Approval of Specialty Training and Continuing Education. (1) Specialty training.

(a) Specialty training, as required in Section 2(1) of this administrative regulation, shall be approved by the board, if not provided by the board;

(b) An approved [A-certified] provider seeking approval of a specialty training course shall submit to the board the following:

1. A certificate of attendance which shall include the number of hours of training received; and

2. An agenda from the training seminar that [which] describes topics and length of time spent on each topic.

(c) The board may require the applicant to provide course materials from the training seminar or additional information, if it is unable to adequately determine the nature of the training provided at the seminar from the materials submitted under subsection (1)(b) of this section.

(2) Continuing education.

(a) Continuing education, as required in Section 3(2)(c) of this administrative regulation, shall be approved by the board, if not provided by the board;

(b) An approved [A-certified] provider seeking approval of continuing education hours shall submit to the board the following:

1. A certificate of attendance that [which] shall include the number of hours of education received.

2. An agenda from the seminar, which describes topics and length of time spent on each topic.

(c) The board may require the applicant to provide course materials from the seminar or additional information, if it is unable to adequately determine the nature of training provided at the seminar from the materials submitted under subsection (2)(b) of this section.

[Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Rapid Risk Assessment for Sex Offender Recidivism (RRA-SOR), (1997 Edition), Solicitor General of Canada;

(b) Minnesota Sex Offender Screening Tool — Revised (MnSOST-R), (1998 Edition), Minnesota Department of Corrections; and

(c) Violence Risk Appraisal Guide (VRAG), (1998 Edition), American Psychological Association; including the Hare Psychopathy Checklist Revised: Interview and Information Schedule (PCL-R), (1991 Edition), Multi-Health Systems, Inc.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 10. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.]

GARY L. DENNIS, Ph.D., Chairman

STEPHEN P. DURHAM, General Counsel

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: April 10, 2000

FILED WITH LRC: April 12, 2000 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Amy Barker, Staff Attorney

(1) Type and number of entities affected: Approximately 2,000 sex offenders currently incarcerated in Kentucky's prisons; approximately 250 felony sex offenders convicted each year who are eligi-

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ble for probation; approximately 50 employees of the Department of Corrections, Department of Juvenile Justice, and Community Mental Health Centers; and an undetermined number of qualified mental health providers in private practice who are eligible to be certified by the Sex Offender Risk Assessment Advisory Board to do presentence evaluations.

(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: Approximately \$700,000.

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

1. First year following implementation: Applications for certification by the board shall be completed and reviewed; evaluation and assessment reports prepared for the court; records and report review conducted on an on-going basis by staff of the board.

2. Second and subsequent years: Applications for certification by the board shall be completed and reviewed; evaluation and assessment reports prepared for the court; records and report review conducted on an on-going basis by staff of the board.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Approximately \$700,000 combination of federal and state funds.

2. Continuing costs or savings: Costs shall continue to increase due to inflation and an increase in the number of sex offenders needing evaluation.

3. Additional factors increasing or decreasing costs: Costs shall continue to increase due to inflation and an increase in the number of sex offenders needing evaluation.

(b) Reporting and paperwork requirements: Review of evaluation and assessment reports by staff.

(4) Assessment of anticipated effect on state and local revenues: State revenues may increase if a significant number of sex offenders are able to pay for all or a part of the assessments; funds collected shall return to the general fund.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: \$675,000 federal grant and state match; portion of salaries of current staff of the Division of Mental Health; additional state general fund dollars were not budgeted in the 1998-2000 biennium to fund this project.

(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: No viable alternatives.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Sex offenders shall be evaluated to determine their risk of recommitting a sex crime, amenability to sex offender treatment and the nature of the required treatment; should result in increased public safety.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects.

(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.

STATEMENT OF EMERGENCY 501 KAR 6:200E

In order to establish procedures for sex offender risk assessments required by KRS 17.554, the Sex Offender Risk Advisory Board needs to implement this emergency administrative regulation. An ordinary administrative regulation shall not suffice as this administrative regulation shall be effective immediately. The Sex Offender Risk Advisory Board has established this administrative regulation to comply with the recently enacted KRS 17.510-17.991. This administrative regulation establishes procedures for performing comprehensive sex offender presentence evaluation. I am requesting that this administrative regulation be declared an emergency so the Sex Offender Risk Advisory Board may begin instructing providers in the proper standards and procedures for performing a comprehensive sex offender presentence evaluation. This emergency administrative regulation shall be replaced by the ordinary administrative regulation in accordance with KRS Chapter 13A. The Notice of Intent for the ordinary administrative regulation is being filed with the Regulations Compiler at the same time the emergency administrative regulation is being filed.

PAUL E. PATTON, Governor

GARY L. DENNIS, Ph.D., Chairman

JUSTICE CABINET Sex Offender Risk Advisory Board

501 KAR 6:200E. Comprehensive sex offender presentence evaluation [risk-assessment] procedure.

RELATES TO: KRS 17.550 to 17.991

STATUTORY AUTHORITY: KRS 17.554(2), 17.564

EFFECTIVE: April 12, 2000

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.554(2) authorizes the Sex Offender Risk Assessment Advisory Board to promulgate administrative regulations to establish a comprehensive sex offender presentence evaluation [risk-assessment] procedure for court-ordered evaluations [risk-assessments] of sex offenders. This administrative regulation establishes the evaluation [risk-assessment] procedure to assure the quality of court-order comprehensive sex offender presentence evaluations [risk-assessments].

Section 1. Definitions. (1) "Amenability to treatment" means at the time of the evaluation, the offender is free from organic or psychological impairment that shall prevent the offender from engaging meaningfully in sex offender treatment and he is, at least minimally, receptive to the treatment process.

(2) "Appropriate setting" means a secure institutional setting or a community-based setting.

(3) "Approved provider" is defined by KRS 17.550(3).

(4) "Board" is defined by KRS 17.550(1).

[(2) "Certified provider" is defined by KRS 17.550(8).]

(5) [(3)] "Clinically adjusted" means changing the risk level recommendation based on facts or evidence which indicate to an approved [a-certified] provider that the probability of recidivism ranges are inappropriate for a sex offender.

[(4)] "High-risk sex offender" is defined by KRS 17.550(3).

(5) "Low-risk sex offender" is defined by KRS 17.550(5).

(6) "Moderate-risk sex offender" is defined by KRS 17.550(4).]

(6) "Comprehensive sex offender presentence evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the four (4) factors listed in KRS 17.554(2).

(7) "Nature of required sex offender treatment" means the treatment management issues including recommendations for the

focus of treatment, special treatment considerations, further evaluation, and restrictions to minimize the risk of recidivism.

(8) "Risk of recommitting a sex crime" means a designation of high or not high risk based on the finding of the instrument and other clinically relevant data where sexual reoffense is more likely than not.

((7)) "Risk assessment" means:

(a) The evaluation of the sex offender's characteristics, using:

1. The factors listed in KRS 17.554(2); and

2. The factors addressed by the following instruments:

a. Rapid Risk Assessment for Sex Offender Recidivism (RRASOR), (1997 Edition), Solicitor General of Canada;

b. Minnesota Sex Offender Screening Tool - Revised (MnSOST-R), (1998 Edition), Minnesota Department of Corrections; and

c. Violence Risk Appraisal Guide (VRAG), (1998 Edition), American Psychological Association; including the Hare Psychopathy Checklist Revised: Interview and Information Schedule (PCL-R), (1991 Edition), Multi-Health Systems, Inc.

(b) To reach a recommendation of the:

1. Level of risk that an offender will recommit a sex crime; and

2. Threat posed to public safety;]

(9) ((8)) "Sex offender" is defined by KRS 17.550(2).

(10) "Treatment effectiveness" is defined in KRS 197.400

(11) "Threat to public safety" means the offender's immediate risk of committing another sexual offense.

Section 2. Comprehensive Sex Offender Presentence Evaluation Procedures. An approved provider shall conduct a comprehensive mental health evaluation following the professional standards of care in the area of his certification or licensure. This shall include a face-to-face interview and a review of collateral information. When the result of initial mental health screening procedure dictate, additional appropriate psychological testing addressing cognitive functioning, mental illness, and severe characterological impairment shall be employed as circumstances allow.

(1) Risk of recommitting a sex crime shall be determined in the following manner: Where applicable, an actuarial instrument shall be used which is appropriate to the sex offender. The results of the instrument may be clinically adjusted at the discretion of the evaluator. If an actuarial instrument is not appropriate, an empirically guided approach shall be used. The board shall identify the appropriate instrument for use, and the list of board approved instruments shall be available upon request to the Department of Corrections.

(2) The threat to public safety shall be determined in the following manner:

(a) The evaluator shall consider the following domains in assessing the sex offender's immediate threat to public safety and in arriving at a recommendation regarding an appropriate treatment setting:

1. The sex offender's amenability to treatment;

2. The degree of threat of harm or actual force employed in the index offense and in prior sexual offenses;

3. The nature and duration of the sexual offending;

4. The sex offender's psychological adjustment; and

5. The sex offender's social and occupational adjustment.

(b) The evaluator shall make a recommendation as to the appropriate setting in which treatment, if indicated, shall be provided for the sex offender.

(3) Amendability to treatment shall be determined in the following manner: The approved provider shall address the following domains in making this assessment. The sex offender shall:

(a) Not exhibit symptoms of a psychological disturbance that shall significantly inhibit treatment effectiveness.

(b) Exhibit a level of intellectual functioning sufficient to complete the task assigned in the treatment program to which he shall be referred.

(c) Acknowledge involvement in the sex offense for which he is charged.

(d) Consider his involvement in the sex offense to be a problematic behavior that he does not want to repeat.

(e) Verbalize a willingness to enter and fully participate in treatment.

(4) In addressing the nature of required sex offender treatment,

the evaluator shall address management issues including recommendations for the focus of treatment, special treatment considerations, further evaluation, and restrictions to minimize the risk of recidivism. An approved provider shall prepare a comprehensive sex offender presentence evaluation report to the court in the form of a bifurcated document. The first section shall consist of information prepared specifically for the court with the second section appendices consisting of the supporting clinical data.

(a) The first section shall contain the following headings:

1. Identifying information including name, Social Security number, date of birth and age, indictment number or county;

2. Referral information, like reason for referral, informed consent, procedures;

3. Information sources; and

4. Summary, conclusions, and recommendations.

(b) The second section shall include the following domains of data from which the summary and conclusions shall be deduced:

1. Criminal justice information like index offense, prior sex offense, other legal history.

2. Psychosocial history including family of origin; education, military, occupational, and financial history; sexual and relationship history; and mental health and medical history.

3. Behavioral observations and mental status.

4. Psychological testing.

5. Diagnosis impressions.

6. Treatment considerations.

(c) The report shall be titled "Comprehensive Sex Offender Presentence Evaluation". [Risk Assessment Procedures. (1) A certified provider shall conduct a risk assessment using the instruments listed in Section 1(7)(a)2 of this administrative regulation as appropriate for the sex offender. The appropriateness of the instruments for a sex offender shall be determined as follows:

(a) The RRASOR listed in Section 1(7)(a)2a of this administrative regulation shall be used for an adult male sex offender who has been convicted of at least one (1) sex offense;

(b) The MnSOST-R listed in Section 1(7)(a)2b of this administrative regulation shall be used for:

1. An adult male sex offender whose sex offense was extrafamilial; or

2. An adult male sex offender whose sex offense was intrafamilial, and involved:

a. Penetration; or

b. A high degree of physical force;

(c) The MnSOST-R listed in Section 1(7)(a)2b of this administrative regulation shall not be used for presentence risk assessments; and

(d) The VRAG listed in Section 1(7)(a)2c of this administrative regulation shall be used for an adult male sex offender who has committed an offense involving violence.

(2) If the risk level recommendation is not clinically adjusted by the certified provider, a probability of recidivism on an instrument listed in Section 1(7)(a)2 of this administrative regulation in the range of zero to fifteen (15) percent shall be a recommendation of low risk for the sex offender.

(3) If the risk level recommendation is not clinically adjusted by the certified provider, a probability of recidivism on an instrument listed in Section 1(7)(a)2 of this administrative regulation in the range of sixteen (16) to forty-nine (49) percent shall be a recommendation of moderate risk for the sex offender.

(4) If the risk level recommendation is not clinically adjusted by the certified provider, a probability of recidivism on an instrument listed in Section 1(7)(a)2 of this administrative regulation in the range of fifty (50) to 100 percent shall be a recommendation of high risk for the sex offender.

(5) If the use of the actuarial instruments listed in Section 1(7)(a)2 of this administrative regulation is not appropriate for a sex offender, the certified provider shall use the Hare Psychopathy Checklist Revised: Interview and Information Schedule (PCL-R), (1991 Edition), Multi-Health Systems, Inc., as a guideline to interview the sex offender and to gather information from available records of the sex offender or other available sources. The certified provider shall use clinical judgement to make a risk level recommendation based on the information gathered from the interview and

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other sources:

(6) If the sex offender is female, the certified provider may use the Risk Assessment Scale for Females which is incorporated by reference.

(7) A certified provider shall prepare a recommendation report to the court which indicates a recommended risk level for a sex offender for which a risk assessment has been completed.

(8) The recommendation report to the court shall include the following headings and subheadings:

(a) Identifying information:

1. Name;

2. Social Security number;

3. Date of birth and age;

4. Indictment number; and

5. Ethnic background;

(b) Risk level recommendation;

(c) Certified provider;

(d) Date of evaluation and site of evaluation;

(e) Reason for referral;

(f) Information resources; and

(g) Evaluation results:

1. Sex crime information;

2. Criminal justice history;

3. Mental health and medical history;

4. Sexual history;

5. Relationship history;

6. Education, military, occupational, and financial history;

7. Family of origin;

8. Testing results;

9. Behavioral observations and mental status;

10. Diagnostic impressions;

11. Release plans; and

12. Conclusions and recommendations.

(9) If the recommendation report is for presentence evaluation purposes, the report shall also include a heading which states "Amenability to Treatment".

(10) The format of the recommendation report to the court shall be as follows:

(a) The report shall be titled "Sex Offender Risk Assessment: Presentence", if the risk assessment was ordered for presentence evaluation purposes.

(b) The report shall be titled "Sex Offender Risk Assessment: Prerelease", if the risk assessment was not ordered for presentence evaluation purposes.]

(d) An approved [(11) A-certified] provider shall place his signature at the end of the recommendation report if he:

1. [(a)] Conducted the comprehensive sex offender presentence evaluation [risk assessment]; or

2. [(b)] Reviewed and approved the evaluation [risk assessment].

(e) If the approved [(12) A-certified] provider previously provided treatment to the sex offender, he shall not perform a sex offender presentence evaluation for the offender [risk assessment if the certified provider previously provided treatment to the sex offender].

(f) If an approved provider has performed a sex offender presentence evaluation for the offender, he shall not provide sex offender treatment for that individual.

Section 3. Recordkeeping. (1) An approved [If a sex offender is determined to be a low or moderate risk, the certified provider shall preserve the collected assessment information for a period of fifteen (15) years:

(2) If a sex offender is determined to be a high risk, the certified provider shall preserve the collected assessment information for the life of the offender.

(3) A certified provider may transmit all collected assessment information to the board in lieu of maintaining the information for the required number of years.

(2) [(4)] The original or a copy of all collected assessment information shall be provided to the board:

(a) Upon request; or

(b) At the death of the approved [certified] provider.

[Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Rapid Risk Assessment for Sex Offender Recidivism (RRASOR), (1997 Edition), Solicitor General of Canada;

(b) Minnesota Sex Offender Screening Tool -- Revised (MnSOST-R), (1998 Edition), Minnesota Department of Corrections; and

(c) Violence Risk Appraisal Guide (VRAG), (1998 Edition), American Psychological Association; including the Hare Psychopathy Checklist Revised: Interview and Information Schedule (PCL-R), (1991 Edition), Multi-Health Systems, Inc.;

(d) Risk Assessment Scale for Females, (1999 Edition), Sex Offender Risk Assessment Advisory Board.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 5. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.]

GARY L. DENNIS, Ph.D., Chairman

STEPHEN P. DURHAM, General Counsel

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: April 10, 2000

FILED WITH LRC: April 12, 2000 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Amy Barker, Staff Attorney

(1) Type and number of entities affected: Approximately 2,000 sex offenders currently incarcerated in Kentucky's prisons; approximately 250 felony sex offenders convicted each year who are eligible for probation; approximately 50 employees of the Department of Corrections, Department of Juvenile Justice, and Community Mental Health Centers; and an undetermined number of qualified mental health providers in private practice who are eligible to be certified by the Sex Offender Risk Assessment Advisory Board to do presentence evaluations.

(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: Approximately \$700,000.

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

1. First year following implementation: Applications for certification by the board shall be completed and reviewed; evaluation and assessment reports prepared for the court; records and report review conducted on an on-going basis by staff of the board.

2. Second and subsequent years: Applications for certification by the board shall be completed and reviewed; evaluation and assessment reports prepared for the court; records and report review conducted on an on-going basis by staff of the board.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: approximately \$700,000 combination of federal and state funds.

2. Continuing costs or savings: Costs shall continue to increase due to inflation and an increase in the number of sex offenders needing evaluation.

3. Additional factors increasing or decreasing costs: Costs shall continue to increase due to inflation and an increase in the number of sex offenders needing evaluation.

(b) Reporting and paperwork requirements: Review of evaluation and assessment reports by staff.

(4) Assessment of anticipated effect on state and local revenues: State revenues may increase if a significant number of sex offenders are able to pay for all or a part of the assessments; funds collected shall return to the general fund.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: \$675,000 federal grant and state match; portion of salaries of current staff of the Division of Mental Health; additional state general fund dollars were not budgeted in the 1998-2000 biennium to fund this project.

(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: No viable alternatives.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Sex offenders shall be evaluated to determine their risk of recommitting a sex crime, amenability to sex offender treatment and the nature of the required treatment; should result in increased public safety.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects.

(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.

STATEMENT OF EMERGENCY 907 KAR 1:012E

This emergency administrative regulation is being promulgated in accordance with provisions 42 USC 1396a, b, and d, to provide inpatient hospital services to eligible recipients. This action must be taken on an emergency basis to ensure that eligible persons are provided with all additional benefits to which they are entitled under this emergency administrative regulation. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients because there is a potential for eligible persons to not receive the additional benefits available to them as provided in this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JIMMY D. HELTON, Secretary

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Physical Health

907 KAR 1:012E. Inpatient hospital services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.050, 42 CFR 440.10, 42 USC 1396, a, b, d, r-4

EFFECTIVE: March 23, 2000

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services [Human Resources] has responsibility to administer the Medicaid Program [of Medical Assistance]. KRS 205.520 author-

izes [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 establishes [sets forth] the provisions relating to inpatient hospital services for which payment shall be made by the Medicaid [Medical Assistance] Program for a hospital inpatient service. [in behalf of both the categorically needy and the medically needy.]

Section 1. Prior Authorization. A [Length of Stay. Inpatient hospital services except for services in an institution for treatment of tuberculosis or mental diseases shall be limited to a maximum of fourteen (14) days per admission, except as shown in Section 2 of this administrative regulation. A recipient may transfer from one (1) hospital to another hospital when the transfer is necessary for the patient to receive medical care which is not available in the first hospital. These transfers and admissions shall begin anew the fourteen (14) day per admission limitation. The maximum covered inpatient hospital stay that may result shall be a total of twenty-eight (28) days for the two (2) admissions. Each] nonemergency admission shall have prior approval of medical necessity [appropriateness] by the designated peer review organization in order for the admission to be covered under the Medicaid Program; this requirement does not apply to [for] emergency admissions. Weekend stays associated with a Friday or Saturday admission shall not be reimbursed unless an emergency exists.

Section 2. [Exceptions to Length of Stay. The following exceptions are applicable with regard to medically necessary inpatient hospital services provided on or after July 1, 1991:

(1) For infants under the age of one (1), there shall be no limits on length of stay or number of admissions; and

(2) For children under the age of six (6) in a disproportionate share hospital, there shall be no limit on the length of stay or number of admissions;

Section 3. Covered Admissions. (1) Admissions for which payment shall be [is] made shall be limited to those primarily indicated in the management of acute or chronic illness, injury or impairment, or, for maternity care that could not be rendered on an outpatient basis.

(2) Admissions relating to only observation or diagnostic purposes shall not be covered.

(3) Cosmetic surgery shall not be covered except as required for prompt repair of accidental injury or for the improvement of the functioning of a malformed or diseased body member.

Section 3. [4.] Inpatient Hospital Services not Covered. Inpatient hospital services not covered shall include: [by the Medical Assistance Program:]

(1) A service [Those services] which is [are] not medically necessary to the patient's well-being, such as television, telephone and guest meals;

(2) Private duty nursing;

(3) [Those] Supplies, drugs, appliances, or [and] equipment which are furnished to the patient for use outside the hospital unless it would be considered unreasonable or impossible from a medical standpoint to limit the patient's use of the item to the periods during which he is an inpatient;

(4) A [Those] laboratory test [tests] not specifically ordered by a physician and not done on a preadmission basis unless an emergency exists;

(5) Private accommodations unless medically necessary and so ordered by the attending physician; or

(6) The following listed surgical procedures, except when a life-threatening situation exists, there is another primary purpose for the admission, or the admitting physician certifies a medical necessity requiring admission to a hospital:

(a) Biopsy: breast, cervical node, cervix, lesions (skin, subcutaneous, submucous), lymph node (except high axillary excision, etc), or [and] muscle;

(b) Cauterization or cryotherapy: lesions (skin, subcutaneous, submucous), moles, polyps, warts or [7] condylomas, anterior nose bleeds, or [and] cervix;

(c) Circumcision;

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(d) Dilation: dilation and curettage (diagnostic and/or therapeutic nonobstetrical); dilation or [f] probing of lacrimal duct;

(e) Drainage by incision or aspiration: cutaneous, subcutaneous, or [and] joint;

(f) Pelvic exam under anesthesia; [(pelvic)-]

(g) Excision: bartholin cyst, condylomas, foreign body, lesions lipoma, nevi (moles), sebaceous cyst, polyps, or [and] subcutaneous fistulas;

(h) Extraction: foreign body, or [and] teeth; [(per-existing-policy)-]

(i) Graft, skin (pinch, splint or full thickness up to defect size three-fourths (3/4) inch diameter);

(j) Hymenotomy;

(k) Manipulation and reduction with or without x-ray; cast change: dislocations depending upon the joint and indication for procedure, or [and] fractures;

(l) Meatotomy or [f] urethral dilation, removal calculus and drainage of bladder without incision;

(m) Myringotomy with or without tubes, otoplasty;

(n) Oscopy with or without biopsy (with or without salpingogram): arthroscopy, bronchoscopy, colonoscopy, culdoscopy, cystoscopy, esophagoscopy, endoscopy, gastroscopy, hysteroscopy, laryngoscopy, laparoscopy, peritoneoscopy, otoscopy, and sigmoidoscopy or procto sidmoidoscopy;

(o) Removal; IUD, or [and] fingernail or toenails;

(p) Tenotomy hand or foot;

(q) Vasectomy; or

(r) Z-plasty for relaxation of scar or [f] contracture.

DENNIS BOYD, Commissioner

JOHN H. WALKER, Attorney

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: March 13, 2000

FILED WITH LRC: March 23, 2000 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen Doyle or Sharon Rodriguez

(1) Type and number of entities affected: In-state hospitals (120); Out-of-state hospitals (300).

(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.

(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.

(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: \$14.8 million additional costs

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Hospitals will need to report costs/charges for days beyond 14.

(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: 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: Promulgation of this regulation will ensure greater access to medical services from hospitals for Kentucky's indigent citizenry. It will allow utilization of the limited disproportionate share hospital (DSH) funds, currently being used to cover inpatient hospital stays beyond 14 days, to be used more for indigent care costs. Hospitals will be assured of reimbursement beyond 14 days.

(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 indigent Kentuckians because they would not have benefit of additional coverage.

(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 1:013E

This emergency administrative regulation is being promulgated in accordance with provisions of 42 USC 1396a, b, and d, to adjust the payments made for inpatient hospital services for those hospitals who serve a disproportionate share of low income patients, to clarify the payment methodology for out-of-state hospitals, and establish payment for critical access hospital services. This action must be taken on an emergency basis to ensure that hospitals are provided with all available federal funds. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients because there is the potential that hospitals will not continue to participate in the Medicaid Program due to low reimbursement for services provided to eligible persons. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on July 21, 1999 as follows: this emergency administrative regulation shifts payments for services reimbursed under the disproportionate share hospital program to the regular inpatient hospital program, in compliance with 907 KAR

1:012E. The methodology that was effective for in-state facilities on July 1, 1999, will also now be applied to out-of-state facilities. Additionally, this emergency administrative regulation establishes payment for critical access hospital services. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JIMMY D. HELTON, Secretary

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Member and Provider Services**

907 KAR 1:013E. Payments for hospital inpatient services.

RELATES TO: KRS 205.520, 205.565, 205.640[; 1996 Ky. Acts ch. 380, Part 1, GB, 51, 5]

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.560(2), 205.637, 205.640, 216.380(10), 20 CFR 405.402 through 405.488, 42 CFR 440.10, 440.140, 447.250 through 447.280, 42 USC 1395f(l), x(mm), 1396a, b, d, r-4, 902 KAR 20:180, 902 KAR 20:240 [; EO 96-862]

EFFECTIVE: March 23, 2000

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 method for determining the amount payable by the Medicaid Program for a hospital inpatient service.

Section 1. Definitions. (1) "Acute care hospital" means a hospital licensed and certified to provide acute care hospital services in accordance with 902 KAR 20:016.

(2) "Base year" means the cost reporting period upon which a rate is based.

(3) "Calculated rate" means the per diem rate effective July 1, 1999 for acute care and rehabilitation hospitals.

(4) "Capital costs" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.

(4) "Charity care" means a service provided to a recipient by a provider without expectation on the part of the provider to receive payment, but shall not include bad debt.

(5) "Cost basis" means the total allowable Medicaid inpatient cost incurred by the provider in the base year.

(6) "Critical access hospital" means a hospital meeting the licensure requirements established in 906 KAR 1:110.

(7) "Department" means the Department for Medicaid Services or its agent.

(8) [(7)] "Disproportionate share hospital" (DSH) means a hospital that:

(a) Has an inpatient Medicaid utilization rate of one (1) percent or higher; and

(b) Meets the criteria established in 42 USC 1396r-4(d); and

(b)1. Meets the criteria established in 42 USC 1396r-4(b); or

2. Has a Medicaid utilization of one (1) percent or higher.

(9) [(8)] "DRI" means Data Resources, Incorporated.

(10) [(9)] "Indexing factor" means the amount that the cost of providing a service is expected to increase during the universal rate year.

(11) "Indigent care" means hospital charges attributable to individuals eligible for the Kentucky Hospital Care Program who are uninsured or unreimbursed by another source, including Medicaid. Eligibility for these individuals shall be determined in accordance with criteria established in 907 KAR 1:635.

[(10)] "Indigent days" means days in excess of fourteen (14) covered days for a Medicaid recipient and days of service provided to an

individual eligible for the Kentucky Hospital Care Program, including outpatient equivalent care days, with eligibility determined in accordance with criteria established in 907 KAR 1:635, and which are uninsured or unreimbursed by another source.

(12) [(11)] "Inflation factor" means the amount that the cost of providing a service has increased, or is expected to increase, for a specific period of time.

(13) [(12)] "Pediatric teaching hospital" is defined in KRS 205.565.

(14) [(13)] "Professional component cost" means a physician compensation cost paid by the provider for a service to a patient and includes the following categories of practice:

(a) Anesthesiology;

(b) Cardiology;

(c) Electroencephalography;

(d) Pathology;

(e) Radiology; and

(f) Psychiatry in a psychiatric hospital.

(15) [(14)] "Psychiatric hospital" means a hospital which meets the minimum licensure requirements established in 902 KAR 20:180.

(16) "Rate on rate" means the methodology of establishing a reimbursement rate by multiplying an existing rate by a percent of increase as specified in Section 2 of this administrative regulation.

(17) [(15)] "Rehabilitation hospital" means a hospital meeting the minimum licensure requirements established in 902 KAR 20:240.

(18) [(16)] "State university teaching hospital" means:

(a) A hospital which is owned or operated by a Kentucky state supported university with a medical school; or

(b) A hospital in which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; however, this shall not include a hospital having a residency program or rotation agreement.

(19) [(17)] "Trending factor" means the inflation factor as applied to that period of time between a facility's base fiscal year end and the beginning of the universal rate year.

(20) [(18)] "Type I hospital status" means an in-state disproportionate share hospital with 100 beds or less that participates in the Medicaid Program.

(21) [(19)] "Type II hospital status" means an in-state disproportionate share hospital with 101 beds or more that participates in the Medicaid Program, except for a hospital that meets the criteria established in this administrative regulation for a Type III or Type IV status hospital.

(22) [(20)] "Type III hospital status" means an in-state disproportionate share state university teaching hospital, owned and operated by either the University of Kentucky or the University of Louisville medical school, that has requested a Type III status which has been approved by the Department for Medicaid Services.

(23) [(21)] "Type IV hospital status" means an in-state disproportionate share hospital participating in the Medicaid Program that is a state owned psychiatric hospital.

[(22)] "Type V hospital status" means an out-of-state disproportionate share hospital participating in the Medicaid Program.

(24) [(23)] "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning July 1 of each year for which payment rates are established for a hospital regardless of the hospital's fiscal year end.

(25) [(24)] "Upper payment limit" means the maximum amount the Medicaid program shall pay for an inpatient day of care with the maximum varying based on specified circumstances as follows:

(a) Utilization factors;

(b) Teaching hospital status; and

(c) Age of patient.

(26) [(25)] "Weighted median" means the cost per diem associated with the median point of cumulative inpatient days calculated by arraying cost per diems within a specified peer group from lowest to highest.

Section 2. Acute Care Hospital and [;] Rehabilitation Hospital [and Psychiatric Hospital] Inpatient Services. The reimbursement rate for an acute care and rehabilitation hospital, including out-of-state hos-

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pitals, for the rate year beginning July 1, 1999 shall be determined by utilizing a rate-on-rate methodology as follows:

(1) The calculated rate shall be determined by the department as follows:

(a) The department shall utilize a hospital's June 30, 1999 per diem rate that includes operating, professional and capital cost components; and

(b) The per diem rate shall be multiplied by the rate of increase of three (3) percent.

(2) Payments for children with exceptionally high cost or long lengths of stay shall be made in accordance with Section 12(10) of this administrative regulation.

Section 3. Psychiatric Hospital Inpatient Services. The Department for Medicaid Services shall pay for inpatient hospital services provided to an eligible Medicaid recipient through the use of a rate that meets the requirements of 42 USC 1396a(a)(13) [is reasonable and adequate to meet the cost that is required to be incurred by an efficiently and economically operated hospital to provide a service in conformity with applicable state and federal laws, regulations, and quality and safety standards].

Section 4. Critical Access Hospital Services. The Department for Medicaid Services shall pay for critical access hospital services effective July 1, 2000. The department shall establish a rate that recognizes the allowable reasonable costs of a critical access hospital for providing services to Medicaid recipients. The interim prospective rate shall include operating, professional and capital cost components, determined as specified in Sections 5 through 13, with year-end settlement to actual cost.

Section 5. [3:] Use of a Prospective Rate. (1) A hospital, including a critical access hospital, shall be paid using a prospective payment rate based on allowable Medicaid inpatient costs and Medicaid inpatient days as follows:

(a) The prospective rate shall include both routine and ancillary costs.

(b) If a base year is selected for setting a rate, that base year shall not change.

(c) The prospective rate shall not be subject to retroactive adjustment, except for critical access hospitals or a facility with a rate based on unaudited data. This facility shall have its rate appropriately revised for the rate year when the audited cost report for the base year becomes available to the department.

(d) Total prospective payments shall not exceed the total customary charges in the prospective year.

(2) An overpayment shall be recouped by:

(a) Payment from the provider for the amount of the overpayment; or

(b) The withholding of the overpayment amount from a future payment due the provider.

Section 6. [4:] Use of a Universal Rate Year. (1) A universal rate year shall be set for a facility with the universal rate year established as July 1 through June 30 of each year to coincide with the state fiscal year.

(2) A hospital shall not be required to change its fiscal years to conform with a universal rate years.

Section 7. [5:] Trending of a Cost Report. The following policies shall be used for the trending of a cost report:

(1) An allowable Medicaid cost, excluding capital cost, as shown in a cost report on file in the department, both audited and unaudited, shall be trended to the beginning of the rate year to update a hospital's Medicaid cost.

(2) The trending factor to be used shall be the inflation factor prepared by DRI for the period being trended.

Section 8. [6:] Indexing for Inflation. (1) After an allowable cost has been trended to the beginning of the rate year, an indexing factor shall be applied to project inflationary cost in the universal rate year.

(2) The indexing factor to be used shall be the inflation factor prepared by DRI for the universal rate year.

Section 9. [7:] Peer Grouping. For rate setting purposes, a hospital shall be grouped with other hospitals in accordance with the following provisions:

(1) The peer grouping shall be based on the number of beds licensed, as of May 1 preceding the universal rate year, which provide Medicaid covered services and shall meet minimum licensure requirements in accordance with 902 KAR 20:009, 902 KAR 20:006, 902 KAR 20:170, 902 KAR 20:180, 902 KAR 20:230 and 902 KAR 20:240.

(2) The peer groupings shall be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds or more.

(3) A Type III hospital shall not be included in the array for a facility with 401 beds or more, but shall be subject to the upper limit for a facility with 401 beds or more.

(4) A psychiatric hospital shall not be peer grouped but shall be in a separate array of psychiatric hospitals.

(5) A rehabilitation hospital, [and] an acute care hospital that is restricted to providing rehabilitation services, and a critical access hospital shall not be:

(a) Peer grouped;

(b) Arrayed; or

(c) Subject to the operating cost upper limit.

Section 10. [8:] Minimum Occupancy Factor. Allowable Medicaid capital cost shall be reduced if one (1) of the following minimum occupancy factors are not met:

(1) A sixty (60) percent occupancy factor shall apply to hospitals with 100 or fewer beds; or

(2) A seventy-five (75) percent occupancy factor shall apply to a hospital with 101 or more beds.

Section 11. [9:] Reduced depreciation allowance shall be applicable, as follows:

(1) The allowable amount for depreciation on building and fixtures, excluding major movable equipment, shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports; and

(2) The use of a reduced depreciation allowance shall not be applicable with regard to a psychiatric hospital or a critical access hospital.

Section 12. [10:] Upper limits and payment principles shall apply to a hospital, with additional limitations for a disproportionate share hospital established in Section 13 [††] of this administrative regulation, as follows:

(1) An acute care hospital with 101 beds or more shall have an upper limit established on all costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost for a hospital in each peer group.

(2) An acute care hospital with 100 beds or less shall have the upper limit on all costs (except Medicaid capital costs and professional component costs) established at 110 percent of the weighted median per diem for a hospital in its peer group.

(3) A state university teaching hospital shall have an upper limit on all costs (except Medicaid capital costs and professional component costs) established at 106 percent of the weighted median per diem for a hospital in its peer group.

(4) A psychiatric hospital:

(a) Shall have an upper limit established on all costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost for a hospital in the array;

(b) Designated by the department as a primary referral and services resource for a child in the custody of the Cabinet for Families and Children shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year end settlement to actual cost; and

(c) May have the projected cost adjusted for usual cost of living increases using the DRI Index.

(5) Except [as provided in subsection (10) of this] Section 2 of this administrative regulation, the following principles shall apply:

(a) The most recent Medicaid cost report available as of May 1 of each year preceding the universal rate year shall be used for rate setting.

(b) If a desk review or audit of the most current cost report is completed after May 1, but prior to the universal rate setting for the year, the desk review or audited data shall be utilized for rate setting.

(c) An audit and desk review shall be conducted in accordance with the Medicaid Reimbursement Manual for Hospital Inpatient Services.

1. Except as provided in subparagraph 2 of this paragraph, the manual shall govern the Medicaid reimbursement for a hospital inpatient service.

2. If a reimbursement issue or area is not specified in the manual, the department shall apply Medicare standards and principles, excluding the Medicare inpatient routine nursing salary differential.

(6) After being set, the arrays and upper limits shall not be altered due to a revision or correction of data.

(7) Professional component costs shall be trended and indexed separately in the same manner as operating costs, except an upper limit shall not be established.

(8) A provider tax shall be considered an allowable cost. The portion attributable to Medicaid utilization shall be included in the per diem rate.

(9) ~~Except as provided in subsection (10) of this section,~~ The following controls shall be applied to the per diem rate increases for an acute care hospital excluding a hospital restricted to rehabilitative services and a critical access hospital:

(a) Allowable rate growth from the prior rate year to the new rate year shall be limited to not more than one and one-half (1 1/2) times the DRI inflation amount for the same time period;

(b) Limits shall be applied to the capital and operating cost per diem components;

(c) Rate growth beyond the allowable amounts shall be considered an unallowable cost for rate setting purposes; and

(d) Unallowable costs resulting from the use of control of rate increase limits shall not be included in the base for future rate setting purposes.

(10) ~~For the rate period beginning July 1, 1997, the rate shall be the rate in effect for January 1, 1996 with the following modifications:~~

(a) ~~The operating and professional components of the rate shall be indexed forward for the 1998 rate period using the inflation factor prepared by DRI for the same period;~~

(b) ~~There shall be an add-on to the rate, computed as fifteen (15) percent of the amount between the lesser of:~~

1. ~~The operating cost per diem or the maximum operating per diem, whichever is less; or~~

2. ~~The operating per diem as limited by the rate of increase control (one and one-half (1 1/2) times the DRI); and~~

(c) ~~The capital component shall not be indexed. The capital component of the rate shall be the amount computed for capital cost in the 1996 individual hospital rate notice, excluding the application of the rate of increase control (one and one-half (1 1/2) times the DRI);~~

~~(11) For a medically necessary hospital inpatient service provided for an exceptionally high cost or long length of stay, the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infant. Exceptionally high cost or long length of stay shall be, in a nondisproportionate share hospital, those cost and days of stay for a child under age one (1) that:~~

(a) ~~For a newborn, is thirty (30) days from the date of discharge for the mother; or~~

(b) ~~For another child, is after thirty (30) days from the date of admission.~~

Section 13. ~~(11.)~~ The following upper limits and payment principles shall apply to a disproportionate share hospital:

(1) An acute care hospital with Medicaid utilization of twenty (20) percent or higher, or a hospital having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for a hospital in that peer grouping.

(2) A state university teaching hospital, having Medicaid utilization of twenty (20) percent or higher, or having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an

upper limit set at 126 percent of the weighted median per diem cost for a hospital of 401 beds and up.

(3) A designated state pediatric teaching hospital meeting the criteria in subsection (2) of this section shall:

(a) Have an upper limit set at 126 percent of the weighted median per diem cost of its appropriate peer group; and

(b) In addition to the hospital's base rate, be paid an amount which is equal to two (2) percent of the base rate for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the hospital.

(4) A designated state pediatric hospital meeting the criteria in subsection (2) of this section and meeting the additional criteria of a Type III hospital status as defined in Section 1(22) of this administrative regulation and subsection (9)(b)2 of this section shall:

(a) Have an upper payment limit set at 126 percent of the weighted median per diem cost of its appropriate peer group rate;

(b) In addition to the hospital's base rate, be paid an amount which:

1. Is equal to two (2) percent of the base rate for each one (1) percent of Medicaid occupancy, not to exceed the payment limit as specified in 42 CFR 447.271;

2. For rate year 1998, shall be an end of the year adjustment applied to services provided by a qualifying hospital July 1, 1998 and thereafter; and

3. For payments subsequent to 1998, shall be prospectively determined quarterly amounts with an end-of-the-year settlement; and

(c) Provide the state match necessary to obtain federal financial participation for funding under this section.

(5) A psychiatric hospital [hospitals] with Medicaid utilization of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for a hospital in the array.

(6) [(5)] An acute care hospital with 100 beds or less shall have an upper limit set at 110 percent of the weighted median per diem for a hospital in the array.

(7) A nondisproportionate [(6) Another disproportionate] share acute care hospital shall have its upper limit set at the weighted median per diem of the cost for a hospital in the peer grouping.

(8) [(7)] A hospital shall be reimbursed an additional amount equal to 110 percent of a hospital's per diem rate for medically necessary hospital inpatient days of service provided for an exceptionally high cost or long length of stay, without regard to length of stay or number of admissions of the child. Exceptionally high cost or long length of stay shall be, in a disproportionate share hospital, those costs and days of stay for a child under the age of six (6) that:

(a) With the exception of a newborn, is after thirty (30) days from the date of admission [For a newborn, is thirty (30) days beyond the date of discharge for the mother]; or

(b) For a newborn, is thirty (30) days beyond the date of discharge for the mother [For another child, is after thirty (30) days from the date of admission].

(9) [(8)] The disproportionate share hospital payment [for the period beginning February 20, 1995] shall be made as follows:

(a) The disproportionate share hospital payment for a Type I or [and] Type II hospital shall be based on the costs of providing indigent care. [include a volume adjustment.]

1. Payment made to a hospital meeting the criteria in this paragraph shall be based on its proportion of the costs of providing inpatient and outpatient indigent care. [The adjustment shall be made by paying for each indigent care day, including equivalent days based on outpatient services actually provided, at the hospital's Medicaid per diem rate.]

2. Total disproportionate share hospital [volume adjustment] payments to a Type I and Type II hospital shall not exceed the funding limits established by the enacted biennium budget of the Kentucky General Assembly [for indigent care services provided during the 1998 fiscal year shall not exceed \$91,900,000. If a payment will cause the limit to be exceeded, each hospital's volume adjustment amount shall be adjusted proportionately].

a. The costs of indigent care for purposes of making payments to a Type II hospital with 200 or more licensed acute care beds [3. The

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inpatient equivalent care days for a hospital] shall be determined by:

(i) Calculating the costs of inpatient indigent care by multiplying each day of indigent care provided by the facility by its Medicaid rate; and

(ii) Calculating the costs of outpatient indigent care by applying the ratio determined by dividing a hospital's average Medicaid outpatient payment per visit by its Medicaid inpatient rate to the number of outpatient visits payable at its Medicaid rate.

b. Effective October 1, 1998, the costs of indigent care for a Type I or a Type II hospital with less than 200 licensed acute care beds shall be determined by applying the hospital's cost-to-charge ratio to allowable indigent charges as follows:

(i) By July 1 of each year, the department shall calculate the cost-to-charge ratio for a hospital by dividing the hospital's total allowable operating expenses by the hospital's total gross patient charges, using the Medicare cost report as of July 1 of that fiscal year.

(ii) To determine the cost-to-charge ratio, the department shall use the total cost from Worksheet B, Part 1, Column 25 and total charges from Worksheet C, Part 1, Column 8. The ratio is the total cost divided by the total gross patient charges.

3. If a payment made in accordance with this paragraph will cause the limit established in subsection (9)(a)2 of this section to be exceeded, each hospital's payment shall be adjusted proportionately prior to the final quarterly payment, [dividing the hospital's average Medicaid allowable outpatient payment per visit by the Medicaid allowable inpatient payment per day and multiplying the result by the number of indigent care outpatient visits for the specified period of time.]

(b) The disproportionate share hospital payment for a Type III [and IV] hospital shall be equal to 100 percent of the cost of services to a Medicaid patient, minus [less] the amount paid by Medicaid as a usual Medicaid per diem [payment], plus the cost of services to an uninsured patient, minus [less] any cash payment made by an uninsured patient.

1. Total disproportionate share hospital payments made to Type III hospitals in accordance with this paragraph shall be based upon available funds. Available funds shall not exceed the limits established in 42 USC 1396r-4(f), minus funds distributed in accordance with paragraph (a) of this subsection, minus funds distributed under paragraph (c) of this subsection. If payments made in accordance with this paragraph exceed available funds, payments shall be proportionately adjusted.

2. Type III status shall be granted to a state university teaching hospital if the hospital agrees as a part of its request for a Type III status to:

1. Forego a local or state government contribution for charity care; and

2. Provide up to 100 percent of the state matching funds necessary to secure federal financial participation for a Medicaid disproportionate share hospital payment to be made during the period of time the hospital is designated as a Type III status hospital.

(c) The disproportionate share hospital payment for a Type IV hospital shall be equal to 100 percent of the costs of services provided to Medicaid patients, minus the amount paid by Medicaid as a usual Medicaid per diem, plus the costs of services to uninsured patients, minus any cash payments made by an uninsured patient. Total disproportionate share hospital payments made to Type IV hospitals in accordance with this paragraph shall be based upon available funds. Available funds shall not exceed the limits established in 42 USC 1396r-4(h), minus funds distributed to psychiatric hospitals under subsection (9)(a) of this section. If payments made in accordance with this paragraph exceed available funds, payments shall be proportionately adjusted. [V-hospital shall be one (1) dollar per Medicaid day plus an earned adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid occupancy above one (1) standard deviation.]

(d) Further adjustments shall not be made to payments described in this subsection except for errors identified by the department when computing the payment. A hospital shall be allowed thirty (30) days from the time that the payment calculation is finalized to submit verifiable data to correct the department's calculation.

[Section 12. In accordance with KRS 205.640, except for none-

mergency care rendered through a hospital emergency room, an in-state nondisproportionate share hospital shall be compensated in the manner described in Section 11(8)(a) of this administrative regulation for services provided by the hospital to a Medicaid recipient beyond the covered days and to an individual and family with a total annual income and resources up to 100 percent of the federal poverty level.]

Section 14. [13:] Payment to a Participating Out-of-state Hospital.

(1) A participating out-of-state hospital shall be reimbursed for covered inpatient services rendered to an eligible Kentucky Medicaid recipient at the lesser of seventy-five (75) percent of usual and customary charges or the [in-state] per diem established in Section 2 of this administrative regulation, [upper limit for a comparable size hospital, plus a provision for capital cost. The capital cost provision shall be computed by using the mean value of the capital cost per diem paid per peer group for an in-state hospital.]

(2) A participating out-of-state hospital shall be reimbursed at the lesser of eighty-five (85) percent of usual and customary charges or 110 percent of the [in-state] per diem established in Section 2 of this administrative regulation for an infant, [upper limit for a comparable size hospital for an exceptionally high cost or long length of stay related to an infant] under the age of one (1) in a nondisproportionate share hospital; or a child under age six (6) in a disproportionate share hospital [hospitals, without regard to length of stay or number of admissions of the infant or child. Exceptionally high cost or long length of stay shall be those cost and days of stay:

(a) In a nondisproportionate share hospital, as defined in Section 10(11) of this administrative regulation; and

(b) In a disproportionate share hospital, as defined in Section 11(7) of this administrative regulation.]

(3) [Except as provided in subsection (2) of this section, disproportionate status shall be reimbursed in accordance with Section 11(1) and (8)(c) of this administrative regulation.

(4) Professional costs for covered days of stay shall be paid at seventy-five (75) percent of the usual and customary charges of the provider.

Section 15. [14:] Provider Appeal Rights. If appealed, negative action shall be appealed in accordance with 907 KAR 1:671.

Section 16. [15:] Incorporation by Reference. (1) "Medicaid Reimbursement Manual for Hospital Inpatient Services", January 2000 [July 1997] edition, Department of Medicaid Services, is incorporated by reference.

(2) This material [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.

DENNIS BOYD, Commissioner

JIMMY D. HELTON, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: February 23, 2000

FILED WITH LRC: March 23, 2000 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen Doyle or Sharon Rodriguez

(1) Type and number of entities affected: In-state hospitals (120); out-of-state hospitals (300).

(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 is held.

(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 is held.

(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

STATEMENT OF EMERGENCY
908 KAR 2:210E

- (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: \$14.8 million additional costs.
 2. Continuing costs or savings: \$0
 3. Additional factors increasing or decreasing costs: None
 - (b) Reporting and paperwork requirements: Hospitals will need to report costs/charges for days beyond 14.
 - (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 is held.
 - (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: Promulgation of this regulation will ensure greater access to medical services from hospitals for Kentucky's indigent citizenry. It will allow utilization of the limited disproportionate share hospital (DSH) funds, currently being used to cover inpatient hospital stays beyond 14 days, to be used more for indigent care costs. Hospitals will be assured of reimbursement beyond 14 days of an inpatient stay.
 - (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 indigent Kentuckians because they would not have benefit of additional coverage.
 - (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.

This emergency administrative regulation is being promulgated in accordance with KRS 13A.190(1)(a)1. This administrative regulation is necessary in order to reduce the risk posed to victims of inadequately treated perpetrators of domestic violence. If this administrative regulation is not implemented immediately, victims of domestic violence will be at unnecessary risk of harm from inadequately assessed or treated offenders. This administrative emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS 13A.190(1)(b)2. A Notice of Intent for the ordinary administrative regulation is being filed concurrently with this emergency administrative regulation.

PAUL E. PATTON, Governor
JIMMY D. HELTON, Secretary

CABINET FOR HEALTH SERVICES
Department for Mental Health/Mental Retardation Services
Division of Mental Health

908 KAR 2:210E. Domestic violence offender treatment certification standards.

RELATES TO: KRS Chapter 13B, 202A.011(12)(d), 202A.400, 209.030, 222.005, 309.130 to 309.1399, Chapters 311, 319, 335.080, 335.100, 335.300 to 335.399, 335.500 to 335.599, Chapters 506, 507 to 510, 515, 403.715 to 403.785, 421.570, 511.020 to 511.040, 512.020, 517.050, 529.020 to 529.050, 530.020, 530.060, 530.064, 530.065, 530.070, 531.030, 531.040, 531.300 to 531.370, 620.030

STATUTORY AUTHORITY: KRS 194A.030, 403.7505

EFFECTIVE: April 14, 2000

NECESSITY, FUNCTION, AND CONFORMITY: KRS 403.7505 authorizes the Cabinet for Health Services to promulgate administrative regulations establishing certification standards for mental health professionals providing court-ordered treatment services for domestic violence offenders. The purpose of this administrative regulation is to establish provider certification requirements and standards for services. This administrative regulation is necessary to assure the quality of court ordered services and reduce the danger of physical injury or death for victims of ineffectively treated domestic violence perpetrators.

Section 1. Definitions. (1) "Appellant" means an applicant or a provider who requests an informal resolution meeting in accordance with Section 13 of this administrative regulation or an administrative hearing in accordance with Section 14 of this administrative regulation.

(2) "Application" means the Application for Certification as a Provider for Court Ordered Domestic Violence Offender Treatment and includes required attachments.

(3) "Assessment" means the evaluation of the offender's characteristics, history of abusive behavior, risk of harm to self and others, and capacity to benefit from treatment.

(4) [(2)] "Associate provider" means an individual that has been certified by the cabinet to provide services in accordance with the requirements of this administrative regulation only under the direct supervision of an autonomous provider.

(5) [(3)] "Autonomous provider" means a [mental health] professional who [that has been licensed or certified pursuant to KRS Chapters 309, 311, 314, 319, or 335 that] has been certified by the cabinet in accordance with Section 2(1)(b) of this administrative regulation for unsupervised clinical practice in a domestic violence program.

(6) [(4)] "Cabinet" means the Cabinet for Health Services or its designee.

(7) [(5)] "Client" means an offender [any individual who has been charged with or convicted of a criminal offense related to domestic violence or who is a respondent in a protective order issued by a court pursuant to KRS 403, and who] has been admitted to a program.

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(8) "Court" means a district, family, or circuit court of the Commonwealth of Kentucky.

(9) [(6)] "Court-ordered," means subject to an order entered by a [an order by any] district, family or circuit court judge for an offender to be assessed by a provider to determine the offender's eligibility for admission to a program, or to participate in a program.

(10) "Department" means the Department for Mental Health and Mental Retardation Services or its designee.

(11) [(7)] "Domestic violence" is defined in KRS 403.720(1).

(12) [(8)] "Offender" means an [any] individual who has been charged with or convicted of a criminal offense related to domestic violence or who is a respondent in a protective order issued by a court pursuant to KRS Chapter 403.

(13) [(9)] "Program" means the services provided in accordance with the requirements of this administrative regulation to offenders who have been referred by a court for assessment or treatment related to domestic violence.

(14) [(10)] "Provider" means an associate provider or an autonomous provider.

(15) "Sanction" means taking compulsory or restrictive action including:

(a) Prohibition, requirement, limitation, or another condition affecting the freedom of a person;

(b) Withholding of relief;

(c) Imposition of a penalty or a fine;

(d) Destruction, taking, seizure, or withholding of property;

(e) Assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; or

(f) Revocation, or suspension of a license.

(16) [(11)] "Screening" means the action taken by a provider [actions taken by associate or autonomous providers] to determine an offender's eligibility for admission to the program.

(17) [(12)] "Treatment" means individual and group counseling and education which is based on a core curriculum that focuses on cessation of domestic violence [counseling and educational services that focus on the cessation of violence by an offender. Treatment includes individual and group services using a comprehensive curriculum of content relating to domestic violence.]

(18) "Victim advocate" is defined in KRS 421.570.

Section 2. Certification Procedures. (1) The cabinet shall certify an individual as:

(a) An associate provider if the applicant meets the qualifications specified in Section 4(1) of this administrative regulation; or

(b) An autonomous provider if the applicant meets the [applicable] qualifications specified in Section 4(2) of this administrative regulation; and

(c) Is not subject to denial or revocation pursuant to Section 3 of this administrative regulation.

(2) An individual may apply to be certified as an associate provider or an autonomous provider by submitting a complete application to the Sexual and Domestic Violence Program Administrator, Department for Mental Health and Mental Retardation Services, Division of Mental Health. [:

(a) A written request for certification to the cabinet;

(b) Documentary evidence of qualifications;

(c) A copy of the curriculum to be used in the program; and

(d) Evidence that the individual has remedied the cause for the denial or revocation if a certification has been denied or revoked in accordance with Section 3 of this administrative regulation.

(3) A request for certification shall be submitted to the Sexual and Domestic Violence Program Specialist, Department for Mental Health and Mental Retardation Services Division of Mental Health.]

(3) [(4)] The cabinet shall notify an applicant in writing if certification is granted or denied no later than sixty (60) days after receiving an application or after receiving additional documentation if the department retains the application in accordance with Section 3(2) of this administrative regulation. The notice shall:

(a) Specify the effective date of certification if applicable;

(b) Specify the basis of the denial of the application, if applicable;

(c) Specify additional documentation that is required if the department retains the application in accordance with Section 3(2) of

this administrative regulation; and

(d) Inform the applicant of the right to appeal the denial in accordance with the informal resolution process established in Section 13 of this administrative regulation, and the administrative hearing process established in Section 14 of this administrative regulation. [determine that a request is incomplete if:

(a) The documentation of qualifications is insufficient to meet the applicable qualifications; or

(b) The cabinet can not verify the authenticity of the documentation of qualifications.

(5) If the cabinet determines that a request is incomplete it shall return the request to the sender and specify additional documentation that is required or the documentation that can not be verified.

(6) The cabinet shall respond to the request for certification in writing no later than sixty (60) working days after receiving a complete request for certification.]

(4) [(7)] Certification shall be effective for two (2) years.

(5) [(8)] The cabinet shall renew the certification of a [an associate provider or an autonomous] provider upon request if the provider submits verifiable documentation of completion of at least eight (8) hours per year of continuing education related to domestic violence unless his certification has been revoked in accordance with Section 3 of this administrative regulation.

(6) The cabinet may solicit recommendations from individuals outside the cabinet regarding the certification of providers.

(9) The cabinet may form a committee of individuals with expertise in domestic violence to provide recommendations to the cabinet on the certification of providers.]

Section 3. Denial or Revocation of Certification. (1) The cabinet shall deny certification to a provider if it determines that:

(a) The application is incomplete;

(b) The documentation of qualifications is insufficient to demonstrate that the applicant meets the applicable requirements in Section 4 of this administrative regulation;

(c) The department cannot verify the authenticity of the documentation of qualifications submitted in the application; or

(d) The core curriculum submitted fails to meet the requirements specified in Section 10(7) of this administrative regulation.

(2) The department may retain the application and permit the applicant to submit additional documentation in accordance with a notice provided pursuant to Section 2(3)(c) of this administrative regulation if the department denies certification in accordance with subsection (1)(a) of this section.

(3) The cabinet shall deny certification to an applicant and shall revoke the certification of a provider upon its determination [may deny a request for certification or revoke the certification of a provider if the cabinet determines] that the applicant or provider:

(a) Has been convicted of or pled guilty to:

1. Criminal homicide pursuant to KRS Chapter 507;

2. Assault or a related offense pursuant to KRS Chapter 508;

3. Kidnapping or a related offense pursuant to KRS Chapter 509;

4. A sexual offense pursuant to KRS Chapter 510;

5. Burglary or a related offense pursuant to KRS 511.020 through 511.040;

6. Criminal damage to property pursuant to KRS 512.020;

7. Robbery pursuant to KRS Chapter 515;

8. Falsifying business records as defined in KRS 517.050 if the conviction was in relation to the applicant's clinical practice;

9. Incest as defined in KRS 530.020;

10. Endangering the welfare of a minor as defined in KRS 530.060;

11. Unlawful transaction with a minor as defined in KRS 530.064, 530.065, or 530.070;

12. Sexual exploitation of a minor pursuant to KRS 531.300 to 531.370;

13. Criminal attempt as defined in KRS 506.010, to commit an offense identified in this paragraph;

14. Distribution of obscene materials involving a minor pursuant to KRS 531.030 or 531.040; or

15. Promoting prostitution pursuant to KRS 529.030, 529.040 or 529.050. [a felony offense or a misdemeanor offense if the crime

negatively impacts the delivery of services to clients;]

(b) Has had a domestic violence protective order issued against him within the [previous] five (5) years prior to the date of the application or after being certified;

(c) Has had an alcohol or other drug abuse problem as defined in KRS 222.005 within the two (2) years prior to the date of the application or engages in alcohol or drug abuse as defined in KRS 222.005 after being certified;

(d) Is subject to a current court order restraining or enjoining him from providing a service pursuant to his licensure or certification; or [Has had a sanction applied against a license or certification held by the applicant or provider at any time in the past two (2) years or currently has a sanction applied against a license or certification;]

(e) Has engaged in prostitution pursuant to KRS 529.020 within the five (5) years prior to the date of the application or after being certified. [Has provided domestic violence offender assessment or treatment services without supervision if supervision is required by Section 5(1) or (2) of this administrative regulation;

(f) Has falsified any information in a request for certification;]

(4) Depending on the severity or recency of the infraction the department may deny an application or revoke the certification of a provider who:

(a) Has had a sanction applied against or a revocation of a professional license or certification held by the applicant or provider at any time in the two (2) years prior to the date of an application or any time after being certified;

(b) Currently has a sanction applied against a professional license or certification;

(c) Has provided domestic violence offender assessment or treatment services in violation of Section 5(1) or (2) of this administrative regulation;

(d) [(g)] Has failed to meet the requirements for maintenance of certification established [set forth] in Section 2(5) [(f)] of this administrative regulation;

(e) [(h)] Has failed to implement a corrective action plan [imposed by the cabinet] in accordance with Section 12(4)(a) or (b) of this administrative regulation;

(f) Has failed to follow the curriculum submitted in the application or submitted and approved in accordance with Section 10(9) of this administrative regulation;

[(i)] Has submitted a curriculum or amended a previously approved curriculum in a manner which is inconsistent with any provision of this administrative regulation or with generally accepted program standards for domestic violence treatment; or]

(g) [(j)] Has failed to meet a requirement established in Sections 2 through 11 [practiced in a manner which is inconsistent with or in violation of a provision] of this administrative regulation; or

(h) Has provided information that the department:

1. Is unable to verify; or

2. Has determined to be incorrect.

(5) The department shall notify a provider in writing if his certification is revoked. The notice shall:

(a) Specify the effective date that his certification shall be revoked;

(b) Specify the basis of the determination to revoke a certification; and

(c) Inform the provider of the right to appeal the revocation in accordance with the informal resolution process established in Section 13 of this administrative regulation, and the administrative hearing process established in Section 14 of this administrative regulation.

(6) A provider whose certification is revoked shall be ineligible for certification until the second anniversary of the effective date of the revocation except as provided in subsection (7) of this section.

(7) The department shall renew the certification of a provider whose certification has been revoked in accordance with subsection (4)(d) of this section upon the department's receipt of documentation that the provider has met the requirement of Section 2(5) of this administrative regulation.

[(2) An applicant or a provider may appeal a denial of a request for certification or a revocation of certification. An appeal shall:

(a) Be submitted in writing to the Sexual and Domestic Violence Program Specialist, Department for Mental Health and Mental Re-

tardation Services Division of Mental Health; and

(b) Specify the reason the provider believes the denial or revocation is unwarranted and;

(c) May include information or documentation supporting the appellant's position;

(3) If an applicant or a provider appeals a certification decision the cabinet shall appoint a hearing officer and conduct an administrative hearing in accordance with KRS Chapter 13B;

(4) An applicant or provider who has had his certification revoked shall be ineligible for certification or recertification until the second anniversary of the date his certificate was revoked;]

Section 4. Qualifications of Certified Providers. (1) The qualifications of an associate provider shall be:

(a) A bachelors degree from an accredited university or college [in a mental health related discipline];

(b) Completion of twenty-four (24) clock hours of specialty training in domestic violence including:

1. Characteristics and dynamics of domestic violence;

2. Clinical profiling of domestic violence offenders;

3. Risk assessment and lethality of domestic violence offenders;

4. Treatment of offenders;

5. Effective services for victims and child witnesses of domestic violence;

6. Safety planning for victims; and

7. Criminal sanctions for domestic violence and legal remedies for victims.

(c) Four (4) years of full-time postbachelors degree work experience totaling at least 8000 hours that shall include general clinical experience or direct case experience related to domestic violence;

(d) [Being a party to] A written agreement to receive [the] supervision, which shall include:

1. Case discussion;

2. Review of reading assignments;

3. Skill building; and

4. Review of an audio or video recording of assessment and treatment performed by the associate provider; [required by Section 5(2) of this administrative regulation]; and

(e) Written recommendations for certification from two (2) victim advocates [as defined in KRS Chapter 42], at least one (1) of whom works in an agency separate from the applicant.

(2) The qualifications of an autonomous provider shall be:

(a) At least a master's [An advanced] degree from an accredited university or college [in a mental health discipline that is regulated by licensure or certification under the statutes of the Commonwealth of Kentucky];

(b) Possession of a certificate or license to practice under the laws of the Commonwealth of Kentucky in one (1) of the following disciplines:

1. Psychology in accordance with KRS Chapter 319;

2. Social work in accordance with KRS 335.080 or 335.100;

3. Medicine in accordance with KRS Chapter 311 if board eligible in psychiatry and neurology;

4. Psychiatric nursing in accordance with KRS 202A.011(12)(d);

5. Marriage and family therapy in accordance with KRS 335.300 to 335.399;

6. Professional counseling in accordance with KRS 335.500 to 335.599; or

7. Art therapy in accordance with KRS 309.130 to 309.1399. [; and]

(c) 150 hours of clinical experience providing domestic violence services under the direct supervision of a professional who is licensed or certified in accordance with [one (1) of the licensed or certified professionals specified in] paragraph (b) of this subsection of which eighty (80) percent of the time shall have been with offenders and twenty (20) percent with victims; [and]

(d) Completion of the training specified in subsection (1)(b) of this section;

(e) A written recommendation for certification from the professional that provided the supervision required by paragraph (c) of this subsection; and

(f) Written recommendations for certification from two (2) victim advocates [as defined in KRS Chapter 42], at least one (1) of

whom works in an agency separate from the applicant.

Section 5. Scope of Practice and Supervision Requirements. (1) An associate provider may, under the supervision of an autonomous provider, an associate provider:

(a) Screen, assess, plan and provide treatment [services under the supervision of an autonomous provider to offenders and clients of a program];

(b) Consult with a court, prosecutor, law enforcement official [the courts, prosecutors, law enforcement, other agencies,] mental health provider [providers] and others regarding the assessment and treatment of a client [or treatment needs of clients]; or

(c) Contact a victim of a client [Have contact with the victims of offenders who are clients of the program] in accordance with Section 7 of this administrative regulation.

(2) An associate provider who provides a service in accordance with [that provides the services specified in] subsection (1) of this section shall participate in at least one (1) hour per week of face-to-face supervision pursuant to the written agreement established in Section 4(1)(d) of this administrative regulation, including:

(a) Case discussion;

(b) Review of reading assignments;

(c) Skill building; and

(d) Review of audio or video tapes of actual clinical practice provided by the associate provider;

(3) A certified autonomous provider may provide screening, assessment, treatment and consultation [services] independently and supervise an associate provider [providers] if he has:

(a) Participated in a three (3) hour training program in clinical supervision that has been approved by a professional [mental health] licensing board specified in Section 4(2)(b) of this administrative regulation, or by the cabinet; and

(b) Been in the practice of domestic violence offender treatment for a period of at least one (1) year.

(4) A certified autonomous provider who supervises an associate provider [associate providers] shall:

(a) Provide the supervision required by subsection (2) of this section; and

(b) [Directly observe the supervisees' practice in person or through video or audio tapes of the supervisees' clinical practice; and

(c)] Assure that an associate provider performs a service in accordance with subsection (1) of this section and Sections 4, 6, 7, 8, 9, 10, and 11 [supervisees provide services in accordance with the provisions] of this administrative regulation.

(5) A supervisor shall not supervise more than six (6) associate providers concurrently.

Section 6. General Service Standards. (1) A court-ordered service shall be based on the following premises [Services provided to offenders referred by a court for domestic violence services shall be based on the following premises regarding violent conduct, the roles of offenders, and the effects of domestic violence on victims]:

(a) Domestic violence constitutes a health hazard to a victim [victims] who may experience short and long-term effects from the abuse. Immediate and long-term cessation of the domestic violence is the priority purpose for treatment.

(b) Domestic violence in any form [its various forms] is criminal behavior.

(c) Treatment [Services] shall be designed to enhance and promote the safety of a victim including a spouse, a live-in partner, a child or other family member [identified and identifiable victims including spouses, live-in partners, children and other family members].

(d) A victim is [Victims are] not responsible for the violent behavior of an offender and a provider [offenders and services] shall not promote the concept of mutual responsibility in explaining domestic violence.

(e) The offender is accountable for domestic violence, which is the product of individual choice and learned traits. The offender's psychopathology, substance abuse, other disorder [disorders], or cultural background is not an explanatory cause of domestic violence [are not explanatory causes of the offenses] but can influence

the offender's behavior.

(f) Cooperation and service coordination between the criminal justice system [law enforcement, the courts, probation and parole agencies], the Department for Community-Based Services, a victim's advocate, a spouse abuse center, and a [centers and other victim advocates,] chemical dependency or mental health professional may be required [professionals, and other mental health professionals is necessary] to assure effective treatment and the safety of a victim or a potential victim [victims and potential victims].

(2) A provider shall give each offender and [or] client a written document that explains the complaint process of the program.

(3) A provider shall treat an offender and a client [offenders] with respect and dignity at all times and shall not discriminate against an offender based on race, ethnicity, gender, age, religion or disability.

(4) An offender and a client shall have the right to complain verbally or in writing to the provider, the referring court, or the cabinet. A provider shall not take adverse action against an offender or a client who [that] makes a complaint.

(5) A provider shall adjust fees based upon the client's ability to pay. If a court has made a finding that a client is indigent prior to making a referral for treatment, a court may order a client to perform community service in lieu of payment of a fee.

(6) A provider shall comply with a federal and a state law [federal laws] pertaining to research with a human subject [subjects] and shall protect the privacy of a client who gives consent to participate in [any] provider sponsored research [activities].

(6) A (7) The provider shall provide a clean and comfortable facility which shall be accessible to the handicapped and meet the applicable fire safety code [facilities for client services that meet applicable fire safety codes and handicapped accessibility codes].

(7) (8) The provider shall comply with all federal and state law [laws] applicable to the confidentiality of a client record [records].

Section 7. Contact with a Victim [Victims]. (1) If an offender consents to a victim's participation in his assessment or treatment [services] a provider shall:

(a) Attempt to contact the victim within five (5) days of the offender's admission to the program;

(b) Offer the victim an opportunity to participate in the assessment or treatment of the offender by disclosing information about the offender and the circumstances of the domestic violence;

(c) Interview a victim who consents [victims who consent] to participate in an assessment or treatment of the offender;

(d) Provide the victim information about the program, its possible benefits, the limitations of treatment [services], and the degree to which the offender's participation may or may not result in increased safety for the victim; and

(e) Educate the victim about community support [services], which is [are] available to assist in meeting a need for current or future protection [needs] of the victim or family member [and family members].

(2) A provider [Providers] shall document an effort to contact a victim [their efforts to contact victims].

(3) An interview of a victim [interviews] shall not be conducted in the presence of the offender.

(4) A provider shall not attempt to coerce or persuade the victim to participate if a victim does not consent to participate, withdraws consent to participate, or refuses to participate or provide information about an offender or a client [a provider shall not attempt to coerce or persuade the victim to participate].

Section 8. Screening Procedures. (1) A provider shall establish:

(a) Eligibility criteria for participation in a program which:

1. Shall include a requirement that an offender sign an authorization to disclose information to a victim if he is not admitted to or is discharged from the program;

2. May include an offender's admission of responsibility for a domestic violence related offense; and

3. May not be based solely on an offender's inability to pay for services;

(b) A procedure to accept a referral [Procedures for acceptance of referrals of offenders] from a court following a charge [charges] of a domestic violence related offense or as a condition of a protective

order issued pursuant to KRS Chapter 403; and

(c) A procedure [Procedures] for notifying the referring court if so ordered, if an offender is ineligible for the program [determined not to be eligible for a provider's services]. The notice shall:

1. Specify the reason an [reasons the] offender is determined to be ineligible in accordance with the eligibility criteria established by the provider pursuant to paragraph (a) of this subsection;

2. Specify each referral [The referrals] made in accordance with Section 9(3) and (4) [(2)] of this administrative regulation, if any; [and]

3. Be made no later than five (5) days after the determination is made; and

4. Make a recommendation for a service which is more likely to benefit the offender in the provider's professional opinion.

(2) A provider shall provide an offender [shall be provided] with the following information prior to the offender receiving an assessment or treatment [services]:

(a) The requirement for confidentiality of information and the limit [limitations] on confidentiality including:

1. The duty of a provider to warn and protect an intended victim of a threat to harm as required by KRS 202A.400 [duties of providers to warn and protect intended victims of threats to harm under the provisions of KRS 202A.400];

2. The requirement [requirements] to report abuse in accordance with KRS 209.030 and [or] 620.030; and

3. The fact that information disclosed to the provider or to another client [other clients] may be used against him in a [them in] civil or criminal proceeding [proceedings];

(b) The requirement of a court order, a statute, or an administrative regulation which imposes a duty upon the provider to disclose information or make a report pertaining to the offender or client to:

1. A court;

2. A prosecutor;

3. A probation or parole officer;

4. A law enforcement agent;

5. The victim; or

6. Another person or organization that may be involved in the assessment of the offender or treatment of the client; [The relationship of the provider to the referring court including duties to make reports pertaining to the client to the courts, prosecutors, probation and parole officers, law enforcement, the victim, and any other named party or agency that might be involved in the coordination of the client's services];

(c) The information provided in accordance with paragraph (b) of this subsection, which shall include:

1. The name of the person if known, or the title of the agency or organization to whom information shall be disclosed or to whom a report shall be made;

2. The basis of the duty to disclose information or to make a report; and

3. The condition under which information shall be disclosed or a report made.

(d) The offender's responsibility to pay for an assessment or treatment in accordance with KRS 403.7505(3)(g), the cost to the offender, and the provider's policy regarding failure to pay [for paying fees for services and policies regarding noncompliance with payment of fees];

(e) [(d)] The expected length of treatment [participation] and the procedure [terms] for voluntary and involuntary discharge from the program [including grounds for involuntary discharge];

(f) [(e)] An explanation of the provisions in [requirements of] Section 6 of this administrative regulation;

(g) [(f)] A description of the assessment and treatment [services] that will be provided to the offender including the requirements for participation; and

(h) [(g)] Notification that, at the discretion of the court, failure to comply with the program [requirements] may result in a citation for contempt of court; and

(i) [(h)] An explanation of the procedures for a victim to participate in the program in accordance with Sections 7 and 10(13) of this administrative regulation [procedures for victim participation in screening, admission and treatment services].

Section 9. Assessment and Admission Procedures. (1) An assessment of the offender's treatment needs shall be performed if an offender is determined to be eligible for domestic violence treatment based on the eligibility criteria established in accordance with Section 8(1)(a) of this administrative regulation. [If an offender is determined to be eligible for domestic violence services offered by the provider in accordance with Section 8(1) of this administrative regulation an assessment of the offender's treatment needs shall be performed.] The assessment shall include consideration of the offender's:

(a) History of abusive behavior including degree of harm and type of violent conduct;

(b) Criminal history;

(c) Risk of harm to self and others;

(d) Medical history;

(e) History of mental or emotional disorder;

(f) Current mental status;

(g) Presence of a [Co-occurring disorders such as] mental illness, or a substance abuse disorder [or dependence];

(h) Ability to benefit from the approved program curriculum [content and methods]; and

(i) Relevant public records, including a police report and other information about the offender [police reports and other available collateral sources of information on the offender].

(2) [Pursuant to the provisions of Section 7 of this administrative regulation] A provider may interview a victim in accordance with the provisions of Section 7 of this administrative regulation and consider information provided by a victim in the assessment if an offender consents for a victim to participate in an assessment.

(3) A provider shall refer an offender to a service which, in his professional opinion, is more likely to benefit the offender, if he determines, based on the assessment required by subsection (1) of this section, that the offender is unlikely to benefit from the program [If, upon assessment, a provider determines that the offender is unlikely to benefit from services due to a high risk of lethality or other factors a provider shall refer the offender to services more likely to benefit the offender].

(4) A provider may require an offender to participate in mental health or substance abuse treatment as a prerequisite for admission to or completion of the domestic violence program. [refer an offender to mental health or substance abuse treatment services as a prerequisite for admission or completion of a domestic violence offender treatment program.]

(5) A provider shall notify the referring court if the offender shall be admitted to a program or not, and a referral made, if any:

(a) No later than five (5) days after making the assessment required by subsection (1) of this section; and

(b) [a determination based on an assessment if the offender shall be admitted to a program or not, and referrals made, if any: The court shall be notified] Within twenty-four (24) hours if the provider chooses not to admit an offender to a program based on the offender's lethality or another factor [other issues] related to the safety of the victim.

(6) An offender shall be admitted to a program if:

(a) He is eligible in accordance with the eligibility criteria established in accordance with Section 8(1)(a) of this administrative regulation;

(b) He signs [for domestic violence treatment upon providing] a written consent for treatment;

(c) He signs a written agreement to comply with the program requirements; and

(d) He signs a [agreeing in writing to comply with all program rules and guidelines and providing] written authorization for a provider to disclose [release] information to a party [the parties] identified in Section 8(2)(b) of this administrative regulation. [subsections (4) and (5) of this section.]

(7) A provider shall notify a victim if:

(a) An offender who has signed an authorization to disclose information to a victim in accordance with subsection (6)(d) of this section is not admitted to the program pursuant to the assessment performed in accordance with subsection (1) of this section; and

(b) The signed authorization identified in paragraph (a) of this subsection specifies that the provider may disclose if the offender is

or is not admitted to the program. [If the provider chooses not to admit an offender to the program due to the offender's inability to benefit from the program or the offender's reasonably foreseeable risk of harm to the victim or others, the provider shall notify the victim of the decision not to admit the offender. Providers shall document their efforts to contact victims.]

Section 10. Treatment Procedures. (1) A provider shall make individual and group treatment services available to a client [clients] at least once weekly.

(2) A group treatment service provided to a female shall not include a male participant [program shall offer separate groups for male and female offenders].

(3) A group treatment service shall include:

(a) No less than two (2) and no more than twelve (12) clients unless two (2) providers are present; and

(b) No more than fifteen (15) clients if two (2) providers are present. [Group services may involve a minimum of two (2) clients but shall not exceed twelve (12) clients at any time unless two (2) providers facilitate each group session. If two (2) providers facilitate a group, it may include a total of fifteen (15) participants.]

(4) A group treatment session shall require a client to attend for a duration of ninety (90) minutes or longer [services shall be scheduled in at least one and one-half (1 1/2) hour sessions].

(5) A client shall participate in the program for at least [for a minimum period of] twenty (20) weeks.

(6) A person who is not referred by a court [Noncourt-referred clients] may participate in a group [services] with a court-referred client [clients].

(7) A [The] provider shall establish and follow a core curriculum for group participation that includes: [covers the essential features of domestic violence including:]

(a) The definition of domestic violence [in its various forms], including physical, sexual, psychological and environmental abuse;

(b) Exploration of the effect [effects] of domestic violence on a victim and a witness to domestic violence [victims and witnesses to the domestic violence];

(c) Discussion of civil and criminal law related to domestic violence;

(d) Description of the cycle of violence and other dynamics of domestic violence;

(e) Instruction of a client about his [clients about their] responsibility for [the] domestic violence [behavior];

(f) Confrontation of the client's use of power, control and coercion in an intimate relationship [intimate relationships];

(g) Confrontation of a rigid sex role stereotype [stereotypes];

(h) Challenge of the client's pattern of aggression in a conflict with a victim [aggressive reactions in conflict situations with victims];

(i) Exploration of the actual and perceived role of alcohol and drug abuse in the domestic violence;

(j) Exploration of a constructive and nonviolent method [methods] for expressing anger and resolving conflict in a relationship [relationships], including the use of time-out ["time-outs"], stress management, anger reduction and constructive verbalization as a method [verbal methods] for resolving conflict;

(k) Development of a relapse prevention technique [techniques]; and

(l) Promotion of aftercare [services] where indicated.

(8) If group treatment is provided to a female client [services for female offenders are offered], the core curriculum required by subsection (7) of this section shall be implemented in a manner that relates to female gender specific issues [amended to relate specifically to female offenders].

(9) A provider may amend a core curriculum with the prior written approval of the department. The provider shall submit to the sexual and domestic violence program administrator:

(a) A written request for approval of an amended core curriculum including an explanation of the purpose for the amendment; and

(b) The proposed amended core curriculum.

(10) The department shall notify the provider in writing if an amended curriculum submitted in accordance with subsection (9) of this section is approved or disapproved no later than thirty (30) days after the date that the department receives the request for approval.

The notice shall:

(a) Specify the effective date of the approval if applicable;

(b) Specify the requirements of subsection (7) or (8) of this section that the amended curriculum does not meet if it is disapproved; and

(c) Inform the provider of his right to dispute a disapproval in accordance with Sections 13 and 14 of this administrative regulation.

(11) A provider shall perform his duty to warn a victim in accordance with KRS 202A.400 if an intended victim has [execute all duties to warn and protect under the provisions of KRS 202A.400 if intended victims have] been threatened by a client of the program.

(12) A provider shall notify a victim if:

(a) A client who has signed an authorization to disclose information to a victim in accordance with Section 9(6)(d) of this administrative regulation is discharged from the program; and

(b) The signed authorization specifies that the provider may disclose if the client is or is not discharged from the program.

[(10) A provider shall notify the victim of the discharge or termination of a client from a program. If the discharge or termination is based on the offender's lethality or other issues related to the safety of the victim, the provider shall immediately make every reasonable attempt to contact the victim. Providers shall document their efforts to contact victims.]

(13) A provider shall document an effort to notify a victim.

(14) [(14)] A provider shall not offer or provide marital counseling or family therapy to a client or a victim unless [any client or victim until] the client:

(a) Has successfully completed the program; and

(b) Has not demonstrated violence in his relationship with a victim [the relationship] for at least six (6) months after [since the] successful completion of the program.

(15) [(12)] A provider shall not offer or provide marital counseling or family therapy to a [any] client or victim if:

(a) There is a foreseeable risk of harm to the victim which may result [resulting] from the marital services; or

(b) He [if a provider] believes that the victim may agree [be agreeing] to participate because of coercion or threat from the client [offender].

Section 11. Involuntary Discharge from a Program. (1) A provider shall involuntarily discharge a client who [dismiss from the program an offender that]:

(a) Fails to attend more than ten (10) percent of scheduled appointments;

(b) Fails to actively participate in services or complete assignments;

(c) [Fails to assume financial responsibility for services as ordered by the court;

(d)] Violates a [any] provision of a court order; or

(d) Perpetrates [(e) Reports a reoccurrence of] domestic violence or other behavior which [behaviors that], in the provider's professional judgment, is [are] associated with increased risk of harm to the victim, after admission to the program.

(2) A provider may involuntarily discharge a client who fails to pay for assessment or treatment:

(a) As agreed; or

(b) As ordered by a court.

(3) A provider shall notify the referring court in writing upon his determination that a client shall be discharged in accordance with subsection (1) or (2) of this section. The notice shall:

(a) Specify the reason for the discharge;

(b) Be made no later than five (5) days after the determination; or

(c) No later than twenty-four (24) hours if the determination is made in accordance with subsection (1)(d) of this section. [no later than five (5) days after a decision to discharge an offender from the program and shall specify the reason for the discharge. If the provider involuntarily discharges an offender due to the offender's inability to benefit from the program or due to a reasonably foreseeable risk of harm to the victim, the provider shall notify the court within twenty-four (24) hours after the decision to discharge the offender.]

(4) [(3)] A provider shall immediately notify the victim in accordance with Section 10(12) of this administrative regulation if the discharge is pursuant to subsection (1)(d) of this section.

(5) The provider shall document an effort to notify a victim. [of the involuntary discharge of a client. A provider shall document an effort to contact a victim.]

Section 12. Monitoring. (1) The cabinet shall:

(a) Investigate a signed written complaint which alleges that a provider has failed to adhere to a requirement of this administrative regulation; and

(b) Refer an allegation that includes information which indicates that a provider has violated a requirement of a professional licensure or certification board to a board which has jurisdiction to regulate the provider.

(2) The cabinet may, on its own initiative:

(a) Interview an offender who consents to an interview;

(b) Interview a victim who consents to an interview;

(c) Review a record of an assessment or treatment service provided to an offender and a client;

(d) Observe the performance of an assessment or treatment service unless an offender objects to being observed; and

(e) Interview an individual, including a judge, who interacts with a provider in relation to the program or who has knowledge about the provider's practice.

(3) The cabinet may determine that a program does or does not meet a requirement of this administrative regulation based on the information obtained in accordance with subsection (1) or (2) of this section. [Investigate signed written complaints received about providers if the complaints allege a failure to comply with the provisions of this administrative regulation; and

(b) Refer any complaints against providers which relate to unethical practice or practice which may be outside the practice of a provider to the appropriate licensure or certification board;

(2) The cabinet may evaluate a certified provider's adherence to the provisions of this administrative regulation on its own initiative;

(3) Monitoring by cabinet staff may include the following activities:

(a) Interviewing offenders or victims if they consent to be interviewed;

(b) Reviewing service records maintained by providers on offenders that have been referred by a court in accordance with this administrative regulation;

(c) Direct observation of services provided to offenders unless an offender objects to being observed;

(d) Interviewing judicial, correctional, or police officials, victim advocates or other agency personnel that interact regularly with a certified provider in relation to offender services;]

(4) If the cabinet determines that a certified provider has failed to meet a requirement [comply with provisions] of this administrative regulation the cabinet shall notify the provider in writing of its determination and may:

(a) Require the provider to submit a corrective action plan;

(b) Impose a corrective action plan upon the provider; or

(c) Revoke a provider's certification in accordance with Section 3(3) or (4) of this administrative regulation.

(5) The cabinet shall notify an autonomous provider who [that] supervises an associate provider if it determines that the [an] associate provider has failed to meet a requirement specified in Section 5(4)(b) [adhere to the provisions] of this administrative regulation and the autonomous provider shall be responsible to assure that corrective action is taken.

Section 13. Informal Resolution of Disputes Prior to Hearing. (1)

An applicant or provider may request an informal resolution meeting if he wishes to appeal:

(a) The denial of an application;

(b) The revocation of certification;

(c) A determination made by the department in accordance with Section 12(3) of this administrative regulation; or

(d) A determination, which is specified in a notice, provided in accordance with Section 10(10)(b) of this administrative regulation.

(2) A request made in accordance with subsection (1) of this

section shall:

(a) Identify the disputed determination or action;

(b) State the basis on which the department's action is believed to be unwarranted or erroneous;

(c) Summarize the appellant's position;

(d) Provide the name, address, and telephone number, of each individual who is expected to attend an informal resolution meeting on the appellant's behalf if a meeting is held; and

(e) Include documentary evidence that the appellant wishes the department to consider in relation to the dispute.

(3) A request submitted in accordance with subsection (1) of this section, shall not be considered a request for an administrative hearing.

(4) The department shall, within thirty (30) days of receipt of a request made in accordance with subsection (1) of this section, notify the appellant in writing of the following:

(a) The time and place at which the informal resolution meeting shall be held;

(b) The name and title of the department's representative who is expected to attend the meeting;

(c) The provisions of subsections (3) and (9) of this section; and

(d) The provisions of Section 14(1) of this administrative regulation.

(5) The informal resolution meeting shall be scheduled for a date no later than sixty (60) days after receipt of a request submitted in accordance with subsection (1) of this section.

(6) Prior to an informal resolution meeting, the department may rescind the disputed action or determination based on the contents of the request made in accordance with subsection (1) of this section.

(7) The department may cancel an informal resolution meeting if:

(a) It rescinds the disputed action or determination in accordance with subsection (6) of this section;

(b) It informs the appellant of the decision to rescind the disputed determination or action at least three (3) business days prior to the scheduled date of the meeting; and

(c) The appellant agrees to cancellation of the meeting.

(8) The department shall document the actions taken in accordance with subsection (7) of this section.

(9) If an informal resolution meeting is held, the department shall notify the appellant in writing no later than thirty (30) days after the meeting if it shall rescind, modify or enforce the disputed action, and the facts upon which its decision is based.

(10) An appellant may request an administrative hearing in accordance with Section 14(1) of this administrative regulation at any time during the informal resolution process established in this section.

Section 14. Administrative Hearing Process. (1) A written request for an administrative hearing shall be received by the department no later than thirty (30) calendar days after the date of notice of a determination or a resolution decision whichever is later. The request shall be sent to the Sexual and Domestic Violence Program Administrator, Department for Mental Health and Mental Retardation Services, Cabinet for Health Services, 100 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40621.

(2) An administrative hearing shall be conducted by a hearing officer who is knowledgeable of cabinet policy. The secretary of the cabinet, in accordance with KRS 13B.030, shall appoint the hearing officer.

(3) The department shall forward to the hearing officer an administrative record, which shall include:

(a) A copy of the notice of action taken;

(b) A copy of the request for an informal resolution meeting;

(c) The documentation required by Section 13(8) of this administrative regulation if applicable;

(d) A copy of the notice provided by the department in accordance with Section 13(9) of this administrative regulation; and

(e) Documentary evidence provided by the appellant to the department.

(4) The hearing officer shall provide notice of a hearing in accordance with KRS 13B.050.

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(5) A prehearing conference may be held at least seven (7) calendar days in advance of the hearing date. Conduct of the prehearing conference shall comply with KRS 13B.070. Each party shall disclose the evidence that the party intends to introduce at the hearing, including documentary evidence and identification of witnesses.

(6) A request for a hearing shall be considered to be abandoned, if the appellant does not appear at the hearing on the scheduled date and the hearing has not been previously rescheduled. A hearing request shall be withdrawn only under the following circumstances:

(a) The hearing officer receives a written statement from the appellant stating that the request is withdrawn; or

(b) The appellant makes a statement on the record at the hearing that he is withdrawing his request for the hearing.

(7) Documentary evidence to be used at the hearing shall be made available in accordance with KRS 13B.090.

(8) The hearing officer shall conduct the hearing in accordance with KRS 13B.080.

(9) The hearing officer shall consider the facts as presented at the hearing, including supplementary material, if requested, and prepare a recommendation in accordance with KRS 13B.110.

(10) The hearing officer's recommendation shall be submitted to the secretary of the cabinet and to the department. The department and the appellant shall have fifteen (15) calendar days within which to file with the secretary exceptions to the hearing officer's recommendation in accordance with KRS 13B.110(4). The secretary shall make the final decision of the cabinet pursuant to KRS 13B.120, supported by findings of fact and conclusions of law.

(11) In the correspondence transmitting the decision, clear reference shall be made to the availability of judicial review pursuant to KRS 13B.140 and 13B.150.

(12) The department shall maintain an official record of the hearing in compliance with KRS 13B.130.

Section 15 Incorporation by Reference. (1) The Application for Certification as a Qualified for Court Ordered Domestic Violence Offender Treatment, April 1, 2000 is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Department for Mental Health and Mental Retardation Services 100 Fair Oaks Lane, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARGARET PENNINGTON, Commissioner
JOHN WALKER, Attorney
JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: April 5, 2000
FILED WITH LRC: April 14, 2000 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Mike Littlefield

(1) Type and number of entities affected: This regulation will affect the 59 judicial districts in the state.

(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. No indirect costs or savings are anticipated.

(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: None

(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: No new revenue is needed. Monitoring of compliance with the regulation will be carried out by existing personnel.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: N/A. No public hearing has been held yet.

(a) Geographical area in which administrative regulation will be implemented: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Treatment of perpetrators of domestic violence requires specialized expertise. The only method the Department is authorized to use for establishing standards is the promulgation of administrative regulations in accordance with KRS Chapter 13A.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This emergency regulation will improve the cabinet's ability to protect the safety of victims of domestic violence by assuring the competence of providers who treat domestic violence perpetrators and by clarifying the requirements for certification of providers and the procedures for denial and revocation of certification in accordance with KRS Chapter 13A.

(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 will compromise the cabinet's ability to enforce the requirements for certification and will allow providers to provide services which are ineffective, thereby increasing the risk of harm to victims of domestic violence.

(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? Tiering is applied to standards for certification. This administrative regulation establishes qualification requirements for associate providers who may provide assessment and treatment under supervision, and autonomous providers who may provide assessment and treatment without supervision, and supervise associate providers. Qualification requirements are tiered.

STATEMENT OF EMERGENCY
908 KAR 3:050E

This emergency administrative regulation is being promulgated in accordance with KRS 13A.190(1)(a)1. This administrative regulation is necessary in order to ensure that the facilities operated by the Cabinet for Health Services maintain the financial ability to care for the needs of the mentally ill and mentally retarded. Revised per diem rates have been calculated based upon the actual cost of patient care during the 1999 fiscal year. If this administrative regulation is not implemented immediately, facilities operated by the cabinet will suffer financial losses, which could reduce the level of patient care. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS 13A.190(1)(b)2. A notice of Intent for the ordinary administrative regulation is being filed concurrently with this emergency administrative regulation.

PAUL E. PATTON, Governor
JIMMY D. HELTON, Secretary

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CABINET FOR HEALTH SERVICES Department for Mental Health/Mental Retardation Services Division of Administration

JOHN WALKER, Attorney
JIMMY D. HELTON, Secretary
APPROVED BY AGENCY: March 7, 2000
FILED WITH LRC: March 23, 2000 at 4 p.m.

908 KAR 3:050E. Per diem rate pursuant to KRS 210.710 to 210.760.

RELATES TO: KRS 210.700 to 210.760

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 210.720(2), 210.750, 210.760

EFFECTIVE: March 23, 2000

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.720(2) requires the Secretary of the Cabinet for Health Services to establish the patient cost per day for board, maintenance and treatment for a [each] facility operated by the cabinet at frequent intervals which shall be the uniform charge for persons receiving such [those] services. KRS 194A.050 [210.750] authorizes the secretary to promulgate administrative regulations. This administrative regulation establishes the patient cost per day for board, maintenance and treatment at facilities operated by the cabinet.

Section 1. Facilities with an All-inclusive Per Diem Rate. The following facility shall charge an all-inclusive per diem rate for room and board and ancillary services. Physician services shall be charged on an individual basis as utilized:

| Facility | Rate |
|------------------------|-------|
| Eastern State Hospital | \$450 |

Section 2. Facilities with a Routine Service Charge Per Diem with Separate Charges for Treatment Services on an Individual Basis.

(1) The following facilities shall charge a per diem rate for room and board and a separate charge for each treatment service listed in subsection (2) of this section that is provided:

| Facility | Rate |
|--------------------------------|-----------|
| Central State Hospital | \$400 |
| Central State - ICF/MR | 395 [385] |
| Western State Hospital | 375 |
| Western State Nursing Facility | 155 |
| Outwood ICF/MR | 200 |
| Oakwood | 200 |
| Hazelwood Center | 270 [260] |
| Glasgow State Nursing Facility | 190 [160] |
| Del Maria | 410 [375] |
| Meadows | 390 [325] |
| Windsong | 350 [310] |
| Volta House | 125 |

(2) A separate charge shall be imposed if the following treatment services are provided at a Department for Mental Health and Mental Retardation Services facility listed in subsection (1) of this section:

- Physicians services;
- EEG;
- EKG;
- Occupational therapy;
- Physical therapy;
- X-ray;
- Laboratory;
- Speech therapy;
- Hearing therapy;
- Psychology;
- Pharmacy;
- Respiratory therapy;
- Anesthesia; and
- Electroshock therapy.

Section 3. Board, Maintenance and Treatment Charges. Cost per day for board, maintenance and treatment charges shall be fixed using the last available audited third party cost report increased for inflation. Current rates shall be posted at each facility.

MARGARET PENNINGTON, Commissioner

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Mike Littlefield

(1) Type and number of entities affected: 13 state treatment 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: 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: Each facility is required to change charge rates in its computer billing system.

(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: Agency 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method is permitted by the statute.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will result in the continuing availability of the current level of services.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement this administration will result in a reduction of third party revenue.

(c) If detrimental effect would result, explain detrimental effect: A reduction in third party revenue would result in a reduction of services.

(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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions? There is no conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not appropriate because all facility rates are set based on actual cost.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee

KENTUCKY BOARD OF DENTISTRY
(As Amended at ARRS, April 12, 2000)

201 KAR 8:006. Advertising of dental services.

RELATES TO: KRS 313.400, 313.410, *Parker v. Kentucky Bd. Of Dentistry*, 818 F.2d 504 (6th Cir. 1987) [313.220]

STATUTORY AUTHORITY: KRS 313.400, 313.410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.220(1) authorizes the board to promulgate administrative regulations regulating the practice of dentistry. This administrative regulation prohibits dentists licensed in Kentucky from using false, misleading, or deceptive advertising and [- This administrative regulation] sets forth the manner in which dentists license in Kentucky may advertise as specialists or as being especially qualified in any area of dentistry.

Section 1. (1) A dentist who does not hold a specialist's license, pursuant to KRS 313.400(1), may hold themselves out to the public as being especially qualified in any branch of dentistry if one (1) of the following phrases is used in the announcement:

- (a) "General dentist";
- (b) "General dentistry";
- (c) "Family dentist"; or
- (d) "Family dentistry".

(2) Announcements may be made by:

- (a) Press;
- (b) Sign;
- (c) Card;
- (d) Letterhead;
- (e) Printed matter; or
- (f) Other means of public advertisement.

(3) The phrases listed in subsection (1) of this section shall be in print of a size equal to or greater than any other portion of the advertisement. [A dentist who:

(1) Does not hold a specialist's license in a branch of dentistry recognized in KRS 313.400(1); and

(2) Holds himself out to the public as being especially qualified in any branch of dentistry by announcing through the press, sign, card, letterhead or printed matter, or any means of public advertising using the name of the specialty or by using other phrases customarily used by qualified specialists that would imply to the public that he is so qualified, shall not be deemed to have violated KRS 313.410 if the press, sign, card, letterhead, or printed matter, or any public advertising contains the name of the general dentist immediately followed by the phrase "general dentist" or "general dentistry" or "family dentist" or "family dentistry" in print of a size equal to or greater than any other portion of the advertisement.]

Section 2. A dentist who does not hold a specialist's license, pursuant to KRS 313.400(1), may, through means of radio, television, or other means of public address, hold themselves out to the public as being especially qualified in any branch of dentistry if:

(1) They are identified by name at the beginning or end of the announcement; and

(2) One (1) of the following phrases is used at the beginning and end of the announcement:

- (a) "General dentist";
- (b) "General dentistry";
- (c) "Family dentist"; or
- (d) "Family dentistry". [A dentist who:

(1) Does not hold a specialist's license in a branch of dentistry recognized in KRS 313.400(1); and

(2) Holds himself out to the public as being especially qualified

in any branch of dentistry by announcing through radio, television, or any other means of public address using the name of the specialty or by using other phrases customarily used by qualified specialists that would imply to the public that he is so qualified, shall not be deemed to have violated KRS 313.410 if the radio, television, or any other means of public address commences and ends with the name of the general dentist immediately followed by the phrase "general dentist" or "general dentistry" or "family dentist" or "family dentistry".]

Section 3. A [No] licensed dentist shall not:

(1) Hold himself out to the public as being a especially qualified in any area of dentistry not recognized in KRS 313.400(1) as a specialty; or

(2) Use the words "certified", "board certified", or "diplomate", unless the advertisement states that Kentucky law does not recognize the advertised field as an area of dentistry suitable for licensing as a dental specialty. [This administrative regulation sets forth the manner in which dentists licensed in Kentucky may advertise dental services:

Section 1. No licensed dentist shall hold himself out to the public as being especially qualified in any branch of dentistry by announcing through the press, sign, card, letterhead or printed matter, or any means of public advertising using such terms as "specialist," or inserting the name of the specialty, or using other phrases customarily used by qualified specialists that would imply to the public that he is so qualified, without first securing a specialist's license for same as provided in KRS Chapter 313 and these administrative regulations.

Section 2. A general dentist who advertises using words or phrases customarily used by a specialist shall not be deemed to have violated Section 1 of this administrative regulation if such advertising contains the name of the general dentist immediately followed by the phrase "general dentist" or "general dentistry" or "family dentist" or "family dentistry" in print of a size equal to or greater than any other portion of the advertisement.

Section 3. A general dentist who advertises through radio, television, or any other means of public address and who uses words or phrases customarily used by a specialist shall not be deemed to have violated Section 1 of this administrative regulation if such advertising commences and ends with the name of the general dentist immediately followed by the phrase "general dentist" or "general dentistry" or "family dentist" or "family dentistry".]

Section 4. Any advertisement for a dental [group] practice where more than one (1) dentist regularly provides dental services to the public shall contain the name of each dentist therein immediately followed by the phrase "general dentist" or "general dentistry" or "family dentist" or "family dentistry" or by the name of the specialty recognized by KRS 313.400(1) in which any member of the [group] practice is licensed.

Section 5. Use of Names in Dental Practice. (1) A dentist shall not use the name of another dentist who:

(a) Did not have an ownership interest in the dental practice; and

(b) Is no longer associated with the dental practice;

(2) If a dentist purchases the practice or business of another dentist, he shall not use the name of the seller for a period longer than one (1) year after the purchase.

(3) A dentist shall not use the name of another dentist who formerly practiced as a partner, after the termination of that partner's ownership interest in the dental practice. [A dentist shall not use the name of any other dentist who:

(1) Had been previously associated with a dental practice by

~~ownership interest; or~~

~~(2) Had been previously associated with a dental practice by practicing in that dental practice after one (1) year following the end of said dentist's ownership interest; or~~

~~(3) The end of said dentist's practicing in that dental practice, whichever is later.]~~

Section 6. A dentist shall not advertising services in any manner which is false, misleading, or deceptive.

Section 7. Any dentist licensed in Kentucky may submit proposed advertising to the Kentucky Board of Dentistry for [prior] written approval prior to using the advertising.

GARY MUNSIE, Executive Director
MARK BRENGELMAN, Assistant Attorney General
APPROVED BY AGENCY: February 8, 2000
FILED WITH LRC: February 9, 2000 at 2 p.m.

**KENTUCKY BOARD OF DENTISTRY
(As Amended at ARRS, April 12, 2000)**

201 KAR 8:130. X-rays by dental assistants.

RELATES TO: KRS 313.220

STATUTORY AUTHORITY: KRS 313.220

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 313.220(1) and (4) authorizes the board to promulgate administrative regulations regarding the practice of dentistry. This administrative regulation requires all dental auxiliary personnel who take x-rays to complete a course in dental radiography safety, a practicum course in x-ray technique, and be supervised by a dentist when taking x-rays.**

Section 1. A dentist shall not delegate the taking of x-rays to dental auxiliary personnel unless written documentation is maintained that the auxiliary personnel has previously completed:

(1) A six (6) hour course in dental radiography safety approved by the board; and

(2) A minimum of:

(a) Four (4) hours of instruction in dental radiography technique while under the employment and supervision of the dentist in the office; or

(b) A four (4) hour course in radiography technique approved by the board.

Section 2. A dentist shall continuously supervise dental auxiliary personnel while taking radiographs. ~~[This administrative regulation requires that all dental auxiliary personnel [assistants] taking x-rays must first complete a course in dental radiography safety as prescribed by the board, a practicum course in x-ray technique taught either by the employing dentist or course approval by the board, and be supervised by the dentist when taking x-rays:~~

Section 1. No dentist may delegate taking x-rays to dental auxiliary personnel unless the dentist:

(1) Maintains written documentation that the dental auxiliary personnel taking the x-ray has previously completed a minimum of a six (6) hour course in dental radiography safety approved by the board;

(2) Maintains written documentation that the dental auxiliary personnel taking the x-ray has previously completed a minimum of four (4) hours of instruction by the dentist in dental radiography technique while under the employment and supervision of the dentist in the office where the dentist practices dentistry; or maintains written documentation that the dental auxiliary personnel has completed a minimum of a four (4) hour course in radiography technique approved by the board; and

(3) Continuously supervises and inspects such dental auxiliary personnel while taking radiographs.]

Section 3. ~~[2.] Licensed and registered dental hygienists shall be [are] deemed to meet the requirements of this administrative regulation. [Dental assistants shall only take x-rays under supervision of a licensed dentist. The supervising dentist shall be held responsible to the board that such assistants shall become qualified for this function by first completing a prescribed course in dental radiography approved by the board.]~~

GARY MUNSIE, Executive Director
MARK BRENGELMAN, Assistant Attorney General
APPROVED BY AGENCY: February 8, 2000
FILED WITH LRC: February 9, 2000 at 2 p.m.

**KENTUCKY BOARD OF DENTISTRY
(As Amended at ARRS, April 12, 2000)**

201 KAR 8:220. Clinical examination.

RELATES TO: KRS 313.050, 313.060, 313.100

STATUTORY AUTHORITY: KRS 313.220(1)

NECESSITY, FUNCTION, AND CONFORMITY: **This administrative regulation sets forth requirements of the clinical examination to obtain a license to practice dentistry, grade to be attained and permits the Board to dismiss a candidate for gross malperformance or misconduct.**

Section 1. Definitions. (1) "Gross malperformance" means gross injury to the hard or soft tissue or gross failure to observe accepted dental principles as determined by the examiners.

(2) "Misconduct" means:

(a) Cheating on the examination **by giving assistance to, or receiving assistance from, another individual;**

(b) **Disorderly conduct, as defined in KRS 525.060; or**

(c) **Harassment, as defined in KRS 525.070.** [which consists of either giving help on the examination to or receiving help on the examination from another individual; or disorderly conduct or harassment as defined by KRS 525.060 and 525.070.]

Section 2. (1) Clinical examination. The requirements of the clinical examination shall be within the discretion of the board as to subject matter but these requirements shall be agreed upon one (1) year prior to the examination, and shall remain within the subjects contained in the regular curriculum of accredited dental schools.

(2) Successful completion of the clinical examination adopted for use by the Kentucky Board of Dentistry **shall require** [requires] that a candidate successfully pass one (1) of the following examinations:

(a) The examination of the Southern Regional Testing Agency, Inc.;

(b) The examination of the Western Regional Testing Association; [or]

(c) **The examination of the Northeast Regional Board; or**

(d) **The examination of the Central Regional Testing Association.** ~~[The CORE examination offered through the Northeast Regional Board and the Central Regional Testing Association.]~~

(3) Regional testing agencies **shall not** [may] conduct examinations in the Commonwealth of Kentucky **without obtaining** [only with] the authorization of the Kentucky Board of Dentistry.

(4) A candidate **shall** [may] be dismissed during the course of the examination for gross malperformance or misconduct.

(5) A candidate who is dismissed from the examination for malperformance or misconduct shall have the right to appeal his dismissal to the Kentucky Board of Dentistry **by filing a petition in writing stating his grounds for appeal before the next regularly scheduled meeting of the Kentucky Board of Dentistry.** Thereafter, a majority vote by the board members present shall determine the issue.

(6) A candidate may appeal a decision of the board in accordance with KRS 13B.140.

GARY MUNSIE, Executive Director
MARK BRENGELMAN, Assistant Attorney General
APPROVED BY AGENCY: February 8, 2000
FILED WITH LRC: February 9, 2000 at 2 p.m.

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KENTUCKY BOARD OF DENTISTRY
(As Amended at ARRS, April 12, 2000)

201 KAR 8:277. Written and clinical application grade requirements.

RELATES TO: KRS 313.270

STATUTORY AUTHORITY: KRS 313.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.220(1) and (4) authorizes the board to promulgate administrative regulations regarding the practice of dentistry. This administrative regulation establishes [Sets forth] requirements and qualifications for the written examination prior to the candidates' participation in the clinical examination.

Section 1. The provisions of 201 KAR 8:180 and 201 KAR 8:185 shall be applicable to dental hygienists for the purpose of establishing the time of examination, and the grading of the examinations of all applicants for a license to practice dental hygiene, and other provisions of these rules as pertain to the procedures and conducting of examinations.

Section 2. (1) Written Examination. To successfully complete the written portion of the Kentucky Board of Dentistry's licensure examination, all applicants shall achieve a grade of at least seventy-five (75) percent on each section of the examination conducted by the Council of National Board of Dental Examiners.

(2) This requirement shall be satisfied prior to admission to the clinical portion of the Kentucky Board of Dentistry's licensure examination.

Section 3. Clinical Examination. (1) To successfully complete the clinical portion of the Kentucky Board of Dentistry's clinical examination, all applicants shall [must] achieve an overall average grade of at least seventy-five (75) percent on any of the following examinations:

- (a) The examination of the Southern Regional Testing Agency, Inc.;
- (b) The examination of the Western Regional Testing Association;

[or]

- (c) The examination of the Northeast Regional Board; or

- (d) The examination of the Central Regional Testing Association.

~~[The CORE examination offered through the Northeast Regional Board and the Central Regional Testing Association.]~~

(2) Regional testing agencies shall not [may] conduct examinations within the Commonwealth of Kentucky without obtaining [only with] the authorization of the Kentucky Board of Dentistry.

GARY MUNSIE, Executive Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: February 8, 2000

FILED WITH LRC: February 9, 2000 at 2 p.m.

KENTUCKY BOARD OF DENTISTRY
(As Amended at ARRS, April 12, 2000)

201 KAR 8:390. General anesthesia, deep sedation, and conscious sedation by dentists.

RELATES TO: KRS 313.220(4)

STATUTORY AUTHORITY: KRS 313.220(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.220(4) authorizes the Board of Dentistry to regulate the practice of dentistry in Kentucky. This administrative regulation is necessary to establish the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist.

Section 1. Definitions. (1) "Conscious sedation" means a minimally depressed level of consciousness:

- (a) Produced by a pharmacological or nonpharmacological method; and
- (b) In which the patient is able to independently and continuously:
 - 1. Maintain an airway; and

- 2. Respond appropriately to physical stimulation and verbal command.

- (2) "Deep sedation" means a controlled state of depressed consciousness produced by a pharmacological or nonpharmacological method accompanied by:

- (a) Partial loss of protective reflexes; and
 - (b) Inability to respond purposefully to verbal command.

- (3) "General anesthesia" means a controlled state of unconsciousness:

- (a) Produced by a pharmacological or nonpharmacological method; and

- (b) Accompanied by:

- 1. Partial or complete loss of protective reflexes; and
 - 2. Inability to respond purposefully to physical stimulation or verbal command.

- (4) "Parenteral" means a sedation technique in which a drug is:

- (a) Absorbed directly from the site of its administration into the cardiovascular system, effectively bypassing the gastrointestinal (GI) tract; and

- (b) Normally administered by injection with a syringe.

Section 2. Authorization. (1) A dentist shall not use general anesthesia on an outpatient basis for a dental patient unless he:

- (a) Applies for and receives an annual permit of authorization by the Kentucky Board of Dentistry; and

- (b) Provides proof of completion of a course of study in advanced cardiac life support (ACLS) sponsored and approved by the American Heart Association within twenty-four (24) months previous to the filing of the application.

- (2) To receive authorization, a dentist shall:

- (a) Complete one (1) year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program as described in Part 2 of the ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry; or

- (b) Be:

- 1. A Diplomate of the American Board of Oral Surgery; or

- 2. Eligible for examination by the American Board of Oral Surgery.

- (3) A permit shall not be needed if a dentist works in conjunction with a trained physician anesthesiologist licensed to practice medicine in Kentucky or a Certified Registered Nurse Anesthetist licensed in Kentucky, if that person:

- (a) Is a member of the anesthesiology staff of an accredited hospital; and

- (b) Remains on the premises of the dental facility or hospital until the patient regains consciousness.

- (4) A facility where general anesthesia, deep sedation, or conscious sedation with a parenteral drug is employed shall meet board standards to insure that the protocol procedures, facilities, drugs, equipment, and personnel utilization are acceptable for safe and appropriate use. Board standards are established in:

- (a) General Anesthesia and Deep Sedation Inspection List; and

- (b) Conscious Sedation with Parenteral Drugs Inspection List.

- (5) A dentist administering general anesthesia or deep sedation shall:

- (a) Have completed a course in advanced cardiac life support (ACLS) through a course of study sponsored and approved by the American Heart Association within the past twenty-four (24) months; or

- (b) Obtain six (6) hours of continuing education every two (2) years relating to anesthesia safety and emergency procedures.

- (6) Staff assisting with the administration of general anesthesia or deep sedation shall have current certification in basic life support (BLS) through a course of study sponsored and approved by the:

- (a) American Heart Association; or

- (b) American Red Cross.

- (7) Staff assisting with the administration of conscious sedation with a parenteral drug shall have current certification in basic life support (BLS) through a course of study sponsored and approved by the:

- (a) American Heart Association; or

- (b) American Red Cross.

- (8) Continuing education required by this administrative regulation shall:

- (a) Not be used to satisfy other continuing education requirements; and:
- (b) Be in addition to other continuing education requirements of 201 KAR Chapter 8.

Section 3. Conscious Sedation with Parenteral Drugs. (1) To qualify to use a parenteral drug in conscious sedation, a dentist shall produce evidence that he:

- (a) Qualifies under Section 2(2) of this administrative regulation for general anesthesia; or
- (b) Has completed an approved course in conscious sedation with parenteral drugs in a program approved by the Kentucky Board of Dentistry, which includes:

- 1. Physical diagnosis and patient evaluation; and
- 2. Passing a course of didactic and clinical training:
 - a. Consistent with Part 2 of the ADA Guidelines for teaching the Comprehensive Control of Pain and Anxiety in Dentistry; and
 - b. With documentation of having treated a minimum of twenty-five (25) cases; or

(c) Is a diplomat, board eligible, eligible for board examination in a specialty, or a graduate of an accredited general practice residency, if he can provide proof of training in the use of conscious sedation with a parenteral drug. The training shall be consistent with Part 2 of the ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry.

(2) A dentist and staff administering or assisting with the administration of conscious sedation with a parenteral drug shall have current certification in Basic Life Support (BLS) through a course of study sponsored and approved by the:

- (a) American Heart Association; or
 - (b) American Red Cross.
- (3) A dentist administering conscious sedation with a parenteral drug shall:

- (a) Have completed a course in Advanced Cardiac Life Support (ACLS) within the past twenty-four (24) months; or
- (b) Obtain six (6) hours of continuing education every two (2) years specifically relating to anesthesia safety and emergency procedures.

(4) Continuing education required by this administrative regulation shall:

- (a) Not be used to satisfy other continuing education requirements; and:
- (b) Be in addition to other continuing education requirements of 201 KAR Chapter 8.

Section 4. Inspection. (1) If general anesthesia, deep sedation, or conscious sedation with a parenteral drug is employed, the board may conduct an unannounced on-site inspection of a facility to determine that the protocol, procedures, facility, drug, equipment, and personnel utilization meet board standards as established in the:

- (a) General Anesthesia and Deep Sedation Inspection List; and
 - (b) Conscious Sedation with Parenteral Drugs Inspection List.
- (2) The inspection team shall:
- (a) Be determined by the board; and
 - (b) Reflect the principles of peer review.

Section 5. Report of Injury or Mortality. A licensee engaged in the practice of dentistry in the state of Kentucky shall submit a complete report within thirty (30) days to the board of a mortality or other incident occurring in an outpatient facility of the dentist which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during or as a direct result of a dental procedure or related use of general anesthesia, deep sedation, or conscious sedation with a parenteral drug.

Section 6. Personnel. The following shall be present during the administration of general anesthesia or deep sedation:

- (1) The operating dentist to direct the general anesthesia or deep sedation;
- (2) A person to observe and monitor the patient; and
- (3) An assistant to the operating dentist.

Section 7. Permit Renewal and Annual Fee. (1) A permit shall be

renewed annually unless the dentist:

- (a) Fails to obtain the:
 - 1. Proper certification in ACLS or BLS; or
 - 2. Required hours of continuing education; and
- (b) Does not utilize general anesthesia, deep sedation, or conscious sedation with a parenteral drug in a facility that meets board standards.

(2) The annual fee of fifty (50) [fifteen-(15)] dollars shall be paid for renewal of a permit at the time of license renewal.

Section 8. Nitrous Oxide. (1) To qualify to use nitrous oxide in conscious sedation, a dentist shall complete a university based course approved by the Kentucky Board of Dentistry.

(2) Equipment used in the administration of nitrous oxide shall have functional safe guard measures that:

- (a) Limit the minimum delivered oxygen concentration to thirty (30) percent; and
 - (b) Provide for scavenger elimination of nitrous oxide gas.
- (3) The dentist shall:
- (a) Insure that a patient receiving nitrous oxide is constantly monitored; and
 - (b) Be present in the office while nitrous oxide is being used.
- (4) A dentist shall not need a permit to administer nitrous oxide.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for General Anesthesia and/or conscious sedation permit", (March, 1999 [~~July, 1995~~] Edition), Kentucky Board of Dentistry;

(b) "ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, Part 2", (November 11, 1999 [~~1987~~] Edition), American Dental Association;

(c) "General Anesthesia and Deep Sedation Inspection List", (1997 Edition), Kentucky Board of Dentistry; and

(d) "Conscious Sedation with Parenteral Drugs Inspection List", (1997 Edition), Kentucky Board of Dentistry.

(2) This material may be inspected, copied, or obtained at Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

GARY MUNSIE, Executive Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: February 8, 2000

FILED WITH LRC: February 9, 2000 at 2 p.m.

KENTUCKY BOARD OF NURSING (As Amended at ARRS, April 12, 2000)

201 KAR 20:370. Applications for licensure and registration.

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

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 for licensure and a licensee 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, endorsement, 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 form 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";

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(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";

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified copy of the court record of each misdemeanor or felony conviction and a letter of explanation that addresses each conviction;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) ~~Not have a 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 by the board in an administrative regulation;

(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;

(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; and

(11) Notify the board upon establishment of a new mailing address.

Section 2. A completed renewal application form and all information needed to determine that an applicant meets the requirements for renewal of 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. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office; and

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office.

Section 4. (1) Pursuant to KRS 314.091(1)(b), a conviction of a felony or misdemeanor shall be considered as bearing directly on the qualifications or ability of an applicant to practice nursing if the conviction involved:

(a) Dishonesty;

(b) Substance abuse;

(c) Sexual offenses;

(d) Breach of trust;

(e) Danger to the public safety;

(f) Physical harm; or

(g) Endangerment, 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) (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.

(2) A felony or misdemeanor conviction shall be reviewed to determine whether:

(a) The application shall be processed with no further action;

(b) The application shall be processed only after the applicant has entered into an agreed order with the board with terms and conditions as agreed to by the parties; or

(c) A notice to deny licensure shall be issued. A notice to deny licensure shall inform the applicant that he may request a hearing. The request shall be in writing.

(3) A complaint received by the board alleging a violation of KRS 314.091(1) shall be handled in the same manner as set forth in subsection 2 of this section.

Section 5. Incorporation by Reference. (1) The following material is [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 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,

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Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to [through] 4:30 p.m.

JUNE BELL, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: December 10, 1999

FILED WITH LRC: February 8, 2000 at 2 p.m.

**BOARD OF PHYSICAL THERAPY
(As Amended at ARRS, April 12, 2000)**

201 KAR 22:135. Fees.

RELATES TO: KRS 327.040(12), 327.050(2), (8), 327.075(1), 327.080(1)

STATUTORY AUTHORITY: KRS 327.040(12), 327.050(2), (8), 327.075(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(12) authorizes the board to establish reasonable fees for the certification, renewal and endorsement of physical therapists' assistants. KRS 327.050(2) requires the board to establish a nonrefundable application fee not to exceed \$250 for licensure as a physical therapist and requires an applicant to pay an examination fee. KRS 327.050(8) requires the board to establish a biennial renewal fee not to exceed \$100 for a license. KRS 327.075(1) requires the board to establish a reinstatement fee not to exceed twenty-five (25) dollars for a lapsed license or certificate. This administrative regulation establishes the fees required to apply for physical therapist (PT) licensure or physical therapist's assistant (PTA) certification, for examination, reinstatement, renewal or reexamination.

Section 1. Payment of Fees. (1) Except as provided in subsection (2) of this section, an application fee shall be:

- (a) Made payable as required by KRS 327.080(1); and
- (b) Paid by:
 1. Cashier's check;
 2. Certified check; or
 3. Money order.
- (2) A renewal application fee shall be paid:
 - (a) As required by subsection (1) of this section; or
 - (b) By personal check.

Section 2. Fees. The fee for:

- (1) Physical therapist licensure and for physical therapist's assistant certification application shall be \$170;
- (2) Reinstatement application shall be \$125;
- (3) Renewal application shall be \$100;
- (4) Physical therapist examination shall be \$285 [245]; [and]
- (5) Physical therapist's assistant examination shall be \$285 [230];
- (6) Physical therapist reexamination shall be \$295 [255]; and
- (7) Physical therapist's assistant reexamination shall be \$295 [240].

TOM A. PENNINGTON, Chairman

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: January 13, 2000

FILED WITH LRC: February 15, 2000 at 10 a.m.

**KENTUCKY BOARD OF PODIATRY
(As Amended at ARRS, April 12, 2000)**

201 KAR 25:031. Continuing education.

RELATES TO: KRS 311.450(2)

STATUTORY AUTHORITY: KRS 311.410(4), 311.450(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.450(2) requires the board to promulgate an administrative regulation to establish continuing education requirements for a podiatrist. This administrative regulation establishes those continuing education requirements.

Section 1. (1) Each podiatrist licensed by the board shall annually complete fifteen (15) hours of continuing education relating to the practice of podiatry.

(2) The fifteen (15) hours required pursuant to subsection (1) of this section shall be taken from those programs approved or sponsored by the board.

(3) Two (2) of the fifteen (15) hours required pursuant to subsection (1) of this section shall include a course on acquired immunodeficiency syndrome, in accordance with Section 3(4) of this administrative regulation.

(4) A continuing education hour shall equal fifty (50) clock minutes of participating in continuing education instruction or presentation that meets the requirements of this administrative regulation for continuing education courses.

Section 2. (1) A continuing education hour shall be earned by attendance at:

- (a) A professional seminar;
 - (b) An accredited school of podiatry continuing education program; or
 - (c) Another program approved by the board.
- (2) Prior approval shall be secured from the board for certification of a continuing education program, other than a program required by Section 3(4) [(5)] of this administrative regulation.

(3) A sponsor shall submit a written letter of application to the board to request approval of a continuing education program. The letter shall indicate that the program has been approved, or is under consideration for approval, by the American Podiatric Medical Association's Council on Podiatric Medical Education.

Section 3. (1) A licensee shall keep a valid record of each continuing education program completed. The record shall:

- (a) Include a receipt or certification received for the program;
- (b) Be kept for three (3) years; and
- (c) Be presented upon request by the board for audit. If selected by the board for audit, the licensee shall submit the requested proof of continuing education to the board within fifteen (15) days of the request.

(2) The period during which continuing education courses shall be completed shall be from July 1 of each year until June 30 of the following year.

(3) Each licensee shall submit, with the annual renewal, a list of all accredited continuing education programs completed by the licensee during the previous license year. Failure to do so shall result in suspension or revocation of the license.

(4) Each licensed podiatrist requesting renewal of his license shall submit to the Kentucky Board of Podiatry that he has successfully completed two (2) hours of continuing education which:

- (a) Complies with the requirements of KRS 214.610(1); and
- (b) Is approved by the Kentucky Cabinet for Health Services pursuant to 902 KAR 2:160 as pertaining to the transmission, control, treatment, and prevention of the human immunodeficiency syndrome and acquired immunodeficiency syndrome.

Section 4. (1) On application, the board shall consider granting a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

- (a) Medical disability of the licensee;
 - (b) Illness of the licensee or an immediate family member;
 - (c) Death or serious injury of an immediate family member.
- (2) A written request for waiver or extension of time involving medical disability or illness shall be:
- (a) Submitted by the person holding the license; and
 - (b) Accompanied by a document verifying the illness or disability signed by the:

1. Licensee's personal physician; or
 2. Immediate family member's personal physician.
- (3) A waiver or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee shall reapply for the waiver or ex-

tension.

Section 5. Inactive Status. (1) A licensee [Licensees] may apply for inactive status by submitting a written letter to the board.

(2) A licensee [Licensees] granted inactive status shall be relieved of the [their] obligation to meet the requirements for continuing education established [set forth] in this administrative regulation.

(3) A person on inactive status shall be [is] permitted to use the term "podiatrist" but the licensee shall not be permitted to engage in the practice of podiatry. Any person who practices podiatry while on inactive status shall be deemed to be practicing podiatry without a license in violation of KRS 311.400.

(4) A licensee [Podiatrists] seeking relicensure from inactive to active status shall [must] fulfill the following requirements:

(a) If the licensee [podiatrist] has been inactive for no more than five (5) consecutive years, he shall [must]:

1. Provide written notice to the board requesting reactivation to active status by filing a License Renewal Application [renewal form] and requesting in writing that the license be made active;

2. Have completed fifteen (15) hours of board approved continuing education requirements within a period of six (6) months preceding the request for active status, including the course on acquired immunodeficiency syndrome required by Section 1(3) of this administrative regulation; and

3. Pay:

a. The renewal fee of \$150 established in 201 KAR 25:021, Section 1; and

b. A reactivation fee of \$100.

(b) If a licensee [podiatrist] has been in inactive status for more than five (5) consecutive years, he shall [must]:

1. File a completed Application for Examination in accordance with 201 KAR 25:011 and pay the required fee;

2. Be approved by the board to take the examination; and

3. Successfully complete a satisfactory examination before the board as provided by 201 KAR 25:012.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Application for Examination, 4/00; and

(b) License Renewal Application, 4/00.

(2) This material may be inspected, copied, or obtained at the Kentucky Board of Podiatry, 906B S. 12th Street, Murray, Kentucky 42071-2947, Monday through Friday, 8 a.m. to 4:30 p.m.

JOSEPH LEONE, Chairman

JAMES J. GRAWE, Assistant Attorney General

APPROVED BY AGENCY: December 11, 1999

FILED WITH LRC: February 14, 2000 at 2 p.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement
(As Amended at ARRS, April 12, 2000)**

405 KAR 20:060. Steep slopes.

RELATES TO: KRS 350.090, 350.093, 350.100, 350.405, 350.410, 350.445, 350.450, 350.465, 30 CFR Parts 730-733, 735, 785.15, 785.16, 816.107, 817.107, 917, 30 USC 1253, 1255, 1257, 1258, 1265(d)

STATUTORY AUTHORITY: KRS [Chapter 19A,] 350.028, 350.093, 350.100, 350.151(1), 350.445, 350.450, 350.465, 30 CFR parts 730-733, 735, 785.15, 785.16, 816.107, 817.107, 917, 30 USC 1253, 1255, 1257, 1258, 1265(d), 1265(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) and (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes special performance standards and limited variance proce-

~~dures for operations conducted on steep slopes. [KRS Chapter 350 in pertinent part requires the cabinet to promulgate environmental protection performance standards, specifically including such standards for operations conducted on steep slopes. This administrative regulation sets forth special performance standards and limited variance procedures for operations conducted on steep slopes.]~~

Section 1. Applicability. (1) [Any] Surface coal mining and reclamation operations on steep slopes shall meet the requirements of this administrative regulation.

(2) The standards of this administrative regulation shall [do] not apply to:

(a) Mining conducted on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area; or

(b) [to] Operations covered by 405 KAR 20:050.

Section 2. Performance Standards. (1) Surface coal mining and reclamation operations conducted on steep slopes [subject to this administrative regulation] shall comply with requirements of this section and all other requirements of 405 KAR Chapters 7 through 24, except to the extent a variance is approved under Section 3 of this administrative regulation.

(2)(a) The permittee shall prevent the following materials from being placed or allowed to remain on the downslope:

1. Spoil;

2. Waste materials, including waste mineral matter;

3. Debris, including that from clearing and grubbing of haul road construction; and

4. Abandoned or disabled equipment.

(b) Nothing in this subsection shall prohibit the placement of material in road embankments located on the downslope, if [so long as] the material used and embankment design comply with the requirements for roads and other transportation facilities in 405 KAR Chapters 16 and 18 and the material is moved and placed in a controlled manner.

(3) The highwall shall be completely covered with compacted spoil and the disturbed area graded to comply with the provisions of 405 KAR Chapters 16 and 18, with respect to backfilling and grading, including, [but not limited to,] the return of the site to the approximate original contour. The permittee shall [must] demonstrate to the cabinet, using standard geotechnical analyses, that the minimum static factor of safety for the stability of all portions of the reclaimed land is at least one and three-tenths (1.3).

(4) Land above the highwall shall not be disturbed unless the cabinet finds that the disturbance facilitates compliance with the requirements of 405 KAR Chapters 16 through 20, provided, however, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate [said] compliance.

(5) Material in excess of that required by the grading and backfilling provisions of subsection (3) of this section shall be disposed of in accordance with the requirements of 405 KAR 16:130 or 405 KAR 18:130.

(6) Woody materials shall not be buried in the backfilled area unless the cabinet determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area as required in subsection 3 of this section. Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the cabinet.

(7) Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the cabinet as stable and not subject to erosion.

Section 3. Limited variances for nonmountaintop removal, steep slope sites. Surface coal mining operations may be conducted under a variance from the requirement to restore disturbed areas to their approximate original contour, if the following requirements are satisfied:

(1) The cabinet grants the variance and the operation is conducted and reclaimed in accordance with the plan approved under 405 KAR 8:050, Section 6.

(2)(a) After reclamation, the lands to be affected by the variance within the permit area shall be suitable for an industrial, commercial, residential, or public postmining land use (including recreational facili-

ties);

(b) After consultation with the appropriate land use planning agencies, if any, the potential use is shown to constitute an equal or better economic or public use;

(c) The alternative postmining land use requirements of 405 KAR 16:210, Section 4 are met; and

(d) Federal, state, and local government agencies with an interest in the proposed land use have an adequate period in which to review and comment on the proposed use.

(3) The applicant has demonstrated in the permit application that the watershed of lands within the proposed permit and adjacent areas will be improved by the operations when compared with the condition of the watershed before mining or with its condition if the approximate original contour were to be restored. The watershed shall [will] be deemed improved only if:

(a) The amount of total suspended solids or other pollutants discharged to ground or surface water from the permit area will be reduced, so as to improve the public or private uses or the ecology of ground or surface [such] water, or flood hazards from precipitation events or thaws within the watershed containing the permit area will be reduced by decreasing the peak flow discharge, or there will be an increase in stream flow during times of the year when streams within the watershed are normally at low flow or dry and the [such-an] increase in stream flow is determined by the cabinet to be beneficial to public or private users or to the ecology of the [such] streams; and

(b) The total volume of flow from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or groundwater; and

(c) The cabinet has considered any agency comments under subsection (2) of this section regarding watershed improvement.

(4) The proposed use is designed and certified by a qualified, registered, professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(5) The surface landowner of the permit area has knowingly requested, in writing in the permit application, that a variance be granted, so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public postmining land use (including recreational facilities).

(6) All applicable requirements of KRS Chapter 350 and 450 KAR Chapters 7 through 24, other than the requirement to restore disturbed areas to their approximate original contour, are met.

(7) The highwall is completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3, using standard geotechnical analysis.

(8) Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24 is placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with 405 KAR 16:130.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: January 26, 2000

FILED WITH LRC: January 27, 2000 at 9 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(As Amended at ARRS, April 12, 2000)

601 KAR 1:018. Special overweight or overdimensional permits.

RELATES TO: KRS 189.270, 189.2715, 189.2717, 23 CFR 658.17, 49 CFR 393.11

STATUTORY AUTHORITY: KRS 174.080[~~189.274~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.270 allows for certain overweight or overdimensional permits to be issued by the Transportation Cabinet. KRS 189.270 authorizes the

Secretary of the Kentucky Transportation Cabinet to issue permits for the movement of motor vehicles with loads exceeding legal weights or dimensions. This administrative regulation establishes the procedures and requirements necessary in the interest of highway safety for the issuance of an overweight or overdimensional permit. It further exempts certain farm implement movements from the requirements of obtaining an overdimensional permit, but retains the associated safety requirements for the movement of these overdimensional vehicles.

Section 1. Definitions. (1) "Boat" means a vehicle used for movement on the water and the trailer on which it is placed for transporting the vehicle on the highway.

(2) "Daylight hours" means [shall-mean] the period of a day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset. However, it shall not include any time when heavy rain, snow, sleet, fog, or other atmospheric conditions [such-as-heavy rain, snow, sleet-or-fog] render visibility lower than is ordinarily the case during that period of the day.

(3) "Divisible load" means [shall-mean] a load which when reasonably divided, dismantled, disassembled or rearranged would no longer be overweight or overdimensional.

(4) "Dual-wheel axle" means one (1) axle with two (2) wheels on each side of the axle.

(5) "Farm implement or equipment" means machinery, equipment or vehicle used exclusively in a farm or agriculture operation including those items which are not required by KRS Chapter 186 to be registered.

(6) "Fully-controlled access highway" means a highway which gives preference to through traffic and which shall have access only at selected public roads or streets and which shall have no highway grade crossing or intersection.

(7) "National holiday" means:

(a) New Year's Day;

(b) Memorial Day (as observed on the last Monday in May);

(c) Independence Day;

(d) Labor Day;

(e) Thanksgiving Day; and

(f) Christmas Day.

(8) "Nondivisible load" means a load or vehicle, which if separated into smaller loads would:

(a) Compromise the intended use of the vehicle, making it unable to perform the function for which it was intended;

(b) Destroy the value of the load or vehicle, making it unusable for its intended purpose; or

(c) Require more than eight (8) work hours to dismantle using appropriate equipment.

(9) "Overdimensional" means the motor vehicle exceeds the dimension limits set forth in 603 KAR 5:070.

(10) "Overweight" means the motor vehicle exceeds:

(a) The gross weight limit established for a highway segment in 603 KAR 5:300;

(b) The axle weight limit established in 603 KAR 5:066;

(c) The gross weight limits established by KRS 177.9771 for a motor vehicle transporting coal or coal by-products;

(d) The bridge weight limit established by 603 KAR 5:066; or

(e) The gross weight limit posted at a bridge or other structure.

(11) "Permit fee" means the fee set forth in KRS 189.270, 189.2715, or 189.2717 charged for the issuance of an overweight or overdimensional trip or annual permit. The fee covers the cost of processing the permit application, including:

(a) A qualification check of the applicant;

(b) A statutory compliance check; and

(c) An initial bridge and weight analysis.

(12) "Pole trailer" means a vehicle which is:

(a) Designed to be drawn by a motor vehicle and attached to the towing motor vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing motor vehicle; and

(b) [-It-is] Used for transporting long or irregularly shaped loads such as poles, pipes, or structural members which generally are capable of sustaining themselves as beams between the supporting connections.

(13) "Single-wheel axle" means a steering axle with one (1)

wheel on each side of the axle.

(14) "Toll road" means any project constructed under the provisions of KRS Chapter 175 or KRS 177.390 through 177.570 on which a toll is collected or was in the past collected by the Transportation Cabinet.

(15) "Utility equipment" means the specialized equipment, including earth-moving equipment, necessary for the installation or operation of utility poles or pipes, or transformers, regulators, or other utility electrical field equipment [~~such as transformers or regulators~~]. It shall not include any equipment necessary for the construction or operation of a power generation station.

Section 2. Permit Application. (1) An application (form TC 95-25, rev. 7/98) for an overweight or overdimensional annual and trip permit may be completed on forms provided by the Kentucky Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Carriers, 501 High Street, Frankfort, Kentucky 40622. The permit application shall contain the following:

- (a) A detailed description of the equipment or load to be moved;
- (b) A description and vehicle identification number of the power unit moving the equipment;
- (c) Registration weight and license plate number of the power unit;

(d) Equipment operator's name, telephone number and address;

(e) Routes requested for travel;

(f) Period of time: Single trip not to exceed ten (10) days; or annual permit shall be 365 days from date of issue.

(2) A single trip permit application or request shall specify the following:

- (a) The year and make of the towing vehicle;
- (b) The towing vehicle's license plate number;
- (c) The maximum weight for which the vehicle is registered;
- (d) The state of registration of the vehicle;
- (e) Name and address of the owner;
- (f) The dates of travel;
- (g) The serial number of the manufactured home or hull identification number of the boat; and
- (h) The specific routes of travel requested.

(3) If the towing vehicle for which a single trip permit is being applied is registered in a state other than Kentucky, the vehicle shall be either:

- (a) Apportioned registered to operate in Kentucky; or
- (b) In compliance with KRS 281.752.

(4) An annual permit application or request shall in writing specify the following information relating to the motor vehicle:

- (a) Year and make;
- (b) Vehicle identification number;
- (c) License plate number;
- (d) The maximum weight for which it is registered;
- (e) The state of apportioned registration, if not registered in Kentucky;

(f) Name and address of the motor carrier operating or the owner of the towing vehicle; and

(g) Whether the motor carrier operating the towing vehicle is a for-hire or private carrier.

(6) If the towing vehicle issued an annual permit is registered in a state other than Kentucky, the vehicle shall be apportioned registered to operate in Kentucky.

(7) The application for an annual permit shall contain a certification by the applicant that he is aware of the safety requirements in the movement of overweight/overdimensional load and shall at all times comply with them.

(8) Special permits to allow the movement of motor vehicles with gross weights or gross dimensions in excess of the weights and dimensions specified by statutes and administrative regulations shall be issued by the Department of Vehicle Regulation, Division of Motor Carriers when, in the discretion of the department, this movement is necessary to provide transportation for specified cargo in the interest of the health, welfare and economy of the people.

(9) Each trip or annual permit issued shall be limited to designated portions of the state primary road system and stated periods of time.

(10) A separate permit shall be required for each vehicle involved in a movement.

volved in a movement.

(11) A permit shall not be issued for a divisible load which when reasonably divided, dismantled, disassembled or rearranged would no longer be overweight or overdimensional except for as provide by KRS 189.2715 or 189.2717.

(12) An overweight permit shall not be issued to the following:

(a) A Kentucky licensed vehicle, for a gross weight exceeding that for which the truck is registered, unless registered for 80,000 pounds (36,287.36 kilograms);

(b) A tractor-trailer combination of less than five (5) axles;

(c) A vehicle not registered in Kentucky, which has not met one (1) of the following conditions:

1. Has been apportioned registered by another jurisdiction to operate in Kentucky at 80,000 pounds (36,287.36 kilograms); or

2. Has met the provisions of KRS 281.752;

(d) A vehicle whose axle weight would exceed the product of 700 pounds (317.51 kilograms) times the aggregate width in inches established from the manufacturer's stamped tire measurement for all tires on the axle; or

(e) A towing vehicle whose horsepower or braking capacity is not adequate to safely transport the overdimensional or overweight load.

(13) This administrative regulation shall not prohibit the permit issuing office from further restricting movements or denying a permit for any movement which may cause damage to property or which may be detrimental to public safety and convenience.

(14) An annual permit shall [will] not be issued if the vehicle is licensed with a limited or restricted registration [~~such~~] as identified in KRS 186.050(8) and (9) for Kentucky-based vehicles.

Section 3. Height. (1) All vehicles and load with a height in excess of thirteen and one-half (13.5) feet shall obtain a permit prior to movement.

(2) There is no set maximum height limit for the issuance of an overdimensional permit except as determined by underpasses and bridges.

Section 4. Weight. (1) Gross or axle overweight shall not be permitted:

(a) On combination units of less than five (5) axles;

(b) On a single unit except off-road equipment such as scraper, mobile cranes or other self-propelled units.

(2) Kentucky licensed vehicles shall not be permitted weights exceeding that for which licensed unless licensed for the maximum of 80,000 pounds.

(3) The weight on any single axle in any combination shall not exceed the product of 700 pounds times the aggregate width in inches established by the manufacturer's stamped tire measurement of all the tires on the axle, or the following axle or axle group weights, whichever is less:

(a) Single axle - 24,000 pounds;

(b) Tandem axle group if the combination vehicle has only five (5) axles total - 45,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tandem axle group);

(c) Tandem axle group if the combination vehicle has six (6) or more axles total - 48,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tandem axle group);

(d) Tridem axle group - 60,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tridem axle group);

(e) Five (5) axle combination units shall not exceed 96,000 pounds gross weight;

(f) Six (6) axle combination units shall not exceed 120,000 pounds gross weight.

(4) Since bridge capacity is the weight-controlling factor in most instances, these maximum weights shall not be permitted unless all bridges involved have sufficient capacity to accommodate the load.

Section 5. Responsibility of Permit Holder. (1) Any damage to the highway, signs, guardrail or other public or private property caused by the transportation of the specialized equipment shall be

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the responsibility of the permit holder. The permit holder shall either repair all damage incurred or pay for the repair.

(2) A permit holder shall not cut, trim, remove or relocate any tree, shrub, guardrail, highway sign or other object on the highway right-of-way without the written approval of the chief district engineer having jurisdiction over the property involved.

(3) The applicant shall be [is] responsible for providing accurate information and to review the permit prior to travel on Kentucky highways.

Section 6. Permit Availability. (1) The original of the annual permit shall be carried in the overweight or overdimensional vehicle at all times.

(2) It shall be presented, upon request, to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

(3) An unauthenticated photocopy of the annual permit shall not be valid.

(4) The original annual or facsimile copy of a single trip permit shall be carried in the overweight or overdimensional vehicle or equipment at all times. It shall be presented, upon request, to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

Section 7. Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen or destroyed annual permit or to transfer the permit to another towing vehicle may be obtained from the Division of Motor Carriers by a payment of ten (10) dollars. Only one (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year. Any additional transfer of the annual permit requested shall be subject to the fees set forth in KRS Chapter 189.270.

Section 8. Travel Restrictions. (1) A single trip permit shall be valid for a period not to exceed ten (10) days. A time extension shall only be granted if the permit holder proves extenuating circumstances. An annual permit shall be valid for 365 days from date of issuance.

(2) The department may further prohibit movements in congested areas within the peak traffic hours. The additional restrictions shall be noted on the permit when issued.

(3) If [When] a utility company is working in an emergency situation to restore utility service to an area otherwise experiencing an outage, the overdimensional restrictions of regulation shall not prohibit travel.

Section 9. Farm Implements. (1) A permit shall not be required to transport overdimensional farm implements, unless the movement occurs on an interstate highway, toll road, or fully controlled access highway in the following instances:

- (a) From one (1) farm to another;
- (b) From a farm to a repair shop or dealer; or
- (c) From a repair shop or dealer to a farm.

(2) The movement of overdimensional farm implements shall comply with the safety requirements set forth in this administrative regulation.

(3) The following movements of farm implements shall only be made under the authority of an overdimensional permit:

- (a) Manufacturer to dealer;
- (b) Dealer to manufacturer;
- (c) Dealer to dealer; or
- (d) Moves on an interstate highway, toll road, or fully-controlled access highway.

(4) On an interstate highway, toll road, or fully-controlled access highway a self-propelled farm implement shall not be:

- (a) Operated; or
- (b) Issued a permit for movement.

(5) If the farm equipment to be transported exceeds twelve (12) feet in width, the farm equipment dealer who holds the annual permit shall, prior to the proposed move, scout the entire route proposed to be used for the movement of the overdimensional farm equipment.

(6) If there is any doubt of the adequacy of the highway to safely accommodate the overdimensional farm equipment, the dealer shall:

(a) Select a different route; or

(b) Contact the appropriate highway district office for clearance to move the equipment over that specific route.

(7) If the highway district office does not issue clearance for the use of a particular route, that route shall not be used.

Section 10. Escort Vehicle, Safety and Flag Requirements. (1) Required escort vehicles shall accompany the overdimensional vehicle at a distance of 300 feet (91.44 meters) on open highways.

(2) This interval shall be shortened in cities or congested areas to protect other traffic.

(3) An escort vehicle's headlamps shall be lit at all times.

(4) On a two (2) lane highway, a vehicle and load with a width in excess of ten (10) feet, six (6) inches (three and two-tenths (3.2) meters) but twelve (12) feet (3.66 meters) or less shall have one (1) lead escort.

(5) On a two (2) lane highway, a vehicle and load with a width exceeding twelve (12) feet (3.66 meters) shall have one (1) lead escort and one (1) trail escort.

(6) On a two (2) lane highway, a vehicle and load traveling at speeds below the average driving speed of traffic on its route shall have one (1) trail escort.

(7) On a four (4) lane or wider highway, a vehicle and load shall have one (1) trail escort if:

(a) Its width exceeds twelve (12) feet (3.66 meters); or

(b) It does not maintain a speed of forty-five (45) miles per hour (72.42 kilometers per hour).

(8) On a two (2) lane highway, a vehicle and load with a length in excess of seventy-five (75) feet (22.86 meters) but not more than eighty-five (85) feet (25.91 meters) shall have one (1) lead escort. If the vehicle and load exceed eighty-five (85) feet (25.91 meters) on a two (2) lane highway, it shall have one (1) lead and one (1) trail escort.

(9) On a four (4) lane or wider highway, a vehicle and load with a length of 120 feet shall have one (1) trail escort. Over 120 feet shall have a front and rear escort.

(10) Red or orange fluorescent flags which are a minimum of eighteen (18) inches square (11,612.7 millimeters square) shall be displayed on each vehicle and load operating under the auspices of either an overlength or an overwidth permit.

(a) Vehicles operating overwidth shall display two (2) warning flags, one (1) on each side of the vehicle or load at its widest extremities.

(b) Vehicles operating overlength or with a rearend overhang shall display two (2) warning flags at the extreme rear of the vehicle or load. These flags shall be located to indicate maximum width of the rearend.

(11) All vehicles exceeding ten and one-half (10.5) feet three and two-tenths (3.2) meters in width or having front overhang shall display two (2) warning signs. The warning signs shall:

(a) State in black letters on a yellow background, "OVERSIZE LOAD";

(b) Not be less than seven (7) feet (2.13 meters) long and eighteen (18) inches (0.46 meters) high;

(c) Have a brush stroke of one and four-tenths (1.4) inches (35.56 millimeters); and

(d) Be fastened at the front of the power unit and the rearend of the towed unit or at the rear of the load.

(12) If the utility equipment, pole, or pipe being transported exceeds fifty-five (55) feet (16.76 meters) in length, a front escort vehicle shall accompany the vehicle required to be permitted when transporting utility equipment, poles, or pipe if the front overhang exceeds ten (10) feet (3.05 meters). An amber strobe or flashing light shall be placed on the power unit of the towing vehicle and shall be in use any time the power unit is in operation.

(13)(a) The lighting devices and reflectors set forth in 49 CFR Part 393.11 for pole trailers and projecting loads shall be required.

(b) Each lamp or light shall be used at all times the vehicle is on or beside a highway.

(c) A front overhang shall not be allowed on a combination vehicle.

(14) As a special provision of the permit, the Department of Vehicle Regulation may require additional escort vehicles, lighting or

warning flags.

(15) The provisions of this section shall ~~[do]~~ not apply if the vehicle or equipment is less than twelve (12) feet wide and the vehicle or equipment is used in part for off-road use, is not required to be registered or licensed, and is not transporting cargo.

Section 11. House or Building Permits. (1) Permits for movement of houses or other buildings shall be issued by the Department of Vehicle Regulation, Division of Motor Carriers.

(2) House moving permits shall not be issued unless the movement is done ~~[may only be issued for movement]~~ during off-peak hours when other traffic will be least affected. The mover shall be required to furnish all escorts and flagmen required in the interest of public safety.

(3) A permit shall not ~~[No permits shall]~~ be issued for movement of any buildings on either toll roads or interstate highways if the width of the building exceeds twelve (12) feet.

(4) The Division of Motor Carriers shall contact the appropriate Department of Highways' district office for specific routing restrictions or local highway conditions prior to the issuance of the permit. Specific restrictions shall be identified on the permit. Deviation from the restrictions shall void the permit

Section 12. Route Deviation. Prior approval shall be secured from the Division of Motor Carriers for any vehicle transporting a load under an annual or trip permit which deviates from the routes prescribed in the permit issued for the towing vehicle.

Section 13. Permit Required. Until a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers under the provisions of this administrative regulation and KRS 189.270:

(1) An overweight/overdimensional load of a width greater than eight and one-half (8 1/2) feet shall not be towed on any highway listed in 603 KAR 5:070, Section 5(1);

(2) An overweight/overdimensional load with a width greater than eight (8) feet shall not be towed on any state-maintained highway not listed in 603 KAR 5:070, Section 5(1) except as provided in KRS 189.2225(3); and

(3) A manufactured home with a combined length of manufactured home and towing vehicle greater than 120 feet shall not be towed upon any Kentucky highway. The manufactured home shall not exceed eighty-five (85) feet in length. ~~[The manufactured home itself shall not exceed eighty (80) feet long.]~~

Section 14. Annual Permits. (1) A permit shall not be issued for the movement of an overweight/overdimensional load in excess of sixteen (16) feet in width inclusive of the usual and ordinary overhang. Mirrors on the towing vehicle shall not be considered in making the determination of width.

(2) Prior to a movement of an overweight/overdimensional load under the provisions of an annual permit, the permit holder shall scout and evaluate the entire route proposed to be used for the movement of the overweight/overdimensional load. The evaluation shall include ~~[but not be limited to;]~~ the following:

- (a) Highway width;
- (b) Shoulder width and surface type;
- (c) Bridge width and posted weights;
- (d) Curves;
- (e) Turns to be negotiated;
- (f) Construction zones;
- (g) Obstructions;
- (h) Access control;
- (i) Traffic volume; and
- (j) Other routes available that might be safer even if not as convenient.

(3) The permit holder shall use the results of the evaluation to determine the safest route available to transport the overweight/overdimensional load. Also the permit holder shall ~~[must]~~ determine if there would be any place on the proposed route which would be too narrow, have curves or turns too sharp or have other obstacles which would prevent the route from safely accommodating the move. The route selected by the permit holder shall be the safest available.

est available.

(4) If there is any doubt about the adequacy of the highway to safely accommodate the overweight/overdimensional load, the permit holder shall either:

- (a) Select a different route; or
- (b) Contact the appropriate highway district office for clearance to move that overweight/overdimensional load over that specific route.

(5) If the highway district office does not issue clearance for the use of a route whose adequacy is in doubt, that route shall not be used.

(6) An annual permit shall not be issued or used for the movement if the height of the combination load and towing vehicle exceeds thirteen and one-half (13.5) feet.

(7) Acceptance and use of the annual permit is the permit holder's acceptance of the liability associated with the move.

(8) Moves of overweight/overdimensional loads more than twelve (12) feet wide shall be limited to highways of four (4) or more lanes and to the shortest and best two (2) lane route designated by the Department of Vehicle Regulation, Division of Motor Carriers to be used to the unit's ultimate destination. The department shall deny movements on any routes deemed unsuitable for move.

(9) The issuance cost of a single and annual trip permit shall be established by KRS 189.270.

Section 15. Traffic Control. (1) If an overweight/overdimensional load while crossing a bridge would encroach on any other lane of traffic:

- (a) All approaching traffic shall be stopped; and
- (b) All trailing traffic shall be prevented from attempting to pass the overweight/overdimensional load until the load has cleared the bridge and has moved sufficiently to the right to safely allow following traffic to pass.

(2) An overweight/overdimensional load shall slow the movement of other traffic as little as possible. If traffic backs up either behind or in front of the load being moved, the escort vehicles and load shall exit the highway wherever there is sufficient space to do so.

Section 16. Permit Validity. (1) Permits shall be valid during:

- (a) Daylight hours; and
- (b) From Monday through Saturday.

(2) Travel shall not be permitted from noon of the day proceeding a national holiday until daylight of the next permissible day.

(3) If the national holiday occurs on Saturday, ~~[Sunday or Monday]~~ the restricted period shall extend from noon of the preceding Friday to daylight of the following Monday ~~[Tuesday]~~.

(4) If the national holiday occurs on Sunday or Monday, the restricted period shall extend from noon of the preceding Friday to daylight of the following Tuesday.

(5) Permits used for the movement of overweight/overdimensional load more than fourteen (14) feet in width shall not be valid on Saturday or Sunday.

(6) ~~[(5)]~~ In Jefferson, Fayette, Boone, Kenton and Campbell Counties permits used for the movement of overweight/overdimensional load fourteen (14) feet wide or less but more than twelve (12) feet wide shall only be valid between the hours of 9 a.m. and 3 p.m. and from 6 p.m. to one-half (1/2) hour after sundown, local prevailing time.

(7) ~~[(6)]~~ Permits used for the movement of overweight/overdimensional load greater than fourteen (14) feet wide shall only be valid Monday through Friday between the hours of 9 a.m. and 3 p.m. and between 6 p.m. and one-half (1/2) hour after sundown local prevailing time.

(8) ~~[(7)]~~ If satisfactory proof of an emergency is furnished the Division of Motor Carriers, moves may be authorized during the restricted hours.

(9) ~~[(8)]~~ A permit shall not be valid if the combined gross weight of the towing vehicle and load exceeds the registered weight of the towing vehicle.

Section 17. Weather Conditions. Moves of overweight/overdimensional loads more than twelve (12) feet wide shall not be made on any highway:

- (1) If ~~[When]~~ wind velocity exceeds twenty-five (25) MPH; or

(2) If [When] adverse weather conditions or road conditions would cause these moves to be dangerous.

Section 18. Brakes. (1) The number, type, size and design of brake assemblies required to assist the towing vehicle in controlling and stopping a manufactured home or boat shall be sufficient to assure that the maximum stopping distance from an initial velocity of twenty (20) miles per hour does not exceed forty (40) feet.

(2) Manufactured homes which are not equipped with brakes on all axles shall certify that the towing unit has sufficient brake assemblies to meet the braking distance specified in this section.

(3) This certification shall be in the form of a manufacturer's statement, documented technical data, or adequate engineering analysis or its equivalent, specifying that the braking distance requirement has been met.

(4) This certificate shall be carried in the towing unit at all times and shall be presented upon request, to any law enforcement officer.

Section 19. Annual Farm Equipment Permits. (1) An annual permit shall not be issued for the movement of the following:

(a) Self-propelled farm equipment which exceeds thirteen (13) feet eleven (11) inches in width;

(b) Motor vehicle transporting farm equipment if the vehicle or load exceeds thirteen (13) feet eleven (11) inches in width unless the transporter is a farm equipment dealer transporting farm equipment from his dealership to a farm or from a farm to his dealership;

(c) A motor vehicle transporting farm equipment which exceeds sixteen (16) feet in width;

(d) Farm equipment if the length of the trailer and towing unit combined exceeds ninety-five (95) feet in length;

(e) Farm equipment if the length of the straight truck and load exceeds fifty-five (55) feet in length; or

(f) A motor vehicle transporting farm equipment if the power unit does not have sufficient horsepower or braking capacity to safely handle the load being transported.

(2) A permit for the movement of farm equipment with a width greater than twelve (12) feet but which does not exceed sixteen (16) feet shall only be:

(a) Issued to a farm equipment dealer; and

(b) Valid when he is transporting the farm equipment from his dealership to a farm or from a farm to his dealership.

(3) A motor vehicle for which a permit was issued to a farm equipment dealer to transport farm equipment with a width greater than thirteen (13) feet eleven (11) inches shall be:

(a) Titled, registered and licensed in Kentucky; or

(b) Apportioned licensed in another jurisdiction to operate in Kentucky.

Section 21. Denial of Permit Application. (1) In accordance with 23 CFR 658.17, the Transportation Cabinet, Division of Motor Carriers shall deny a permit application if:

(a) The route includes any portion of the interstate highway system; and

(b) The load is divisible. [Federal regulation 23 CFR 658.17 forbids the issuance of a permit for the movement on the interstate highway system of an overweight load which is divisible [can be readily divided].]

(2) The Transportation Cabinet may [shall have the right to] deny or restrict a permit for the use of any route if it would [that may] be detrimental to public safety or convenience. The Transportation Cabinet shall consider the following when making the determination on the application:

(a) The strength of all bridges and structures on the route;

(b) Traffic congestion on the route;

(c) Horizontal and vertical alignment of the route;

(d) The availability of alternate routes that afford greater safety;

(e) Urban development in residential and commercial areas on the route;

(f) The proximity of schools to the route; and

(g) Any other condition that would unduly compromise public safety and convenience.

Section 22. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) The Multistate Permit Agreement for Oversize and Overweight Vehicles, March 1999 edition.

(b) 23 CFR Part 658.17, Truck Size and Weight, Route Designations - Length, Width and Weight Limitations, revised December 22, 1998.

(c) 49 CFR Part 393.11, Lighting Devices, Reflectors, and Electrical Equipment, revised December 7, 1988.

(d) Application for Annual Overweight/Overdimensional Permit, TC 95-25, July 1998.

(2) All material incorporated by reference as a part of this administrative regulation may be obtained, viewed or copied at the Division of Motor Carriers, 3rd Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622. Its telephone number is (502) 564-4540. Its office hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

TODD SHIPP, Office of General Counsel/Legislative Affairs

APPROVED BY AGENCY: January 4, 2000

FILED WITH LRC: January 5, 2000 at 10 a.m.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Long-term Care
(As Amended at ARRS, April 12, 2000)

907 KAR 1:023. Review and approval of [oxygen and] selected therapies as ancillary services in nursing facilities.

RELATES TO: 42 CFR Parts 430, 431, 432, 433, 435, 440, 442, 447, 455, 456, 42 USC 1396a, b, d [KRS 205.520]

STATUTORY AUTHORITY: KRS 194A.030, 194A.050 [194.050], 205.520, 44 CFR 430, 431, 432, 433, 435, 440, 442, 447, 455, 456, 42 USC 1396a, b, d]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, [Human Resources] has responsibility to administer the Medicaid Program. KRS 205.520 authorizes [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 administration regulation establishes the [sets forth] provisions relating to the review and approval of [oxygen and] selected therapies as ancillary services for Medicaid recipients in nursing facilities.

Section 1. Definitions. (1) "Adult recipient" means an individual who is:

(a) Eligible to participate in Kentucky's Medicaid Program; and

(b) Age twenty-one (21) or over.

(2) "Ancillary service" means a direct therapy service for which a separate charge is customarily made pursuant to Section 2 of this administrative regulation.

(3) "Attending physician" means the physician of record identified in the recipient's nursing facility medical record.

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

(5) "Nursing facility" or "NF" means that:

(a) The state survey agency has:

1. Granted an NF license to a facility; and

2. Recommended the NF to the department for certification as a Medicaid provider; and

(b) The department has granted certification for Medicaid participation to the NF. ["Nursing facility (NF)" means a facility as defined in 907 KAR 1:022, Section 1(7).]

(6) "Pediatric recipient" means an individual who is:

(a) Eligible to participate in Kentucky's Medicaid Program; and

(b) Under twenty-one (21) years of age.

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Section 2. Covered Ancillary Services. (1) Oxygen therapy shall be a covered ancillary service if the department determines that the therapy:

- (a) Is medically necessary; and
- (b) Meets criteria pursuant to Section 3 of this administrative regulation.
- (2) The following therapies shall be covered ancillary services if the department determines that the therapies meet the criteria established in Section 3 of this administrative regulation:
 - (a) Physical therapy;
 - (b) Occupational therapy;
 - (c) Speech therapy; or [and]
 - (d) Respiratory therapy.

Section 3. On-site Review Approval and Denial Criteria. (1) The department shall approve a therapy as an ancillary service if, through an on-site review, the department determines that:

- (a) The nature and extent of functional deficiency requires a qualified therapist, as determined through chart evaluation and resident contact;
- (b) The care setting is appropriate for treatment planned;
- (c) The therapy frequency, duration and intensity is reasonable and necessary;
- (d) The following documentation is complete:
 - 1. Referral request;
 - 2. Therapy assessment;
 - 3. Action plan;
 - 4. Progress report; and
 - 5. Service discontinuance;
- (e) The progress of the [a] resident can be verified against baseline and stated goals and time frames;
- (f) The [A] therapy is not duplicative of other services that the [a] resident is receiving;
- (g) The condition of the resident requires a registered therapist to:
 - 1. Evaluate the [a] resident's active daily intervention program;
 - 2. Supervise trained staff to carry out a therapy regimen;
 - 3. Use assistive or adaptive equipment;
 - 4. Train staff to use assistive or adaptive [adoptive] equipment;
 - 5. Train the resident to use assistive or adaptive equipment during goal setting;
 - 6. Supervise and certify a therapy assistant who is participating in a treatment program;
 - 7. Establish a nursing care plan program to be performed by:
 - a. Nursing staff;
 - b. Restorative aide; or
 - c. A resident; and
 - 8. Be responsible for the timely discharge of a service level; [and]
- (h) A therapist has a:
 - 1. Specific diagnosis;
 - 2. Specific treatment plan that relates to a condition of the [a] resident;
 - 3. Specific modality for intervention that relates to a condition of the [a] resident; and
 - 4. Reasonable expectation for gain based on reasonable goals and time frames; and
- (i) A resident is:
 - 1. An adult recipient who meets the approval criteria of the "Technical Criteria for Reviewing Ancillary Services for Adults"; incorporated into this administrative regulation by reference]; or
 - 2. A pediatric recipient who meets the "Technical Criteria for Reviewing Ancillary Services for Pediatrics"; incorporated into this administrative regulation by reference].
- (2) The department shall deny a request for a therapy as an ancillary service pursuant to Section 2 of this administrative regulation if, through an on-site review, the department determines that:
 - (a) Services of a registered therapist is not needed on a daily basis because:
 - 1. Lack of progress of the [a] patient;
 - 2. Goals have been met;
 - 3. A patient is unable to participate;
 - 4. Lack of ability of nursing staff or resident to conduct or perform care;
 - 5. Nursing care plan program has been designed and will be performed by staff other than a therapist;
 - 6. Nursing staff or the resident is able to safely:
 - a. Perform the following:
 - (i) Repetitious exercise;
 - (ii) Nonrestorative exercise;
 - (iii) Drills; and
 - b. Use equipment or devices;
 - 7. The frequency or intensity of the services exceeds the benefits;
 - 8. No further gains are reasonably achievable; or
 - 9. A resident is:
 - a. Independent; or
 - b. Needs only minimal assistance for performance;
 - (b) The resident is:
 - 1. An adult recipient who meets the "Indication for Denial" criteria established [contained] in the "Technical Criteria for Reviewing Ancillary Services for Adults"; or
 - 2. A pediatric recipient who meets the "Indication for Denial" criteria established [contained] in the "Technical Criteria for Reviewing Ancillary Services for Pediatrics"; and
 - (c) If applicable, oxygen therapy is not medically necessary [to sustain the life of the resident].

Section 4. Certification and Recertification Process for a Therapy as an Ancillary Service. (1) Within two (2) workdays of the date that a recipient's attending physician orders administration of a therapy pursuant to Section 2 of this administrative regulation, the NF shall:

- (a) Notify the department by telephone; and
- (b) Request an on-site review of a therapy.
- (2) Within five (5) workdays of receipt of notification pursuant to subsection (1) of this section, the department shall:
 - (a) Perform an on-site review pursuant to Section 3 of this administrative regulation; and
 - (b) Render a certification decision.
- (3) The department shall issue a written notice of approval or denial relating to:
 - (a) A request for oxygen therapy to the:
 - 1.a. Resident; or
 - b. [2.] Guardian; [and]
 - 2. [3.] NF; and
 - 3. [4.] Attending physician; or
 - (b) A request for a therapy pursuant to Section 2(2) of this administrative regulation to the NF.
- (4) If a therapy pursuant to Section 2(2) of this administrative regulation is approved as an ancillary service, the department shall establish a certification period that includes:
 - (a) A start date of up to two (2) workdays prior to the date of notification by a NF pursuant to subsection (1) of this section; and
 - (b) An end date that the department determines to be a reasonable time period for an individual to meet goals established by an individualized therapy program.
- (5) Prior to the last day of a certification period for an approved therapy as an ancillary service, the department shall:
 - (a) Recertify a therapy as an ancillary service for an extended period of time, if an individual continues to meet criteria pursuant to Sections 2 and 3 of this administrative regulation; and
 - (b) Issue a written notice pursuant to subsection (3) of this section.
- (6) If the department denies the request for certification or recertification of a therapy as an ancillary service, the NF may request that the department reconsider a request pursuant to Section 5 of this administrative regulation.

Section 5. Reconsideration and Appeal of a Denial of a Therapy as an Ancillary Service. (1) The department shall reconsider its decision to deny a request for oxygen therapy as an ancillary service if, within thirty (30) days of the date on a notice of ad-

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verse action, a written request for reconsideration is submitted to the department by a:

- (a) Resident; or
- (b) Resident's legal guardian.

(2) If the department receives a request for reconsideration pursuant to subsection (1) of this section, the department shall:

(a) Conduct a reconsideration on-site review within three (3) workdays from the receipt of the [a] request;

(b) Employ a physician who was not involved with the initial on-site review or determination to conduct a reconsideration on-site review [who was not involved with the initial on-site review or determination];

(c) Base its reconsideration decision solely upon information that is:

1. Contained in the [a] resident's medical records; and

2. Submitted with the [a] written request pursuant to subsection (1) of this section; and

(d) Issue a notification of approval or denial within two (2) workdays of a reconsideration on-site review.

(3) The department shall reconsider its decision to deny a request for a therapy as an ancillary service pursuant to Section 2(2) of this administrative regulation if:

(a) Form MAP-703, "Request for Reconsideration Ancillary Therapy Billing" [incorporated into this administrative regulation by reference] is submitted to the department by a NF; and

(b) Form MAP-703 is received by the department within seven (7) days of the date on the notice of adverse action.

(4) If the department receives a request for reconsideration pursuant to subsection (3) of this section, the department shall:

(a) Conduct a reconsideration on-site review within seven (7) workdays from receipt of the [a] request;

(b) Employ a registered nurse who was not involved with the initial on-site review or determination to conduct the reconsideration on-site review [who was not involved with the initial on-site review or determination]; [and]

(c) Base its reconsideration decision solely upon information that is:

1. Contained in the [a] resident's medical records; and

2. Submitted with the [a] request pursuant to subsection (3)(a) of this section; and

(d) Issue a notification of approval or denial within three (3) workdays of a reconsideration on-site review.

(5) If an outcome of a reconsideration on-site review results in the denial of a therapy as an ancillary service, the department shall grant an appeal as follows:

(a) An appeal of the denial of oxygen therapy as an ancillary service shall be granted pursuant to 907 KAR 1:563; and

(b) An appeal of the denial of a therapy pursuant to Section 2(2) of this administrative regulation as an ancillary service shall be granted pursuant to 907 KAR 1:671.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Technical Criteria for Reviewing Ancillary Services for Adults", Department for Medicaid Services, February 2000 [October 1999] edition;

(b) The "Technical Criteria for Reviewing Ancillary Services for Pediatrics", Department for Medicaid Services, April [February] 2000 [October 1999] edition; and

(c) Form "MAP-703, Request for Reconsideration of Ancillary Therapy Billing", Department for Medicaid Services, October 1999 edition.

(2) This material 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. [Coverage of Oxygen. The Medicaid review agency shall determine medical necessity for the use of oxygen in nursing facilities in accordance with criteria shown in the Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual.

Section 2. Coverage of Selected Therapies as Ancillary Services. The Medicaid review agency shall determine whether respiratory, occupational, speech, and physical therapy, when

ordered by a physician for a Medicaid patient in a Medicaid participating nursing facility, meets program criteria to be billed as an ancillary service using criteria shown in the Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual.

Section 3. Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual. The Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual, dated May 1, 1994, incorporated by reference in this administrative regulation, specifies the review and approval criteria for determinations of medical necessity for oxygen; the criteria for billing specified therapies as an ancillary service in a nursing facility; and the appeals process for the medical necessity decisions made by the review agency. The Review and Approval of Oxygen and Selected Therapies in Nursing Facilities 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 an appropriate fee which shall not exceed approximate cost.

Section 4. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after May 1, 1994.]

DENNIS BOYD, Commissioner
JOHN H. WALKER, Attorney
JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: February 2, 2000

FILED WITH LRC: February 3, 2000 at noon

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Behavioral Health Programs
(As Amended at ARRS, April 12, 2000)

907 KAR 3:110. Community mental health center substance abuse services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(5), 42 CFR 440.130, 440.210, 440.250, 447.325, 42 USC 1396a-d

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520 authorizes the cabinet by administrative regulation to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the eligibility criteria, schedule of benefits, payment methodology and qualifications and criteria for the provision of substance abuse services.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health Services.

(2) "Individual" means a pregnant woman or a postpartum woman **for a sixty (60) day period after pregnancy ends and any remaining days in the month in which the 60th day falls** [up to the end of the month of sixty (60) days following the date of delivery] who has applied for or is receiving substance abuse services through Medicaid.

(3) "Prevention Protocol Review Panel" means a panel of substance abuse prevention experts, composed of a representative appointed by the cabinet secretary and representatives from the Division of Substance Abuse, who review and approve therapeutic risk reduction protocols.

(4) "Qualified preventionist" means a staff member of a provider agency who provides substance abuse prevention services and meets the qualifications in accordance with Section 7(1) of this administrative regulation.

(5) "Qualified substance abuse treatment professional" means a staff member of a provider agency who conducts a clinical assess-

ment, develops a treatment plan, leads a therapy session, or provides a case-management service and meets the requirements in Section 7(2) of this administrative regulation.

(6) "Substance abuse" means alcohol and other drug abuse as defined in KRS 222.005(12).

(7) "Substance abuse prevention service" means universal, selective or indicated prevention services in accordance with the requirements in Section 4 of this administrative regulation.

(8) "Substance abuse treatment service" means outpatient, intensive outpatient, day rehabilitation, case management or community-support services in accordance with the requirements in Section 4 of this administrative regulation.

(9) "Substance-related disorder" means the formal diagnosis of substance abuse or substance dependency, excluding nicotine dependence, under the classification of mental disorders found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(10) "Therapeutic risk reduction protocol" means a behavior change regimen using research-based strategies which have been demonstrated to produce desired attitudinal or behavioral outcomes that halt progression toward substance dependency and reduce risk for other alcohol and drug related problems in specific targeted populations.

(11) "Triage" means a telephone or face-to-face interview with an applicant for services or a referral source to:

- (a) Determine the nature of the presenting problem;
- (b) Determine the immediacy of the need for services; and
- (c) Refer the individual for a substance abuse assessment.

Section 2. Eligibility Criteria. A person shall be eligible to receive the substance abuse services covered under this administrative regulation if the individual:

(1) Is a pregnant woman or a postpartum woman **for a sixty (60) day period after pregnancy ends and any remaining days in the month in which the 60th day falls** [up to the end of the month of sixty (60) days following the date of delivery]; and

(2) Meets the service placement criteria in Section 6 of this administrative regulation.

Section 3. Provider Participation Requirements. In order to provide substance abuse services pursuant to Section 4 of this administrative regulation, a provider:

(1) Shall be a community mental health-mental retardation center:

- (a) Established in accordance with KRS 210.380; and
- (b) Which provides services either:

1. Directly in accordance with the following licensure administrative regulations:

a. 902 KAR 20:091 for substance abuse outpatient and intensive outpatient services;

b. 908 KAR 1:380 for substance abuse prevention services and 908 KAR 1:010 - 908 KAR 1:080, 908 KAR 1:100 - 908 KAR 1:110, 908 KAR 1:150 - 908 KAR 1:220 and 908 KAR 1:230(2) and (3); or

2. Indirectly through a subcontractor who shall adhere to the following contractual requirements:

a. For a substance abuse treatment service, a subcontractor shall be either:

(i) Licensed in accordance with 908 KAR 1:010-908 KAR 1:240 for substance abuse assessment, outpatient, intensive outpatient, and day rehabilitation services; or

(ii) Licensed in accordance with 902 KAR 20:160 or KRS Chapter 216B and comply with the applicable standards of 908 KAR 1:080, 908 KAR 1:100, 908 KAR 1:110, 908 KAR 1:120, 908 KAR 1:130, 908 KAR 1:220, 908 KAR 1:230(2) and (3) and 908 KAR 1:240;

b. For a substance abuse prevention service, a subcontractor shall be either:

(i) Licensed in accordance with 908 KAR 1:380; or

(ii) A local health department under the authority of KRS 211.180 and 211.190.

(2) Shall comply with service access standards established in Section 5 of this administrative regulation.

Section 4. Substance Abuse Services. The following services shall be covered through Medicaid if provided by staff who meet the requirements in Section 7 of this administrative regulation and if an individual meets the placement criteria in accordance with Section 6 of this administrative regulation.

(1) Substance abuse assessment. A substance abuse assessment shall be completed by a qualified substance abuse treatment professional and shall include:

(a) An assessment interview with an individual that includes information on the:

1. Current level of substance intoxication or withdrawal;
2. Current pattern of substance use including quantity, frequency and history of personal use;
3. Utilization of prenatal care and pediatric care for newborns; and

4. Psychosocial history including the:

- a. Presenting need;
- b. Current living arrangements;
- c. Identification of household members and significant others in the individual's life who use alcohol and drugs;
- d. Marital and family history;
- e. Family history of alcohol and drug abuse;
- f. History of involvement with child and adult protective services;
- g. Current custody status of an individual's children;
- h. Legal, employment, military, educational and vocational history;

i. Peer group relationships;

j. Religious background and practices;

k. History of emotional, sexual and physical abuse including current needs for safety;

l. Ethnic and cultural background;

m. Leisure and recreational activities; and

n. Individual strengths and limitations;

(b) Completion of a physical health status questionnaire;

(c) Mental status screening;

(d) An integrative written summary of the individual's need for services including documentation of:

1. Pregnancy and postpartum status as reported by the individual and a primary diagnosis of a substance-related disorder requiring treatment services; or

2. The need for substance abuse prevention services; and

3. The individual's need for:

a. Prenatal care if a pregnant woman is not regularly engaged in prenatal care;

b. A screening for health care problems for a postpartum woman;

c. Pediatric care if an infant is not currently receiving this care;

d. Mental health, mental retardation or developmental disability services; and

e. Community services to meet immediate needs for safety, food, clothing, shelter or medical care.

(e) An initial plan of care that includes the following:

1. The presenting need or problem;

2. All substance abuse services needed by an individual in accordance with the assessment findings and the service placement criteria established in Section 6 of this administrative regulation to include:

a. An explanation of how this individual meets the admission criteria for this service;

b. The name of the provider to whom an individual is being referred for this service; and

c. The determination of the immediacy of the individual's need to receive the services based on the following criteria:

(i) Emergency care. Emergency care shall include immediate care for a substance-related condition that may result in serious jeopardy to the life or health of an individual or a fetus, harm to another person by an individual, or inability of an individual to seek food or shelter. A provider agency shall provide either access to a substance abuse outpatient, intensive outpatient or day rehabilitation service on an emergency basis within three (3) hours of determining the individual's need for the service or make a referral to other appropriate emergency care providers.

(ii) Urgent care. A provider agency shall provide access to a

substance abuse outpatient, intensive outpatient and day rehabilitation service on an urgent basis within a twenty-four (24) hour period of determining the individual's need for a service. An urgent condition shall include a clinical condition that does not pose an immediate risk of harm to self or another person but requires a rapid clinical response in order to prevent onset of an emergency condition.

(iii) Routine care. A provider agency shall provide access to a substance abuse outpatient, intensive outpatient and day rehabilitation service on a routine basis within a forty-eight (48) hour period of determining the individual's need for a service. A routine condition shall pose no immediate risk of harm to self or another person but requires a clinical response.

(iv) Selective and indicated prevention services. A provider agency shall provide access to a substance abuse selective or indicated prevention service within a seven (7) day period of a request for a service for an individual.

(v) Universal prevention service. A provider agency shall provide access to a substance abuse universal preventive service within a thirty (30) day period of a request for a service for an individual; and

3. Documentation of the name of the provider to whom an individual is being referred to address the service needs identified in paragraph (d)2c of this subsection.

(f) The completed assessment and initial plan of care shall be forwarded to the substance abuse treatment or prevention provider within five (5) working days.

(2) Universal prevention service.

(a) **A universal prevention service shall be delivered as an individual or group service.**

(b) A universal prevention service shall be designed to reduce the risk that an individual will initiate the use of alcohol, tobacco and other drugs during pregnancy and the postpartum period, thus protecting the child from subsequent risk for harm.

(c) [(b)] A universal prevention service shall utilize a protocol approved by the Kentucky Division of Substance Abuse. The protocol shall be approved for a period of two (2) years at which point it shall be reevaluated by the Protocol Review Panel to determine its continued use.

(d) [(e)] A universal prevention protocol shall:

1. Identify specific risks associated with alcohol, tobacco and other drug use during pregnancy and lactation, including risks to a fetus, such as low birth weight and fetal alcohol syndrome;

2. Address biological, psychological, and social factors that may increase risk for use during pregnancy and lactation; and

3. Identify signs of postpartum depression and address the risk for substance abuse following pregnancy.

(e) [(d)] A substance abuse universal prevention service shall be a face-to-face contact between an individual and a qualified preventionist who meets the requirements in Section 7(1) of this administrative regulation.

(f) [(e)] The effectiveness of the delivery of a universal prevention service for an individual shall be measured through the use of pre-test and post-test surveys, and shall be constructed to measure the following outcomes:

1. Continued or increased perceptions of potential harm to the fetus as a result of using alcohol, tobacco or other drugs during pregnancy;

2. Increased intentions to not use alcohol, tobacco and other drugs during pregnancy and lactation; and

3. Increased ability to recognize signs of postpartum depression and risk for substance abuse following pregnancy.

(f) Service limitation. No more than two (2) hours of substance abuse universal prevention service shall be reimbursed during a single pregnancy and postpartum period.

(3) Selective prevention service.

(a) **A selective prevention service shall be delivered as an individual or group service.**

(b) A selective prevention service shall be designed to reduce the risk for initiation of alcohol, tobacco and other drug use during pregnancy, initiation of high-risk use following pregnancy, and subsequent risk for harm to a child or mother.

(c) [(b)] A selective prevention service shall utilize a therapeutic risk reduction protocol approved by the Kentucky Division of Substance Abuse. The protocol shall be approved for a period of two (2)

years at which point it shall be reevaluated by the Protocol Review Panel to determine its continued use.

(d) [(e)] A therapeutic risk reduction protocol for a selective prevention service shall:

1. Identify specific risks associated with alcohol and drug use during pregnancy, including risks to a fetus, such as low birth weight and fetal alcohol syndrome;

2. Increase the perception of personal risk for harm due to high-risk alcohol and drug use throughout life;

3. Identify the existence of biological, psychological, and social risk factors that may increase risk for use during pregnancy and throughout life;

4. Identify the levels of alcohol and drug use that increase risk for problems during pregnancy and throughout life; and

5. Address health and social consequences of high-risk drinking or drug choices.

(e) [(d)] A therapeutic risk reduction protocol for a selective prevention service may also include:

1. Changing perceptions of normative alcohol and drug use behaviors;

2. Developing skills for making and maintaining behavioral changes in alcohol, tobacco and drug use and in developing social and psychological supports for these changes throughout life; or

3. Addressing parental influences on alcohol and drug choices of children, family management issues, and the establishment of successful expectations and consequences.

(f) [(e)] A selective prevention service shall consist of a face-to-face contact between an individual and a qualified preventionist who meets the requirements in Section 7(1) of this administrative regulation.

(g) [(f)] The effectiveness of the delivery of a selective prevention service for an individual shall be measured through the use of pretest and posttest surveys, and shall be constructed to measure the following outcomes:

1. Abstinence from alcohol, tobacco and other drugs during pregnancy and lactation;

2. Increased intentions to not use during pregnancy and lactation;

3. Continued or increased perceptions of potential harm to a fetus when alcohol, tobacco or other drugs are used during pregnancy and lactation;

4. Increased perceptions of personal vulnerability to alcohol or drug dependency or other problems throughout life; and

5. Attitude changes which support an individual in making low risk choices related to tobacco, alcohol and other drug use during and following pregnancy or increased skills necessary to make and maintain low risk alcohol and other drug choices throughout life.

(h) [(g)] Limitation. No more than a total of **nineteen (19)** [seventeen-(17)] hours of selective prevention service shall be reimbursed during a single pregnancy and postpartum period.

(4) Indicated prevention service.

(a) **An indicated prevention service shall be delivered as an individual or group service.**

(b) An indicated prevention service shall be designed to reduce the risk that certain individuals may experience alcohol or other drug related health problems, including substance dependency, or experience alcohol and other drug related impairments.

(c) [(b)] An indicated prevention service shall utilize a therapeutic risk reduction protocol approved by the Kentucky Division of Substance Abuse. The protocol shall be approved for a period of two (2) years at which point it shall be reevaluated by the Protocol Review Panel to determine its continued use.

(d) [(e)] A therapeutic risk reduction protocol for an indicated prevention service shall:

1. Address the health and social consequences of high-risk drinking or drug choices, including consequences to a fetus in the case of any alcohol or drug use during pregnancy;

2. Increase the perception of personal risk for harm due to high-risk alcohol and drug use;

3. Identify existence of biological, psychological, and social risk factors; and

4. Identify levels of alcohol and drug use that increase risk for problems.

(e) [(d)] A therapeutic risk reduction protocol for an indicated prevention service may also include:

1. Changing perceptions of normative alcohol and drug use behaviors;
2. Developing skills for making and maintaining behavioral changes, including changes in alcohol and drug use, and in developing social and psychological supports for these changes throughout life; or
3. Addressing parental influences on the alcohol and drug choices of children, family management issues, and the establishment of successful expectations and consequences.

(f) [(e)] An indicated prevention service shall consist of a face-to-face contact between an individual and a qualified preventionist who meets the requirements in Section 7(1) of this administrative regulation.

(g) [(f)] The effectiveness of the delivery of the indicated prevention service for an individual shall be measured through the use of pretest and post-test surveys, and shall be constructed to measure the following outcomes:

1. Decreased alcohol and other drug use;
2. Decreased intentions to use;
3. Attitude changes which support an individual in making low-risk choices related to alcohol and other drug use; and
4. A greater readiness for and response to treatment for an individual with a substance abuse related diagnosis who is receiving this service as an adjunct to a substance abuse treatment plan or increased skills necessary to make and maintain low risk alcohol and other drug use choices during pregnancy and throughout life.

(h) [(g)] Limitation. No more than a total of twenty-seven (27) ~~twenty-five (25)~~ hours of an indicated prevention service shall be reimbursed during a single pregnancy and postpartum period.

(5) Outpatient services.

(a) An outpatient service shall be an ambulatory care service that:

1. Is a face-to-face therapeutic interaction between an individual and a qualified substance abuse treatment professional; and
2. Is for the purpose of reducing or eliminating a substance abuse problem and shall include the following services:

- a. Treatment planning;
- b. Referrals for other needed health and social services;
- c. Information on substance abuse and its effects on health and fetal development;
- d. Orientation to substance abuse related self-help groups; and
- e. Participation in one (1) or more of the following modalities of outpatient treatment:

(i) Individual therapy;

(ii) Group therapy;

(iii) Family therapy. This modality shall be provided to an individual and one (1) or more persons with whom an individual has a close association;

(iv) Psychiatric evaluation provided by a psychiatrist or advanced registered nurse practitioner (ARNP);

(v) Psychological testing provided by a licensed psychologist, or **certified psychologist without autonomous functioning, certified psychological associate within his scope of practice;**

(vi) Medication management provided by a physician or an advanced registered nurse practitioner; and

(vii) Collateral care. This modality shall provide face-to-face consultation or counseling to a person who is in a position of custodial control or supervision of an individual under age twenty-one (21), in accordance with an individual's treatment plan.

(b) Service limitations.

1. Group therapy.

a. There shall be no more than twelve (12) persons in a group therapy session.

b. Group therapy shall not include physical exercise, recreational activities or attendance at substance abuse and other self-help groups.

2. Collateral care shall be limited to individuals under age twenty-one (21).

3. Psychiatric evaluations or psychological testing that do not result in an individual receiving substance abuse treatment shall not

be reimbursable through this benefit.

4. No more than eight (8) hours of outpatient services shall be reimbursed during a one (1) week period.

(6) Intensive outpatient services.

(a) An intensive outpatient service shall be an ambulatory care service for the purpose of reducing or eliminating an individual's substance abuse problem.

(b) The following components shall be provided in an intensive outpatient service as a face-to-face therapeutic interaction between an individual and a qualified substance abuse treatment professional:

1. Treatment planning;

2. A structured program of information on substance abuse and its effects on health, fetal development and family relationships which shall be provided either to an individual or an individual and one (1) or more persons with whom an individual has a close association; and

3. Individual, group and family therapy.

(c) The following components may be provided in an intensive outpatient service as a face-to-face activity between an individual and a qualified substance abuse treatment professional or a member of the therapeutic team, supervised by a qualified substance abuse professional:

1. Independent living skills training;

2. Parenting skill development;

3. Orientation to substance abuse and other self-help programs;

4. Staff support to activities led by the individual.

(d) Service limitations.

1. Group therapy.

a. There shall be no more than twelve (12) persons in a group therapy session.

b. Group therapy shall not include physical exercise, recreational activities or attendance at substance abuse or other self-help groups.

2. Reimbursement for an intensive outpatient service shall be limited to no more than seven (7) hours per day not to exceed forty (40) hours per week.

(7) Day rehabilitation services.

(a) A day rehabilitation service shall be provided in a residential facility for the purpose of reducing or eliminating an individual's substance abuse problem.

(b) The following components shall be provided in a day rehabilitation service as a face-to-face therapeutic interaction between an individual and a qualified substance abuse treatment professional:

1. Treatment planning;

2. A structured program of information on substance abuse and its effects on health, fetal development and family relationships which shall be provided to either an individual or an individual and one (1) or more persons with whom an individual has a close association; and

3. Individual, group and family therapy.

(c) The following components may be provided in a day rehabilitation service but shall be provided as a face-to-face activity between an individual and a qualified substance abuse treatment professional or a member of the therapeutic team, supervised by a qualified substance abuse professional:

1. Independent living skills training;

2. Parenting skill development;

3. Orientation to substance abuse and other self-help programs; and

4. Staff support to activities led by the individual.

(d) Service limitations.

1. In accordance with 42 USC 1396d(a) and 1396d(i), payment shall not be made for care or services for any individual who has not attained sixty-five (65) years of age and who is a patient in an institution of more than sixteen (16) beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases.

2. Group therapy.

a. There shall be no more than twelve (12) persons in a group therapy session.

b. Group therapy shall not include physical exercise, recrea-

tional activities or attendance at substance abuse or other self-help groups.

3. Reimbursement for a day rehabilitation service shall be limited to no more than eight (8) hours per day not to exceed forty-five (45) hours per week.

4. Room and board costs shall not be covered under this benefit.

(8) Case-management services.

(a) Case management shall be an ambulatory care service that:

1. Is a face-to-face or telephone contact between or on behalf of an individual and a qualified substance abuse professional; and

2. Is for the purpose of reducing or eliminating an individual's substance abuse problem by assisting an individual in gaining access to needed medical, social, educational and other support services.

(b) Case-management services shall include:

1. An assessment of an individual's case-management needs;

2. Development of a service plan that identifies an individual's case management projected outcomes; and

3. Activities that support the implementation of an individual's service plan.

(c) Case-management services shall not be connected with a specific type of substance abuse treatment but shall follow an individual across the array of substance abuse treatment services identified in an individual's treatment plan.

(d) Service limitations. The following activities shall not be reimbursed by this Medicaid benefit:

1. An outreach or case-finding activity to secure a potential individual for services;

2. Administrative activities associated with Medicaid or eligibility determinations;

3. Transportation services solely for the purpose of transporting the individual; and

4. The actual provision of a service other than a case-management service.

(9) Community-support services.

(a) A community-support service shall be an ambulatory care service that shall be provided if the service is identified as a need in an individual's case-management service plan.

(b) A community-support service shall be a face-to-face or telephone contact between an individual and a qualified community-support provider, who meets the requirements in Section 7(6) of this administrative regulation.

(c) A community-support service shall include:

1. Assisting an individual in remaining engaged with substance abuse treatment or community self-help groups;

2. Assisting an individual in resolving a crisis in an individual's natural environment; and

3. Coaching an individual in her natural environment to:

a. Access services arranged by a case manager; and

b. Apply substance abuse treatment gains, parent training and independent living skills to an individual's personal living situation.

(d) A community-support provider shall coordinate the provision of community-support services with an individual's primary provider of case-management services.

(e) Service limitation. Transportation services solely for the purpose of transporting an individual shall not be reimbursed through this Medicaid benefit.

(10) Service limitation for substance abuse services. Reimbursement for a substance abuse service shall not be payable for an individual who is a resident in a Medicaid-reimbursed inpatient facility.

Section 5. Access to Substance Abuse Services. A provider agency shall operate a triage component that meets the following requirements:

(1) The provider agency shall maintain telephone access to services twenty-four (24) hours a day, seven (7) days a week through a toll free telephone number that shall be made available to a Medicaid-eligible recipient;

(2) Triage procedures shall include:

(a) Determination of need for access to a substance abuse assessment on either an emergency, urgent or routine basis in accordance with the following:

dance with the following:

1. Emergency care. Emergency care shall include immediate care for a substance-related condition that may result in serious jeopardy to the life or health of an individual or a fetus, harm to another person by an individual, or inability of an individual to seek food or shelter. A provider agency shall provide access to a substance abuse assessment on an emergency basis within three (3) hours of receiving a request for a service for an individual.

2. Urgent care. A provider agency shall provide access to a substance abuse assessment on an urgent basis within a twenty-four (24) hour period of a request for a service for an individual. An urgent condition shall include a clinical condition that does not pose an immediate risk of harm to self or another person but requires a rapid clinical response in order to prevent onset of an emergency condition.

3. Routine care. A provider agency shall provide access to a substance abuse assessment on a routine basis within a forty-eight (48) hour period of a request for a service for an individual. A routine condition shall pose no immediate risk of harm to self or another person but requires a clinical response; and

(b) Determination of individual's current Medicaid status.

Section 6. Service Placement Criteria. The following criteria shall be utilized to determine the most appropriate service to meet an individual's needs.

(1) Universal prevention substance abuse service.

(a) Admission criteria. Admission criteria to a universal prevention service shall require that an individual:

1. Has no identified biological, psychological or social factors which would increase risk for initiating use of alcohol or another drug during pregnancy;

2. Does not have a history of personal use of alcohol or another drug that has contributed to a lifestyle, a legal problem or another symptom indicating the need for a substance abuse treatment assessment;

3. Has not used alcohol or other drugs during the last thirty (30) days;

4. Does not have a substance-related disorder;

5. Does not have a medical or psychiatric condition that requires immediate medical care in order to benefit from this service;

6. Is not at high risk of harming herself or another person; and

7. May benefit from participation in a universal prevention service.

(b) Discharge criteria. One (1) of the following criteria shall be sufficient to require discharge of an individual who:

1. Has completed the substance abuse universal prevention service;

2. Has been identified as having a substance abuse or other type of problem that is severe enough to require more intensive services;

3. Has revoked consent to participate or has withdrawn from the service and does not meet criteria for involuntary hospitalization pursuant to KRS 202A.030; or

4. Has demonstrated the inability to benefit from this service.

(2) Selective prevention substance abuse service.

(a) Admission criteria. Admission criteria to a selective prevention service shall require that an individual:

1. Does not have a history of personal use of substances that has contributed to a lifestyle, a legal problem or another symptom indicating the need for a substance abuse indicated prevention or treatment service;

2. Is a member of a target population whose biological, psychological or social factors place them at high risk for:

a. Initiating alcohol or other drug use during pregnancy and lactation; or

b. Developing alcohol and other drug-related problems over a lifetime;

3. Has not used alcohol or other drugs during the last thirty (30) days;

4. Does not have a substance-related disorder;

5. Does not have a medical or psychiatric condition that requires immediate medical care in order to benefit from this service;

6. Is not at high risk of harming herself or another person; and

7. May benefit from participation in a selective prevention service.

(b) Discharge criteria. One (1) of the following criteria shall be sufficient to require discharge of an individual who:

1. Has completed the substance abuse selective prevention service;

2. Has been identified as having a substance abuse or other type of problem that is severe enough to require more intensive services;

3. Has revoked consent to participate or has withdrawn from the service and does not meet criteria for involuntary hospitalization pursuant to KRS 202A.030; or

4. Has demonstrated an inability to benefit from the selective prevention service.

(3) Indicated prevention substance abuse service.

(a) Admission criteria. Admission criteria to an indicated prevention service shall require that an individual:

1. Has used alcohol or other drugs since learning of her pregnancy; or

2. Exhibits problematic behaviors prior to pregnancy, associated with her use of alcohol and other drugs; or

3. Exhibits ~~many of the~~ risk factors that increase her chances of developing a substance abuse problem;

4. Has not reached the point where a diagnosis of a substance-related disorder may be made; or

5. Has been diagnosed with a substance-related disorder and may benefit from this service as an adjunct to outpatient treatment in order to increase her readiness and response to outpatient treatment;

6. Does not have a medical or psychiatric condition that requires immediate medical care in order to benefit from this service;

7. Is not at high risk of harming herself or another person; and

8. May benefit from participation in an indicated prevention service.

(b) Discharge criteria. One (1) of the following criteria shall be sufficient to require discharge of an individual who:

1. Has completed the substance abuse indicated prevention service;

2. Has been identified as having a substance abuse or other type of problem that is severe enough to require a more intensive service;

3. Has revoked consent to participate or has withdrawn from the service and does not meet criteria for involuntary hospitalization pursuant to KRS 202A.030; or

4. Has demonstrated an inability to benefit from an indicated prevention service.

(4) Outpatient substance abuse services.

(a) Admission criteria. Admission criteria to an outpatient service shall require that an individual:

1. Has a primary substance abuse problem that meets criteria for a substance-related disorder established in Section 1(9) of this administrative regulation;

2. Is not experiencing alcohol or drug intoxication or withdrawal symptoms that require detoxification in either a nonmedical twenty-four (24) hour facility or inpatient medical facility;

3. Is not at high risk of harming herself or another person and her level of risk may be managed with outpatient services;

4. Does not have a medical or psychiatric condition that requires immediate medical care prior to outpatient services; and

5. May benefit from outpatient services or may benefit from outpatient services as a means to:

a. Increase acceptance of the need for a more intensive substance abuse treatment service; or

b. Maintain treatment until the required intensive treatment service is available.

(b) Continuing stay criteria. To remain in an outpatient service, a qualified substance abuse treatment professional shall review an individual's progress every ninety (90) days and determine that an individual:

1. Continues to meet the criteria for admission established in paragraph (a) of this subsection; and

2. Is making progress in reducing or eliminating substance abuse or dependency but has not met the treatment goals for this

service, and may benefit from continued services.

(c) Discharge criteria. One (1) of the following criteria shall be sufficient to require discharge of an individual who:

1. Has met the treatment goals;

2. Requires more intensive treatment; or

3. Has revoked consent to participate or has withdrawn from the service and does not meet criteria for involuntary hospitalization pursuant to KRS 202A.030.

(5) Intensive outpatient substance abuse service.

(a) Admission criteria. Admission criteria to an intensive outpatient service shall require that an individual:

1. Has a primary substance abuse problem that meets criteria for a substance-related disorder established in Section 1(9) of this administrative regulation;

2. Has a substance abuse problem requiring structured treatment several days a week;

3. Does not have a substance abuse problem severe enough that progress in reducing or eliminating the abuse or dependency requires more intensive treatment;

4. Is not experiencing alcohol or drug intoxication or withdrawal symptoms that require detoxification in either a nonmedical twenty-four (24) hour facility or inpatient medical facility;

5. Does not have a medical or psychiatric condition that requires immediate medical care prior to intensive outpatient services;

6. Is not at high risk of harming herself or another person requiring inpatient care and her level of risk may be managed within this service; and

7. May benefit from an intensive outpatient service.

(b) Continuing stay criteria. To remain in an intensive outpatient service, a qualified substance abuse treatment professional shall review an individual's progress every thirty (30) days, to determine that an individual:

1. Continues to meet criteria for admission established in paragraph (a) of this subsection; and

2. Is making progress in reducing or eliminating substance abuse or dependency but has not met the treatment goals for this service, and may benefit from continued services.

(c) Discharge criteria. One (1) of the following criteria shall be sufficient to require discharge of an individual who:

1. Has met treatment goals for an intensive outpatient service;

2. No longer meets admission criteria established in paragraph (a) of this subsection; or

3. Has revoked consent to participate or has withdrawn from the service and does not meet criteria for involuntary hospitalization pursuant to KRS 202A.030.

(6) Day rehabilitation substance abuse service.

(a) Admission criteria. Admission criteria to a day rehabilitation service shall require that an individual:

1. Has a primary substance abuse problem that meets criteria for a substance-related disorder established in Section 1(9) of this administrative regulation;

2. Has a substance abuse problem that requires intensive daily or near-daily structured treatment to reduce or eliminate substance abuse or dependency;

3. Is not experiencing alcohol or drug intoxication or withdrawal symptoms that require detoxification in a nonmedical twenty-four (24) hour facility or inpatient medical facility;

4. Does not have a medical or psychiatric condition that requires immediate medical care prior to intensive outpatient services;

5. Is not at high risk of harming herself or another person requiring inpatient care, and her level of risk may be managed within this service; and

6. May benefit from day rehabilitation services.

(b) Continuing stay criteria. To remain in a day rehabilitation service, a qualified substance abuse treatment professional shall review an individual's progress in treatment every two (2) weeks and determine that the individual:

1. Continues to meet criteria for admission established in paragraph (a) of this subsection; and

2. Is making progress in reducing or eliminating substance abuse or dependency but has not met the treatment goals for this service and may benefit from continued services.

(c) Discharge criteria. One (1) of the following criteria shall be

sufficient to require discharge of an individual who:

1. Has met treatment goals;
2. No longer meets admission criteria established in paragraph (a) of this subsection; or

3. Has revoked consent to participate or has withdrawn from the service and does not meet criteria for involuntary hospitalization pursuant to KRS 202A.030.

(7) Case management substance abuse service.

(a) Admission criteria. Admission criteria to a case-management service shall require that an individual:

1. Has a primary substance abuse problem that meets criteria for a substance-related disorder established in Section 1(9) of this administrative regulation;

2. Has been **referred for admission** [admitted] to an outpatient service, intensive outpatient service, day rehabilitation service or has been discharged from a twenty-four (24) hour facility;

3. Needs assistance in reducing barriers to **entering and** staying in substance abuse treatment or in accessing other resources that are needed to maximize her functioning in the community; and

4. May benefit from a case-management service.

(b) Continuing stay criteria. To remain in a case-management service, a qualified substance abuse treatment professional shall review an individual's progress every thirty (30) days, and determine that an individual:

1. Continues to meet criteria for admission established in paragraph (a) of this subsection; and

2. Is making progress in reducing or eliminating substance abuse or dependency, but has not met the goals of the case-management service plan and may benefit from continued case-management services.

(c) Discharge criteria. One (1) of the following criteria shall be sufficient to require discharge of an individual who:

1. Has met the service plan goals for case management;
2. No longer meets admission criteria established in paragraph (a) of this subsection; or

3. Has revoked consent to participate or has withdrawn from the service and does not meet criteria for involuntary hospitalization pursuant to KRS 202A.030.

(8) Community-support substance abuse services.

(a) Admission criterion. The admission criterion to a community-support service shall be that an individual have documentation in her case-management service plan of the need for intensive contact with the treatment community in an individual's natural environment in order to reduce or eliminate substance abuse or substance dependency.

(b) Continuing stay criteria. To remain in a community-support service, a qualified substance abuse treatment professional shall review an individual's progress every thirty (30) days, to determine that the individual:

1. Continues to meet criteria for admission established in paragraph (a) of this subsection; and

2. Is making progress in reducing or eliminating substance abuse or dependency, but has not met the community-support service goals in the case-management plan and may benefit from continued community-support services.

(c) Discharge criteria. One (1) of the following shall be sufficient to require discharge of an individual who:

1. Has met the case-management service plan goals for community-support services;
2. No longer meets the admission criteria established in paragraph (a) of this subsection; or

3. Has revoked consent to participate or has withdrawn from the service and does not meet criteria for involuntary hospitalization pursuant to KRS 202A.030.

Section 7. Staff Qualifications. Staff who are eligible to provide the substance abuse prevention and treatment services established in Section 4 of this administrative regulation shall meet the following qualifications:

(1) A qualified preventionist shall be a staff member of a provider agency who:

(a) Provides universal, selective or indicated substance abuse prevention services;

(b) Meets the qualifications for the delivery of a therapeutic risk reduction protocol approved by the Kentucky Division of Substance Abuse; and

(c) Meets one (1) of the following requirements:

1. A prevention professional certified pursuant to the Kentucky Certification Board of Prevention Professionals;

2. An alcohol and drug counselor certified by the Kentucky Board of Certification for Alcohol and Drug Counselors in accordance with KRS 309.080 to 309.089, and who meets the training and documentation requirements in subsection (4)(a) and (c) of this section; or

3. A certified or licensed professional identified in subsection (3) of this section, who meets the training and documentation requirements in subsection (4)(b) and (c) of this section;

(2) A qualified substance abuse treatment professional shall be a staff member in a provider agency who conducts a clinical assessment, develops a treatment plan, leads a therapy session, or provides a case-management service. In order to provide these services the qualified substance abuse treatment professional shall meet one (1) of the following requirements:

(a) An alcohol and drug counselor certified by the Kentucky Board of Certification for Alcohol and Drug Counselors in accordance with KRS 309.080 to 309.089;

(b) A certified or licensed professional identified in subsection (3) of this section who meets the training and documentation requirements in subsection (5)(a) and (c) of this section; or

(c) An individual who has a bachelors degree or greater in any field, from an accredited college or university, who meets the training, documentation and supervision requirements in subsection (5)(b) and (c) of this section;

(3) A staff member, who is licensed or certified as one (1) of the following:

(a) A Kentucky physician licensed in accordance with KRS 311.530 to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

(b) A psychiatrist licensed in accordance with KRS 311.530 to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification with the American Board of Psychiatry and Neurology;

(c) A psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning certified [to-function-without-supervision, in an area specified] by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;

(e) A certified psychologist certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;

(f) A psychological associate certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.064;

(g) A clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of [Examiners-of] Social Work in accordance with KRS 335.100;

(h) A social worker certified by the Kentucky Board of Examiners of Social Work in accordance with KRS 335.080;

(i) An advanced registered nurse practitioner licensed by the Kentucky Board of Nursing in accordance with KRS 314.042, with scope of practice in psychiatric or mental health nursing;

(j) A registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university and two (2) years of full-time clinical experience in psychiatric nursing;

(k) A registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a bachelor of science degree in nursing from an accredited college or university who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of full-time clinical experience in psychiatric nursing;

(l) A registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314, and who has one (1) of the following combinations of education and work experience:

1. A bachelor of science in nursing from a four (4) year program from an accredited college or university and one (1) year clinical work experience in the substance abuse or mental health field;
2. A diploma graduate in nursing and two (2) years clinical work experience in the substance abuse or mental health field; or
3. An associate degree in nursing from a two (2) year program from an accredited college or university and three (3) years clinical work experience in the substance abuse or mental health field;
- (m) A marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists in accordance with the provisions of KRS 335.300 to 335.399;
- (n) A professional counselor certified by the Kentucky Board of Certification for Professional Counselors in accordance with the provisions of KRS 335.500 to 335.599; or
- (o) A professional art therapist certified by the Kentucky Board of Certification of Professional Art Therapists in accordance with the provisions of KRS 309.130 to 309.1399;
- (4) Prevention staff training and documentation requirements.
 - (a) A certified alcohol and drug counselor shall have twenty-four (24) hours of prevention training within the four (4) years prior to the date of assuming the responsibility for delivering a universal, selective or indicated prevention service. The twenty-four (24) hours of training shall be obtained in the following topic areas for the required number of training hours:
 1. Twelve (12) hours in prevention strategies and procedures; and
 2. Twelve (12) hours specific to working with the prevention target populations being served.
 - (b) A certified or licensed professional listed in subsection (3) of this section shall complete an additional forty-five (45) hours of training in alcohol and other drug abuse within the four (4) years prior to the date of assuming responsibility for delivering a universal, selective or indicated prevention service. The forty-five (45) hours of training shall be obtained in the following topic areas for the required number of training hours:
 1. Twelve (12) hours in the recognition and understanding of substance abuse or dependency and related problems;
 2. Twelve (12) hours in prevention strategies and procedures;
 3. Twelve (12) hours specific to working with the prevention target population being served; and
 4. Nine (9) hours in one (1) or more of the training topics identified in subparagraphs 1, 2 and 3 of this paragraph.
 - (c) The hours of training required in this subsection shall be documented in a staff member's training file that shall include the:
 1. Date of the training;
 2. Length of the training event in clock hours;
 3. Learning objectives; and
 4. Name of the training provider;
- (5) Treatment staff training, documentation and supervision requirements.
 - (a) A certified or licensed professional identified in subsection (3) of this section shall complete eighty (80) hours of training in alcohol and other drug abuse counseling, within the four (4) years prior to the date of assuming responsibility for conducting clinical assessments, developing treatment plans, leading counseling sessions or providing case-management services, or within two (2) years after assuming these responsibilities or the effective date of this administrative regulation, whichever is later.
 - (b) A staff member with a bachelors degree or greater in any field, from an accredited college or university, shall receive training and supervision according to the following:
 1. Prior to being eligible to deliver a Medicaid substance abuse treatment assessment, case management, outpatient or intensive outpatient service, he shall complete forty (40) hours of training on the following topics:
 - a. Dynamics and treatment of substance abuse;
 - b. Alcohol and drug abuse recovery issues unique to pregnant women and women with dependent children; and
 - c. Recovery issues unique to females who are HIV positive, intravenous drug users, adolescents, and members of racial, cultural or ethnic groups;
 2. Supervision from a clinical services supervisor who meets one (1) of the following sets of qualifications:
 - a. A certified alcohol and drug counselor certified pursuant to KRS 309.080 to 309.089 who has at least two (2) years full-time clinical work experience post-certification; or
 - b. One (1) of the following licensed or certified professionals who **has completed eighty (80) hours of training in alcohol and other drug abuse counseling, within four (4) years prior to the date of assuming responsibility as a clinical services supervisor and has documented this training in accordance with the [meets the training and documentation] requirements in subsection (5)[(a) and] (c) of this section;**
 - (i) A Kentucky physician licensed in accordance with KRS 311.530 to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;
 - (ii) A psychiatrist licensed in accordance with KRS 311.530 to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification with the American Board of Psychiatry and Neurology;
 - (iii) A psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.050;
 - (iv) A certified psychologist with autonomous functioning certified to function without supervision, in an area specified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;
 - (v) A certified psychologist with at least three (3) years of full-time post-certification practice certified by the Kentucky Board of Examiners of Psychology in accordance with the requirements and limitations established in KRS 319.056;
 - (vi) A psychological associate with at least three (3) years of full-time post-certification practice certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.064;
 - (vii) A clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of Social Work in accordance with KRS 335.080;
 - (viii) A certified social worker with at least three (3) years of full-time post-certification clinical practice in psychiatric social work licensed by the Kentucky Board of Social Work in accordance with KRS 335.080;
 - (ix) An advanced registered nurse practitioner licensed by the Kentucky Board of Nursing in accordance with KRS 314.042 with scope of practice in psychiatric or mental health nursing;
 - (x) A registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university and two (2) years of full-time clinical experience in psychiatric nursing;
 - (xi) A registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a bachelor of science degree in nursing from an accredited college or university who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of full-time clinical experience in psychiatric nursing;
 - (xii) A marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists in accordance with the provisions of KRS Chapter 335;
 - (xiii) A professional counselor certified by the Kentucky Board of Certification for Professional Counselors in accordance with the provisions of KRS Chapter 335; or
 - (xiv) A professional art therapist certified by the Kentucky Board of Certification of Professional Art Therapists in accordance with the provisions of KRS 309.130.
 3. At least four (4) hours of face-to-face supervision shall be provided monthly by a clinical services supervisor who meets the requirements in subparagraph 2 of this paragraph and include at least two (2) of the following methodologies each month:
 - a. Didactic presentations;
 - b. Case consultation;
 - c. Monitoring a staff member's work with an individual through audio or audiovisual taping;
 - d. A supervisor's direct observation of a staff member's work with an individual; or
 - e. Meets with an individual that the staff member is working with

to determine if she is receiving the services she needs;

4. Supervision may be provided either one-on-one or in a group setting with other staff members being supervised;

5. A clinical services supervisor shall develop and update annually, a written plan of supervision for each staff member which shall:

- a. Identify knowledge and skill areas needing development;
- b. Identify supervision activities to increase clinical competence in areas of need; and

c. Include a dated signature of the clinical services supervisor and clinician agreeing to the plan of supervision; and

6. A clinical services supervisor shall maintain for a staff member he supervises, a record of each supervisory session which includes the date, length of the session and content of the supervision; and

7. In order to continue being eligible to deliver a Medicaid substance abuse treatment assessment, case management, outpatient, intensive outpatient or day rehabilitation service, a staff member with at least a bachelors degree, who meets the requirements of this paragraph, shall achieve licensure or certification as established in subsection (2)(a) or (b) of this section, within three (3) years from the date a staff member begins to deliver Medicaid substance abuse treatment services.

(c) Training received under the requirements of this subsection shall be documented in a staff member's training file and shall include the:

1. Date of the training;
2. Learning objectives;
3. Length of the training in clock hours; and
4. Name of the training provider.

(6) Community-support staff qualifications and training.

(a) A qualified community-support staff member shall be a person working in a participating provider agency who provides community-support services in accordance with Section 4(9) of this administrative regulation.

(b) A qualified community-support staff member shall meet the following minimum requirements:

1. A high school diploma or general equivalent diploma (GED);
2. Two (2) years of supervised experience in a substance abuse treatment setting and knowledge of substance abuse related self-help groups;
3. Twenty (20) hours of training on:
 - a. Dynamics and treatment of substance abuse;
 - b. Information on substance abuse recovery issues unique to pregnant women and women with dependent children;
 - c. Recovery issues unique to females who are HIV positive, intravenous drug users, adolescents, and members of racial, cultural or ethnic groups;
 - d. Strategies to defuse resistance;
 - e. Professional boundary issues with an individual that address enabling behaviors; and
 - f. Protecting a qualified community-support staff member, who may be a recovering substance abuser, from losing his own sobriety;

4. For a staff member who does not meet the requirement in subparagraph 2 of this paragraph, an additional forty (40) hours of training on the topics listed in subparagraph 3 of this paragraph shall be required;

5. Training shall be documented in a staff member's training file and shall include the:

- a. Date of the training;
- b. Learning objectives;
- c. Length of the training in clock hours; and
- d. Name of the training provider; and

6. He shall receive supervision from a case manager who meets the qualifications in subsection (2)(a) or (b) of this section, and provides supervision according to the following:

- a. A minimum of six (6) hours of face-to-face supervision shall be provided monthly and shall include:
 - (i) Didactic presentations;
 - (ii) Case consultation; and
 - (iii) A supervisor's direct observation of a community-support staff member's work with an individual, or a meeting between a supervisor and an individual with whom a staff member is working, to

determine if the individual is receiving the services she needs from a community-support staff person;

b. He may provide supervision one-on-one or in a group setting with other staff members being supervised;

c. He shall develop a written plan of supervision, updated annually, which:

- (i) Identifies knowledge and skill areas needing development;
- (ii) Identifies supervision activities to increase clinical competence in areas of need; and

(iii) Includes a dated signature of the supervisor and the community-support staff person agreeing to the plan of supervision; and

d. A supervisor shall maintain for a community-support staff person he supervises, a record of each supervisory session that includes the date, length of the session and content of the supervision.

Section 8. Records. Services delivered in accordance with Section 4 of this administrative regulation shall be documented in a service record maintained for each individual and meet the following standards:

(1) The service record shall include verification of the individual's pregnancy and postpartum status to include:

(a) A dated and signed statement from a licensed physician, physician assistant, certified nurse midwife, or ARNP;

(b) Anticipated due date or date of delivery; and

(c) Applicable ICD-9 diagnosis code;

(2) All entries in an individual's service record shall be:

(a) Kept current;

(b) Dated;

(c) Entitled according to the service received;

(d) Noted as to starting and ending time for each service rendered; and

(e) Signed by the staff member rendering the service, including his title.

(3) At admission to a substance abuse prevention or treatment service, the following intake information shall be completed and documented in an individual's service record within one (1) working day of her visit:

(a) An individual's name, address and telephone number;

(b) Emergency contact person;

(c) Referral source;

(d) Verification of Medicaid status and medical assistance identification number (MAID);

(e) Social Security number;

(f) Age, sex, and race; and

(g) Presenting need.

(4) Assessment. Substance abuse assessment information in accordance with the requirements of Section 4(1) of this administrative regulation shall be documented.

(5) Substance abuse prevention services.

(a) An ICD-9 diagnosis code for pregnancy or postpartum shall be documented.

(b) An individual's specific risk factors for developing alcohol and drug related problems shall be identified and documented.

(c) An individual's behavioral outcomes shall be identified and address the risks associated with using alcohol, tobacco and other drugs during pregnancy and lactation and throughout their lifetime.

(d) The prevention service selected for the individual shall be documented and include an explanation of how this individual meets the admission criteria for that service.

(e) The name of the substance abuse prevention therapeutic risk reduction protocol selected for use with an individual shall be documented.

(f) An individual's progress towards meeting her learning objectives shall be documented in her record in accordance with the following:

1. Documentation shall occur within one (1) working day following the delivery of each session;

2. Describe the session's activities, an individual's participation, reaction and progress during the session; and

3. If the prevention service is provided in a group setting, a summary of the session's activities may be copied and placed in each individual's record. An individualized note describing an indi-

vidual's participation, reaction and progress during the group session shall also be placed in an individual's record. A progress note shall not include the name of any other group member.

(g) Referrals made to other service providers shall be documented.

(h) A discharge summary shall:

1. Be completed following either an individual's withdrawal from or completion of a substance abuse prevention protocol;
2. Be completed within ten (10) days following discharge; and
3. Include a discussion of an individual's progress towards meeting the expected outcomes of the protocol and any recommendations and referrals for other needed services.

(i) An individual's completed pretest and post-test surveys associated with the prevention protocol shall be included in an individual's record.

(6) Substance abuse treatment services. For an individual receiving a substance abuse outpatient, intensive outpatient, day rehabilitation, case-management or community-support service, the following information shall be documented in an individual's service record by the staff member providing the service:

(a) A treatment plan;

(b) A case-management service plan if an individual is receiving case-management services;

(c) Review and revisions of the treatment and case-management service plan;

(d) An individual's progress towards meeting the objectives of a treatment plan or case-management service plan, documented within one (1) working day and recorded according to the following:

1. Outpatient, case-management and community-support services.

a. A substance abuse treatment professional shall prepare a progress note to include an observation of an individual's behavior and response to the service, and an individual's progress toward meeting the goals and objectives of her treatment plan or case-management service plan.

b. If group therapy is provided, an individual's progress note may include a summary of the session's activities that is copied and placed in each group member's record. An individualized note describing each individual's participation, reaction and progress during the group session shall also be placed in an individual's record. A progress note shall not include the name of another group member.

2. Intensive outpatient and day rehabilitation service.

a. Documentation of an individual counseling session shall meet the progress note documentation requirements in subparagraph 1a of this paragraph.

b. For other treatment activities in an intensive outpatient service, a summary note of an individual's progress may be recorded weekly and shall include:

(i) The eligible treatment activities an individual participated in during the week;

(ii) Observations of an individual's behavior in response to these services; and

(iii) An individual's progress in meeting their treatment goals and objectives;

(e) An aftercare plan that shall include identification of an individual's service needs at discharge, and activities and referrals supporting recovery from substance abuse; and

(f) A discharge summary that shall be completed within ten (10) days of discharge on an individual seen in excess of three (3) visits, and shall include the:

1. Date of admission and discharge;

2. Presenting problem;

3. Diagnosis;

4. Summary of an individual's treatment and response to treatment; and

5. Referrals made to other service providers.

(7) Confidentiality of an individual's service record. Information in an individual's service record shall be kept confidential in accordance with 908 KAR 1:320.

(8) Right to inspect records for audit and evaluation purposes.

(a) Information contained in an individual's record shall be disclosed only to authorized Cabinet for Health Service representatives, or authorized representatives of the federal government.

(b) An individual's service record and other information regarding payments claimed shall be maintained in an organized file and furnished to cabinet or federal government personnel upon request for inspection and copying.

(c) Failure of the provider agency to provide the requested documentation to Cabinet for Health Services staff shall result in denial of payment for the billed services.

Section 9. Reimbursement. (1) Rate setting for the fiscal years beginning July 1, 1999 and July 1, 2000 shall be as follows:

(a) For outpatient services provided in accordance with Section 4(5) of this administrative regulation, final prospectively determined rates for direct service cost centers shall be established on the basis of actual reasonable allowable cost as derived from a provider's audited annual cost report for the prior year prepared in accordance with 908 KAR 2:060, Section 3, and rates shall be determined in accordance with the following:

1. If an audited cost report is not available, the most recent unaudited annual cost report shall be the basis for the final rate.

2. If an unaudited cost report is used to establish rates, these rates shall be adjusted upon audit or desk review of the cost report used in setting the rate.

3. Allowable costs shall be trended to the beginning of the rate year and indexed to the end of the rate year using Standard and Poore's Data Resource, Incorporated (DRI).

4. A base payment rate for each service shall be the lower of the per unit rate derived from a provider's cost report or the maximum base payment rate for that service as established by the Medicaid Program.

5. A maximum base payment rate shall be determined for each service and shall be set at 130 percent of the median cost per unit of service of participating providers.

6. An incentive payment equal to fifteen (15) percent of the amount that a maximum base payment rate exceeds a provider's base payment rate, excluding the incentive payment, shall be paid for facilities with base payment rates under the maximum.

(b) Final rates for services not specified in paragraph (a) of this subsection shall be determined in accordance with the following:

1. The services are as follows:

a. Assessment provided in accordance with Section 4(1) of this administrative regulation;

b. Universal prevention provided in accordance with Section 4(2) of this administrative regulation;

c. Selective prevention provided in accordance with Section 4(3) of this administrative regulation;

d. Indicated prevention provided in accordance with Section 4(4) of this administrative regulation;

e. Intensive outpatient provided in accordance with Section 4(6) of this administrative regulation;

f. Day rehabilitation provided in accordance with Section 4(7) of this administrative regulation;

g. Case management provided in accordance with Section 4(8) of this administrative regulation; and

h. Community-support services provided in accordance with Section 4(9) of this administrative regulation.

2. Rates shall be determined in accordance with the following:

a. An interim rate for each provider shall be established through a budgeted cost report submitted by each provider prior to payment;

b. A separate accounting cost center shall be established by each provider for each direct service identified in subparagraph 1 of this paragraph to record costs incurred;

c. A final rate for each direct service cost center for each year shall be established based on the provider's actual cost report prepared in accordance with 908 KAR 2:060, Section 3, for the years ending June 30, 2000, and June 30, 2001; and

d. A payment based on an interim rate established in accordance with paragraph (b) of this subsection shall be adjusted retroactively to final rates established in accordance with clause c of this subparagraph.

(2) Rate setting for periods beginning after June 30, 2001 shall be as follows:

(a) A final prospectively determined rate for each direct service cost center, covered in this administrative regulation, shall be estab-

lished on the basis of actual reasonable allowable cost as derived from the provider's audited annual cost report prepared in accordance with 908 KAR 2:060, Section 3, for the prior year.

1. If an audited cost report is not available, the most recent unaudited annual cost report shall be the basis for the final rate.

2. If an unaudited cost report is used to establish rates, these rates shall be adjusted upon audit or desk review of the cost report used in setting the rate.

(b) Allowable costs shall be trended to the beginning of the rate year and indexed to the end of the rate year using DRI.

1. A base payment rate for each service area shall be the lower of the per unit rate derived from a provider's cost report or the maximum base payment rate for that service as established by the Medicaid Program.

2. A maximum base payment rate shall be determined for each service and shall be set at 130 percent of the median cost per unit of service of all participating providers.

3. An incentive payment equal to fifteen (15) percent of the amount that the maximum base payment rate exceeds a provider's base payment rate, excluding the incentive payment, shall be paid for facilities with base payment rates under the maximum.

(3) Implementation of the payment system.

(a) Reimbursement for services shall be based on the following units of service:

1. Universal prevention service shall be a one-quarter (1/4) hour unit;

2. Selective prevention service shall be a one-quarter (1/4) hour unit;

3. Indicated prevention service shall be a one-quarter (1/4) hour unit;

4. Outpatient service shall be a one-quarter (1/4) hour unit for the following modalities:

- a. Individual therapy;
- b. Group therapy;
- c. Family therapy;
- d. Psychiatric evaluation;
- e. Psychological testing;
- f. Medication management; and
- g. Collateral care;

5. An assessment service shall be a one-quarter (1/4) hour outpatient unit;

6. Intensive outpatient shall be a one-quarter (1/4) hour unit;

7. Day rehabilitation services shall be a one (1) hour unit;

8. Case-management services shall be a one-quarter (1/4) hour unit; and

9. Community support shall be a one-quarter (1/4) hour unit;

(b) Overpayments discovered as a result of audits shall be settled through recoupments or withholding of future payments.

(c) A provider shall submit an annual cost report on forms provided by the cabinet not later than ninety (90) days from the end of the provider's accounting year and shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services provided to Medicaid-eligible individuals.

(d) An audited cost report shall be submitted to the cabinet within six (6) months from the end of the provider's accounting year.

(e) Each provider shall make available to the cabinet at the end of each fiscal reporting period, and at intervals as the cabinet may require, all patient and fiscal records of a provider, subject to reasonable prior notice by the cabinet.

(f) Payments due a provider shall be made at reasonable intervals but not less often than monthly.

(4) Nonallowable costs.

(a) The cabinet shall not make reimbursement under the provisions of this administrative regulation for any service not specified as covered in Section 4 of this administrative regulation.

(b) Reimbursement shall not be made for any portion of a provider's costs found to be unreasonable or nonallowable in accordance 908 KAR 2:060, Section 3.

(c) Room and board costs shall not be included as an allowable cost for any service defined in Section 4 of this administrative regulation.

Section 10. Reimbursement of Out-of-state Providers. Reimbursement to a participating out-of-state mental health center provider shall be the lower of charges, or a provider's rate as set by the Medicaid Program in the other state, or the maximum base payment rate for that type of service in effect for Kentucky providers.

Section 11. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding the Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 12. Incorporation by Reference. (1) "The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition," DSM IV™; Copyright ©1994, American Psychiatric Association; published by the American Psychiatric Association, Washington, D.C., is incorporated by reference.

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

DENNIS BOYD, Commissioner

JOHN H. WALKER, Attorney

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: February 10, 2000

FILED WITH LRC: February 14, 2000 at 9 a.m.

**CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, April 12, 2000)**

921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

RELATES TO: KRS 205.010, [205.200(2), (3), 205.2003; 205.2005, 205.703, 205.720(1), 45 CFR Parts 260 through 265 [205.10, 205.52, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 233.90, 233.100], 8 USC 1611-1645, 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194B.050(1), [205.010; 205.200(2), (3), 205.2003, 42 USC 601 et seq., EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 205 requires the Cabinet for Families and Children [has the responsibility under the provisions of KRS Chapter 205] to administer the assistance program, the Kentucky Transitional Assistance Program, the block grant program funded pursuant to [under] 42 USC 601 et seq. KRS 205.200(2) requires that the conditions of eligibility to receive assistance [money grants] be prescribed by administrative regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation establishes [sets forth] the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, cooperation in child support [enforcement] activities, strikers, minor teenage parent provisions, time limits and potential entitlement for other programs for eligibility for benefits from the Kentucky Transitional Assistance Program.

Section 1. Definitions. (1) "Assistance" means the definition of "assistance" pursuant to 45 CFR 260.31.

(2) "Battered or subjected to extreme cruelty" means an individual who has been subjected to:

(a) A physical act [acts] that resulted in, or threatened to result in, physical injury to the individual;

(b) Sexual abuse;

(c) Sexual activity involving a dependent child;

(d) Being forced as the caretaker relative of a dependent child to engage in a nonconsensual sexual act or activity [acts or activities];

(e) Threat [Threats] of, or an attempt [attempts] at, physical or sexual abuse;

(f) Mental abuse; or

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(g) Neglect or deprivation of medical care.

(3) [(2)] "Cabinet" means the Cabinet for Families and Children.

(4) [(3)] "Child" means an individual:

(a) Age fifteen (15) or under;

(b) Age sixteen (16), seventeen (17), or eighteen (18) in regular full-time attendance in elementary, junior high, or high school or equivalent level of vocational or technical school; or

(c) Under age eighteen (18) and a high school graduate.

(5) "Concerns" means a hardship the individual shall overcome to become employed and self-sufficient.

(6) [(4)] "Domestic violence" means "battered or subjected to extreme cruelty" pursuant to [as-defined-in] subsection (2) [(4)] of this section.

(7) "Employed" means a person who performs a physical or mental activity in exchange for direct monetary compensation.

(8) [(5)] "Kentucky Transitional Assistance Program (K-TAP)" [;] means Kentucky's Temporary Assistance for Needy Families (TANF) [program, means a] money payment program for a child who is [children who are] deprived of parental support or care due to:

(a) Death of one (1) parent; or

(b) Continued voluntary or involuntary absence of one (1) [a] parent; or

(c) If [(b) Physical or mental incapacity of one (1) parent when] both parents are in the home;

1. Physical or mental incapacity of one (1) parent; or

2. [(c)] Unemployment of at least one (1) parent [when both parents are in the home].

(9) [(6)] "Kentucky Works" means a program that [which] assists a:

(a) Recipient [recipients] of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or

(b) Former K-TAP recipient with job retention service.

(10) [(7)] "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married or is married and not living with the spouse; and

(c) Has a minor child in the applicant's or recipient's care.

(11) [(8)] "Parent" means the natural, adoptive, or adjudicated (including administrative establishment of relationship [paternity]) parent of the child.

(12) [(9)] "Prior labor market attachment (PLMA)" means the parent has earned not less than \$1,000 during the twenty-four (24) months prior to the application[;] for K-TAP benefits based on the deprivation of unemployment pursuant to Section 9 of this administrative regulation.

(13) [(10)] "Qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive K-TAP, is:

(a) Lawfully admitted for permanent residence pursuant to [under] 8 USC 1101 et seq.;

(b) Granted asylum pursuant to [under] 8 USC 1158;

(c) A refugee who is admitted to the United States pursuant to [under] 8 USC 1157;

(d) Paroled into the United States pursuant to [under] 8 USC 1182(d)(5) for a period of at least one (1) year;

(e) An alien whose deportation is being withheld pursuant to [under]:

1. 8 USC 1253(h), as in effect prior to April 1, 1997; or

2. 8 USC 1231(b)(3);

(f) Granted conditional entry pursuant to 8 USC 1153(a)(7) as in effect prior to April 1, 1980; or

(g) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 USC 1522;

(h) Battered or subjected to extreme cruelty in the United States by a:

1. [A] Spouse or [a] parent; or

2. [A] Member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, the battery or cruelty; or

(i) An alien, a child of an alien or a child who is an alien who has been battered or subjected to extreme cruelty in the United States by a:

1. [A] Spouse or [a] parent of the alien without the active participation of the alien in the battery or cruelty; or

2. [A] Member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or

acquiesced to the battery or cruelty.

(j) Provisions in paragraph (h) and (i) of this subsection shall apply only if:

1. The alien no longer resides in the household with the individual responsible for the battery or cruelty;

2. There is a substantial connection between the battery or cruelty and the need for the benefit; and

3. The alien has been approved or has a petition pending for:

a. Status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of 8 USC 1154(a)(1)(A);

b. Classification pursuant to clause (ii) or (iii) of 8 USC 1154(a)(1)(B); or

c. Suspension of deportation and adjustment of status pursuant to 8 USC 1254(a)(3).

(k) An alien who is lawfully residing in Kentucky and is:

1. A veteran pursuant to [as-defined-in] 38 USC 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

2. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 USC 5303A(d); or

3. The spouse or unremarried surviving spouse if the marriage fulfills the requirements in 38 USC 1304, or unmarried dependent child of an individual pursuant to [described-in] clause a or b of this subparagraph.

(l) An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 USC 1101.

(14) [(11)] "Qualifying parent" means the parent who meets PLMA.

(15) [(12)] "Second chance home" means an entity that:

(a) Provides a minor teenage parent a supportive and supervised living arrangement; and

(b) Requires [in-which] a minor teenage parent [is-required] to learn;

1. Parenting skills, including child development;

2. Family budgeting;

3. Health and nutrition; and

4. Other skills to promote long-term economic independence and the well-being of the child of the minor teenage parent.

(16) [(13)] "Striker" means an employed individual who is participating in:

(a) A work stoppage;

(b) A concerted slowdown of work; or

(c) An interruption of operations at his place of employment.

(17) [(14)] "Supplemental Security Income (SSI)" means a monthly cash payment [payments] made pursuant to [under-the] authority of:

(a) 42 USC 1381 to 1385 to the aged, blind and persons with a disability;

(b) 42 USC 1382e; or

(c) 42 USC 1382.

(18) [(15)] "Unemployed parent" (UP) case means K-TAP benefits paid to a family if [when] both parents are in the home and at least one (1) parent is unemployed.

(19) [(16)] "Work" means participation in a Kentucky Works component pursuant to 921 KAR 2:370, Section 2(2)(c) (the following:

(a) Unsubsidized employment;

(b) Subsidized employment;

(c) Work experience training;

(d) Community services; or

(e) Work programs established by the cabinet).

Section 2. Age and School Attendance. (1) The definition of a "child", pursuant to [as-specified-in] Section 1(4) of this administrative regulation shall be met for at least one (1) person in the home.

(2) Verification of school attendance shall be required for a:

(a) [A] Child who is sixteen (16), seventeen (17), or eighteen (18) years of age, in order to determine his continuing eligibility; or

(b) [A] Minor teenage parent pursuant to Section 18(1) of this administrative regulation.

(3) Full- and part-time school attendance shall be defined pursuant to [is-defined-in] 921 KAR 2:016, Section 1(13) [Standards for need and amount for K-TAP].

(4) Unless the parent states the child shall not reenter school, a child shall be considered in regular attendance in a month [months-in which] he is not attending because of:

- (a) Official school or training program vacation;
- (b) Illness;
- (c) Convalescence; or
- (d) Family emergency.

(5) Verification of a high school diploma for a child under age eighteen (18) who is a high school graduate shall be required.

Section 3. Enumeration. (1) A [Each] person included in the K-TAP case shall furnish his Social Security number or apply for a number if one (1) has not been issued.

(2) Refusal to furnish the Social Security number or apply for a number shall result in the ineligibility of the person whose Social Security number is not furnished.

(3) The cabinet [agency] shall assist an individual in making application for a Social Security number, if needed.

Section 4. Residence and Citizenship. (1) Residence. A resident shall be an individual [anyone] who:

- (a) Is living in the state voluntarily and not for a temporary purpose; or
- (b) Entered the state with a job commitment or seeking employment; and
- (c) Is not receiving assistance funded by a block grant program pursuant to [under] 42 USC 601 et seq. from another state.

(2) Citizenship.

(a) Except as provided in paragraphs (b) and (c) of this subsection, K-TAP shall be provided only to a United States citizen [citizens].

(b) A qualified alien, pursuant to [as-defined-in] Section 1(13) [(10)] of this administrative regulation, who entered the United States before August 22, 1996, who is otherwise eligible for K-TAP, shall be eligible for assistance.

(c) A qualified alien, pursuant to [as-defined-in] Section 1(13) [(10)] of this administrative regulation, who entered the United States on or after August 22, 1996, shall not be eligible for K-TAP for a period of five (5) years beginning on the date of the alien's entry into the United States. The following exceptions shall apply to this provision:

1. An alien who is admitted to the United States as a refugee pursuant to [under] 8 USC 1157;
 2. An alien who is granted asylum pursuant [under] 8 USC 1158;
 3. An alien whose deportation is being withheld pursuant to:
 - a. 8 USC 1253(h), as in effect prior to April 1, 1997; or
 - b. 8 USC 1231(b);
 4. An alien who is lawfully residing in Kentucky and is:
 - a. A veteran pursuant to [as-defined-in] 38 USC 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;
 - b. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 USC 5303A(d); or
 - c. The spouse or unremarried surviving spouse if the marriage fulfills the requirements in 38 USC 1304, or unmarried dependent child of an individual described in clause a or b of this subparagraph;
 5. An alien who is a Cuban and Haitian entrant pursuant to 8 USC 1522; or
 6. An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 USC 1101.
- (d) Failure of the parent or other adult, applying for or receiving benefits, to sign a citizenship or alien status declaration shall cause the needs of the parent or other adult to be removed from the case.

Section 5. Deprivation. (1) To be eligible for K-TAP, a child shall be in need and shall be deprived of parental support or care pursuant to [as-specified-in] Section 1(8) [(5)] of this administrative regulation.

(2) A specific deprivation factor shall be verified for a [each] child for whom assistance is approved.

Section 6. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 7. Deprivation Due to Absence. (1) To be considered

deprived due to absence, a needy child shall be physically separated from the parent.

(2) Absence may be voluntary or involuntary.

(a) Voluntary absence shall include [includes]:

1. Divorce;
2. Legal separation;
3. Marriage annulment;
4. Desertion of:

a. [Of] Thirty (30) days or more if the parent:

- (i) [The parent] Voluntarily leaves; or
- (ii) [The parent] Refuses to accept the child into his home; or

b. [Of] Less than thirty (30) days if:

(i) The child leaves the parent because the parent was requiring the child to live under a circumstance [circumstances] hazardous to the health or morals of the child; or

(ii) One (1) of the parents in the home is required by the court to leave the home because that parent was requiring the child to live under a circumstance [circumstances] hazardous to the health or morals of the child; or

(iii) The child is voluntarily placed with a relative [relatives] following a finding by the cabinet that the home is unsuitable; or

(iv) The child is placed by the court with a specified relative other than the parent; or

(v) The child is eligible and receiving benefits based on the unemployment or the incapacity of a parent and one (1) of the parents subsequently leaves the home; or

(vi) Both parents are absent from the home;

5. Forced separation; or

6. Birth out-of-wedlock.

(b) Involuntary absence shall include [includes]:

1. Commitment to a penal institution for thirty (30) days or more;
2. Long-term hospitalization;
3. Deportation; or
4. Single parent adoption.

(3) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday shall be considered absent from the home.

Section 8. Deprivation Due to Incapacity. (1) A [Each] determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

- (a) Medical;
- (b) Social; and
- (c) Economic.

(2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the parent's inability to support or care for the child.

(3) Incapacity shall exist [exists] in a case if [when] the following criteria are met:

(a) It is medically determined that one (1) parent has a physical or mental disability, illness or impairment that [which was]:

1. Was present at the time of application; and
2. [Which] Has continued or is expected to last for a period of at least thirty (30) calendar days.

(b) The thirty (30) day period may include a period [in-which] the claimant is undergoing:

1. Planned diagnostic study [studies]; or
2. Evaluation of rehabilitation potential; and

(c) It is determined by nonmedical evaluation that the disability, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

(4) A determination regarding incapacity shall be made by:

(a) Field staff if the following criteria are met:

1. The parent declares physical inability to work;
2. The worker observes some physical or mental limitation; and
3. The parent:

a. Is receiving SSI; or

b. Is age sixty-five (65) or over; or

c. Has been determined to meet the definition of blindness pursuant to [as-contained-in] 42 USC 1382c or 42 USC 416 by the Social

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Security Administration; or

d. Has been determined to meet the definition of permanent and total disability pursuant to ~~[as contained in]~~ 42 USC 1382c or 42 USC 416 by either the:

(i) ~~[The]~~ Social Security Administration; or

(ii) ~~[The]~~ Medical review team of the ~~cabinet~~ ~~[Department for Community-Based Services]~~; or

e. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition; or

f. Is receiving Retirement, Survivors and Disability Insurance, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter; or

g. Is receiving Veterans Administration benefits based on 100 percent disability, as verified by an award letter; or

h. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, a statement from the physician shall be ~~[is also]~~ requested to indicate if incapacity existed as of application date; or

i. Is recovering from surgery, illness or injury that ~~[which]~~ requires a period of time for recovery, up to six (6) weeks, as specified by a physician statement. A period ~~[Periods]~~ longer than six (6) weeks shall be determined through the medical review team; or

j. Is on approved sick leave recovering from surgery, illness or injury for the duration of the approved sick leave if the employer is holding the job for the individual's return, as verified by the employer; or

k. Is a woman in a high risk pregnancy, during the duration of the pregnancy, as verified by physician statement.

(b) The medical review team, consisting of a licensed physician and a social worker employed by the ~~cabinet~~ ~~[agency]~~, if a determination by field staff is precluded.

(5) The factors to be considered by the medical review team in making the medical determination shall include:

(a) The claimant's medical history and subjective complaint ~~[complaints]~~ regarding an alleged physical or mental disability, illness or impairment; and

(b) Competent medical testimony relevant to whether:

1. [Whether] A physical or mental disability, illness or impairment exists; and

2. [Whether] The disability, illness or impairment is:

a. Sufficient to reduce the parent's ability to support or care for a child; and

b. ~~[3. Whether the disability, illness or impairment is]~~ Likely to last thirty (30) days.

(6) The factors to be considered in making the nonmedical evaluation shall include:

(a) The claimant's:

1. Age;

2. Employment history;

3. Vocational training;

4. Educational background; and

5. Subjective complaint ~~[complaints]~~ regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

(b) The extent and accessibility of employment opportunity ~~[opportunities]~~ available in the claimant's area of residence.

(7) In determining the extent and accessibility of available employment opportunity ~~[opportunities]~~, the limited employment opportunity ~~[opportunities]~~ of an individual ~~[individuals]~~ with a disability shall be taken into account; and

(a) Available printed materials that provide information regarding available employment opportunity ~~[opportunities]~~ shall be researched;

(b) The local Department for Employment Service office shall be contacted regarding accessible employment opportunity ~~[opportunities]~~ within the claimant's area of residence; and

(c) The claimant shall be referred, if necessary, for further appraisal of his abilities.

(8) A written report shall be made of the determination under this subsection.

(9) A ~~[Each]~~ claimant shall be provided timely and adequate notice

of and an opportunity for a fair hearing pursuant to ~~[as provided in]~~ 921 KAR 2:055.

Section 9. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent if ~~[when]~~ both parents are in the home shall be based on the determination that the qualifying parent meets the criteria of unemployment pursuant to subsection (3) of this section and has a PLMA, pursuant to ~~[as defined in]~~ Section 1(12) of this administrative regulation.

(2) ~~The determination of the qualifying parent shall include the following:~~

~~(a) If the agency is unable to secure primary evidence of earnings to determine which parent is the qualifying parent, the agency shall designate the qualifying parent using the best evidence available.~~

~~(b) If both parents earned identical amounts of income, or no income, the agency shall designate the parent meeting the criteria of unemployment, as specified in subsection (3) of this section.~~

~~(c) Earnings of each parent shall be considered in determining the qualifying parent regardless of when their relationship began.~~

~~(d) The qualifying parent designation shall remain with the same parent as long as assistance is received on the basis of the same application.~~

(3) ~~[Unemployment:]~~ A parent shall be considered to be unemployed if employed:

(a) ~~[Employed]~~ Less than 100 hours in a calendar month; or

(b) In excess of ~~[Employment exceeds]~~ 100 hours in a particular month if the employment ~~[but the work]~~ is intermittent and the excess is of a temporary nature if ~~[This would be evidenced by the fact that]~~ the parent:

1. Was under the 100 hour standard in the prior two (2) months, from the month of application for K-TAP; and

2. Is expected to be under the 100 hour standard in the following month of application for K-TAP.

(c) The 100 hour requirement for unemployment in paragraphs (a) and (b) of this subsection shall apply to a K-TAP applicant ~~[applicants]~~.

(4) PLMA shall be established if the parent:

(a) Attests to the amount of earnings pursuant to ~~[meeting the definition in]~~ Section 1(12) ~~[(9)]~~ of this administrative regulation;

1. Gross income from self-employment and farming qualify as earned income in determining PLMA; and

2. The self-employed individual does not have to realize a profit to meet this requirement.

(b) Within twelve (12) months prior to application, received unemployment compensation; or

(c) Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

(5) In determining whether or not criteria in subsection (4) of this section is met, two (2) semesters of full-time school attendance, as defined by the school or institution, may be substituted for \$500 of the \$1000 earnings.

(6) ~~[Restrictions:]~~ Unemployment shall not exist if the qualifying parent:

(a) Is on strike;

(b) Is temporarily unemployed:

1. Due to weather condition ~~[conditions]~~ or lack of work;

2. If there is a job to return to; and

3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

(c) Is unavailable for full-time employment;

(d) Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

(e) Has not met the criteria of unemployment for at least thirty (30) days;

(f) Is not:

1. Registered for work pursuant to 921 KAR 2:370, Section 4(3); or

2. Subject to Kentucky Works, pursuant to ~~[as specified in]~~ 921 KAR 2:370; or

(g) Has refused a bona fide offer of employment or training for employment without good cause, pursuant to 921 KAR 2:370, Section

6(1), in the thirty (30) days prior to UP eligibility or during the course of receipt of UP benefits. [Good cause exists if criteria specified in 921 KAR 2:370, Section 6(1) are met.]

Section 10. Living with a Specified Relative. (1) To be eligible for K-TAP a needy child shall be living in the home of a relative as follows:

- (a) [(1)] A blood relative, including a relative of the half-blood;
- (b) A [(2)] Any person listed in paragraph (a) of this subsection [(1)] of this section if the alleged father has had relationship [paternity] established through the administrative determination process pursuant to [as specified in] Section 11 of this administrative regulation;
- (c) [(3)] An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent;
- (d) [(4)] A relative by marriage, even if the marriage may have terminated, providing termination occurred after the birth of the child;

1. [(a) For K-TAP eligibility purposes:] A couple that has been considered married by a state with a common-law marriage provision [provisions] shall be considered married in Kentucky for K-TAP eligibility purposes; and

2. [(b)] The statement of the applicant or recipient that the couple's marriage recognized from another state as a [he resides in a state which recognizes] common-law marriage shall be accepted as verification by the cabinet [agency].

(2) [(5)] Cash assistance shall not be provided for a child who is absent, or expected to be absent, from the home for a period of thirty (30) consecutive days or more unless good cause exists. Good cause for absence, or expected absence, of the child from the home for a period of thirty (30) consecutive days or more, shall exist if the parent continues to exercise care and control of the child and the child is absent due to:

- (a) Medical care;
- (b) Attendance at school including boarding school;
- (c) College or vocational school;
- (d) Emergency foster care, as verified by the cabinet; or
- (e) If it is intended that the child will return to the home and the parent or specified relative maintains parental control of the child, short visit with a friend or relative [visits with friends or relatives].

(3) [(6)] A child shall be removed from the benefit group the first administratively feasible month following thirty (30) consecutive days from the date the child is placed in emergency foster care. If the only eligible child in the benefit group is absent due to emergency foster care, the otherwise eligible parent or parents in the benefit group shall:

- (a) Remain eligible for sixty (60) days from the date the child is placed in emergency foster care; and
- (b) If no other eligible child is in the benefit group, be discontinued the first administratively feasible month following sixty (60) days from the date the child is placed in emergency foster care.

(4) [(7)] If a specified relative fails to notify the cabinet [agency] of a thirty (30) consecutive day or more absence of the child for a reason other than one (1) of the good cause reasons listed in subsection (3) [(6)] of this section, the specified relative shall not be eligible for his share of K-TAP benefits during the period of the child's unreported absence of thirty (30) consecutive days or more. Ineligible benefits received by the specified relative and child during the period of the child's unreported absence of thirty (30) consecutive days or more shall be recouped pursuant to Section 10 of 921 KAR 2:016.

Section 11. Administrative Establishment of Relationship [Paternity]. (1) An administrative determination of relationship [paternity] as establisher [set forth] in this administrative regulation shall be used only to establish relationship for K-TAP eligibility if [and shall be limited to situations in which] the following type [types] of evidence is [are] present:

- (a) A birth certificate listing the alleged parent; or
- (b) Legal document which shall include [documents such as]:
 - 1. Hospital record [records];
 - 2. Juvenile court record [records];
 - 3. Will [Wills]; and
 - 4. Other court record that [records which] clearly indicates [indicate] the relationship of the alleged parent or relative; or
- (c) Receipt of statutory benefits as a result of the alleged parent's circumstance [circumstances]; or

- (d) VS-8 "Declaration of Paternity"; or
- (e) VS-8B "Voluntary Acknowledgment"; or
- (f) VS-8C "Three (3) Way Paternity Affidavit"; or
- (g) A sworn statement or affidavit of either parent acknowledging relationship [paternity] plus one (1) of the following:

- 1. School record [records];
- 2. Bible record [records];
- 3. Immigration record [records];
- 4. Naturalization record [records];
- 5. Church document [documents], such as baptismal certificate [certificates];
- 6. Passport;
- 7. Military record [records];
- 8. U.S. Census record [records]; or
- 9. Notarized statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(2) Rebuttal of administrative relationship [paternity] may occur if:

- (a) The parent or, in the absence of the parent, the caretaker relative alleges the evidence pursuant to [present in] subsection (1)(a) or (b) of this section is erroneous and provides substantiation of the erroneous information; and
- (b) The parent or caretaker relative provides a notarized statement or affidavit:

- 1. Acknowledging the erroneous information; and
 - 2. Containing the correct information on the actual alleged parent.
- (3) Presence of the notarized statement or affidavit pursuant to [specified in] subsection (2)(b) of this section shall serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of relationship [paternity] shall not be acknowledged.

Section 12. One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for K-TAP if receiving SSI.

(2) If a child who receives SSI meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for K-TAP if all other eligibility factors are met.

(3) If a child who receives foster care benefits meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for K-TAP if all other eligibility factors are met.

Section 13. Strikers. (1) A family shall be ineligible for benefits for a [any] month [in which] the parent, with whom the child is living [is] on the last day of the month, is participating in a strike; and

(2) A specified relative other than the parent shall be ineligible for benefits for a [any] month if, on the last day of the month, the relative is participating in a strike.

Section 14. Work Registration. An adult applicant or recipient of the K-TAP benefit group shall register for work pursuant to 921 KAR 2:370, Section 4(3).

Section 15. Kentucky Works. The technical requirements for participation in the Kentucky Works Program are pursuant to [specified in] 921 KAR 2:370.

Section 16. Cooperation in Child Support [Enforcement] Activities. (1) The Department for Community Based Services shall attempt to secure parental support, and if necessary establish paternity, for a child [children] receiving assistance pursuant to Section 1(1) of this administrative regulation, who has a parent absent from the home due to [K-TAP based on the following voluntary absence deprivation factors]:

- (a) Divorce;
 - (b) Desertion;
 - (c) Birth out-of-wedlock;
 - (d) Legal separation;
 - (e) Forced separation; or
 - (f) Marriage annulment.
- (2) With the exception of a good cause reason, pursuant to [reasons, specified in] subsection (4) of this section, avoidance of the twenty-five (25) percent reduction of the amount of the payment

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maximum in K-TAP benefits pursuant to subsection (7) of this section shall be dependent upon the applicant's or recipient's cooperation in child support activities ~~that shall include~~ [-This includes]:

(a) Identifying the noncustodial parent or obligor;

(b) Providing information to assist in the;

1. Location of the noncustodial parent or obligor;

2. Enforcement of a child support order; or

3. Review or modification of a child support order;

(c) Establishing paternity, if required; and

(d) Establishing, modifying or enforcing a child support order; and

(e) Forwarding a child support payment [payments] received to the state's centralized collection agency.

(3) The cabinet [for Families and Children] shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate in a child support activity.

(4) The applicant or recipient shall be excused from penalty for failure to cooperate with a child support activity, pursuant to subsection (2) of this section, if [determined to have "good cause" for failing to cooperate only when] one (1) [or more] of the following criteria is met:

(a) [The applicant or recipient's] Cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to:

1. The child; or

2. The caretaker relative [(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself] to [such] an extent that it would reduce the [his] capacity to care for the child adequately; or

(b) [(c)] The child was conceived as a result of incest or forcible rape and the cabinet [department] believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(c) [(d)] Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the cabinet [department] believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) [(e)] The applicant or recipient is being assisted by a public or licensed private social service agency:

1. To resolve whether to keep the child or release him for adoption; and

2. Discussion has not gone on for more than three (3) months; and

3. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Unless an extension is granted, the applicant or recipient shall have twenty (20) days from the date the good cause claim is filed to provide evidence to substantiate the claim.

(a) Evidence used to determine [upon which a determination of] good cause shall include [be made includes the following]:

1. Birth certificate [certificates], medical information, or law enforcement record [records] indicating that the child was conceived as a result of incest or forcible rape;

2. Court document [documents] or other record [records] indicating legal proceedings for adoption of the child by a specific family is [are] pending before a court of competent jurisdiction;

3. Record or other evidence [Records (court, medical, criminal, child protective services, social services, psychological or law enforcement)] indicating the noncustodial parent or obligor, or the alleged parent might inflict physical or emotional harm on the child or caretaker relative;

4. A written statement from a public or licensed private social service agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption and the issue has not been pending more than three (3) months; or

5. Notarized statement from an individual [statements from individuals], other than the applicant or recipient, with knowledge of the circumstance that provides [circumstances which provide] the basis for the good cause claim.

(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:

1. The present emotional state of the individual subject to emotional harm;

2. The emotional health history of the individual;

3. The extent and probable duration of the individual's emotional

impairment; and

4. The extent of involvement required by the individual in establishing paternity or enforcing a support obligation [obligations].

(c) If [When] the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted:

1. The cabinet [agency] shall conduct an investigation if it is believed that:

a. Corroborative evidence is not available; and

b. The claim is credible without corroborative evidence.

2. If the cabinet [agency] conducts an investigation of a good cause claim, it shall not contact the noncustodial parent or obligor, or the alleged parent regarding support unless the contact is necessary to establish the good cause claim.

3. If it is necessary for the cabinet [agency] to make the contact, the worker shall notify the applicant or recipient of the proposed contact to either:

a. Obtain permission for the contact; or

b. [To] Enable the applicant or recipient to:

(i) Present additional evidence or information so that such contact shall be [is] unnecessary;

(ii) Withdraw the application for assistance or request discontinuance of K-TAP; or

(iii) Have the good cause claim denied.

(6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the cabinet [agency] shall:

(a) Document the case;

(b) Determine that good cause:

1. [Good cause] Exists and a support activity [activities] cannot be initiated without endangering the:

a. [The] Best interests of the child; or

b. [The] Physical or emotional health of the child or the relative; or

2. [Good cause] Does not exist.

(c) Advise the applicant or recipient in writing of the result of the good cause claim determination; and

(d) Identify each case that [in which] good cause is established, but may be subject to change, for subsequent review.

(7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not deemed to be met by the cabinet [agency]:

(a) K-TAP benefits shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate family size pursuant to Section 8 of 921 KAR 2:016; and

(b) The cabinet [agency] shall attempt to obtain a protective payee to administer the K-TAP payment on behalf of the child.

(8) If, after the reduction of the K-TAP payment for failure to cooperate, the specified relative states he will cooperate, the cabinet [agency] shall:

(a) Remove the twenty-five (25) percent reduction in benefits effective the first administratively feasible month if the individual states he will cooperate and verification of cooperation is provided timely;

(b) Remove the protective payee from the case; and

(c) Not authorize a back payment [payments] for the period [of time for which] the individual did not cooperate.

(9) As a condition of eligibility for assistance, each applicant for, or recipient of K-TAP shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1). The assignment shall:

(a) Include all members of the case for whom support rights apply; and

(b) Be completed at the time of application for K-TAP benefits.

Section 17. Potential Entitlement for Other Programs. (1) An applicant or recipient shall apply for and comply with the requirements to receive another [any] benefit if potential entitlement exists.

(2) Failure to apply for another benefit or comply with its requirements shall result in ineligibility for K-TAP.

(3) If an applicant or recipient voluntarily reduces the amount of benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

Section 18. Minor Teenage Parents. (1) A minor teenage parent

including a married parent under the age of eighteen (18) living with the spouse shall participate in an educational activity [activities] directed toward the attainment of a high school diploma, or its equivalent, or a cabinet approved alternate education or training program if the individual has [minor-teenage-parent]:

(a) [Has] A minor child at least twelve (12) weeks of age in his care; and

(b) [Has] Not completed a high school education (or its equivalent).

(2) Except pursuant to [as-provided-in] subsection (4) of this section, a minor teenage parent and his minor child shall reside in:

(a) A place of residence maintained by:

1. A parent;

2. A legal guardian;

3. An adult relative pursuant to [as-described-in] Section 10 of this administrative regulation; or

(b) An appropriate adult supervised supportive living arrangement, that includes a second chance home or maternity home, taking into consideration the needs and concerns of the minor teenage parent.

(3) The cabinet shall provide or assist the minor teenage parent in locating a second chance home, maternity home, or other appropriate adult supervised supportive living arrangement if the:

(a) [The] Minor teenage parent does not have a:

1. [A] Parent, legal guardian or appropriate adult relative pursuant to [as-described-in] Section 10 of this administrative regulation who is living or whose whereabouts is [are] known; or

2. [A] Living parent, legal guardian, or other appropriate adult relative pursuant to [as-described-in] Section 10 of this administrative regulation who otherwise meets applicable state criteria to act as the legal guardian of the minor teenage parent, who would allow the minor teenage parent to live in the home of the parent, guardian, or relative pursuant to [as-described-in] Section 10 of this administrative regulation; or

(b) [The] Cabinet determines:

1. The minor teenage parent or the minor child of the teenage parent is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the minor teenage parent's own parent or legal guardian; or

2. Substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the minor teenage parent and the minor child lived in the same residence with the minor teenage parent's own parent or legal guardian.

(4) The requirement in subsection (2) of this section shall be waived if the cabinet determines:

(a) [The cabinet determines] Living in the place of residence maintained by the parent, legal guardian, or adult relative pursuant to [as-described-in] Section 10 of this administrative regulation is not in the best interest of the minor child taking into consideration the needs [and concerns] of the minor child; or

(b) [The cabinet determines] The minor teenage parent's current living arrangement is appropriate.

(5) If a circumstance changes [circumstances change] and the current arrangement ceases to be appropriate based on the needs and concerns of the minor teenage parent, the cabinet shall assist the minor teenage parent in finding an alternate appropriate arrangement.

(6) The minor teenage parent shall complete a "Teen Parent Personal Responsibility Plan", form PA-202TP.

(7) If the minor teenage parent is determined to be ineligible for K-TAP as a result of not complying with a provision [provisions] found in Section 18 of this administrative regulation, payment [payments] to a protective payee shall continue for the eligible child of the minor teenage parent.

(8) Even if exemption criteria is met and the cabinet determines the minor teenage parent's current living arrangement is appropriate, a minor teenage parent and his child, who do not reside in a place of residence maintained by a parent, legal guardian, other adult relative pursuant to [as-described-in] Section 10 of this administrative regulation, second chance home or maternity home, shall be considered an adult regarding benefit time limitations pursuant to Section 19 of this administrative regulation.

Section 19. Benefit Time Limits. (1) K-TAP shall not be provided to a benefit group, pursuant to [as-defined-by] Section 1(2) of 921 KAR

2:016, that includes an adult, or minor teenage parent pursuant to Section 18(8) of this administrative regulation, who has received assistance for sixty (60) months from a federally-funded program funded pursuant to [under] 42 USC 601 et seq., whether or not consecutive.

(2) [A month or months of assistance received by an otherwise eligible benefit group shall not be counted toward the sixty (60) months lifetime limit:

(a) If the benefit group contains an adult who is battered or subjected to extreme cruelty pursuant to Section 23 of this administrative regulation; or

(b) During a month or months the benefit group is not issued a K-TAP check in accordance with 921 KAR 2:050;

(3) After assistance has been received for sixty (60) months, an otherwise eligible benefit group containing one (1) of the following individuals shall be allowed an extension of the sixty (60) months time limit, during the period the individual:

(a) Is battered or subjected to extreme cruelty;

(b) Has a physical or mental disability prohibiting work as determined by the cabinet;

(c) Is required to provide constant care of a household member who is a parent, spouse or child with a disability and no alternative care arrangement is available; or

(d) Is a grandparent or other relative except for a parent caring for an eligible child who would otherwise be placed in foster care; or

(e) Is an adult with insufficient employment, as determined by the cabinet, who has complied with all program requirements including participation in Kentucky Works.

(3) [(4)] If otherwise eligible, a benefit group containing a member who has lost a job within thirty (30) days of reaching the sixty (60) month time limit shall receive a three (3) month extension of the time limitation.

[(5)] Each month of participation in the wage supplementation component of Kentucky Works, pursuant to 921 KAR 2:370, Section 2 shall count toward the sixty (60) month lifetime limit.]

(4) [(6)](a) Within twenty-four (24) months of receiving K-TAP assistance, whether or not consecutive, a parent or caretaker relative receiving assistance, shall work or participate in an approved work activity [activities], if available, pursuant to [as-defined-in] Section 1(19) [(16)] of this administrative regulation.

(b) The twenty-four (24) month limitation shall not be applied until the individual has been penalized for failure to participate in Kentucky Works, pursuant to 921 KAR 2:370, Section 7, for a period of six (6) cumulative months.

(5) [(7)] Time limitations shall apply to a:

(a) Sanctioned individual pursuant to 921 KAR 2:016, Section 1(26); or

(b) Penalized individual pursuant to [as-defined-in] 921 KAR 2:016, Section 1(23) [(22)].

Section 20. Receiving Assistance in Two (2) or More States. (1) K-TAP assistance shall be denied for ten (10) years to a person who has:

[(1)] been convicted in federal or state court of having made a fraudulent statement or representation committed after August 22, 1996, with respect to the place of residence of the individual in order to receive assistance simultaneously from two (2) or more states for:

(a) [Under] A program pursuant to [funded under]:

1. 42 USC 601 et seq.;

2. 42 USC 1396; or

3. 7 USC 2011 et seq.; or

(b) [For] Benefits received under supplemental security income.

(2) The requirement in subsection (1) of this section shall not apply to a conviction for a month [any months] beginning after the granting of a pardon by the President of the United States with respect to the conduct that [which] was the subject of the conviction.

Section 21. Fugitive Felons. (1) K-TAP assistance shall not be provided to:

(a) An individual fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or an attempt to commit a crime, committed or attempted to be committed after August 22, 1996, that [which] is a felony; or

(b) Violating a condition of probation or parole imposed under

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federal or state law.

(2) Subsection (1) of this section shall not apply with respect to conduct of an individual for a month [any month] beginning after the President of the United States grants a pardon with respect to the conduct.

~~[(3) The sixty (60) month lifetime benefit limitation in Section 19 of this administrative regulation shall apply to a benefit group containing an adult who is ineligible for K-TAP as a result of subsection (1) of this section.]~~

Section 22. Denial of Assistance for a Drug Felon [Felons]. (1) An individual convicted under federal or state law of an offense committed after August 22, 1996, classified as a felony by the law of the jurisdiction involved and that [which] has as an element the possession, use or distribution of a controlled substance pursuant to [as defined in] 21 USC 802(6), shall not be eligible for K-TAP benefits, except pursuant to [as provided by] KRS 205.2005.

(2) An [Each] individual applying for K-TAP benefits shall be required to state in writing whether the individual or a [any] member of the household has been convicted of a crime pursuant to [described in] subsection (1) of this section.

Section 23. Domestic Violence. (1)(a) A K-TAP applicant or recipient shall be screened for a history of domestic violence.

(b) If the applicant or recipient is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual. The plan shall:

1. Be developed by a person trained in domestic violence;

2. Reflect the individualized assessment and a revision made by a redetermination;

3. Include appropriate referral to counseling and supportive services based on the needs and concerns identified in the individualized assessment, as determined by the cabinet;

4. Be designed to lead safely to employment; and

5. Be completed no less often than every six (6) months. [and at risk of further domestic violence as determined by the cabinet, the individual shall be referred to counseling and supportive services.]

(2) If compliance with the following K-TAP requirements would make it more difficult for an individual receiving K-TAP to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, [or an individual who is at risk of further domestic violence, as determined by the cabinet,] the individual shall not be required to meet:

(a) Residency requirements pursuant to Section 4 of this administrative regulation;

(b) Child support cooperation requirements pursuant to Section 16 of this administrative regulation;

(c) Time limitations, for so long as necessary and otherwise eligible, pursuant to Section 19 of this administrative regulation; or

(d) Participation in Kentucky Works requirements pursuant to 921 KAR 2:370.

Section 24. ~~[Immunizations. (1) Except as provided under KRS 214.036, a recipient of K-TAP shall maintain current immunizations for an under school age child, pursuant to the Cabinet for Health Services, Department for Public Health Immunization Schedule in 902 KAR 2:060.~~

~~(2) The parent or caretaker relative shall be sanctioned, as defined in 921 KAR 2:016, Section 1, for failure to maintain current immunizations.~~

~~Section 25.] Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) PA-1C Supplement D, "Qualifying Parent Eligibility, edition 5/00 [5/99]";~~

~~(b) PA-14, "Declaration of citizenship or Alien Status, edition 5/00 [8/97]";~~

~~(c) PA-33D, "Child's Certification of School Enrollment/Attendance, edition 5/00 [8/97]";~~

~~(d) PA-121, "Good Cause Claim/Determination, edition 5/99";~~

~~(e) PA-202TP, "Teen Parent Personal Responsibility Plan, edition 5/00 [8/97]";~~

~~(f) PA-219, "Kentucky Works Program Fact Sheet, edition 11/98";~~

(g) CS-333, "Facts About the Child Support Program, edition 5/00 [4/99]"; and

(h) CS-333.1, "Facts About the Right to Claim Good Cause, edition 4/99".

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

DIETRA PARIS, Commissioner

CHARLES P. LAWRENCE, Attorney

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: February 9, 2000

FILED WITH LRC: February 15, 2000 at 11 a.m.

ADMINISTRATIVE REGULATIONS AS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(Amended After Hearing)

921 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).

RELATES TO: KRS 205.200(2), 205.210(1), 205.211, 205.2001, [42-CFR-435.831-] 45 CFR Parts 260-265 [233-, 233-20(a)(13)], 25 USC 1408, 42 USC 602

STATUTORY AUTHORITY: KRS 194B.050(1), 205.200(2), 42 USC 601 et seq., EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Kentucky Transitional Assistance Program (K-TAP), the block grant program funded by 42 USC 601 et seq. This administrative regulation sets forth the standards of the need for and the amount of a Kentucky Transitional Assistance Program payment.

Section 1. Definitions. (1) "Assistance" means the definition of "assistance" pursuant to 45 CFR 260.31.

(2) "Benefit group" means a group composed of one (1) or more children and may include as specified relative a person pursuant to [any person-specified-in] 921 KAR 2:006, Section 10.

(a) The benefit group shall include:

1. The dependent child;
2. The child's parent living in the home with the needy child who

is:

- a. Eligible for K-TAP; or
- b. Ineligible for K-TAP due to benefit time limitations pursuant to 921 KAR 2:006, Section 19; and
3. All eligible siblings living in the home with the needy child.

(b) If the benefits to the household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, this child shall not be included in the benefit group.

(c) If the dependent child's parent is a minor living in the home with his eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.

(d) The incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors are met.

(3) [(2)] "Beyond the control" means:

- (a) Loss or theft of the money;
- (b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible; or

(c) Expenditure of the lump sum income to meet an extraordinary expense that is [expenses, that are] not included in the K-TAP Standard of Need.

(4) [(3)] "Burial space" means a space and a related service [certain-related-services] used for the remains of a deceased person that may include [-This includes]:

- (a) A grave site;
- (b) Cos. [Costs] to open and close the grave;
- (c) A crypt;
- (d) A mausoleum space;
- (e) A casket;
- (f) A vault;
- (g) An urn; and
- (h) A headstone.

(5) "Cabinet" means the Cabinet for Families and Children.

(6) [(4)] "Change in circumstances" means a change in income or [and] dependent care expense affecting [expenses-which-affects] the ongoing K-TAP payment that [-This] shall include:

- (a) Beginning or ending employment;
- (b) Change in an employer [employers] or obtaining additional

employment;

(c) Increase or decrease in the number of work hours;

(d) Increase or decrease in the rate of pay;

(e) Increase or decrease in the dependent care expense due to a change in provider, number of hours of care, number of individuals for whom care is given, or amount charged; or

(f) Change in farm cropping arrangement [arrangements] or type of self-employment activity [activities].

(7) [(5)] "Claimant" means the individual responsible for an overpayment.

(8) [(6)] "Countable income" means income that [which] remains after excluded income and appropriate deductions are removed from gross income.

(9) [(7)] "Deduction" means an amount subtracted from gross income to determine countable income.

(10) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(11) [(8)] "Excluded income" means income that is received but not counted in the gross income test.

(12) [(9)] "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(13) [(10)] "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in:

1. An adult basic education program;
2. A general educational development program; or
3. A literacy program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or.

(c) The number of hours required by the individual high school or vocational school to fulfill their definition of full time.

(14) [(11)] "Gross income limitation standard" means 185 percent of the assistance standard, as set forth in Section 8 of this administrative regulation.

(15) [(12)] "Job Training Partnership Act Program (JTPA)" means a program that prepares a youth and unskilled adult [adults] for entry into the labor force. Only an individual who is [those individuals who are] certified as eligible for the program may [can] benefit from JTPA funds.

(16) [(13)] "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) Program, means a money payment program for a child who is [children who are] deprived of parental support or care pursuant to 921 KAR 2:006, Section 1.

(17) [(14)] "Kentucky Works" means a program that [which] assists a:

(a) Recipient [recipients] of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or

(b) Former K-TAP recipient with job retention service.

(18) [(15)] "Lump sum income" means income that does not:

1. Occur on a regular basis; or
2. [and does not] Represent accumulated monthly income received in a single sum.

(19) [(16)] "Minor" means a [any] person who is under the age of: [(a)] eighteen (18); or

[(b)] under the age of Nineteen (19) pursuant to [in accordance with] 921 KAR 2:006, Section 1.

(20) [(17)] "Minor teenage parent" means an individual who:

- (a) Has not attained eighteen (18) years of age;
- (b) Is not married or is married and not living with the spouse; and
- (c) Has a minor child in the applicant's or recipient's care.

(21) [(18)] "Part-time employment" means employment of:

- (a) Less than thirty (30) hours per week;
- (b) [or] 130 hours per month; or
- (c) Not employed throughout the entire month.

(22) [(19)] "Part-time school attendance" means a workload that is [of anything] less than "full-time school attendance."

(23) [(20)] "Penalized individual" means a person who is required to be included in the benefit group but fails to fulfill an eligibility requirement that [which] causes a pro rata reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.

(24) [(21)] "Prospective budgeting" means computing the amount of assistance based on income and circumstances that [which] will exist in the month the [month(s) for which] payment is made.

(25) [(22)] "Recoupment" means recovery of an overpayment [overpayments] of an assistance payment [payments].

(26) [(23)] "Sanctioned individual" means a [any] person who is required to be included in the benefit group but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(27) [(24)] "Self-employment income" means income from a business enterprise if [from which no] taxes are not withheld prior to receipt of the income by the individual.

(28) [(25)] "Supplemental security income (SSI)" means a monthly cash payment [payments] made pursuant to [under the authority of]:

- (a) 42 USC 1381 to 1385 to the aged, blind and disabled;
- (b) 42 USC 1382e; or
- (c) 42 USC 1382.

(29) [(26)] "Unavailable" means that the income is not accessible to the K-TAP benefit group for use toward basic food, clothing, shelter, and utilities.

(30) [(27)] "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, and tools [and transportation].

Section 2. Resource Limitations. (1) Real and personal property shall be considered if:

- (a) Available to the benefit group; and
- (b) Owned in whole or in part by:

1. An applicant or recipient;
2. A sanctioned or penalized individual; or

3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.

(2) The amount that can be reserved by each benefit group shall not be in excess of \$2,000 equity value excluding an item or [those] items [specifically] listed in subsection (3) of this section.

(3) Excluded resources. The following resources shall be excluded from consideration:

- (a) One (1) owner-occupied home;
- (b) One (1) motor vehicle;

(c) Basic household item or items essential for day-to-day living, including:

1. Furniture;
2. Appliances; and
3. Clothing;

(d) Gift or inheritance not legally available until a later date;

(e) Nonessential item with a value of less than fifty (50) dollars;

(f) [All] Resources of a recipient of SSI or the state supplementation program living in the home;

(g) Equity value of all equipment, livestock or other inventory used in a farming or self-employment enterprise;

(h) Crops and animals raised for home consumption;

(i) Real property that [which] the benefit group is making a good faith effort to sell, for a period of nine (9) months or less. If excluded:

1. The benefit group shall agree to repay K-TAP benefits received beginning with the first month of the exemption.

2. An [Any] amount of K-TAP paid during a [that] period that would not have been paid if the disposal of property had occurred at the beginning of the period shall be [is] considered an overpayment.

3. The amount of the repayment shall not exceed the net proceeds of the sale.

4. If the property has not been sold within the nine (9) months, or if eligibility stops for another [any other] reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) A child's [Children's] toys and bicycle [bicycles];

(k) Household pet [pets];

(l) Resources of a child excluded from the K-TAP grant;

(m) Resources of an individual not receiving assistance but living in the home including:

1. The stepparent;
2. Parent or legal guardian of a minor parent;
3. The spouse of a nonresponsible specified relative; or
4. The spouse of a minor dependent child;

(n) Amount of the K-TAP grant;

(o) Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home;

(p) Funds in an individual retirement account, retirement or deferred compensation account during the period of unavailability;

(q) Excluded income, pursuant to [as specified in] Section 4 of this administrative regulation;

(r) Principal and accrued interest of an irrevocable trust during a period [periods] of unavailability;

(s) One (1) burial space per K-TAP family member;

(t) Per family member, up to \$1,500 of the total value of:

1. Prepaid burial funds; and
2. Cash surrender value of all burial insurance policies per family member;

(u) Principal of a verified loan;

(v) Up to \$12,000 to Aleutians and \$20,000 to an individual [individuals] of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;

(w) Payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to a veteran or his survivor [veterans or their survivors];

(x) Earned income tax credit payment [payments] in the month of receipt and the following month;

(y) A [Any] payment received from the Radiation Exposure Compensation Trust Fund;

(z) A nonrecurring lump sum SSI retroactive payment that is made to a K-TAP recipient who is not ongoing eligible for SSI, in the month paid and the next following month; [and]

(aa) Up to a total of \$5,000 in individual development accounts, excluding interest accruing, pursuant to subsection (7) of this section;

(bb) A payment received from the National Tobacco Growers Settlement Trust; and

(cc) A Tobacco Loss Assistance Program payment pursuant to 7 CFR 1464.201.

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise divested himself of property without fair compensation in order to qualify for assistance.

(b) The household's application shall be denied, or assistance discontinued if:

1. It is determined by the cabinet that the transfer was made expressly for the purpose of qualifying for assistance; and

2. The uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limit.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d) If the amount of excess transferred resources does not exceed \$500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every \$500 increment up to a maximum of twenty-four (24) months.

(5) Lifetime care agreement.

(a) The existence of a valid agreement between the applicant or recipient and another individual or organization that [in which] the applicant or recipient has surrendered his resources in exchange for lifetime care shall make the case ineligible.

(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.

(6) Resources held jointly by more than one (1) person.

(a) A bank account [accounts] requiring one (1) signature for withdrawal [withdrawals].

1. Unless the other owner is a recipient of SSI, the total balance of the account shall be [is] considered available to the K-TAP applicant or recipient.

2. If the other owner receives SSI, the balance shall be [is] divided evenly by the number of owners and [only] the K-TAP applicant or recipient's share shall be [is] considered available.

(b) For a bank account that requires [accounts which require] more than one (1) signature for withdrawal, [withdrawals, determine] the K-TAP applicant or recipient's share shall be determined by obtaining a written statement from the other owners as to the division.

(c) If there is no predetermined allocation of shares from a business enterprise, the [determine] applicant or recipient's available share shall be determined by dividing the value of the business enterprise by the number of owners.

(d) If a resource is [resources are] held jointly, other than a resource pursuant to [those listed in] paragraphs (a) through (c) of this subsection, the applicant or recipient's share shall be [is] determined by dividing the value of the resource by the number of owners.

(e) Rebuttal of ownership may be accomplished if the applicant or recipient asserts he does not contribute to or benefit from a jointly held resource and he provides:

1. A written statement regarding ownership, who may deposit and withdraw [deposits and withdraws]; and

2. A written statement from each of the other owners that [which] corroborates the applicant's or recipient's statement, unless the account holder is a minor or is incompetent; and

3. Verification that the applicant's or recipient's name has been removed from the resource.

(7)(a) To be considered an exempt resource, the individual development account shall have been established on or after May 1, 1997, funded through periodic contributions by a member of the benefit group using funds derived from earned income that [which] was earned after May 1, 1997, for a qualified purpose.

(b) A qualified purpose to establish an individual development account shall be for:

1. Postsecondary educational expense that [expenses which] shall include:

a. Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution; and

b. Fees, books, supplies and equipment required for a course [courses] of instruction at an eligible educational institution;

c. An eligible educational institution shall be an:

(i) [An] Institution pursuant to [described in] 20 USC 1088(a)(1) or 1141(a); or

(ii) [An] Area vocational education school pursuant to [as defined by] 20 USC 2471(4)(C) or (D);

2. First home purchase that [which] includes:

a. Costs of acquiring, constructing, or reconstructing a residence; and

b. Usual or reasonable settlement, financing, or other closing costs;

3. A business capitalization expenditure [expenditures] for a business that does not contravene a [any] law or public policy, as determined by the cabinet, pursuant to a qualified plan. A qualified plan shall:

a. Include capital, plant, equipment, working capital, and inventory expenses;

b. Be approved by a financial institution; and

c. Include a description of a service or a good [services or goods] to be sold, a marketing plan, and projected financial statement [statements]. Assistance of an experienced entrepreneurial advisor may be required; or

4. Other purpose allowed by a federal regulation or clarification [regulations or clarifications].

(c) Funds held in an individual development account shall not be withdrawn except for one (1) or more of the qualified purposes pursuant to [listed in] paragraph (b) of this subsection;

(d) To be considered an exempt resource, an individual development account shall be matched by funds from:

1. A nonprofit organization; or

2. Funding permitting, a state or local government agency acting in cooperation with an organization pursuant to [described in] subparagraph 1 of this paragraph.

Section 3. Income Limitations. In determining eligibility for K-TAP, the following shall apply:

(1) Gross income test.

(a) The total gross non-K-TAP income shall not exceed the gross income limitation standard. This income shall include [includes]:

1. Income of the benefit group;

2. Income of a parent who does not receive SSI or state supplementation pursuant to 921 KAR 2:015;

3. Income of a sanctioned or penalized individual; and

4. An amount deemed available from:

a. The parent of a minor parent living in the home with the benefit group;

b. ~~[5. An amount deemed available from]~~ A stepparent living in the home;

c. ~~[6. An amount deemed available from]~~ The spouse of a minor dependent child living in the home; or

d. and

~~7. An amount deemed available from]~~ An alien's sponsor and sponsor's spouse if living with the sponsor.

(b) Excluded income types pursuant to [specified in] Section 4(1) of this administrative regulation shall apply.

(c) If total gross income exceeds the gross income limitation standard, the benefit group shall be [is] ineligible.

(2) Benefit calculation.

(a) If the benefit group meets the criteria pursuant to [set forth in] subsection (1) of this section, benefits shall be determined by subtracting excluded income and applicable deductions pursuant to [in] Section 4(1), (2), and (3) of this administrative regulation.

(b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the standard of need for the appropriate benefit group size pursuant to [as set forth in] Section 8 of this administrative regulation, the benefit group shall be [is] ineligible.

(c) Amount of assistance shall be determined prospectively.

(3) Ineligibility period.

(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during a [any] month the [for which] assistance is paid exceeds a limit pursuant to [the limits as set forth in] subsection (2) of this section due to receipt of lump sum income.

(b) The ineligibility period shall be:

1. The number of months that [which] equals the quotient of the division of total countable income by the standard of need pursuant to [as set forth in] Section 8 of this administrative regulation for the appropriate benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump sum amount.

(c) The ineligibility period shall be recalculated if [any of the following circumstances occur]:

1. The standard of need pursuant to [set forth in] Section 8 of this administrative regulation increases and the amount of grant the benefit group would have received also changes;

2. Income, that [which] caused the calculation of the ineligibility period, has become unavailable for a reason [reasons] that was [were] beyond the control of the benefit group;

3. The benefit group incurs and pays a necessary medical expense [expenses] not reimbursable by a third party;

4. An individual, who is required to be a member of the benefit group, joins the K-TAP household during an established ineligibility period; or

5. The benefit group reapplies during an established ineligibility period and the cabinet [agency] determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 4. Excluded Income and Deductions. [All] Gross non-K-TAP income received or anticipated to be received by the benefit group, sanctioned or penalized individual, natural parent, spouse of a dependent child and parent of a minor parent living in the home with the benefit group and stepparent living in the home, shall be considered with the application of excluded income and deduction policy pursuant to [as set forth in] the following subsections:

(1) Gross income test. An income [incomes] listed in this subsection shall be excluded:

(a) A deduction [Deductions] applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, pursuant

- to ~~[as-set-forth-in]~~ Section 6 of this administrative regulation;
- (b) A deduction ~~[Deductions]~~ applicable to an alien sponsor's income, pursuant to ~~[as-set-forth-in]~~ Section 7 of this administrative regulation;
- (c) A deduction ~~[Deductions]~~ applicable to self-employment income;
- (d) The difference between the standard of need and the payment maximum for the benefit group, pursuant to ~~[as-specified-in]~~ Section 8 of this administrative regulation, if ~~[for-households-in-which]~~ a member of the benefit group receives a JTPA stipend;
- (e) Value of United States Department of Agriculture program benefits including:
1. Donated food ~~[foods]~~;
 2. Supplemental food assistance received pursuant to ~~[under]~~ 42 USC 1771;
 3. Special food service program for a child pursuant to ~~[children under]~~ 42 USC 1775;
 4. Nutrition program for the elderly pursuant to ~~[under]~~ 42 USC 3001; and
 5. The monthly food stamp allotment;
- (f) Reimbursement for transportation in performance of an employment duty ~~[duties]~~, if identifiable;
- (g) The value of Kentucky Works supportive services payment pursuant to ~~[payments-authorized-under]~~ 921 KAR 2:017;
- (h) Nonemergency medical transportation payment ~~[payments]~~;
- (i) Payment ~~[Payments]~~ from complementary program ~~[programs]~~ if no duplication exists between the other assistance and the assistance provided by the K-TAP program;
- (j) Educational grant, loan, scholarship ~~[grants, loans, scholarships]~~, and work study income, including:
1. Payment ~~[Payments]~~ obtained and used under a condition ~~[conditions]~~ that preclude their use for current living cost ~~[costs]~~; and
 2. An education grant or loan to an ~~[All-education-grants-and-loans to-any]~~ undergraduate made or insured under a ~~[any]~~ program administered by:
 - a. The United States Commissioner of Education; or
 - b. The Bureau of Indian Affairs.
- (k) Highway relocation assistance;
- (l) Urban renewal assistance;
- (m) Federal disaster assistance and state disaster grant ~~[grants]~~;
- (n) Home produce utilized for household consumption;
- (o) Housing subsidy ~~[subsidies]~~ received from federal, state or local governments;
- (p) Receipt ~~[Receipts]~~ distributed to a member ~~[members]~~ of certain Indian tribes by the federal government pursuant to ~~[under]~~ 25 USC 459, 1261 and 1401;
- (q) Funds distributed per capita to or held in trust for a member of an ~~[members-of-any]~~ Indian tribe by the federal government pursuant to ~~[under]~~ 25 USC 459, 1261 and 1401;
- (r) Payment ~~[Payments]~~ for supporting services or reimbursement of out-of-pocket expense ~~[expenses]~~ made to an individual volunteer ~~[individual-volunteers]~~ serving under a program pursuant to ~~[programs authorized-by]~~ 42 USC 5001 and 42 USC 5011, including a:
1. Foster grandparent ~~[grandparents]~~;
 2. Senior health aide ~~[aides]~~;
 3. Senior companion; or ~~[companions;]~~
 4. Member of the:
 - a. Service Corps of Retired Executives; or
 - b. and
 5. Active Corps of Executives;
- (s) Payment ~~[Payments]~~ to "Volunteers in Service to America" (VISTA) participant pursuant to ~~[participants-under]~~ 42 USC 1451 if less than the minimum wage under state or federal law, whichever is greater;
- (t) Payment ~~[Payments]~~ from the cabinet ~~[for-Families-and-Children]~~ for:
1. Child foster care; or
 2. Adult foster care;
- (u) Energy assistance payment ~~[Payments]~~ made under:
1. The Low Income Home Energy Assistance Program pursuant to ~~[under]~~ 42 USC 8621; or
 2. and Other energy assistance payment ~~[payments-which-are]~~ made to an energy provider or provided in-kind;
- (v) Child support payment ~~[payments]~~ until K-TAP is received;
- (w) Earnings of an individual attending school who is age ~~[~~:
1. A child; or
 2. A parent who is:
 - a. Under the age of eighteen ~~(18); or~~
 - b. Age eighteen ~~(18) or~~ nineteen (19) or under;
- (x) Earnings of a dependent child under eighteen (18) who is a high school graduate;
- (y) Nonrecurring gift ~~[gifts]~~ of thirty (30) dollars or less received per calendar quarter for an ~~[each]~~ individual included in the assistance group;
- (z) The principal of a verified loan;
- (aa) Up to \$12,000 to Aleuts and \$20,000 to an individual ~~[individuals]~~ of Japanese ancestry for payment ~~[payments]~~ made by the United States Government to compensate for a hardship ~~[hardships]~~ experienced during World War II;
- (bb) Income of an individual receiving SSI;
- (cc) The essential person's portion of the SSI check;
- (dd) Income of an individual receiving mandatory or optional state supplementary payment pursuant to ~~921 KAR 2:015~~ ~~[payments]~~;
- (ee) The advance payment or refund of earned income tax credit;
- (ff) Payment ~~[Payments]~~ made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;
- (gg) Child support received in a month ~~[for-which]~~ the K-TAP payment is suspended;
- (hh) In-kind income;
- (ii) Income of a technically ineligible child;
- (jj) Payment ~~[Payments]~~ made from the Agent Orange Settlement Fund;
- (kk) K-TAP back payment ~~[payments]~~;
- (ll) Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship pursuant to ~~[as-specified-in]~~ 921 KAR 2:006, Section 10;
- (mm) Payment ~~[Payments]~~ made from the Radiation Exposure Compensation Trust Fund;
- (nn) Up to \$2,000 per year of income received by individual Indians denied from a lease ~~[leases]~~ or other use ~~[uses]~~ of individually-owned trust or restricted lands;
- (oo) Payment ~~[Payments]~~ made to an individual ~~[individuals]~~ because of his ~~[their]~~ status as a victim ~~[victims]~~ of Nazi persecution; and
- (pp) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;
- (qq) A payment received from the National Tobacco Growers Settlement Trust; and**
- (rr) A Tobacco Loss Assistance Program payment pursuant to 7 CFR 1464.201.**
- (2) Benefit calculation. Excluded income pursuant to ~~[in]~~ subsection (1) of this section and an ~~[any]~~ applicable deduction listed in this subsection shall be applied:
- (a) Standard work expense deduction of ninety (90) dollars for full-time and part-time employment; and
- (b) On or after November 1, 1995, if the caregiver is not the parent, legal guardian or a member of the benefit group, the dependent care disregard shall:
1. Be allowed as a work expense for:
 - a. An able bodied child age thirteen (13) or over and not under court supervision;
 - b. An incapacitated adult living in the home and receiving K-TAP;
 - c. A sanctioned individual whose earned income is considered available to the K-TAP household;
 - d. At the option of the recipient, a K-TAP case that ~~[which]~~ would otherwise be ineligible for K-TAP without the benefit of the disregard for child care; or
 2. The month of application for K-TAP benefits; and
2. Shall not exceed:
- a. \$175 per month per individual for full-time employment; or
 - b. \$150 per month per individual for part-time employment; or
 - c. \$200 per month per individual for child under age two (2).
- (c) Child support payment ~~[payments]~~ assigned and actually forwarded or paid to the cabinet ~~[department]~~; and
- (d) First thirty (30) dollars and one-third (1/3) of the remainder of earned income not already deducted for each member of the benefit

group.

1. The one-third (1/3) portion of this deduction shall be applied to each member's earned income for four (4) months.

2. The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent period.

3. Until the individual has earnings, reported timely, from new employment, the [These] deductions shall not be available to the individual after expiration of the time limits [until he has earnings, reported timely, from new employment]; and

(e) For new employment, or increased wages, acquired after approval and reported timely, a one (1) time only disregard per employed adult member of the benefit group, the amount of two (2) full calendar months earnings.

1. The two (2) months earnings disregard shall be consecutive, and at the option of the recipient.

2. If otherwise eligible, a sanctioned or penalized member of the benefit group may receive the two (2) months earnings disregard.

(3) Deductions from earnings pursuant to [in] subsection (2)(a), (b) and (d) of this section shall not apply for a [any] month [in which] the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists pursuant to 921 KAR 2:370, Section 6(1).

(b) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (2)(d) of this section;

(c) Fails to report an [and] increase in earnings, that [which] impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:

1. The benefit group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case, and if different, the member employed, is out of town for the entire ten (10) day report period.

(4) Changes in income and resources of the benefit group that contains a member who is participating in the wage supplementation component of Kentucky Works pursuant to 921 KAR 2:370 shall be disregarded for the first six (6) months of wage supplementation component participation.

Section 5. Child Care Payments. With the exception of those circumstances pursuant to [outlined in] Section 4(2)(b) of this administrative regulation, a child care expense [expenses] incurred as a result of employment shall be paid pursuant [according] to 922 KAR 2:160.

Section 6. Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, pursuant to [as described in] subsection (2) of this section:

(a) A stepparent;

(b) The spouse of a minor dependent child;

(c) The spouse of a specified relative other than a parent;

(d) A parent barred from receiving assistance due to failure to meet alien status; or

(e) A parent of a minor parent.

(2) Income. The gross income of the individual shall be [is] considered available to the benefit group, subject to the following deductions:

(a) The first ninety (90) dollars of the gross earned income;

(b) An amount equal to the K-TAP standard of need for the appropriate family size, pursuant to [as set forth in] Section 8 of this administrative regulation of:

1. The support of the individual; and

2. A [Any other] person living in the home if:

a. The needs of the person are not included [His needs are not taken into consideration] in the K-TAP eligibility determination; and

b. He is or may be claimed as a dependent for the purpose [purposes] of determining his federal personal income tax liability by the individual;

(c) An [Any] amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for the purpose [purposes] of determining his personal income tax liability by the individual;

(d) Payment [Payments] for alimony or child support to a person not living in the home by the individual;

(e) Income of an SSI recipient who is listed in subsection (1) of this section; or

(f) A retroactive SSI payment, that [which] is counted in determining eligibility and the amount of payment to the K-TAP unit in the month received, in a [any] subsequent month.

(3) Sanction exception. The income of a [any] sanctioned individual shall not be [is not] eligible for a deduction [the deductions] listed in this section.

(4) A resource shall not be considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group that belongs [Resources which belong] solely to the;

(a) Stepparent;

(b) Spouse of a minor dependent child;

(c) Spouse of a specified relative other than a parent; or

(d) Parent of a minor parent [are not considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group].

Section 7. Alien Income and Resources. (1) For the purpose [purposes] of this section, the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor. This subsection and subsections (2), (3), (4), (5), and (6) of this section shall apply to an immigrant [immigrants] who has [have] an agreement executed other than an agreement pursuant to 8 USC 1183a.

(2) The gross non-K-TAP income and resources of an alien's sponsor shall be deemed available to the alien, subject to a deduction [deductions] set forth in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien shall be [is] ineligible for a [any] month in that [which] adequate information on the sponsor or sponsor's spouse is not provided.

(5) If an alien is sponsored by an agency or organization, that [which] has executed an affidavit of support, the [that] alien shall be [is] ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

(a) Is no longer in existence; or

(b) Does not have the financial ability to meet the alien's needs.

(6) The provisions of this subsection shall not apply to an alien pursuant to [those aliens identified in] subsection (5) or (7) of this section.

(a) Income. The gross income of the sponsor shall be [is] considered available to the benefit group subject to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;

2. An amount equal to the K-TAP standard of need for the appropriate family size pursuant to [as set forth in] Section 8 of this administrative regulation of:

a. The sponsor; and

b. Other person [persons] living in the household:

(i) Who is [are] or may be claimed by the sponsor as a dependent [dependents] in determining his federal personal income tax liability; and

(ii) The person's [Whose] needs are not considered in making a determination of eligibility for K-TAP;

3. An amount [Amounts] paid by the sponsor to nonhousehold member [members] who is [are] or may be claimed as a dependent [dependents] in determining his federal personal tax liability;

4. Actual payment [payments] of alimony or child support paid to a nonhousehold member [members]; and

5. Income of a sponsor receiving SSI or K-TAP.

(b) Resources. Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were a K-TAP applicant in this state, less \$1,500.

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(7)(a) For a sponsored alien [aliens] who enters [enter] the United States on or after December 19, 1997, who is [are] required to complete a sponsorship agreement pursuant to 8 USC 1183a, the total gross income and resources of an alien's sponsor and sponsor's spouse shall be deemed available to the alien. The sponsor's obligation shall be available until:

1. The immigrant:
 - a. Becomes a United States citizen;
 - b. ~~Is~~ [Can be] credited with forty (40) quarters of work; or
 - c. Ceases to hold the status of an alien lawfully admitted for permanent residence; or
2. The sponsor dies.

(b) The immigrant shall provide the sponsorship agreement pursuant to 8 USC 1183a.

(8) If an amount less than the amount in the sponsorship agreement is made available to the immigrant, the actual amount provided by the sponsor shall be considered for a period up to twelve (12) months from the month of the determination if an alien is determined indigent. An alien shall be [is] determined indigent if:

(a) The amount of the sponsor's income and resources given to the alien is less than the amount in the agreement; and

(b) Without K-TAP assistance and after consideration of the alien's own income, cash, food, housing or assistance provided by an individual [other individuals] including the sponsor, the alien is [would be] unable to obtain food and shelter;

(9) Deeming of the sponsor's income shall not apply for twelve (12) months if the:

(a) [The] Alien or alien's child has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:

1. [A] Spouse or parent; or
2. [A] Spouse or parent's family living with the alien or alien's child and the spouse or parent allows the cruelty or battery; or

(b) [The] Alien is a child who lives with a parent who has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:

1. [A] Spouse; or
2. [A] Member of the spouse's family living in the same household and the spouse allows the cruelty or battery.

Section 8. Payment Maximum. (1) The K-TAP payment maximum includes an amount [amounts] for food, clothing, shelter, and utilities.

(2)(a) Countable income, pursuant to [as determined by the provisions of] Section 9 of this administrative regulation, shall be [is] subtracted in determining eligibility for and the amount of the K-TAP assistance payment as follows:

| [Effective December 1, 1995] | | |
|------------------------------|-----------------|------------------------|
| Number of Eligible Persons | Payment Maximum | Standard of Need |
| 1 person | \$186 | \$401 [394] |
| 2 persons | \$225 | \$460 |
| 3 persons | \$262 | \$526 |
| 4 persons | \$328 | \$592 |
| 5 persons | \$383 | \$658 |
| 6 persons | \$432 | \$724 |
| 7 or more persons | \$482 | \$790 |

(b) The gross income limit shall be [is] as follows for the appropriate family size:

| Number of Eligible Persons | Maximum Gross Income Limits |
|----------------------------|-----------------------------|
| 1 Person | \$742 [729] |
| 2 Persons | \$851 |
| 3 Persons | \$974 |
| 4 Persons | \$1096 |
| 5 Persons | \$1218 |
| 6 Persons | \$1340 |
| 7 or more Persons | \$1462 |

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied

to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4)(a) The assistance payment shall be the lesser amount of either:

1. Fifty-five (55) percent of the deficit pursuant to subsection (3) of this section; or

2. The payment maximum pursuant to subsection (2)(a) of this section [~~whichever is the lesser amount~~].

(b) As a result of applying the forty-five (45) percent ratable reduction pursuant to [listed in] subsection (3) of this section, an eligible payment to an otherwise eligible family with no income shall be calculated pursuant to [in accordance with] KRS 205.200(2).

Section 9. Best Estimate. (1) [~~The agency shall compute~~] The benefit shall be computed by using a [its] best estimate of income that may [which will] exist in the payment month.

(2) The following method [methods] shall be used [by the agency] to calculate a best estimate:

(a) For a case [cases] with earned income, other than self-employment earned income:

1. Cents shall: [~~The agency~~]

a. Not be rounded [Shall not round cents] to the nearest dollar before adding or multiplying hourly or daily earnings; and [~~but~~]

b. Be rounded [Shall round cents] to the nearest dollar before adding or multiplying weekly, biweekly, semimonthly, monthly, quarterly, or annual amounts.

2. Unless it does not represent the ongoing situation, [~~the agency shall use~~] income from all pay periods in the preceding two (2) calendar months shall be used.

3. [~~The agency shall determine~~] A monthly amount shall be determined by:

- a. Adding gross income from each pay period;
- b. Dividing by the total number of pay periods considered;
- c. Converting the pay period figure to a monthly figure by multiplying a:

(i) Weekly amount by four and one-third (4 1/3);

(ii) [a] Biweekly amount by two and one-sixth (2 1/6); or

(iii) [a] Semimonthly amount by two (2); and

d. Rounding to the nearest dollar.

4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, [~~the agency shall compute~~] the anticipated monthly income shall be computed by:

- a. Multiplying the hourly rate by the estimated number of hours to be worked in a pay period; or
- b. Multiplying the daily rate by the estimated number of days to be worked in the pay period; and
- c. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3c of this paragraph [~~by multiplying a weekly amount by four and one-third (4 1/3), a biweekly amount by two and one-sixth (2 1/6), or a semimonthly amount by two (2); and~~]; and
- d. Rounding to the nearest dollar.

(b) For a case [cases] with unearned income, other than unearned self-employment income, [~~the agency shall determine~~] a monthly amount shall be determined by:

1. Rounding cents to the nearest dollar;
2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis;
3. Unless it does not represent the ongoing situation, averaging the amount of nonstable unearned income received in the three (3) prior calendar months.

(c) For a case [cases] with self-employment income:

1. If the self-employment enterprise has been in operation for at least a year, [~~the agency shall prorate~~] the income shall be prorated by dividing the income from the last calendar year by twelve (12).

2. If the self-employment enterprise has been in operation for less than a year, [~~the agency shall prorate~~] the income shall be prorated by dividing by the number of months the business has been in existence.

3. [~~The agency shall determine~~] Profit shall be determined by:

- a. Rounding the total gross income to the nearest dollar;
- b. Rounding the total amount of allowable expenses to the nearest dollar;
- c. Dividing each by twelve (12), or the appropriate number of months, and rounding to the nearest dollar; and

d. Subtracting the rounded monthly expense from the rounded monthly income.

(3) The best estimate shall be recalculated:

(a) At six (6) month intervals for a case [cases] with:

1. Earned or unearned income other than self-employment; or
2. Income from a self-employment enterprise that [which] has not been in existence for at least one (1) year;

(b) At twelve (12) month intervals for a case [cases] with a self-employment enterprise that [which] has been in existence for at least one (1) year;

(c) If [Whenever] the agency becomes aware of a change in a circumstance [circumstances]; or

(d) To reflect a mass change in the standard of need or payment maximum standard pursuant to [as set forth in] Section 8 of this administrative regulation.

Section 10. K-TAP Recoupment. Except for an overpayment [those overpayments] in administrative regulation 921 KAR 2:017, the following provisions are effective for an overpayment discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup an overpayment.

(2) An overpayment, including assistance paid pending a hearing decision [decisions], shall be recovered from:

- (a) The claimant;
- (b) The overpaid benefit group;
- (c) A [Any] benefit group that [of which] a member of the overpaid benefit group has subsequently become a member; or
- (d) An [Any] individual member of the overpaid benefit group whether or not currently a recipient.

(3) An overpayment shall be recovered through:

- (a) Repayment by the individual to the cabinet; or
- (b) Reduction of future K-TAP benefits, that [which] shall result in the benefit group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income pursuant to [in accordance with] Section 8 of this administrative regulation; or

(c) Civil action in the court of appropriate jurisdiction.

(4) In a case that has [cases which have] both an overpayment and an underpayment, they shall be [the cabinet shall] offset one against the other in correcting the payment to a current recipient [recipients].

(5) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing pursuant to [as specified in] 921 KAR 2:055 is given and the administrative and judicial remedies have been exhausted or abandoned.

Section 11. Avoiding an Overpayment. (1) A K-TAP recipient may voluntarily return a benefit check to avoid an overpayment if the:

- (a) [The] Case is totally ineligible for the month [for which] the check is issued; and
- (b) [The] Check has not been reduced for recoupment of a previous overpayment.

(2) If a check is voluntarily returned, a determination shall be made [the agency shall determine] whether or not the recipient is due a refund as described in Section 12 of this administrative regulation.

Section 12. Refund. A recipient shall be due a refund in the following situations:

(1) [The agency recoups] An amount in excess of the actual overpayment is recouped;

(2) [The agency offsets] An overpayment and an underpayment is offset and [finds] a balance is owed to the recipient;

(3) A [recipient voluntarily returns a] K-TAP check that is voluntarily returned to avoid an overpayment is compared to [and] the current month obligation of child support [was] collected by the cabinet [agency] during the month the K-TAP check was intended to cover, leaving a balance owed to the recipient.

Section 13. Correction of Underpayments. The following provisions shall apply to a [all] K-TAP payment [payments]:

(1) [The department shall promptly correct] An underpayment shall be promptly corrected to:

(a) A current K-TAP recipient; and

(b) One (1) who would be a current recipient if the error causing the underpayment had not occurred.

(2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group.

(3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in:

(a) The month the payment is paid; or

(b) The next following month.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) PA-30.2, "Payment Receipt, edition 5/00 [2/97]";

(b) PA-35, "Sale of Property Agreement to Repay K-TAP Benefits to the Commonwealth of Kentucky, edition 5/00 [8/97]";

(c) FA-1, "Transitional Assistance Self-assessment, edition 5/99".

(2) These forms may be inspected and copied at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

CHARLES P. LAWRENCE, Attorney

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: March 27, 2000

FILED WITH LRC: April 4, 2000 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) Block Grant Program called Kentucky Transitional Assistance Program (K-TAP). In Kentucky the TANF Block Grant Program to implement the work requirements is called Kentucky Works. The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) Block Grant Program called Kentucky Transitional Assistance Program (K-TAP). As of January 2000, approximately 39,084 families in Kentucky received K-TAP, including 24,968 adults and 64,907 children. Adults receiving K-TAP are required to participate in work activities.

(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 comment received: A public hearing scheduled on March 21, 2000, as a result of the publication of the administrative regulation, was not held since no requests were received; however, written comments were received by close of business on March 21, 2000. No written comments were received regarding cost of living and employment in the geographical area.

(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: A public hearing scheduled on March 21, 2000, as a result of the publication of the administrative regulation, was not held since no requests were received; however, written comments were received by close of business on March 21, 2000. No written comments were received regarding the cost of doing business in the geographical area.

(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 individuals who are applicants or recipients of K-TAP will not have any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The breakdown of costs and savings to the agency for the first year are listed below: No additional fiscal impact to the agency is anticipated due to the amendments to this administrative regulation as the result of written comments received by close of

business on March 21, 2000.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year are listed below: Same as first year.

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 funds and state 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: A public hearing scheduled on March 21, 2000, as a result of the publication of the administrative regulation, was not held since no requests were received; however, written comments were received by close of business on March 21, 2000. A written comment was received regarding the economic activities in the geographical area in which administrative regulation will be implemented. The commentor stated that a payment received from the National Tobacco Growers Settlement Trust and the Tobacco Loss Assistance Program should be excluded in K-TAP as a resource or income. We agreed with the commentor and added this exclusion to 921 KAR 2:016. This change will be implemented statewide. Excluding these payments in the K-TAP case will have a positive effect on the economic activities in the state. These payments may encourage the development of other agricultural products which will lessen the impact of decreased tobacco quotas.

(b) Kentucky: A public hearing scheduled on March 21, 2000, as a result of the publication of the administrative regulation, was not held since no requests were received; however, written comments were received by close of business on March 21, 2000. A written comment was received regarding the economic activities in Kentucky. The commentor stated that a payment received from the National Tobacco Growers Settlement Trust and the Tobacco Loss Assistance Program should be excluded in K-TAP as a resource or income. We agreed with the commentor and added this exclusion to 921 KAR 2:016. This change will be implemented statewide. Excluding these payments in the K-TAP case will have a positive effect on the economic activities in the state. These payments may encourage the development of other agricultural products which will lessen the impact of decreased tobacco quotas.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the amendments to the regulation are required to comply with federal regulations issued on April 12, 1999.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with federal TANF regulations issued April 12, 1999, effective October 1, 1999.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: TANF Block grant funding for public assistance benefits (including supportive services) received by needy Kentuckians may be jeopardized if Kentucky does not comply with federal requirements found in 45 CFR Parts 260 Through 265, effective October 1, 1999. Prior to the issuance of the final federal TANF regulations, states were allowed to operate programs under a reasonable interpretation of the TANF federal statutes as a result of the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. However, this standard only applies until the effective date of the final TANF regulations which is October 1, 1999. At that time, states are required to implement changes in the programs to comply with these federal regulations. If these changes are not implemented, penalties and loss of federal funds may result. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services which enables the parent to remain

in the work activity.

(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: None

(10) Any additional information or comments: A public hearing scheduled on March 21, 2000, as a result of the publication of the administrative regulation, was not held since no requests were received; however, written comments were received by close of business on March 21, 2000. A Statement of Consideration was filed with LRC as a result of written comments received by March 21, 2000.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR Parts 260 through 265.

2. State compliance standards. KRS 205.2001

3. Minimum or uniform standards contained in the federal mandate. Federal regulations contain standards regarding the definition of "assistance" funded with TANF federal funds.

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (Amended After Hearing)

921 KAR 2:017. Kentucky Works supportive services.

RELATES TO: KRS 205.200(2), 205.211, 205.2003, 45 CFR Parts 260 through 265, 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194B.050(1), 205.200(2), 205.2003, 42 USC 601 et seq., EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is required to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive assistance [K-TAP-money-grants] be prescribed by administrative regulations in conformity with 42 USC 601 et seq. and federal regulations. KRS 205.2003 requires administrative regulations for the development of a work program for recipients of public assistance to provide for immediate employment or preparation for employment and to provide supportive services to assist in the pursuit of work and self-sufficiency. This administrative regulation sets forth the requirements for receiving Kentucky Works supportive services.

Section 1. Definitions. (1) "Approved Kentucky Works activity [activities]" means participation in an allowable activity pursuant to 921 KAR 2:370, Section 2(2)(c).

(2) "Assistance" means the definition of "assistance" pursuant to 45 CFR 260.31.

(3) "Cabinet" means the Cabinet for Families and Children.

(4) [(3)] "Component" means a service or activity [services and activities] pursuant to 921 KAR 2:370, Section 2(2)(c).

(5) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(6) [(4)] "Component preparation" means the period in which assessment, testing, completion of the transitional assistance agreement Form KW-202 "K-TAP Transitional Assistance Agreement", incorporated by reference in 921 KAR 2:370, and referral [referrals] for removal of concerns takes place.

(7) [(5)] "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(8) [(6)] "Kentucky Transitional Assistance Program (K-TAP)",

means Kentucky's Temporary Assistance for Needy Families (TANF) ~~[program, means a]~~ money payment program for a child [children] pursuant to 921 KAR 2:006, Section 1.

(9) ~~[(7)]~~ "Kentucky Works" means a program ~~that [which]~~ assists a:

(a) Recipient [recipients] of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or
(b) Former K-TAP recipient with job retention service.

(10) ~~[(8)]~~ "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(11) ~~[(9)]~~ "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(12) ~~[(10)]~~ "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(13) ~~[(11)]~~ "Transitional extension" means a period of up to twelve (12) months [ninety (90) days] subsequent to the discontinuance of the K-TAP case in which a supportive service payment [payments] may continue if:

(a) The case is not discontinued due to fraudulent activity; and

(b) The case is not discontinued due to failure to comply with procedural requirements; and

(c) Total gross income of the benefit group, pursuant to 921 KAR 2:016, Section 1(2), is at or below 200 percent of federal poverty level, adjusted annually; and

(d) The Kentucky Works participant:

1. Elects to continue the approved component activity in which he is engaged at the time of discontinuance; and

2. Is employed.

Section 2. Kentucky Works Participation and Supportive Services Payment [Entitlement]. (1) Except for the exclusions listed in this administrative regulation, a [those individuals participating in the Kentucky Works Program shall be entitled to] payment of a supportive services cost, [costs] necessary for participation in an approved Kentucky Works activity, as determined by the cabinet, shall be made for an individual participating in the Kentucky Works Program.

(2) Kentucky Works activities are pursuant to [described in] 921 KAR 2:370, Section 2(2)(c).

Section 3. Transportation [Payments in Kentucky Works components]. Transportation reimbursement shall be paid, or a transportation service provided by a regional capitated transportation network, in the following situations:

(1) Precomponent;

(2) Component preparation;

(3) Component participation, with the exception of OJT and unsubsidized employment, while the K-TAP case remains active. Transportation expenses for individuals in unsubsidized employment are covered by the work expense standard deduction as defined in 921 KAR 2:016, Section 1(1); [or]

(4) Transitional extension; or

(5) A period of up to ninety (90) days subsequent to the discontinuance of the K-TAP case if:

(a) The case is not discontinued due to:

1. Fraudulent activity; or

2. Failure to comply with procedural requirements;

(b) The Kentucky Works participant elects to continue the approved component activity in which he is engaged at the time of discontinuance; and

(c) Total gross income of the benefit group, pursuant to 921 KAR 2:016, Section 1(2), is at or below 200 percent of federal poverty level, adjusted annually; [or

(5) On-the-job training (OJT) participants discontinued from K-TAP, until the end of the component placement].

Section 4. Transportation Payment Amount and Authorization. (1) If free transportation is unavailable that [which] meets the needs of the recipient, transportation shall be provided for an individual [individuals] participating in an approved Kentucky Works activity [activities] through:

(a) Arrangement by the state K-TAP agency or contractor; and

(b) After receipt of verification, in an area where a transportation service is not provided by a regional capitated transportation network,

a direct payment to the individual shall be made through the System Tracking for Employability Program (STEP), as follows:

1. If low-cost transportation is available and meets the needs of the individual, the actual transportation cost [costs] shall be paid up to the maximum payment rate pursuant to [rates listed in] subparagraph 2 of this paragraph; or

2. If free or low-cost transportation that meets the needs of the individual is unavailable, a direct payment shall be made to the individual per month as follows:

a. Nine (9) dollars for less than four (4) days per month;

b. Thirty-five (35) dollars for four (4) to sixteen (16) days per month; or

c. Sixty (60) dollars for seventeen (17) or more days per month.

(c) For a special circumstance, as determined by the cabinet, when the actual transportation cost exceeds [costs exceed] the maximum payment rate [rates] in paragraph (b) of this subsection, if approved by the cabinet, the actual negotiated rate not to exceed \$100 per month may be paid.

(d) A payment [Payments] shall be made pursuant to [as specified in] 921 KAR 2:050.

(2) In precomponent, if necessary to guarantee that the transportation arrangement shall not be lost, a transportation payment [payments] shall be provided for the period of up to:

(a) [Up to] Two (2) weeks prior to the scheduled start of component activity; and

(b) [Up to] One (1) month during a break in component activity if subsequent component activity is scheduled to begin within that period.

Section 5. Restriction [Restrictions] on Authorization of a Transportation Payment. A payment [Payments, Payments] shall not be made if:

(1) Appropriate verification is not returned by the end of the month prior to the month in which the cost will be incurred;

(2) The participant is penalized for noncompliance with a Kentucky Works activity, pursuant to [activities, as specified in] 921 KAR 2:370.

Section 6. Transportation Service [Services] in a Regional Capitated Transportation Network. Initially in limited areas until statewide implementation is completed, the transportation service shall be provided pursuant to 921 KAR 2:018, ~~Section 2 and 603 KAR 7:080.~~

Section 7. Other Supportive Services [in Kentucky Works Components]. (1) Other supportive services shall be provided if necessary for participation in the approved Kentucky Works activity [activities] of:

(a) Component preparation;

(b) Component participation while the K-TAP case remains active;

(c) A period of up to ninety (90) days subsequent to the discontinuance of the K-TAP case if:

1. The case is not discontinued due to:

a. Fraudulent activity; or

b. Failure to comply with procedural requirements;

2. The Kentucky Works participant elects to continue the approved component activity in which he is engaged at the time of discontinuance; and

3. Total gross income of the benefit group, pursuant to 921 KAR 2:016, Section 1(2), is at or below 200 percent of federal poverty level, adjusted annually; or [Transitional extension];

(d) [OJT participants discontinued from K-TAP, until the end of the component placement; or

(e) Acceptance of a new job or retention of an existing one if the parent or other adult:

1. Has accepted employment and a start date of employment is provided, except if [when] an item is required as a condition of being hired by the employer; or

2. Is employed.

(2) Other supportive services shall be approved by the cabinet. An item or service [Items and services] that shall be approved is [are] the purchase of an item or service needed by the K-TAP recipient for participation in the Kentucky Works activity, as determined by the cabinet.

(3) Other supportive services shall be a cumulative limit of \$600 in a twelve (12) month period, beginning with the first day of the month in

which the appropriate verification is issued.

(4) A payment may be authorized for an eligible parent or other adult included as a specified relative pursuant to Section 10 of 921 KAR 2:006.

(5) A penalized or [and] sanctioned K-TAP ineligible adult is [adults-are] not eligible for other supportive services.

(6) A retroactive payment for other supportive services shall not be made for an item purchased by a penalized or sanctioned individual who later cures the penalty. After the parent or other adult cures the penalty or sanction, an eligible expense [eligible-expenses] may be authorized.

(7) Except pursuant to [as-allowed-by] Section 8 of this administrative regulation, a medical service or item shall not be an allowable supportive service.

Section 8. Allowable Medical Service or Item. If non-TANF funding is used and as long as funding is available, the purchase of the following item or service shall be allowed for a K-TAP recipient, if needed for participation in the Kentucky Works activity and not reimbursable through Medicaid, as determined by the cabinet and limited to:

- (1) Eyeglasses or corrective lens;
- (2) Dentures;
- (3) Hearing aids; and
- (4) Medical service or item required as a condition of employment.

Section 9. Car Repairs. (1) A car repair expenditure [Car-repairs] shall be provided if necessary for participation in the approved Kentucky Works activity [activities] of:

- (a) Component preparation;
- (b) Component participation, including unsubsidized employment while the K-TAP case remains active; or
- (c) A period of up to ninety (90) days subsequent to the discontinuance of the K-TAP case if:

1. The case is not discontinued due to:
 - a. Fraudulent activity; or
 - b. Failure to comply with procedural requirements;
2. The Kentucky Works participant elects to continue the approved component participation in which he is engaged at the time of discontinuance; and

3. Total gross income of the benefit group, pursuant to 921 KAR 2:016, Section 1(2), is at or below 200 percent of federal poverty level, adjusted annually [Transitional-extension; or

(d) OJT-participants discontinued from K-TAP, until the end of the component placement].

(2) Car repair expense [expenses] shall meet the following criteria to be considered for payment:

- (a) Car repair that [which] makes the car functional;
- (b) Property tax on the [taxes-on] vehicle;
- (c) Vehicle registration;
- (d) Licenses fee [fees];
- (e) Liability insurance to drive a vehicle; and
- (f) Other car expense needed by the K-TAP recipient that [which] would allow participation in the Kentucky Works activity, as determined by the cabinet.

(3) A car repair expenditure [All-car-repair-expenditures] listed in subsection (2) of this section shall require:

- (a) An estimate of the cost; and
- (b) Approval by the cabinet.
- (4) A [All] auto repair work shall be completed by a garage. [garages;]

(5) Prior to approval of a car repair expenditure [car-repair-expenditures], the cabinet shall verify the participant owns the vehicle.

(6) The payment maximum for total car repair expenditures shall be up to a maximum of \$500 per year per eligible family.

Section 10. Short-term Training. A fee for a short-term training program shall be eligible for payment for a K-TAP recipient if the training program is:

- (1) [Is] Not eligible for federal financial aid; and
- (2) [Is] Likely to lead to paid employment and is in accordance with the participant's Transitional Assistance Agreement, form KW-202, "K-TAP Transitional Assistance Agreement", as determined by the cabinet.

Section 11. Other Fees. (1) The following fee payment [payments] may be made for an eligible recipient:

- (a) Registration fee [fees];
- (b) Financial aid application fee [fees];
- (c) Testing fee [fees];
- (d) Application fee [fees] required by a vocational school [schools] for a specified program [programs];
- (e) Liability insurance fee [fees];
- (f) Copy of records;
- (g) Activity fee [fees] if mandated by the institution; or [and]
- (h) Other required fee [fees].
- (2) Other fees shall not exceed \$200 per [each] payment.

Section 12. Work Incentive Bonus. (1) A job retention bonus of \$250 shall be paid to a K-TAP adult who:

- (a) Obtains full-time unsubsidized employment that [which] shall be at least thirty (30) hours per week at no less than the federal minimum wage;
- (b) Reports and provides timely verification of the wages;
- (c) Remains K-TAP eligible;
- (d) Maintains employment for at least ninety (90) days; and
- (e) [At the end of the ninety (90) day period, requests the bonus within thirty (30) days.

(f) The work incentive bonus shall be limited to one (1) time only during the lifetime of the K-TAP adult.

(2) A job retention bonus of \$500 shall be paid to an adult who:

- (a) Becomes ineligible for K-TAP with [due-to] reported earnings;
- (b) Obtains and maintains full-time unsubsidized employment that [which] shall be at least thirty-five (35) hours per week at no less than the federal minimum wage;
- (c) Reports and provides timely verification of the wages;
- (d) Maintains continuous employment for at least ninety (90) days; and

(e) At the end of the ninety (90) day period:

1. Requests a bonus within thirty (30) days of the end of the ninety (90) day period; and
2. Provides the cabinet with a current mailing address.

(f) If the adult described in paragraph (a) of this subsection maintains continuous employment for 180 days an additional \$500 shall be paid, if requested.

(g) If the adult described in paragraph (a) of this subsection maintains continuous employment for 270 days an additional \$500 shall be paid, if requested.

(h) The work incentive bonus for an adult discontinued from K-TAP as a result of earnings shall be limited to three (3) payments of \$500 during the lifetime of the adult.

(3) A K-TAP applicant or recipient shall be advised of the work incentive bonuses at the time of application, at [each] recertification and through periodic mailings that remind them of incentives that are available.

(4) A post-K-TAP recipient eligible for the work incentive bonus during the transitional extension period shall not be required to meet the at or below 200 percent gross income limit pursuant to Section 1(13)(c) of this administrative regulation.

Section 13. Educational Bonus. (1) An educational bonus of \$250 per individual shall be paid to a K-TAP adult or child who reports and verifies:

(a) Receiving a:

1. [a] High school diploma;
2. [b] GED certificate; or
3. [c] Postsecondary school certificate or degree; or
- [d] Graduating from English as a second language class.

(2) A short-term training program [programs] shall not qualify for postsecondary education.

(3) A K-TAP applicant or recipient shall be advised of the educational bonus and be reminded of available work incentives:

- (a) During [at-the-time-of] application;
- (b) At [each] recertification; and
- (c) Through periodic mailings [that remind them of incentives that are available].

Section 14. Home Mortgage Assistance. (1) As long as funding

is available, an employed former K-TAP recipient may be provided the opportunity to receive home mortgage assistance. To be eligible for home mortgage assistance an employed former K-TAP recipient discontinued from K-TAP for at least twelve (12) months shall [be] meet the following criteria:

(a) The family shall be in a crisis situation, as determined by the Kentucky Housing Corporation; and

(b) Total gross income of the family shall not exceed the lower of:

1. At or below 200 percent of federal poverty level, adjusted annually, for the appropriate family size; or

2. Kentucky Housing Corporation's Family Self-sufficiency Program guideline.

(2) If due to loss of employment for no longer than four (4) months and an eligible former K-TAP recipient misses a house payment, short-term assistance may be received.

(3) Assistance may be received for an eligible recipient for:

(a) An emergency repair to the home; or

(b) Credit counseling.

(4) The amount of assistance shall be based on need according to Kentucky Housing Corporation's determination.

Section 15. Assistance with Access to a Vehicle. (1) In limited areas and as long as funding is available, a K-TAP recipient may be provided the opportunity to lease or buy a vehicle at a subsidized rate.

(2) To qualify, the K-TAP recipient shall be participating in one (1) of the following Kentucky Works components:

(a) Full-time employment;

(b) Training activity leading to employment; or

(c) Last year of postsecondary education.

Section 16. Restrictions on Authorization of Supportive Service Payments. A payment [Payments] shall not be made for the period during which:

(1) Verification is not returned; or

(2) The participant is penalized for noncompliance with a Kentucky Works activity, pursuant to [activities, as specified in] 921 KAR 2:370, or is ineligible.

Section 17. [15:] Hearings and Appeals. An applicant or recipient of benefits pursuant to a program [Applicants or recipients of benefits under programs] described herein who is [are] dissatisfied with an [any] action or inaction on the part of the cabinet shall have the right to a hearing pursuant to [under] 921 KAR 2:055.

Section 18. [16:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) PA-32, "Authorization for Supportive Services Payments, edition 5/00 [8/97]";

(b) PA-33, "Verification of Participation in Education or [f] Training Activity [and Transportation], edition 5/00 [1/98]"; and

(c) PA-33N, "Second Notice for Verification of Kentucky Works Participation [Verification of Education/Training, and Transportation], edition 5/00" [1/98].

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

DIETRA PARIS, Commissioner

CHARLES P. LAWRENCE, Attorney

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: March 27, 2000

FILED WITH LRC: April 4, 2000 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley

(1) Type and number of entities affected: In Kentucky the TANF Block Grant Program to implement the work requirements is called Kentucky Works. The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families

(TANF) Block Grant Program called Kentucky Transitional Assistance Program (K-TAP). As of January 2000, approximately 39,084 families in Kentucky received K-TAP, including 24,968 adults and 64,907 children. Adults receiving K-TAP are required to participate in work activities.

(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 comment received: A public hearing scheduled on March 21, 2000, as a result of the publication of the administrative regulation, was not held since no requests were received; however, written comments were received by close of business on March 21, 2000. No written comments were received regarding cost of living and employment in the geographical area.

(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: A public hearing scheduled on March 21, 2000, as a result of the publication of the administrative regulation, was not held since no requests were received; however, written comments were received by close of business on March 21, 2000. No written comments were received regarding cost of doing business in the geographical area.

(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 individuals who are applicants or recipients of K-TAP or post K-TAP recipients eligible for services will not have any additional compliance, reporting or paperwork requirements. However the form PA-32, Authorization for Supportive Services Payments, will require a person providing a service to furnish information about their tax status. This requirement is necessary due to federal income tax requirements and should not be a burden to the provider since a check off box is provided on the form for completion of this information.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The breakdown of costs and savings to the agency for the first year are listed below:

a. The supportive services for eligible post K-TAP recipients are extended to 12 months with gross income at or below 200% of federal poverty level. It is not known at this time the types of supportive services post K-TAP recipients will be accessing and the fiscal impact to the agency is indeterminable. However, there should be sufficient TANF funds to cover these expenditures.

b. Allowing the exception to the at or below 200% gross income limit for post K-TAP recipients eligible for the work incentive bonuses is clarification of policy. Federal funds are used for bonuses received for recipients at or below 200% of poverty. Beginning October 1, 1999, state funds was used for post K-TAP recipients who have gross income over 200% of federal poverty level who receive a work incentive bonus. This information will be tracked so appropriate funds are correctly used. It is projected the cost impact to the agency will be minimal.

c. The exception that had prohibited employed K-TAP recipients from receiving a direct transportation payment is removed to coincide with policy established for employed K-TAP recipients eligible for services in the regional capitated transportation network. The need for this direct payment has been reduced due to statewide implementation of the transportation network.

d. Allowing housing assistance for an employed former K-TAP recipient will be indeterminable fiscal impact to the agency; however, there are sufficient TANF funds to cover these expenditures.

e. Providing a K-TAP recipient, in limited areas, an opportunity to lease or buy a vehicle at a subsidized rate will be a very limited fiscal impact to the agency since transportation services are provided by a regional capitated transportation network statewide and should only be in an area where access to transportation service is not readily available.

f. Allowing the education bonus be paid to a K-TAP recipient graduating from English as a second language class will be minimal fiscal impact to the agency due to the small number of K-TAP recipients who would be accessing this service.

g. Changing all forms to correct the name of the division and other changes as the result of the reorganization of the Cabinet for Families and Children would have minimal fiscal impact to the agency; however, printing costs were budgeted with the current program dollars therefore no additional impact.

h. Restoring information inadvertently removed from the administrative regulation as a result in the change to the definition of "transitional extension" will have no economic impact to the agency since we did not intend to change this policy currently in effect.

i. Amending the PA-32 to add tax status will have no additional impact to the agency since printing costs were budgeted with the current program dollars.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year are listed below: Same as number 1.

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 funds (TANF block grant funds) and state 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: A public hearing scheduled on March 21, 2000, as a result of the publication of the administrative regulation, was not held since no requests were received; however, written comments were received by close of business on March 21, 2000. No written comments were received regarding economic impact in the geographical area in which the administrative regulation will be implemented.

(b) Kentucky: A public hearing scheduled on March 21, 2000, as a result of the publication of the administrative regulation, was not held since no requests were received; however, written comments were received by close of business on March 21, 2000. No written comments were received regarding economic impact in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is required to conform with federal TANF regulations effective October 1, 1999.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with the mandated requirements found in final federal TANF regulations issued on April 12, 1999, effective October 1, 1999.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not comply with the final federal TANF regulations issued on April 12, 1999, effective October 1, 1999. TANF block grant funding (K-TAP) for public assistance benefits (including supportive services) received by needy Kentuckians may be jeopardized if Kentucky does not comply with federal requirements found in 45 CFR Parts 260 Through 265. Prior to the issuance of the final federal TANF regulations, states were allowed to operate programs under a reasonable interpretation of the federal TANF statutes as a result of the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. However, this standard only applies until the effective date of the final TANF regulations which is October 1, 1999. At that time, states are required to implement changes in the programs to comply with these federal regulations. If these changes are not implemented, penalties and loss of federal funds may result. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services which enables the parent to remain in the work activity.

(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: None

(10) Any additional information or comments: A public hearing scheduled on March 21, 2000, as a result of the publication of the administrative regulation, was not held since no requests were received; however, written comments were received by close of business on March 21, 2000. A Statement of Consideration was filed with LRC as a result of written comments received by March 21, 2000.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR Parts 260 Through 265

2. State compliance standards. KRS 205.200; 205.2003

3. Minimum or uniform standards contained in the federal mandate. Federal regulations contain standards regarding the definition of "assistance" funded with TANF federal funds.

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (Amended After Hearing)

921 KAR 2:370. Technical requirements for Kentucky Works.

RELATES TO: KRS 205.200(7), 205.2003, 45 CFR Parts 98.2, 260-265, 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194B.050(1), 205.200(2), (7), 205.2003, 42 USC 601 et seq., EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program for the Kentucky Transitional Assistance Program, the block grant program funded pursuant to [under] 42 USC 601 et seq. KRS 205.2003 requires that a work program for a recipient [recipients] of Kentucky Transitional Assistance Program be prescribed by administrative regulations. This administrative regulation sets forth the technical requirements of the Kentucky Works Program [participants as they relate to eligibility for receiving assistance from the Kentucky Transitional Assistance Program].

Section 1. Definitions. (1) "Affordable child care arrangements" means appropriate child care at a reasonable distance that is suitable and with a charge at or below the maximum provider payment rate pursuant to the Child Care and Development Fund plan.

(2) "Appropriate child care" means an eligible child care pursuant to 45 CFR Part 98.2.

(3) "Assessment" means the ongoing evaluation of an individual's strengths and needs relative to achieving self-sufficiency.

(4) "Assistance" means the definition of "assistance" pursuant to 45 CFR 260.31.

(5) [(2)] "Cabinet" means the Cabinet for Families and Children.

(6) [(3)] "Concerns" means a hardship the individual shall overcome to become employed and self-sufficient.

(7) [(4)] "Conciliation" means a process in which a participation problem [problems] in the Kentucky Works Program can be resolved.

(8) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(9) [(5)] "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) program, means a money payment program for a child [children] pursuant to 921 KAR 2:006, Section 1.

(10) [(6)] "Kentucky Works" means a program that [which] assists:
(a) A recipient [recipients] of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or

(b) A former K-TAP recipient with a job retention service.

(11) "Reasonable distance" means the distance customarily available within a locality.

(12) "Unsuitable of informal child care" means care not regulated pursuant to Kentucky law that does not meet the quality child care need as defined by the parent or the health and safety requirements applicable to unregulated child care in the Commonwealth.

(13) [(7)] "Vocational education" means a training program that [which] prepares the individual for employment.

(14) [(8)] "Wage supplementation" means a component in which an employer hires a participant and receives [employers hire participants and receive] reimbursement from the cabinet for a portion of wages paid to the participant.

Section 2. Program Participation. (1) An [All] adult and teenage parent Kentucky Transitional Assistance Program recipient [recipients] shall be required to participate in the Kentucky Works Program unless the recipient meets the exception criteria in Section 3 of this administrative regulation;

(2) An [All] adult Kentucky Transitional Assistance Program recipient who does [recipients who do] not meet the exception criteria in Section 3 of this administrative regulation shall be required to participate in the Kentucky Works Program as follows:

(a) A one (1) parent household shall be required to participate in a specific activity pursuant to [listed in] paragraph (c) of this subsection no less than the number of hours per week required in the activity, as determined by the cabinet. The activity shall be required to have at least a minimum of:

1. Through September 30, 1999, twenty-five (25) hours per week; five (5) hours per week which may be satisfied through education activities defined in paragraph (c)7, 8, and 9 of this subsection or in literacy or adult education;

2. On or after October 1, 1999, a minimum of thirty (30) hours per week; ten (10) hours per week that [which] may be satisfied through an education activity pursuant to [education activities defined in] paragraph (c)7, and 8[-, and 9] of this subsection or in literacy or adult education.

(b) A two (2) parent household shall participate in a specific activity no less than the number of hours per week required in the activity, as determined by the cabinet. The activity shall be required to have at least a minimum of:

1. Thirty-five (35) hours per week for one (1) parent with at least thirty (30) hours of the required thirty-five (35) hours per week in an activity pursuant to [specific activities listed in] paragraph (c) of this subsection; and

2. Twenty (20) hours per week for one (1) parent in a two (2) parent household with all twenty (20) hours per week in an activity pursuant to [specific activities listed in] paragraph (c)1, 2, 3, 4, and 6 of this subsection if:

a. The family receives federally-funded child care assistance; and

b. An adult in the family is not disabled pursuant to 921 KAR 2:006; or

c. An adult is not needed to care for a child in the home with a severe disability pursuant to 921 KAR 2:006.

3. If the family does not receive federally-funded child care assistance, a minimum of thirty-five (35) hours per week shall be required for both parents combined.

4. A two (2) parent household eligible for K-TAP based on the deprivation of incapacity, pursuant to 921 KAR 2:006, shall meet the number of hours of participation in a work activity listed in paragraph (a) of this subsection.

(c) An activity [Specific activities] to be in compliance with the program participation requirement [requirements] in Kentucky Works may [shall] include:

1. Unsubsidized employment;
2. Subsidized employment;
3. Work experience training;
4. On-the-job training;
5. Job search and job readiness assistance;

6. Community service;

7. [Vocational education not to exceed twelve (12) months and after that time coupled with work or work activities for the amount of hours per week specified in paragraphs (a) and (b) of this subsection;

8. Full-time enrollment progressing satisfactorily, as defined by the school, in postsecondary or vocational education not to exceed twenty-four (24) months and after that time coupled with work or work activity [activities] for the amount of hours per week pursuant to [specified in] paragraphs (a) and (b) of this subsection;

8. [9.] Satisfactory attendance at secondary school or equivalent in the case of a recipient who has not completed secondary school or equivalent coupled with work or work activity [activities] in the amount of hours per week pursuant to [specified in] paragraphs (a) and (b) of this subsection;

9. [10.] Provision of child care services to an individual participating in community service;

10. [11.] Based on the findings of the assessment, the [agency or] cabinet designee and the participant may determine placement in a work preparation activity that [which] includes:

- a. Domestic violence counseling;
- b. Life skills training;
- c. A substance abuse program;
- d. Mental health counseling;
- e. Vocational rehabilitation;
- f. Literacy; [and]
- g. Adult education;

11. [12.] Wage supplementation, that [which] may [shall] be available in limited areas and may [shall] expand into additional areas until statewide implementation is complete;

12. [13.] Participation in a work program [work programs] approved by the cabinet; and

13. [14.] Participation in an activity [other activities] approved by the cabinet.

Section 3. Exceptions to Program Participation. (1) A Kentucky Transitional Assistance Program recipient who is a head of household, who has not obtained a high school diploma or a graduate equivalency diploma and has not attained twenty (20) years of age shall be deemed to be engaged in work for a [any] month in a fiscal year if the recipient:

(a) Maintains satisfactory attendance at a secondary school or the equivalent during the month; or

(b) Participates in education that is directly related to employment for at least twenty (20) hours a week.

(2)(a) An adult Kentucky Transitional Assistance Program recipient shall not be required to comply with a program participation requirement [requirements] for up to twelve (12) months if the adult is an individual caring for a child who has not attained twelve (12) months of age;

(b) The twelve (12) months of exemption from a work participation requirement [requirements] shall be limited to a total of twelve (12) months in a lifetime for the adult and may be:

1. Consecutive; or
2. Cumulative.

(3)(a) For a Kentucky Transitional Assistance Program recipient where compliance with program participation would make it difficult to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence [or who is at risk of further domestic violence, as determined by the cabinet], compliance shall not be mandated;

(b) If a Kentucky Transitional Assistance Program applicant or recipient is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual pursuant to 921 KAR 2:006, Section 23(1).

(4) A Kentucky Transitional Assistance Program recipient shall be deemed to be engaged in work for a [any] month if the recipient is:

(a) The only parent or caretaker relative in the family with a child who has not attained six (6) years in age; and

(b) Engaged in work for an average of at least twenty (20) hours per week during the month.

(5) An applicant of K-TAP shall be informed in writing of the availability of the exceptions to participation in Kentucky Works pursuant to [listed in] Section 3 of this administrative regulation.

Section 4. Program Participation Requirements. (1) Assessment.

- (a) The cabinet or another entity designated by the cabinet shall make an assessment of the individual's employability;
- (b) Other agencies shall assist in the assessment process as needed;
- (c) The assessment shall include:
 - 1. Consideration of basic skills;
 - 2. Occupational skills; and
 - 3. Concerns and other relevant factors.
- (2) The self-sufficiency plan. Based on the findings of the assessment, the ~~[agency or]~~ cabinet designee and participant shall jointly develop a self-sufficiency plan by completing the KW-202, K-TAP Transitional Assistance Agreement. This plan shall contain:
 - (a) An employment goal for the participant;
 - (b) A service [Services] to be provided by the cabinet [agency] ~~including child care~~;
 - (c) An activity [Activities] to be undertaken by the recipient to achieve the employment goal; and
 - (d) Other needs of the family.
- (3) An adult applicant or recipient of the K-TAP benefit group shall register for work except for a member who is:
 - (a) Under age eighteen (18);
 - (b) Age sixty (60) or over;
 - (c) Age eighteen (18) or nineteen (19) years old in full-time school attendance pursuant to ~~[as set forth in]~~ Section 1(13) ~~[(14)]~~ of 921 KAR 2:016;
 - (d) Receiving benefits based on 100 percent disability;
 - (e) An individual who has received benefits based on 100 percent disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability; or
 - (f) Employed thirty (30) hours or more per week at minimum wage or more.

Section 5. Conciliation. (1) Conciliation shall be conducted:

- (a) At the request of a Kentucky Works participant;
- (b) At the request of a service provider; or
- (c) When a situation is identified ~~that [which]~~ could result in a penalty pursuant to ~~[(as specified in)]~~ Section 7 of this administrative regulation~~)).~~
- (2) The conciliation shall be conducted by the cabinet or contractor:
 - (a) During conciliation, the cabinet [agency] shall determine if an additional service is [additional services are] needed to assist with Kentucky Works participation.
 - (b) During conciliation, participation shall be monitored for up to fifteen (15) days following the issuance of form KW-204, "Conciliation Contract".
 - (c) The fifteen (15) day period may be extended for an additional fifteen (15) days, if necessary.
- (3) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.

Section 6. Excused from Penalties. (1) A ~~[(K-TAP)]~~ recipient shall be excused from a penalty [penalties] for failure to comply with the Kentucky Works Program, pursuant to ~~[(as specified in)]~~ Section 7 of this administrative regulation, if one (1) of the following good cause criteria is met:

- (a) The individual is a single custodial parent who has a demonstrated inability to obtain needed child care for a child under six (6) years of age. A demonstrated inability to obtain needed child care for a child under six (6) years of age shall be met if the single custodial parent:
 - 1. Cannot locate appropriate child care;
 - 2. Cannot locate child care at a reasonable distance from home;
 - 3. Determines the unsuitability of informal child care; or
 - 4. Cannot locate affordable child care arrangements; [caring for a child under age six (6) and child care is unavailable, as determined by the cabinet];
- (b) Dependent care is not available for an incapacitated individual living in the same household as a dependent child;
- (c) Child care is terminated through no fault of the applicant or recipient;
- (d) Child care does not meet the needs of the child, for example, a

child with a disability;

- (e) The individual is unable to engage in employment or training for a mental or physical reason [reasons] as verified by the cabinet;
- (f) Illness of another household member requiring the presence of the participant as documented by medical evidence or by a reliable information source, [from other sources] as verified by the cabinet;
- (g) The participant is temporarily incarcerated or institutionalized for thirty (30) days or less;
- (h) The cabinet [agency] determines there is discrimination by an employer and a formal complaint has been filed based on:
 - 1. Age;
 - 2. Race;
 - 3. Sex;
 - 4. Color;
 - 5. Disability;
 - 6. Religious belief [beliefs];
 - 7. National origin; or
 - 8. Political belief [beliefs];
- (i) Work demand or condition renders [demands or conditions render] continued employment unreasonable including [-such as]:
 - 1. Consistently not being paid on schedule; or
 - 2. The presence of a risk to the individual's health or safety;
- (j) Wage rate is [rates are] decreased subsequent to acceptance of employment;
- (k) The participant accepts a better job that [which], because of a circumstance [circumstances] beyond the control of the recipient, does not materialize;
- (l) The work activity site is so far removed from the home that commuting time would exceed three (3) hours per day.
- (2) The duration of good cause criteria may vary according to an individual's circumstance [individual circumstances].

Section 7. Penalties. (1) When a Kentucky Transitional Assistance Program recipient fails to comply with a requirement [the requirements] of the Kentucky Works Program, he shall be subject to a Kentucky Works and Kentucky Transitional Assistance Program penalty [penalties]. Failure to comply shall be found when the participant:

- (a) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a required activity [required activities], including:
 - 1. An assessment interview;
 - 2. An assessment; or
 - 3. Self-sufficiency plan development including completion of the Transitional Assistance [Assessment] Agreement, KW-202;
- (b) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a program activity pursuant to [the program activities as defined in] the Transitional Assistance [Assessment] Agreement, KW-202;
- (c) Refuses without good cause, pursuant to Section 6 of this administrative regulation, to accept employment;
- (d) Terminates employment or reduces earnings without good cause, pursuant to Section 6 of this administrative regulation; or
- (e) Unless an exception in Section 4(3) of this administrative regulation applies, fails to register for work.
- (2)(a) Except for a requirement [requirements] listed in paragraph (b) of this subsection, a K-TAP recipient who has failed to comply with a Kentucky Works requirement [requirements] without good cause, pursuant to Section 6 of this administrative regulation, or register for work unless an exception pursuant to [in] Section 4(3) of this administrative regulation applies, shall be penalized by reducing the amount of the assistance otherwise payable to the benefit group on a pro rata basis; or
- (b) Assistance to the benefit group shall be discontinued if the K-TAP recipient, fails, without good cause pursuant to Section 6 of this administrative regulation, to:
 - 1. Keep appointment for an assessment interview; or
 - 2. Complete an assessment, pursuant to Section 4 of this administrative regulation.
- (c) The penalty in paragraph (a) or (b) of this subsection shall continue to be applied until the participant complies with a program requirement [program requirements].
- (d) The penalty in paragraph (a) or (b) of this subsection shall not be applied until after a conciliation procedure is [conciliation proce-

dures-are] conducted pursuant to Section 5 of this administrative regulation.

Section 8. Hearings and Appeals. An applicant or recipient of benefits pursuant to a program [Applicants or recipients of benefits under programs] described herein who is [are] dissatisfied with an [any] action or inaction on the part of the cabinet shall have the right to a hearing pursuant to [under] 921 KAR 2:055.

Section 9. Work Experience Program Training Site Agreement. (1) A cost [Costs] incurred by the training site agency because of participation in WEP shall not be reimbursed.

(2) A WEP participant shall not be involved in partisan politics.

(3) A WEP participant shall not be removed from training without prior notice to the Department for Community Based Services.

(4) A WEP participant shall not infringe upon the promotional opportunity [opportunities] of a currently employed individual.

(5) An individual shall not be subjected to discrimination, or denied training or employment or benefits, in the administration of, or in connection with, the training program because of:

- (a) Race;
- (b) Color;
- (c) Religion;
- (d) Sex;
- (e) National origin;
- (f) Age;
- (g) Disability; or
- (h) Political belief or affiliation;

(6) A training site agency shall:

(a) Complete a Department for Community Based Services questionnaire [questionnaires] relating to the operation of the training site agreement;

(b) Not displace a currently employed worker by a WEP participant, including a partial displacement including [such as] a reduction of the:

- 1. Hours of nonovertime work;
- 2. Wages; or
- 3. Employment benefits;

(c) Comply with 42 USC 12101 et seq. [the Americans with Disabilities Act];

(d) Shall report a personnel problem to the departmental representative designated by the cabinet [department];

(e) Shall maintain accurate time and attendance records for a [each] WEP participant;

(f) Verify time and attendance records for a [each] WEP participant on Form PA-33, "Certification of Education or Training, Child Care and Transportation" that will be submitted by a WEP participant;

(g) Shall grant access for the Department for Community Based Services to the training site during working hours to counsel a participant [participants] and to monitor the site;

(h) Shall immediately report an injury to the designated representative;

(i) Shall conduct an investigation [investigations] and submit a report [reports] upon the request of the Department for Community Based Services;

(j) Not encourage or require a WEP participant to take part in partisan political activity, or involve a WEP participant in partisan political activity;

(k) Except as authorized by law, or in writing by a WEP participant, shall maintain the confidentiality of information~~[in any form]~~ provided by or about a WEP participant who seeks or receives a service pursuant to [services under] the Training Site Agreement;

(l) Hold the cabinet harmless from a loss, claim, expense, action, cause of action, cost, damage, and obligation [losses, claims, expenses, actions, causes of action, costs, damages, and obligations] arising from a negligent act or omission of the training site agency, its agent, employee, licensee, invitee, or WEP participant [agents, employees, licensees, invitees, or WEP participants] that results in injury to a person, or damage or loss [damages or losses] relative to a person, corporation, partnership, or other entity;

(m) Provide:

- 1. Sufficient training to ensure development of appropriate skills;
- 2. New task [tasks] after mastery of a [each] skill; and

3. Adequate participation instruction and supervision at all times.

(7) A training site agency shall:

(a) Provide the participant [participants] a safe training place;

(b) Assure a participant, engaged in an activity not covered pursuant to 29 USC 651 et seq., is not required or permitted to receive training or a service in a building or surrounding, or under a training condition that is [that if participants are engaged in activities that are not covered under the Occupational Safety and Health Act of 1970, as amended, they shall not be required or permitted to be trained, or receive services, in buildings, or surroundings, or under training conditions that are] unsanitary, hazardous, or dangerous to the health and safety of the participant [participants]; and

(c) Provide adequate material to complete a [each] training activity in a safe environment;

(8) A WEP participant shall have the right to request a public hearing relating to a grievance or complaint.

(9) A training site agency shall sign a "WEP Training Site Agreement" with the cabinet containing a statement of:

(a) ~~[Each of]~~ The conditions established by subsections (1) through (8) of this section; and

(b) The period covered by the agreement, including the required weekly number of hours of participation [required each week].

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) PA-33, "Verification of Participation in Education or Training Activity [and Transportation] edition 5/00 [4/98];

(b) PA-33D, "Child's Certification of School Enrollment/Attendance, edition 5/00 [8/97];

(c) PA-218A, "New Chance Referral, edition 5/00 [4/97];

(d) PA-219, "Kentucky Works Program Fact Sheet, edition 11/98;

(e) KW-105, "Kentucky Works Referral Form (Participant), edition 5/00 [6/97];

(f) KW-200, "Kentucky Works Assessment Form, edition 5/00 [5/97];

(g) KW-202, "K-TAP Transitional Assistance Agreement, edition 5/00 [4/97];

(h) KW-204, "Conciliation Contact, edition 5/00 [3/98];

(i) KW-205, "Conciliation Results, edition 5/00 [3/98];

(j) KW-211, "Noncompliance Contact, edition 5/00 [5/97];

(k) KW-230, "Wage Supplementation Program Participant Agreement, edition 4/99;

(l) KW-240, "Work Experience Training Program Participant Agreement, edition 5/00 [4/98];

(m) KW-244, "WEP Training Site Agreement Amendment, edition 5/00 [4/98];

(n) KW-245 "Notice of WEP Discontinuance, edition 5/00 [4/98];

(o) KW-246 "WEP Referral Form, edition 5/00 [4/98];

(p) KWET-241, "WEP Training Site Agreement, edition 9/98.

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

DIETRA PARIS, Commissioner

CHARLES P. LAWRENCE, Attorney

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: March 27, 2000

FILED WITH LRC: April 4, 2000 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) Block Grant Program called Kentucky Transitional Assistance Program (K-TAP). The TANF Block Grant Program to implement the work requirements is called Kentucky Works. As of January 2000, approximately 39,084 families in Kentucky received K-TAP, including 24,968 adults and 64,907 children. Adults receiving K-TAP are required to participate in work activities.

(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 comment received: A public hearing scheduled on March 21, 2000, as a result of the publication of the administrative regulation, was not held since no requests were received; however, written comments were received by close of business on March 21, 2000. No written comments were received regarding cost of living and employment in the geographical area.

(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: A public hearing scheduled on March 21, 2000, as a result of the publication of the administrative regulation, was not held since no requests were received; however, written comments were received by close of business on March 21, 2000. No written comments were received regarding cost of doing business in the geographical area.

(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 individuals who are applicants or recipients of K-TAP, who are required to comply with Kentucky Works provisions will have no additional compliance, reporting or paperwork requirements due to the amendments to this regulation.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to the agency:

1. First year: The breakdown of costs and savings to the agency for the first year are listed below: No additional fiscal impact is anticipated to the agency due to these amendments.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year and continuing are listed below: See impact in number 1.

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: State and federal 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: A public hearing scheduled on March 21, 2000, as a result of the publication of the administrative regulation, was not held since no requests were received; however, written comments were received by close of business on March 21, 2000. No written comments were received regarding economic impact in the geographical area in which the administrative regulation will be implemented.

(b) Kentucky: A public hearing scheduled on March 21, 2000, as a result of the publication of the administrative regulation, was not held since no requests were received; however, written comments were received by close of business on March 21, 2000. No written comments were received regarding economic impact in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the amendments to the regulation are required to comply with federal regulations issued on April 12, 1999.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with the mandated requirements found in final TANF federal regulations effective October 1, 1999.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not comply with the final TANF federal regulations issued on April 12, 1999. TANF block grant funding (K-TAP) for public assistance benefits (including supportive services) received by needy Kentuckians may be jeopardized if Kentucky

does not comply with federal requirements found in 45 CFR Parts 260 Through 265, effective October 1, 1999. Prior to the issuance of the final federal TANF regulations, states were allowed to operate programs under a reasonable interpretation of the TANF federal statutes as a result of the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. However, this standard only applies until the effective date of the final TANF regulations which is October 1, 1999. At that time, states are required to implement changes in the programs to comply with these federal regulations. If these changes are not implemented, penalties and loss of federal funds may result. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services which enables the parent to remain in the work activity.

(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: None

(10) Any additional information or comments: A public hearing scheduled on March 21, 2000, as a result of the publication of the administrative regulation, was not held since no requests were received; however, written comments were received by close of business on March 21, 2000. A Statement of Consideration was filed with LRC as a result of written comments received by March 21, 2000.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR Parts 260 through 265

2. State compliance standards. KRS 205.2003

3. Minimum or uniform standards contained in the federal mandate. Federal regulations contain standards regarding the definition of "assistance" funded with TANF federal funds.

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, APRIL 14, 2000

COUNCIL ON POSTSECONDARY EDUCATION
(Amendment)

13 KAR 2:020. Guidelines for admission to the state-supported postsecondary education institutions in Kentucky.

RELATES TO: KRS 156.160, 164.001, 164.011, 164.020(3), 164.030

STATUTORY AUTHORITY: KRS 164.020(8)
NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 164.020(8) the council sets the minimum qualifications for admission to the state-supported postsecondary education institutions. It is the intent of the council that all students [Kentucky residents shall] have available to them an opportunity for postsecondary education appropriate to their interests and abilities. [This administrative regulation sets forth the minimum qualifications related to admission at state-supported postsecondary education institutions.]

Section 1. Definitions. (1) "Adult student" means a student who is twenty-one (21) years of age or older.

(2) "Council" is defined by KRS 164.010(7).

(3) "Institution" or "institutions" means a state-supported postsecondary education institution as defined in KRS 164.001(10).

(4) "Program of Studies" means the document "Program of Studies for Kentucky Schools: Grades Primary-12" published by the Kentucky Board of Education.

(5) "Remedial course" means a college or university class or section that prepares a student for college-level study and does not award credit toward a degree.

(6) "System-wide standard" means a score of eighteen (18) or above on a mathematics, English, or reading subscale of the ACT Assessment.

Section 2. Minimum Qualifications for Institutional Admission as First-time Freshmen. (1)(a) An applicant has fulfilled the minimum requirements for admission to a degree program at a community or technical college or to a community college-type program at a university when the applicant has:

1. Graduated from a public high school or a certified nonpublic high school; or

2. Earned a high school general equivalency certificate (GED).

(b) Provided, however, that the Kentucky Community and Technical College System may exempt a student who enrolls in a certificate or diploma program from the requirements of paragraph (a) 1 and 2 of this subsection.

(c) An applicant to a community-college type program at a university shall take the ACT Assessment.

(2) An applicant has fulfilled the minimum requirements for admission to a baccalaureate program at a university when the applicant has:

(a) Graduated from a public high school or a certified nonpublic high school;

(b) Completed the precollege curriculum; and

(c) Taken the ACT Assessment.

(d) Provided however, an applicant who has earned a high school general equivalency certificate (GED) or who is a graduate of a noncertified nonpublic high school, including a home school, may be admitted to a baccalaureate program at a university by taking the ACT Assessment and by scoring at a level on the subtests established by the university. An applicant satisfies the provisions of subsection (2)(b) of this section by taking the ACT Assessment and by scoring at levels on the ACT Assessment subtests that are established by a university.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, a university may substitute the SAT for the ACT Assessment. The ACT RESIDUAL, ASSET Testing Program, COMPASS Testing Program, or ACCUPLACER Testing Program may be substituted for the ACT Assessment requirement for adult students.

(4) An institution shall establish a written policy for admitting a student where an applicant has attended a noncertified or nonpublic

school and completed a course of study. Noncertified nonpublic schools shall include a home school.

(5) A nonresident shall meet the same minimum qualifications for admission as a Kentucky resident as stated in subsections (1) through (4) of this section.

(6)(a) A university may, under extenuating circumstances, admit a student without fulfilling the testing requirements of subsection (2)(c) of this section.

(b) Provided however, that a university shall have a written policy defining extenuating circumstances.

(c) When a university admits a student under the provisions of subsection (6) of this section, the student shall satisfy the provisions of subsection (2)(c) of this section during the first semester of enrollment.

(7) A university may establish, in writing, additional admission criteria to supplement these minimum requirements. [A Kentucky resident who has graduated from a public high school or a certified nonpublic high school, who has taken the ACT Assessment Test, and who will enroll in college classes for the first time following graduation from high school shall be generally granted admission to a community or technical college or community college-type program at an institution:

(a) The Career Planning Program Level II (GPP-II), the ASSET testing program, or the COMPASS testing program may be substituted for the ACT Assessment Test requirement for adult students, if the institution believes any of these testing instruments is better suited to the needs of adult students.

(b) The Kentucky Community and Technical College System may substitute the Test of Adult Basic Education (TABE) for an applicant to a technical college:

(2) A Kentucky resident who has graduated from a public high school or a certified nonpublic high school, who has taken the ACT Assessment Test, who has completed the minimum academic preparation, and who will enroll in college classes for the first time following graduation from high school has fulfilled the minimum requirements for admission to a baccalaureate program at a university. An institution may accept the Scholastic Aptitude Test (SAT) in lieu of the ACT Assessment Test. An institution may establish additional admission criteria to supplement these minimum requirements:

(3) A Kentucky resident who has earned a high school equivalency certificate (GED) or who is a graduate of a noncertified nonpublic high school may be admitted to:

(a) A community or technical college or community college-type program at an institution upon completion of the ACT Assessment Test:

1. The Career Planning Program Level II (GPP-II), the ASSET testing program, or the COMPASS testing program may be substituted for the ACT Assessment Test requirement for an adult student.

2. The Kentucky Community and Technical College System may substitute the Test of Adult Basic Education (TABE) for an applicant to a technical college; or

(b) A baccalaureate program at a university by meeting the minimum requirements specified in subsection (2) of this section. Completion of the minimum educational preparation may be validated through the submission of ACT area scores which are deemed adequate by each university. A university may establish additional admission criteria to supplement these minimum requirements:

(4) An institution shall establish a policy for the admission of a student to a technical college, community college, or a university where a Kentucky resident student has attended a noncertified nonpublic school and completed a course of study. Noncertified nonpublic schools shall include a home school. Except for the high school graduation or high school equivalency certificate (GED) requirements, all remaining requirements of subsections (1), (2) and (3) of this section shall apply to a student who has attended a noncertified nonpublic school and completed a course of study:

(5) A nonresident shall meet the same minimum qualifications for admission as a Kentucky resident as stated in subsections (1) through (4) of this section and at least one (1) of the following conditions in order to be admitted to a state institution:

(a) Graduate in the top fifty (50) percent of their high school class;

(b) Achieve a composite score at the 50th percentile or above for all students taking the ACT or the SAT nationally (the ACT is the preferred admission test for Kentucky public institutions, and applicants are encouraged to take the ACT; however, each institution may accept the SAT in lieu of the ACT for resident and nonresident applicants); or
(c) Demonstrate the ability to pursue the college academic program without substantial remedial education.

(6) If, under extenuating circumstances, a student is admitted conditionally without having fulfilled the testing requirement, the student shall take the ACT to fulfill this requirement during the first semester of enrollment.]

Section 3. Precollege Curriculum. [Minimum Academic Preparation and the Precollege Curriculum:] (1) Effective for the fall semester of 2000 [1999], an applicant to a baccalaureate degree program at an institution shall complete, in addition to the requirements of Section 2 of this administrative regulation, [who has satisfied the minimum qualifications for institutional admission as a first-time freshman and who has successfully completed] twenty (20) or more approved high school units including the following courses in the precollege curriculum [describing the minimum academic preparation requirements shall be eligible for admission to a baccalaureate program at each university]. The precollege curriculum described in this section shall include the following categories and courses of study and is based on the Program of Studies. [An institution may establish additional requirements to supplement this minimum academic preparation:]

(a) Four (4) units of high school study in English/language arts, specifically including English I, English II, English III, and English IV or AP English.

(b) Three (3) units of high school study in mathematics, including algebra I, algebra II and geometry. This mathematics requirement may be met by completing the integrated mathematics series consisting of three (3) units.

(c) Two (2) units of high school study in science, biology I and either chemistry I or physics I. At least one (1) [of the] science course [courses] shall be a laboratory course.

(d) Two (2) units of high school study in social studies, that shall include [specifically including] world civilization and U.S. history or AP American history.

(e) A college-bound student is encouraged to take, as part of his elective course selection, additional coursework in mathematics, sciences, foreign languages, arts, and computer literacy.

(f) A substitution shall not be made for any course [which is] identified in subsection (1) of this section unless the course in question has been deemed equivalent in content by the Council on Postsecondary Education in consultation with the Department of Education.

(2) Effective for the fall semester of 2002, an applicant to a baccalaureate degree program at an institution shall complete, in addition to the requirements of Section 2 of this administrative regulation, twenty-two (22) or more approved high school units including the following courses in the precollege curriculum, [who has satisfied the minimum qualifications for institutional admission as a first-time freshman and who has successfully completed twenty-two (22) or more approved high school units including the following precollege curriculum describing the minimum academic preparation requirements may be eligible for admission to a baccalaureate program at each university:] The precollege curriculum described in this section shall include the following categories and courses of study and is based on the Program of Studies. [An institution may establish additional requirements to supplement this minimum academic preparation:]

(a) Four (4) units of high school study in English/language arts, specifically, including English I, English II, English III, and English IV or AP English.

(b) Except as provided in subparagraphs 1, 2, and 3 of this paragraph, three (3) units of high school study in mathematics, including algebra I, algebra II, and geometry.

1. A student may substitute for algebra I a mathematics course whose content is more rigorous than that described in the Program of Studies.

2. Algebra I may be taken prior to high school and counted as a required mathematics [required] course if the academic content of the

course is at least as rigorous as that listed in the Program of Studies.

3. Algebra II shall include the content and skills described in the Core Content for Mathematics Assessment.

(c) Three (3) units of high school study in science, to include physical science, life science, and earth and [f] space science. At least one (1) unit shall be a laboratory course.

(d) Three (3) units of high school study in social studies, from the following content areas: United States history, economics, government, world geography, and world civilization.

(e) One-half (1/2) unit in health education.

(f) One-half (1/2) unit in physical education.

(g) One (1) unit in history and appreciation of visual and performing arts.

(h) Effective with the fall semester 2004, an applicant shall:

1. Complete two (2) units in the same foreign [a nonnative] language. Provided, however, when a local school has diagnosed a student as having a learning disability as set forth in KRS 157.200 and 707 KAR 1:280 or 707 KAR 1:310 and has determined that the learning disability precludes a student from successfully completing a foreign language course, the student shall be exempt from the provisions of this subparagraph [where the academic content includes the spoken and written aspects of a nonnative language as well as the culture associated with that language]; or

2. Demonstrate linguistic competence and awareness of a foreign [nonnative] language [and culture] equivalent to two (2) years of high school language [and the culture associated with that language]. The council shall adopt a policy by 2003 for assessing nonnative language competence].

(3)(a) Beginning with fall semester 2002 through the academic year 2003-2004, a student shall, in addition to the requirements of subsection (2) of this section, take seven (7) electives. Five (5) of the seven (7) electives shall be courses with academic content that is at least as rigorous as that required in the minimum high school graduation requirements and shall be in an approved area

[(b) Beginning with the fall semester 2004, a student shall take five (5) electives. Three (3) of five (5) electives shall be courses with academic content that is at least as rigorous as that required in the minimum high school graduation requirements. An elective shall be in an approved area of study]:

1. Social studies.

2. Science.

3. Mathematics.

4. English/language arts.

5. Arts and humanities.

6. Physical education and health. A student shall be limited to one-half (1/2) unit as an elective in physical education and to one-half (1/2) unit in health.

7. Foreign [Nonnative] language [where the academic content includes spoken and written aspects of a nonnative language as well as the culture associated with the language].

8. Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education and career pathways. The academic content shall be more rigorous than the introductory level as described in 703 KAR 4:060.

9. A college-bound student is encouraged to take, as part of an [his] elective course selection, additional coursework in mathematics, sciences, and arts.

(b) Beginning with the fall semester 2004, in addition to the requirements of subsection (2) of this section a student shall take five (5) electives. Three (3) of the five (5) electives shall be courses with academic content that is at least as rigorous as that required in the minimum high school graduation requirements and shall be in an approved area of study set forth in paragraph (a) 1 through 8 of this subsection.

(4)(a) A student may substitute an integrated, applied, interdisciplinary, or higher level course within a program of study for a course listed in subsections (1) or (2) of this section, if the substituted course offers the same or greater academic rigor and the course covers or exceeds the minimum required content.

(b) Integrated mathematics [math] courses are intended to be taken as a sequence. A student shall choose either the algebra/geometry sequence or the integrated mathematics [math] se-

quence.

(c) An approved substitute course may [shall] include an honors course, advanced placement course, dual credit course, or a course taken at an institution.

(5) An institution may establish additional requirements to supplement this minimum academic preparation.

(6) A waiver of a required precollege curriculum course may be justified when [if]:

(a) A student is physically unable to complete a course because of a physical handicap;

(b) A student's handicapping condition is verified through appropriate documentation;

(c) The school district superintendent (or designee) verifies that a student's handicapping condition will prevent the student from completing the course in question; and

(d) Following a determination that a student is unable to complete a course based upon subsection (6)(a), (b), and (c) of this section, a local school may substitute another course in accordance with 704 KAR 3:305. Section 2(3) [a closely related area may be substituted for the course that cannot be completed].

(7) [(6)] A course selection is tied to the Program of Studies and the individual course descriptions contained in that document. [Adjustments in the minimum academic preparation for college shall occur as changes are made in the program of studies.] For guidance in the selection of a specific course, a counselor may consult the program of studies and Council materials on the precollege curriculum.

(8) [(7)] Each institution shall determine whether an applicant has met these minimum academic preparation requirements.

(9) [(8)] Effective with admissions for the fall semester of 2002, except as provided in subsection (9) of this section, a student admitted to a baccalaureate degree program at an institution shall be subject to the precollege curriculum. The precollege curriculum requirement shall apply to:

(a) A first-time freshman pursuing a baccalaureate degree with or without a declared major;

(b) A student converting from nondegree status to baccalaureate degree status;

(c) A student changing from certificate or associate-degree level to baccalaureate-degree level; and

(d) A student who, transferring from another institution, has been admitted to baccalaureate-degree status by the receiving institution. [A degree-seeking student shall be assigned a degree-level code.]

(10) [(9)] The following shall be exempted from the requirements of the precollege curriculum:

(a) An adult student;

(b) A student entering baccalaureate-degree status with twenty-four (24) or more semester credit hours applicable to a baccalaureate degree with a GPA (grade point average) of at least 2.00 on a 4.00 scale;

(c) Active duty military personnel, their spouses, and their dependents; [or]

(d) A student enrolled in a community or technical college or a community college type program;

(e) A nonresident student; or

(f) An international student.

Section 4. Conditional Admissions Qualifications. (1) A university [Subject to the requirements and limitations established by the council, an institution] shall have the option of admitting conditionally a first-time freshman applicant to a baccalaureate [or associate] degree program [or diploma or certificate program] who has not met the requirements of Section 3 of this administrative regulation [minimum academic preparation qualifications for admission]. A first-time freshman admitted conditionally shall remove or otherwise satisfy all academic deficiencies [regarding the minimum academic preparation] in a manner and time period established by the enrolling institution.

(2) An institution enrolling students in a baccalaureate degree program under the conditional admission provision provisions in subsections (1) and (4) [in subsection (1)] of this section shall admit conditionally each academic term not more than five (5) percent of a base figure. The base figure shall be the average number of students reported as enrolled with baccalaureate-degree status over the preceding four (4) years.

(3) Although not subject to the precollege curriculum for admission purposes, the precollege curriculum status of students enrolled in a [technical college, community college or] community college-type program in a university shall be assessed and reported to the Council on Postsecondary Education [as to their precollege curriculum status].

(4) [Section 5. Special Students. (1)] An applicant of superior ability, as demonstrated by exceptional academic achievement, a high ACT Assessment score, and social maturity, may be granted early admission. An applicant granted early admission by an institution shall be exempt from the provisions of Sections 2 and 3 of this administrative regulation.

(5) [(2)] At the discretion of the institution, a person who does not [an applicant unable to] meet college entrance requirements, including high school students, may enroll in [be admitted to a] college courses as a nondegree student [class for which he is qualified].

[(3)] A Kentucky resident sixty-five (65) or older who is admitted to an institution shall have all registration and tuition charges waived. An institution may limit admission under this subsection if classes are filled, or if admission necessitates creating additional classes.]

Section 5. [6. General Policy on Nonresident Enrollment. (1) An institution providing a scholarship to a nonresident student, regardless of the source or nature of the scholarship, shall count that student as a nonresident student for purposes of this policy and reporting to the council.

(2) A student from another state or country shall be accepted by an institution if the nonresident enrollment does not inhibit the educational opportunities of a Kentucky resident. An institution may establish additional admission criteria consistent with this administrative regulation.

Section 7. Transfer Students. (1) The council's general education transfer policy and baccalaureate program transfer frameworks policy shall provide the basis for an institution's policy [institutional policies] on the acceptance of transfer credits. The American Association of Collegiate Registrars and Admissions Officers' "Transfer Credit Practices of Educational Institutions" shall serve as a reference for admission of transfer students to an institution and for the acceptance of transfer credits. [Generally, a student dismissed from a college or university shall not be accepted at an institution for the semester following his dismissal. Failure by a student to report enrollment at another institution may result in dismissal and loss of credits earned.]

(2) A state-supported institution shall assure that a transferring student receives academic counseling concerning the transfer of credit among institutions.

(3) An institution, consistent with the provisions of subsection (1) of this section, shall accept a student's college credit earned when a course is taken both for high school credit and college credit. Credit earned through such a dual enrollment arrangement shall be treated the same as credit earned in any other college course.

Section 6. Assessment and Placement of Students. (1) The assessment and placement policy of the council shall be effective with the fall semester 2001 and shall apply to:

(a) A first-time freshman enrolled in an associate or baccalaureate degree program or a certificate or diploma program at an institution;

(b) A student who transfers from a degree program at one (1) institution into a baccalaureate degree program at another institution and who has not taken and successfully passed college-level courses in mathematics and English;

(c) A student who transfers from a certificate or diploma program into a degree program and who has not taken and successfully passed college-level courses in mathematics and English;

(d) A student converting from nondegree status to degree status who has not taken and successfully passed college-level courses in mathematics and English.

(2) A nondegree-seeking student is exempt from system-wide mandatory assessment and placement policies.

(3) A university shall use the ACT Assessment to evaluate student competencies in mathematics, English, and reading. A university may accept scores on the SAT in lieu of the ACT Assessment

for placement in college-level courses. A university may use an institutional placement exam as a supplement to the ACT Assessment to help place a student in the proper course.

(4) A university shall place a student who scores below the system-wide standard in mathematics, English, or reading in an:

(a) Appropriate remedial course in the relevant discipline; or

(b) Entry-level college course, if the course offers supplementary academic support, such as extra class sessions, additional labs, tutoring, and increased monitoring of students, beyond that usually associated with an entry-level course.

(c) Provided however, that a university may set a cut-off score above the system-wide standard to place a student.

(5) An adult student who has been admitted without the ACT Assessment test or the SAT may be placed into an appropriate course using:

(a) The ACT Residual Test;

(b) The ASSET Testing Program;

(c) The COMPASS Testing Program;

(d) The ACCUPLACER Testing Program; or

(e) An institutional placement test.

(6) A university is responsible for determining the remediation required including the number of remedial courses required, if necessary.

(7)(a) KCTCS shall select campus placement tests for the community and technical colleges that assess mathematics, English, and reading skills.

(b) KCTCS shall ensure that the same campus placement tests are used by the Technical College Branch and the Community College Branch to assess degree-seeking students.

(c) KCTCS may use the ACT Assessment scores or SAT scores to place a student into an appropriate course.

(8) The KCTCS shall place a degree-seeking student who scores below the system-wide standard in mathematics, English, or reading in an:

(a) Appropriate remedial course in the relevant discipline; or

(b) Entry-level college course if the course offers supplementary academic support, such as extra class sessions, additional labs, tutoring, and increased monitoring of students beyond that which is usually associated with an entry-level course.

(9) KCTCS shall develop guidelines for use at the community and technical colleges that will determine the remediation required in mathematics, English, or reading based upon placement test scores.

(10)(a) KCTCS shall develop assessment and placement policies for students who enroll in certificate and diploma programs.

(b) For each certificate and diploma program, KCTCS shall determine the proper cut-off scores for placing students and the standards for exiting remedial instruction.

(c) Provided however, KCTCS may exempt students enrolled in selected certificate and diploma programs from an assessment and placement in mathematics, English, and reading.

(11) Effective with the spring semester 2001, an institution shall report to the council data that monitors the performance of first-time freshmen in remedial and entry-level courses. The core elements of the first-time freshmen performance monitoring system shall include, as appropriate:

(a) ACT or SAT scores;

(b) Institutional placement exam results;

(c) Information that identifies whether a course is remedial, entry-level, or entry-level with supplementary academic support provided; and

(d) Grades in remedial and entry-level courses.

Section 7. [8. Remedial Placement. (1) The council shall adopt a policy on remedial placement by June 30, 1999, that provides minimum standards for placement of a student in a college-level course.

(2) An institution shall adopt, no later than the end of calendar year 1999, a policy on placement of a student in a college-level course to be effective no later than the fall semester of the year 2000. The institutional policy shall use an assessment system that:

(a) Meets or exceeds the minimum level of the policy developed by the council in subsection (1) of this section;

(b) Evaluates whether a student meets entry-level standards in reading, English and mathematics;

(c) Requires a student who does not meet the entry-level standards to enroll in appropriate remedial level courses and pass them with a grade of "C" or higher; and

(d) Requires an institution to use placement tests for assigning students to the appropriate level course.

(3) The Kentucky Community and Technical College System shall establish uniform placement policies for the two (2) branches, the Technical College Branch and the University of Kentucky Community College Branch.

Section 9.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Program of Studies for Kentucky Schools, Grades Primary-12", [April 28,] 1998, Kentucky Department of Education;

(b) "Core Content for Mathematics Assessment", Version 3.0, 1999, [1-0, 1996,] Kentucky Department of Education;

(c) "General Education Transfer Policy", 1995, Council on Postsecondary Education; and

(d) "Baccalaureate Program Transfer Frameworks", 1999-2000 [1998-99], Council on Postsecondary Education.

(2) This material may be inspected, copied or obtained at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES WHITEHEAD, Chair

DENNIS L. TAULBEE, General Counsel

APPROVED BY AGENCY: March 19, 2000

FILED WITH LRC: April 13, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on administrative regulation 13 KAR 2:020, Guidelines for admission to the state-supported postsecondary education institutions in Kentucky, will be held on May 25, 2000 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 May 18, 2000. 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 administrative regulation. A transcript of the public hearing will not be made unless requested in writing. 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 new administrative regulation to: Mr. Roger Sugarman, Associate, Academic Affairs, 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, General Counsel

(1) Type and number of entities affected: This administrative regulation affects the eight postsecondary education institutions and the Kentucky Community and Technical College System who admit students into the state-supported postsecondary education institutions, the Kentucky Department of Education who establishes graduation requirements for secondary education students, local education agencies who advise students and all prospective students.

(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
- (8) Assessment of expected benefits.
 - (a) Impact on public health and environmental welfare. 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.

**PERSONNEL CABINET
(Amendment)**

101 KAR 2:102. Classified leave administrative regulations.

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394, 344.030, 29 USC 201, et seq., 2601, et seq.

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 344.030, 29 USC 201, et seq., 2601, et seq.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. This administrative regulation establishes the leave requirements for classified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

| Months of Service | Annual Leave Days |
|-------------------|---|
| 0-59 months | 1 leave day per month; 12 per year |
| 60-119 months | 1 1/4 leave days per month; 15 per year |
| 120-179 months | 1 1/2 leave days per month; 18 per year |
| 180-239 months | 1 3/4 days per month; 21 per year |
| 240 months & over | 2 leave days per month; 24 per year |

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a

state retirement system, is receiving retirement benefits and returns to state service, shall not receive credit for months of service prior to retirement.

(g) A part-time employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or of one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.

(h) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

| Months of Service | Maximum Amount |
|---------------------|----------------------------|
| 0-59 months | Thirty (30) workdays |
| 60-119 months | Thirty-seven (37) workdays |
| 120-179 months | Forty-five (45) workdays |
| 180-239 months | Fifty-two (52) workdays |
| 240 months and over | Sixty (60) workdays |

(i) Leave in excess of the maximum amounts specified in paragraph (h) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(j) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2)(h) of this section. Following payment of annual leave at resignation, leave remaining after the payment of the maximum provided shall be removed from the balance.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and

2. The successor employer has agreed to credit him with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service. An employee with 240 or more months of service at the time of implementation of this section shall have the additional ten (10) days credited to the sick leave balance.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee who is appointed, reinstated or reemployed, other than a former employee receiving benefits under a state retirement system, shall be credited with the unused sick leave balance credited to him upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of accrued sick leave with pay if an employee:

1. Is unable to work due to medical, dental or optical examination or treatment;

2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested;

3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member;

4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others;

5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this subparagraph shall be limited to three (3) days; or

6. Requires leave for the birth, placement or adoption of a child.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) An employee eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than education leave, during any part of the previous month.

(d) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.

(e) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(f) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff or retirement.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and

2. The employee has used or been paid for all accumulated

annual, sick and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.

(c) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay;

2. 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;

3. Is unable to return to his former position;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during service in the classified service.

(4) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, an employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing author-

ity shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 20 USC 2601, et seq., and the federal regulations implementing the Act, 29 CFR Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

- (a) Completed twelve (12) months of service; and
- (b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) If both parents are employed by the state, each parent shall be entitled to twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of a child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:

- (a) The employee's leave balance has been exhausted; or
- (b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, or administrative agency or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 USC Chapter 8.

(b) An employee who is directed to, or who requests and is authorized to, work in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 to 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work week following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the regular work schedule.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be

carried forward from one (1) pay period to another shall be 240 hours.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay. If the appointing authority or the designee approves the payment, an employee's leave balance shall be reduced accordingly.

(c) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(d) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

- 1. Exceed the number of normally prescribed hours of duty; and
- 2. Do not exceed the maximum amount of compensatory time that is permitted.

(e) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(f) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

- 1. Regular hourly rate of pay; or
- 2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, 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 State Public Health Service Reserve, or the Kentucky National Guard shall be relieved from the civil duties, to serve under order on training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of the duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) ~~[An employee who is not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote.]~~ An employee who is permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis for the hours worked on election day.

Section 8. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four

(24) months.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relates to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(a) Leave shall not exceed sixty (60) working days.

(b) 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.

(c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(d) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 9. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provision of the Fair Labor Standards Act; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned the employment.

Section 10. Absences Due to Adverse Weather. (1) ~~If operations are suspended or temporarily closed due to localized adverse weather,~~ An employee, who is not designated for mandatory operations and chooses not to report to work or to leave early in the event of adverse weather conditions such as tornado, flood, blizzard or ice storm, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory or sick leave shall charge leave as originally requested.

(3) Where operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) ~~Makeup work shall occur in the workweek in which the time is lost or in a week when the employee has not worked a full work schedule due to holiday, annual leave or sick leave.~~

(b) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available.

(c) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a [hurricane,] tornado, flood, ice storm or blizzard, and it

becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shutdown shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 11. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

Section 12. Incorporation by Reference. (1) Overtime Compensation Form, September 1999, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CAROL M. PALMORE, Secretary

PAUL E. PATTON, Governor

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: March 17, 2000

FILED WITH LRC: March 24, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000 at 9:30 a.m., prevailing local time in Room 508 of the Personnel Cabinet's Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by May 15, 2000, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, fax number: (502) 564-7603.

REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: The proposed amendment to 101 KAR 2:102, Leave regulations for the classified service action will affect approximately 32,253 employees in the classified service of the executive branch of state government.

(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: No direct impact anticipated. This administrative regulation is being modified to correct an error in Section 10 governing the use of leave in inclement weather situations and to clarify the regulations governing the accrual and use of annual and sick leave.

(b) Cost of doing business in the geographical area in which the

administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: See (3)(a)(1), above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change anticipated.

(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: Recurring agency base budgets.

(6) To the extent available from 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: The changes to this administrative regulation are technical in nature and are offered to clarify the administrative regulation that became effective on August 25, 1999. The modification eliminates conflicting and contradictory language and is designed to eliminate the confusion that the original language would create.

(8) Assessment of expected benefits: Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky. No direct impact on public health or environmental welfare is anticipated.

(a) State whether a detrimental effect on environmental and public health would result if not implemented: The change in the current regulation is intended to eliminate confusion as to the obligations of state employees to report to work during periods of inclement weather.

(b) If detrimental effect would result, explain detrimental effect: If not implemented, we anticipate that employees would attempt to use roads that have been closed due to weather emergencies due to uncertainty as to whether they would lose pay or leave time.

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not conflict with, overlap or duplicate an existing statute, administrative regulation or government policy, to our knowledge.

(a) Necessity of proposed regulation if in conflict: No conflict is seen.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.

(10) Any additional information or comments: No.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the classified service of state government, it does not apply to the unclassified service.

PERSONNEL CABINET (Amendment)

101 KAR 3:015. Leave administrative regulations for the unclassified service.

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394, 344.030, 29 USC 201 et. seq., 2601 et seq.

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 344.030, 29 USC 201 et seq., 2601 et seq.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. This administrative regulation establishes the leave requirements for unclassified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

| Months of Service | Annual Leave Days |
|-------------------|---|
| 0-59 months | 1 leave day per month; 12 per year |
| 60-119 months | 1 1/4 leave days per month; 15 per year |
| 120-179 months | 1 1/2 leave days per month; 18 per year |
| 180-239 months | 1 3/4 days per month; 21 per year |
| 240 months & over | 2 leave days per month; 24 per year |

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits and returns to state service, shall not receive credit for months of service prior to retirement.

(g) A part-time or interim employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or of one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.

(h) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

| Months of Service | Maximum Amount |
|---------------------|----------------------------|
| 0-59 months | Thirty (30) workdays |
| 60-119 months | Thirty-seven (37) workdays |
| 120-179 months | Forty-five (45) workdays |
| 180-239 months | Fifty-two (52) workdays |
| 240 months and over | Sixty (60) workdays |

(i) Leave in excess of the maximum amounts specified in paragraph (h) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(j) The amount of annual leave that may be carried forward and

the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2)(h) of this section. Following payment of annual leave at resignation, leave remaining after the payment of the maximum provided shall be removed from the balance.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns or is terminated one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and
2. The successor employer has agreed to credit him with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service. An employee with 240 or more months of service at the time of implementation of this section shall have the additional ten (10) days credited to the sick leave balance.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee, other than a former employee receiving benefits under a state retirement system, who is appointed to an unclassified position, shall be credited with the unused sick leave balance upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of accrued sick leave with pay if an employee:

1. Is unable to work due to medical, dental or optical examination or treatment;
2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the

employee's inability to perform his duties for the days or hours sick leave is requested;

3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member;

4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others;

5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this subparagraph shall be limited to three (3) days; or

6. Requires leave for the birth, placement or adoption of a child.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) An employee eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than education leave, during any part of the previous month.

(d) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.

(e) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(f) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff or retirement.

(g) The duration of an interim employee's appointment shall not be extended by the use or approval for sick leave with or without pay.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay to an employee for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and

2. The employee has used or been paid for all accumulated annual, sick and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.

(c) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to an employee, other than an interim employee, who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and
2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay;
2. 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;
3. Is unable to return to his former position;
4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he qualified and is capable of performing its essential functions with or without reasonable accommodation; and
5. Has not been placed by the appointing authority in a vacant

position.

(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during his service in the classified service.

(4) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If he is too ill to work, an employee shall notify his immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 20 USC 2601, et seq., and the federal regulations implementing the Act, 29 CFR Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) If both parents are employed by the state, each parent shall be entitled to twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of a child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:

(a) The employee's leave balance has been exhausted; or

(b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, or administrative agency or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or

compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 USC Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 to 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next workweek following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of his regular work schedule.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 240 hours.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. If the appointing authority or his designee approves the payment, an employee's leave balance shall be reduced accordingly.

(c) An employee who is not in a policy-making position shall be paid for fifty (50) hours at his regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(d) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, he shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(e) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(f) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is

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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 civil duties, to serve under order on training duty without loss of his regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of the duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) ~~[An employee who is not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote.]~~ An employee who is permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis for the hours worked on election day.

Section 8. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months or the conclusion of the administration in which the employee is serving, whichever comes first.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relates to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3)(a) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(b) Leave shall not exceed sixty (60) working days.

(c) 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.

(d) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(e) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether he has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 9. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for his absence to his supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by

the provision of the Fair Labor Standards Act; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned his employment.

Section 10. Absences Due to Adverse Weather. (1) ~~[If operations are suspended or temporarily closed due to localized adverse weather,]~~ An employee, who is designated for mandatory operations and chooses not to report to work or to leave early in the event of adverse weather conditions such as tornado, flood, blizzard or ice storm, shall have the time of his absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is who are on prearranged annual, compensatory or sick leave shall charge leave as originally requested.

(3) Where operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) ~~[Makeup work shall occur in the workweek in which the time is lost or in a week when the employee has not worked a full work schedule due to holiday, annual leave or sick leave.]~~

(b) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available.

(b) ~~[(e)]~~ If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a ~~[hurricane,]~~ tornado, flood, ice storm or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 11. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave. An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

Section 12. Incorporation by Reference. (1) Overtime Compensation Form, September 1999, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CAROL M. PALMORE, Secretary
PAUL E. PATTON, Governor
DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: March 17, 2000

FILED WITH LRC: March 24, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000 at 9:30 a.m., prevailing local time in Room 508 of the Personnel Cabinet's Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by May 15, 2000, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, fax number: (502) 564-7603.

REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: The proposed amendment to 101 KAR 2:102, Leave regulations for the unclassified service action will affect approximately 2,873 employees in the unclassified service of the executive branch of state government.

(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: No direct impact anticipated. This administrative regulation is being modified to correct an error in Section 10 governing the use of leave in inclement weather situations and to clarify the regulations governing the accrual and use of annual and sick leave.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: See (3)(a)(1), above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change anticipated.

(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: Recurring agency base budgets.

(6) To the extent available from 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: The changes to this administrative regulation are technical in nature and are offered to clarify the administrative regulation that became effective on August 25, 1999. The modification eliminates conflicting and contradictory language and is designed to eliminate the confusion that the original language would create.

(8) Assessment of expected benefits: Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky. No direct impact on public health or environmental welfare is anticipated.

(a) State whether a detrimental effect on environmental and public health would result if not implemented: The change in the current regulation is intended to eliminate confusion as to the obligations of state employees to report to work during periods of inclement weather.

(b) If detrimental effect would result, explain detrimental effect: If not implemented, we anticipate that employees would attempt to use roads that have been closed due to weather emergencies due to uncertainty as to whether they would lose pay or leave time.

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not conflict with, overlap or duplicate an existing statute, administrative regulation or government policy, to our knowledge.

(a) Necessity of proposed regulation if in conflict: No conflict is seen.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.

(10) Any additional information or comments: No

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the unclassified service of state government, it does not apply to the classified service.

KENTUCKY LICENSING BOARD FOR SPECIALISTS IN HEARING INSTRUMENTS (Amendment)

201 KAR 7:015. Fees.

RELATES TO: KRS 334.050, 334.080, 334.090, 334.110

STATUTORY AUTHORITY: KRS 334.050, 334.080, 334.090, 334.110, 334.150

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessitated by KRS 334.050, 334.080, 334.090 and 334.110 and sets forth in detail all fees charged by the board.

Section 1. Application Fees Schedule. The following fees shall be paid in connection with all types of hearing instrument specialist applications:

(1) The application fee for an apprentice permit shall be fifty (50) dollars.

(2) The application fee for a license shall be fifty (50) dollars.

Section 2. Examination Fees. The following fees shall be paid in connection with the licensure examinations required by the board:

(1) The fee for the National Institute for Hearing Instrument Studies Examination shall be ninety-five (95) [thirty-five (35)] dollars.

(2) The fee for all portions of the state examination shall be seventy-five (75) [sixty-five (65)] dollars.

(3) The fee for an individual portion of the state examination shall be fifteen (15) dollars per portion.

Section 3. Original License Fees. The original license fee shall be \$100 for an applicant who successfully completes all portions of the examination and application processes.

Section 4. Renewal Fees and Penalties. No person holding a license shall practice in this state after March 2 of the year in which their license is to be renewed unless such license has been renewed as provided by law and payment of the prescribed fee has been made. All licenses not renewed by March 2 following the expiration date shall be deemed expired and no person holding an expired license shall engage in the practice of fitting and selling hearing instruments. The following fees and penalties shall be paid in connection with licensure renewals and penalties:

(1) The renewal fee for licensure shall be \$100.

(2) The late renewal fee, including penalty, for the grace period

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extending from January 31 to March 2 shall be \$125.

(3) The renewal fee for renewal of licensure after March 2 shall be \$150.

Section 5. Duplicate License Fees. The fee for a duplicate license shall be ten (10) dollars.

MICHAEL K. STONE, Chair

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 13, 2000 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amended administrative regulation shall be held on May 26, 2000, at 4 p.m., local time, at the Division of Occupations and Professions, Kentucky Licensing Board for Specialists in Hearing Instruments, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Board in writing by May 19, 2000, five (5) workdays 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Nancy L. Black, Director, Division of Occupations and Professions, Executive Director, Kentucky Licensing Board for Specialists in Hearing Instruments, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601, Phone (502) 564-3296, ext. 224; Fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact person: Nancy L. Black, Director

(1) Type and number of entities affected: Approximately 55 applicants for licensure who must take and pass the National Institute for Hearing Instrument Studies Examination as a requirement of initial licensure.

(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: N/A

(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: This fee regulation will have a negligible financial impact on the cost of doing business for new licensees as it increases fees for taking the National Institute for Hearing Instrument Studies Examination as required for initial licensure.

(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:

(a) Direct and indirect costs or savings: This administrative regulation will allow the agency to assess the full and complete cost of each National Institute for Hearing Instrument Studies Examination required for each applicant as a condition of initial licensure.

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: N/A

(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: Agency funds and annual budget.

(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:

(b) Kentucky: N/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: N/A

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

(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: N/A

(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. This administrative regulation applies equally to all applicants for licensure taking the National Institute for Hearing Instrument Studies Examination.

KENTUCKY ATHLETIC COMMISSION (Amendment)

201 KAR 27:005. Definitions.

RELATES TO: KRS 229.011

STATUTORY AUTHORITY: KRS 229.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.180 provides that the Kentucky Athletic Commission is authorized to adopt and promulgate any and all rules and administrative regulations considered by it necessary or expedient for the performance of its function provided in this chapter.

Section 1. Definitions. The following terms shall have the meaning assigned herein:

(1) "Amateur" shall mean a person who engages in boxing, sparring or wrestling contests and exhibitions where no cash prizes are awarded to participants, and who has never received any purse or other article of value either for the expenses of training therefor or for participating in any boxing, sparring or wrestling contest or exhibition, and where the prize competed for shall not in value exceed thirty-five (35) dollars or, in boxing, a maximum amount established by the United States Amateur Boxing Federation.

(2) "Bout" shall mean a contest or exhibition.

(3) "Card" shall mean contests and exhibitions scheduled or occurring as part of a program of contests and exhibitions to which a single ticket authorizes admittance.

(4) "Chairman" means the chairman of the Kentucky Athletic Commission.

(5) "Club" means any person, corporation, association or partnership conducting boxing, kick boxing, or elimination event matches, shows or exhibitions under the jurisdiction of the Kentucky Athletic Commission.

(6) "Commission" means the Kentucky Athletic Commission.

(7) "Commissioner" means a member of the Kentucky Athletic Commission.

(8) "Contest" shall mean an engagement in which the boxers or strive earnestly in good faith to win.

(9) "Contestant" means any person participating in boxing, wrestling, elimination events or kick boxing matches, shows or exhibitions coming under the jurisdiction of the Kentucky Athletic Commission.

(10) "Elimination event" means a boxing show where the winner of each match continues to box against additional opponents in a tournament format until an overall winner is determined.

(11) "Employee" means any employee of the Kentucky Athletic Commission.

(12) "Exhibition" shall mean an engagement in which the participants show or display their skill without necessarily striving to win.

(13) "Judge" shall mean a person other than a referee who shall have a vote in determining the winner of any boxing or contest.

(14) "Kick boxing" means a boxing show where the participants are allowed to throw kicking or foot blows at the opponent in addition to regular punching with the hands.

(15) "License" means the written authority to engage in the business of conducting, holding, giving, or officiating at, or participating in, boxing, wrestling, elimination events or kick boxing matches, shows or exhibitions.

(16) "Manager" means any person, including an agent, managing, handling, booking, directing, or in any other way directly or indirectly acting for or with a contestant in obtaining and participating in any match, show or exhibition, whether for compensation or not.

(17) "Match" means one (1) of the contests which make up a show.

(18) "Matchmaker" or "booker" shall mean any person, including an agent, who brings together professional boxers or wrestlers or arranges professional boxing contests or wrestling exhibitions.

(19) "Medical examination" includes all physical, mental and psychological examinations.

(20) "Official" means any announcers, judges, physicians, referees, or timekeepers.

(21) "Participant" shall mean a boxer or wrestler who takes part in a contest or exhibition.

(22) "Permit" means a written permission for licensee to engage in, conduct, hold, or give a professional boxing, wrestling, elimination event or kick boxing match, show or exhibition at a specific date and hour and at a specific place.

(23) "Person" shall mean any natural person, and corporations, partnerships, associations or other similar entities.

(24) "Physician" shall mean an individual licensed in Kentucky to engage in the general practice of medicine and surgery.

(25) "Professional" shall mean a person who competes in a boxing contest or wrestling exhibition for a purse, or teaches or pursues or assists in the practice of boxing or wrestling as a means of obtaining a livelihood or pecuniary gain.

(26) "Promoter" means any individual, corporation, association, partnership or club who has been issued a license to promote and conduct professional boxing, wrestling, elimination events or kick boxing matches, shows or exhibitions within this Commonwealth.

(27) "Purse" or "ring earnings" shall mean the financial guarantee or any other remuneration, or part thereof, for which professional boxers or wrestlers are participating in a contest or exhibition.

(28) "Ring officials" shall include referees, judges and timekeepers.

(29) "Second" means any person aiding, assisting or advising a contestant during a boxing match, show or exhibition.

(30) "Show" means any organized grouping of boxing matches, wrestling matches, elimination event matches or kick boxing matches or exhibitions coming under the jurisdiction of the Kentucky Athletic Commission.

(31) "Sparring" shall mean practice boxing, in which a boxer receives, lands or attempts to land blows from or on another person as part of a practice or training exercise.

(32) "Trainer" means any person who participates in the training of any contestant provided such training occurs within this Commonwealth.

(1) "Commission" means the Kentucky Athletic Commission.

(2) "Commissioner" means a member of the Kentucky Athletic Commission.

(3) "Chairman" means the chairman of the Kentucky Athletic Commission.

(4) "Employee" means any employee of the Kentucky Athletic Commission.

(5) "Official" means any announcers, judges, physicians, referees, or timekeepers.

(6) "Contestant" means any person participating in boxing, wrestling, elimination events or kick boxing matches, shows or exhibitions coming under the jurisdiction of the Kentucky Athletic Commission.

(7) "Trainer" means any person who participates in the training of any contestant provided such training occurs within this Commonwealth.

(8) "Manager" means any person managing, handling, booking, directing, or in any other way directly or indirectly acting for or with a

contestant in obtaining and participating in any match, show or exhibition, whether for compensation or not.

(9) "Second" means any person aiding, assisting or advising a contestant during a boxing match, show or exhibition.

(10) "Show" means any organized grouping of boxing matches, wrestling matches, elimination event matches or kick boxing matches or exhibitions coming under the jurisdiction of the Kentucky Athletic Commission.

(11) "Club" means any person, corporation, association or partnership conducting boxing, kick boxing, or elimination event matches, shows or exhibitions under the jurisdiction of the Kentucky Athletic Commission.

(12) "License" means the written authority to engage in the business of conducting, holding, giving, or officiating at, or participating in, boxing, wrestling, elimination events or kick boxing matches, shows or exhibitions.

(13) "Permit" means a written permission for licensee to engage in, conduct, hold, or give a professional boxing, wrestling, elimination event or kick boxing match, show or exhibition at a specific date and hour and at a specific place.

(14) "Promoter" means any individual, corporation, association, partnership or club who has been issued a license to promote and conduct professional boxing, wrestling, elimination events or kick boxing matches, shows or exhibitions within this Commonwealth.

(15) "Elimination event" means a boxing show where the winner of each match continues to box against additional opponents in a tournament format until an overall winner is determined.

(16) "Kick boxing" means a boxing show where the participants are allowed to throw kicking or foot blows at the opponent in addition to regular punching with the hands.

(17) "Match" means one (1) of the contests which make up a show.]

JACK KERNS, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 13, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 22nd day of May, 2000, at 3 p.m., at 700 Louisville Road, Berry Hill Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 15th day of May, 2000, five workdays 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: Nancy Black, Executive Director, Kentucky Athletic Commission, Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3296, Telefax No.: (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact person: Nancy Black, Executive Director

(1) Type and number of entities affected: Approximately 6 licensed boxing promoters; 41 licensed boxers; 45 licensed managers; 38 licensed wrestling promoters; 536 licensed wrestlers; 51 licensed referees; 25 licensed judges, and 20 licensed timekeepers.

(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:

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1. First year following implementation: N/A
2. Second and subsequent years: N/A
3. Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings: None
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: N/A
- (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: Agency funds and annual budget.
- (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: N/A
 - (b) Kentucky: N/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: N/A
 - (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. No separate classifications are created. All licensees who are impacted are treated the same.

KENTUCKY ATHLETIC COMMISSION (Amendment)

201 KAR 27:008. Licensing requirements and fees.

RELATES TO: KRS 229.021, 229.081, 229.171

STATUTORY AUTHORITY: KRS 229.180

NECESSITY, FUNCTION, AND CONFORMITY: To establish licensure requirements and fees for participants and for professional matches to be held in the Commonwealth.

Section 1. Annual License for Participants. All persons participating as in a professional match shall be licensed by this commission. All licenses shall expire on December 31 of the year in which they are issued. The license fee for each participant shall be as follows:

- (1) Wrestlers and referees of professional wrestling matches - twenty-five (25) [ten-10] dollars;
- (2) Boxers and kick boxers - twenty-five (25) [ten-10] dollars;
- (3) Judges - twenty-five (25) [ten-10] dollars;
- (4) Managers - twenty-five (25) [ten-10] dollars;
- (5) Referees of boxing, elimination, and kick boxing - twenty-five (25) [ten-10] dollars; or
- (6) Timekeepers - twenty-five (25) [ten-10] dollars.

Section 2. Licenses for Elimination Events. The fee for a contestant to participate in an elimination event shall be five (5) [four-4] dollars and shall be valid for the duration of that event only or a maximum of three (3) [calendar] days from the date of issuance. This fee shall be paid directly to the attending ring physician.

Section 3. Annual License for Professional Matches. The annual license for professional matches shall entitle the holder to conduct wrestling, boxing, elimination, or kick boxing events at any location within the Commonwealth for a period of one (1) year from the date of issuance. The fee for the annual license for professional matches shall

be \$300.

Section 4. Licensees to Deal Only with Licensees. Each licensee shall deal only with other appropriate licensees in any matter within the commission's jurisdiction.

Section 5. Unlicensed Persons. No unlicensed person shall perform any activities within the jurisdiction of the commission. If a licensee's license is revoked or allowed to expire, any contractual relationships he or she may have or claim within the commission's jurisdiction shall become voidable at the discretion of the commission.

Section 6. Reporting Obligations of Licensees. All licensees shall promptly furnish the commission with all information concerning illness of a boxer or wrestler, and of any reason why any licensee has failed to fulfill any contract. No licensee shall be relieved from performing his or her contractual obligations unless otherwise directed or authorized by the commission.

JACK KERNS, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 13, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 22nd day of May, 2000, at 3 p.m., at 700 Louisville Road, Berry Hill Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 15th day of May, 2000, five workdays 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: Nancy Black, Executive Director, Kentucky Athletic Commission, Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3296, Telefax No.: (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact person: Nancy Black, Executive Director

(1) Type and number of entities affected: Approximately 6 licensed boxing promoters; 41 licensed boxers; 45 licensed managers; 38 licensed wrestling promoters; 536 licensed wrestlers; 51 licensed referees; 25 licensed judges, and 20 licensed timekeepers.

(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: This fee regulation will have a negligible financial impact on the cost of doing business for all participants in boxing or wrestling in Kentucky as it very slightly increases the license fees.

(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:

(a) Direct and indirect costs or savings: None

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: Will slight increase revenue received by the Athletic Commis-

sion.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency funds and annual budget.

(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: 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: N/A

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

(c) If detrimental effect would result, explain detrimental effect: Licensees would have to spend slightly more money to obtain a license.

(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. No separate classifications are created. All licensees who are impacted are treated the same.

KENTUCKY ATHLETIC COMMISSION (Amendment)

201 KAR 27:010. General requirements for boxing, elimination events, kick boxing, matches, shows, or exhibitions.

RELATES TO: KRS 229.071(2), 229.171

STATUTORY AUTHORITY: KRS 229.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171 states that the commission is given the sole control, authority and jurisdiction over professional boxing and all persons who participate therein. This administrative regulation sets forth the general requirements for boxing, elimination events, and kick boxing matches, shows, or exhibitions.

Section 1. The proposed program for a show shall be filed with the commission at least five (5) business days prior to the date of the show. Notice of any change in a program or any substitutions in a show shall be immediately filed with the commission.

Section 2. Before the commencement of a show, all changes or substitutions shall be announced from the ring, and in addition, notice of any change or substitution shall be posted in a conspicuous place at the ticket office. Purchasers of tickets shall be entitled, upon request by them, to a refund of the purchase price of the tickets, provided the request is made before the commencement of the show.

Section 3. For boxing, elimination events, and kick boxing shows the row nearest the ring on all four (4) sides shall be under the exclusive control of the commission.

Section 4. The ring specifications for boxing, kick boxing, and elimination events shall be as follows:

(1) All matches shall be held in a roped ring not less than sixteen (16) feet square inside the ropes; and the floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot and shall be elevated not more than four (4) feet above the arena floor and shall be provided with steps for the use of those properly entitled to enter the ring on two (2) sides.

(2) The ring shall be formed of posts and ropes, with ropes extending in a triple line eighteen (18) inches, thirty-five (35) inches and fifty-two (52) inches above the ring floor, and with ropes to be not less than one (1) inch in diameter and wrapped in clean, soft material

drawn taut. Ropes shall be held in place with vertical straps on each of the four (4) sides. A fourth rope may be used subject to prior approval by the commission.

(3) Ring posts shall be made of metal or other strong material not less than three (3) inches in diameter and not nearer the ropes than eighteen (18) inches and shall be wrapped in soft, clean material.

(4) The ring floor shall be padded or cushioned with clean, soft material, to be approved by the commission, of not less than one (1) inch in thickness and extending over the edge of the platform, with a covering of canvas or similar material tightly stretched.

(5) Turnbuckles shall be padded with a safe, soft vertical pad at least six (6) inches in width.

Section 5. A bell or horn shall be used by the timekeeper in indicating the time.

Section 6. Equipment supplied by promoter. In addition to the ring and ring equipment, the promoter shall supply the following items, which shall be available for use as needed:

(1) A public address system in good working order;

(2) Judges and timekeepers chairs elevated sufficiently to assure unobstructed view of the ring and the ring floor;

(3) A stool or chair, a clean bucket, a clean water bottle, towels, rubber gloves and an adequate supply of water and fresh ice for each boxer's corner;

(4) A complete set of numbered round-cards;

(5) A container of powdered resin;

(6) A clean stretcher and a clean blanket, placed under or adjacent to the ring throughout each program;

(7) First aid oxygen apparatus or equipment;

(8) Gloves for each boxer in each contest or exhibition. Gloves shall weigh not less than eight (8) ounces of which weight no more than one (1) ounce shall be in the wrist padding of the glove. Gloves shall be new for main events and for contests and exhibitions scheduled for ten (10) or more rounds. For all contests and exhibitions, thumbless or thumblock gloves approved by the commission shall be used, unless otherwise directed or authorized by the commission. [Buckets, water buckets, stools, towels, rubber gloves, and other articles as are necessary in the show shall be furnished in sufficient number and quantity by the promoter.]

Section 7. Scales. Scales used for any weigh-in shall be approved in advance by the commission.

Section 8. Duty to Safeguard Premises. All promoters shall safeguard and provide security at the premises where contests or exhibitions are conducted to insure to the commission's satisfaction that adequate protection against disorderly conduct has been provided. Any disorderly act, assault or breach of decorum on the part of any licensee at such premises is prohibited.

JACK KERNS, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 13, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 22nd day of May, 2000, at 3 p.m., at 700 Louisville Road, Berry Hill Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 15th day of May, 2000, five workdays 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: Nancy Black, Executive Director, Kentucky Athletic Commission, Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3296, Telefax No.: (502) 564-4818.

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REGULATORY IMPACT ANALYSIS

Contact person: Nancy Black, Executive Director

(1) Type and number of entities affected: Approximately 6 licensed boxing promoters, 38 licensed wrestling promoters and 45 licensed managers.

(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: This regulation will have a negligible financial impact on the cost of doing business for individuals putting on shows or bouts in Kentucky as it will require, for the first time, basic first aid equipment as well as mandating security actually be on the premises.

(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:

(a) Direct and indirect costs or savings: None

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: N/A

(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: Agency funds and annual budget.

(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: N/A

(b) Kentucky: No comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Current regulations do not allow alternative methods of complying with continuing education; this regulation will allow compliance through some alternative methods.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation will ensure there will be proper first aid equipment to help ensure the safety of participants. Security will also aid in crowd control helping protect participants.

(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: Licensees would have to spend more time and money on complying with continuing education.

(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. No separate classifications are created. All licensees who are impacted are treated the same.

KENTUCKY ATHLETIC COMMISSION (Amendment)

201 KAR 27:012. Wrestling requirements.

RELATES TO: KRS 229.021, 229.081, 229.171

STATUTORY AUTHORITY: KRS 229.180

NECESSITY, FUNCTION, AND CONFORMITY: To establish licensure requirements for wrestlers and for wrestling matches to be

held in the Commonwealth.

Section 1. The wrestling ring shall:

(1) Be clean, sanitary and free from grit, dirt, resin, or other foreign substances including blood;

(2) Be no smaller than fourteen (14) [sixteen-(16)] feet by fourteen (14) [sixteen-(16)] feet and shall have no fewer than three (3) ropes; and

(3) Wrestling mats required for ring. The mat covering the ring in boxing cards must not be used when wrestling cards are staged. Separate mats conforming to the specifications of the commission are required.

(4) Have an area of at least six (6) feet between the edge of the ring and the first row of spectator chairs on all four (4) sides of the ring. [Some type of fencing, ropes, or other barricade may be used to separate this area from the spectators.]

(5) A partition, barricade or some type of divider must be placed between the first row of the audience and the six (6) foot buffer zone, as well as any entry lane for the wrestler to enter the ring.

Section 2. Before the beginning of a wrestling show, all changes or substitutions in the advertised program of wrestling shall be posted at the ticket window and at the entrance to the facility. Changes or substitutions shall also be announced in the ring before commencement of the first match along with the information that any ticket holder desiring a refund based on those announced changes or substitutions shall be entitled to receive a refund before commencement of the program. Purchasers of tickets shall be entitled, upon request by them, to a refund of the purchase price of such tickets, if the request is made before the commencement of the first match.

Section 3. Licensed wrestlers who have made a commitment to participate in a professional match and are unable to participate, for any reason, shall notify the promoter of their inability to participate at the earliest possible moment. Failure to notify the promoter in a timely manner shall constitute grounds for possible disciplinary action by the commission.

Section 4. When participating in a match a wrestler, manager or second shall:

(1) Not use, or be instructed to use, any object or tactic to intentionally cut either himself, his opponent or any other participant in the show;

(2) Not use any pyrotechnic on another wrestler, manager or second during the course of the show; or

(3) Intentionally cause himself or his opponent to bleed while participating in an exhibition or appearing at the site of a show. [Have his fingernails trimmed well below the tips of the fingers;

(2) Be dressed in clean attire which is in good taste;

(3) Be personally clean and neat in appearance; and

(4) Wear soft-soled shoes or no shoes.

Section 5. The following provisions shall relate to wrestling "falls":

(1) Both shoulders pinned to the canvas for the referee's count of three (3) shall constitute a fall. Flying and rolling falls shall not count;

(2) Conceding a fall, or quitting because of having received punishment from a legitimate hold, constitutes a fall; and

(3) The referee shall not place his hands under the shoulders of a contestant unless necessary to determine a fall.]

Section 5.[6.] When a wrestling contestant rolls off the canvas and outside the ropes, he shall be ordered to return to the middle of the ring to resume the contest. If a contestant fails to obey the referee's order to return to the ring before the referee's count of ten (10) he shall be counted out and the decision awarded to his opponent.

[Section 7. (1) In the conduct of a wrestling match, a contestant shall:

(a) Use only legitimate holds or methods known to wrestling;

(b) Refrain from grasping or hanging onto clothing, ring or ropes for support or to gain a competitive advantage; or

(c) Break within a count of three (3), when ordered to do so by the referee.]

Section 6. [(2)] Any violation of this or any other administrative regulation [the provisions of subsection (1) of this section may result in disqualification of a contestant, at the discretion of the referee. Flagrant violation] which results in injury to a [another] contestant, participant or member of the audience may result in suspension or revocation of a [contestant's] license, at the discretion of the commission.

Section 7. Where Wrestling Must Take Place. All wrestling or entertainment must take place either in the ring or within the partitioned-off portion of the gym or arena. No physical activity is permitted between contestants or other wrestlers in the audience or outside of the safety partition.

Section 8. Duty to Safeguard Premises. All promoters shall safeguard and provide security for the premises where contests or exhibitions are conducted to insure to the commission's satisfaction that adequate protection against disorderly conduct has been provided. Any disorderly act, assault or breach of decorum on the part of any licensee at such premises is prohibited.

JACK KERNS, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 13, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 22nd day of May, 2000, at 3 p.m., at 700 Louisville Road, Berry Hill Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 15th day of May, 2000, five workdays 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: Nancy Black, Executive Director, Kentucky Athletic Commission, Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3296, Telefax No.: (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact person: Nancy Black, Executive Director

(1) Type and number of entities affected: Approximately 38 licensed wrestling promoters and 536 licensed wrestlers.

(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: This regulation will have a negligible financial impact on the cost of doing business for promoters in Kentucky as they will be required to maintain a partition to separate participants from the audience.

(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:

(a) Direct and indirect costs or savings: None

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: N/A

(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: Agency funds and annual

budget.

(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: Current regulations do not allow alternative methods of complying with continuing education; this regulation will allow compliance through some alternative methods.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Since professional wrestling is sports entertainment, this regulation will help ensure the safety of the participants by stopping intentional bleeding or use of dangerous, pyrotechnic devices, as well as establishing a boundary to separate participants from audience.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Wrestlers will continue to intentionally cut themselves or opponents creating the possibility of passing in blood borne diseases.

(c) If detrimental effect would result, explain detrimental effect: Injury to licensees.

(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: This regulation is meant to recognize that professional wrestling is entertainment.

(11) TIERING: Is tiering applied? No. No separate classifications are created. All licensees who are impacted are treated the same.

KENTUCKY ATHLETIC COMMISSION (Amendment)

201 KAR 27:013. Scoring and conduct of boxing, kick boxing, and elimination events.

RELATES TO: KRS 229.101, 229.131, 229.171

STATUTORY AUTHORITY: KRS 229.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171 states that the commission is given the sole control, authority and jurisdiction over professional boxing, kick boxing, and elimination events and all persons who participate therein. This administrative regulation sets forth the rules relative to the conduct of all forms of boxing matches. The following administrative regulation applies to boxing, kick boxing, and elimination events.

Section 1. Judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned by the commission.

Section 2. Decisions shall be rendered as follows:

(1) If a contest lasts the scheduled limit, the winner of the contest shall be decided by:

(a) A majority vote of the judges if three (3) are used; or

(b) A majority vote of the judges and the referee if two (2) judges are used.

(2) Decisions shall be based primarily on effectiveness, giving credit for:

(a) Clean, forceful hitting;

(b) Aggressiveness;

(c) Defensive work; and

(d) Ring generalship, and deducting points for an opposite showing.

Section 3. Scoring shall be as follows:

(1) Each round in boxing shall be accounted for on the score card, using the ten (10) point must system. Scoring shall be in ratio of merit and demerit, the difference displayed by the contestants.

(2) Score cards shall be:

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- (a) Signed;
 - (b) Handed to the referee in the ring; and
 - (c) Filed by him with the commissioner or employee of the commission in attendance.
- (3) The decision shall then be announced from the ring.

Section 4. Rounds shall be as follows:

- (1) Boxing or kick boxing rounds shall:
 - (a) Be of either two (2) or three (3) minutes duration; and
 - (b) Have not less than a one (1) minute rest period between rounds.
- (c) Bouts shall consist of either four (4), six (6), eight (8), ten (10), or twelve (12) rounds.
- (2) Elimination rounds shall:
 - (a) Not exceed ninety (90) seconds duration; and
 - (b) Have not less than a one (1) minute rest period between rounds.
- (c) Bouts shall not exceed three (3) rounds.

Section 5. Requirements for boxing gloves shall be as follows:

- (1) For boxing, contestants shall wear boxing gloves which shall be:
 - (a) Clean and sanitary;
 - (b) Furnished by the promoter;
 - (c) Of equal weight;
 - (d) Not less than eight (8) ounces; and
 - (e) Thumbless or thumb-attached.
- (2) For elimination events:
 - (a) Contestants shall wear boxing gloves and headgear which shall be:
 - 1. Clean and sanitary;
 - 2. Furnished by the promoter;
 - 3. Clearly labeled with the promoter's name;
 - 4. Of equal weight;
 - 5. Not less than sixteen (16) ounces; and
 - 6. Thumbless or thumb-attached.
 - (b) Contestants shall not be allowed to provide substitute gloves or headgear.
 - (3) For kick boxing:
 - (a) Contestants shall wear boxing gloves which shall be:
 - 1. Clean and sanitary;
 - 2. Furnished by the promoter;
 - 3. Of equal weight;
 - 4. Not less than eight (8) ounces; and
 - 5. Thumbless or thumb-attached.
 - (b) Contestants shall also wear padded kick boxing boots on their feet approved by the commission.
 - (4) Gloves for all main matches shall be new and shall be put on in the ring subject to the discretion of the commissioner or employee of the commission.
 - (5) Breaking, roughing, or twisting of gloves shall not be permitted.
 - (6) The laces on gloves shall be tied on the back of the wrist and taped.

Section 6. Requirements for bandages shall be as follows:

- (1) For boxing and kick boxing only soft cotton or linen bandages shall be used for the protection of the boxer's hands. Bandages shall not be more than two (2) inches in width and twelve (12) yards in length for each hand.
- (2) For elimination events bandaging of the hands shall not be allowed.
- (3) Medical adhesive tape not more than one (1) inch in width may be used to hold bandages in place. Adhesive tape shall not be lapped more than one-eighth (1/8) of one (1) inch. Adhesive tape not to exceed one (1) layer shall be crossed over the back of the hand for its protection. Three (3) strips of adhesive tape, lapping not to exceed one-eighth (1/8) of one (1) inch, may be used for protection of the knuckles.

Section 7. Requirements for knock downs shall be as follows:

- (1) If a contestant is knocked to the floor by his opponent or falls from weakness or other causes, his opponent shall:
 - (a) Immediately retire to the farthest neutral corner of the ring; and

(b) Remain there until the referee completes his count or signals a resumption of action.

(2) The timekeeper shall commence counting off the seconds and indicating the count with a motion of the arm when the contestant is down. The referee shall pick up the count from the timekeeper.

(3) If a contestant fails to arise before the count of ten (10), the referee shall declare him the loser by waving both arms to indicate a knockout.

(4) If a contestant who is down arises during the count, the referee may, if he deems it necessary, step between the contestants long enough to assure himself that the contestant just arisen is in condition to continue the match.

(5) Should a contestant who is down arise before the count of ten (10) is reached and again go down from weakness or the effects of a previous blow, without being struck again, the referee shall resume the count where he left off.

(6) At the discretion of the referee, a standing eight (8) count may be used.

(7) If a contestant is knocked down three (3) times during a round, the contest shall be stopped. The contestant scoring the knock downs shall be the winner by a technical knockout. This rule may be waived by the commission upon the request of both contestants. Any request for waiver shall be made prior to the beginning of the show.

(8) When a round, other than the last round, ends before a contestant who was knocked down rises, the bell shall ring and the count shall continue. If the contestant fails to arise before the count of ten (10), the referee shall declare him the loser by waving both arms to indicate a knockout.

Section 8. A failure to resume a match shall be as follows:

(1) If a contestant fails to resume the match for any reason after a rest period, or leaves the ring during the rest period and fails to be in the ring when the bell rings to begin the next round, the referee shall count him out the same as if he were down in that round.

(2) If a contestant who has been knocked out of or has fallen out of the ring during a match fails to return immediately to the ring and be on his feet before the expiration of ten (10) seconds, the referee shall count him out as if he were down.

Section 9. A contestant shall be considered "down" when:

- (1) Any part of his body other than his feet is on the ring floor; or
- (2) He is hanging helplessly over the ropes and in the judgment of the referee, he is unable to stand; or
- (3) He is rising from the "down" position.

Section 10. (1) The following shall be considered fouls:

- (a) Hitting below the belt;
- (b) Hitting an opponent who is down or who is getting up after having been down;
- (c) Holding an opponent and deliberately maintaining a clinch;
- (d) Holding an opponent with one (1) hand and hitting with the other;
- (e) Butting with head or shoulder or using the knee;
- (f) Hitting with inside or butt of the hand, the wrist, or the elbow, and all backhand blows except for those backhand blows allowable in kick boxing;
- (g) Hitting or "flicking" with the glove open or thumbing;
- (h) Wrestling, or roughing, against the ropes;
- (i) Purposely going down without having been hit;
- (j) Deliberately striking at the part of opponent's body over the kidneys;
- (k) Use of the pivot blow or rabbit punch or any physical action which may injure a contestant;
- (l) Use of abusive or profane language; or
- (m) Failure to obey the referee.

(2) A contestant who commits a foul may be disqualified and the decision awarded to his opponent by the referee. The referee shall immediately do so if contestant commits a deliberate and willful foul which incapacitates his opponent.

(3) Any contestant committing a foul may be disciplined by the commissioner or employee of the commission.

(4) If a match is temporarily stopped by the referee, due to accidental fouling, the referee, with the aid of the physician, if necessary,

shall decide whether the contestant who has been fouled is in physical condition to continue the match. If in their opinion the contestant's chances have not been seriously jeopardized, as a result of the foul, he shall order the match resumed after a reasonable time, the time to be set by the referee, but not exceeding five (5) minutes.

(5) If a contestant is unable to continue as the result of an accidental foul and the match is in one (1) of the first three (3) rounds, the match shall be declared a technical draw. If the foul occurs after the third round, or if an injury sustained from an accidental foul in the first three (3) rounds causes the contest to be subsequently stopped, the contest shall be scored on the basis of the judges' scorecards.

Section 11. The following shall be prohibited:

- (1) "Battle royal"; and
- (2) Use of excessive grease or any other substance which may handicap an opponent.

Section 12. Boxer Repeatedly Knocked Out or Otherwise Defeated. (1) A boxer or kick boxer who has been repeatedly knocked out and severely beaten shall be retired and not permitted to box again if, after subjecting him to a thorough examination by a physician, the commission decides the action is necessary in order to protect the health and welfare of the boxer.

(2) A boxer or kick boxer who has suffered six (6) consecutive defeats by knockout shall not be allowed to box again until he has been investigated by the commission and examined by a physician.

(3) A contestant whose license is under suspension in any other jurisdiction may be allowed to participate in any boxing, kick boxing, or elimination match only after review and approval of the case by the commissioner or employee of the commission.

(4) Any boxer who has been knocked out shall be prohibited from all contact for sixty (60) days.

(5) Any boxer who has suffered a technical knockout shall be prohibited from contact for thirty (30) days.

Section 13. Sex of Boxers. No boxer shall engage in any boxing or sparring with a member of the opposite sex.

Section 14. Age of Boxers. Unless special permission otherwise is granted by the commission, boxers under nineteen (19) years of age are permitted to box no more than six (6) rounds; boxers nineteen (19) years of age, eight (8) rounds; boxers twenty (20) years of age ten (10) rounds; and for all bouts over ten (10) rounds, each boxer in such bout shall be at least twenty-one (21) years of age. No person over the age of thirty-nine (39) without first submitting a complete physical and medical authorization/release completed within fifteen (15) days of the scheduled bout.

JACK KERNS, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 13, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 22nd day of May, 2000, at 3 p.m., at 700 Louisville Road, Berry Hill Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 15th day of May, 2000, five workdays 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: Nancy Black, Executive Director, Kentucky Athletic Commission, Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3296, Telefax No.: (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact person: Nancy Black, Executive Director

(1) Type and number of entities affected: Approximately 6 licensed boxing promoters; 41 licensed boxers; 45 licensed promoters; 51 licensed referees; 25 licensed judges, and 20 licensed time-keepers.

(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: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

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: N/A

(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: Agency funds and annual budget.

(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: 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: This amendment is meant to help ensure safety of participants.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Health of participants may be harmed because they may get back into ring when not medically cleared.

(c) If detrimental effect would result, explain detrimental effect: The possibility that boxers will fight when not medically ready.

(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. No separate classifications are created. All licensees who are impacted are treated the same.

KENTUCKY ATHLETIC COMMISSION (Amendment)

201 KAR 27:015. Prompt payment of fees, fines and forfeitures required.

RELATES TO: KRS 229.081, 229.091(1), 229.991

STATUTORY AUTHORITY: KRS 229.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.091(1)

provides that every licensee shall be subject to such administrative regulations as the commission prescribes. This administrative regulation is intended to insure that licensees pay all fees, fines and forfeitures owed to the Commonwealth in a prompt manner.

Section 1. All compensation agreements shall be in writing and

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submitted to the commission for approval not less than five (5) calendar days prior to the date of the proposed show.

Section 2. Compensation shall not be paid to any contestant in advance unless by prior approval of the commission.

Section 3. A promoter shall not pay any part of the compensation due to managers, contestants, or their agents, if such manager or contestant or agent owes the Commonwealth of Kentucky any fees, fines, forfeitures, or other funds incurred in conducting, holding, giving, officiating at, or participating in, boxing, kick boxing, elimination events, wrestling matches, shows, or exhibitions.

Section 4. Before the commencement of any boxing, elimination event, kick boxing show or exhibition, the promoter of the show or exhibition shall tender to the commissioner or an employee of the commission a check or money order made payable to each official who will officiate the show or exhibition in the amount prescribed by the schedule of compensation for officials set forth in Section 5 of this administrative regulation.

Section 5. The schedule for compensation to be paid in advance to officials participating in a professional show shall be as follows:

(1) Judges for elimination events (minimum three (3)) - \$150 [125] each per day.

(2) Judges for boxing shows or kick boxing shows (minimum three (3)) - seventy-five (75) [fifty (50)] dollars each.

(3) Timekeeper for:

(a) Boxing shows or kick boxing shows - seventy-five (75) [fifty (50)] dollars; and

(b) Elimination event - \$150 [125] per day.

(4) [Physician for elimination events - \$225 per day;

(5)] Physician for boxing shows, [or] kick boxing shows and elimination events - \$225 [150].

(5) [(6)] Referees for elimination events (minimum two (2)) - \$150 [125] per day.

(6) [(7)] Referees for boxing shows and kick boxing shows - \$100 [fifty (50) dollars] each. If there are more than thirty (30) scheduled rounds, a minimum of two (2) referees shall be required.

Section 6. If a show or exhibition is cancelled, with less than twenty-four (24) hours notice to the commission, officials shall be paid one-half (1/2) [one-third (1/3)] the compensation required by this administrative regulation.

JACK KERNS, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 13, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 22nd day of May, 2000, at 3 p.m., at 700 Louisville Road, Berry Hill Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 15th day of May, 2000, five workdays 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: Nancy Black, Executive Director, Kentucky Athletic Commission, Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3296, Telefax No.: (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact person: Nancy Black, Executive Director

(1) Type and number of entities affected: Approximately 6 licensed boxing promoters; 41 licensed boxers; 45 licensed manag-

ers; 38 licensed wrestling promoters; 536 licensed wrestlers; 51 licensed referees; 25 licensed judges, and 20 licensed timekeepers.

(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: This fee regulation will have a negligible impact on promoters as it slightly raises the fees for officials participating in a professional show.

(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:

(a) Direct and indirect costs or savings: None

1. First year: N/A

2. Continuing costs or savings: \$75 for judges; \$25 for timekeepers; \$75 for a physician; and \$50 for referees.

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(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: Agency funds and annual budget.

(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 received.

(b) Kentucky: None received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Current regulations do not allow alternative methods of complying with continuing education; this regulation will allow compliance through some alternative methods.

(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: 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. No separate classifications are created. All licensees who are impacted are treated the same.

KENTUCKY ATHLETIC COMMISSION (Amendment)

201 KAR 27:035. Seconds.

RELATES TO: KRS 229.171

STATUTORY AUTHORITY: KRS 229.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171 gives the Kentucky Athletic Commission the sole direction, management, control, and jurisdiction over all professional boxing shows, kick boxing shows, and elimination events held in the Commonwealth. It is therefore necessary to control the activities of some unlicensed participants in these shows.

Section 1. Seconds shall report to and be under the general supervision of the commissioner or employee of the commission in attendance at the show. Seconds shall obey all orders of the commissioner or employee.

Section 2. Seconds shall be governed by the law and administrative regulations of the commission.

Section 3. Any violation, by seconds, of the law or administrative regulations of the commission may be sufficient cause for disqualification of the contestant, for whom they act, by the referee or judges.

Section 4. Seconds shall not act as managers unless so licensed.

Section 5. Seconds shall not be more than three (3) in number, and only two (2) shall be allowed in the ring at the same time.

Section 6. Seconds shall be equipped with first aid kits and the necessary supplies for proper attendance upon their contestants.

Section 7. Seconds shall leave the ring at the timekeeper's ten (10) seconds whistle before the beginning of each round of a boxing match, kick boxing match, or elimination event match removing all equipment. None of this equipment shall be placed on the ring floor until after the bell has sounded at the end of the round or period.

Section 8. Seconds shall not throw towels or other articles into the ring.

Section 9. Seconds shall wear surgical gloves at all times while carrying out their duties.

Section 10. Seconds may be ejected from a match or excluded from future matches based on a violation of these administrative regulations.

JACK KERNS, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 13, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 22nd day of May, 2000, at 3 p.m., at 700 Louisville Road, Berry Hill Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 15th day of May, 2000, five workdays 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: Nancy Black, Executive Director, Kentucky Athletic Commission, Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3296, Telefax No.: (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact person: Nancy Black, Executive Director

(1) Type and number of entities affected: Approximately 41 licensed boxers and individuals assisting the boxer.

(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: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

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: N/A

(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: Agency funds and annual budget.

(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 received.

(b) Kentucky: None received.

(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: 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. No separate classifications are created. All licensees who are impacted are treated the same.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 1:012. Boating, swimming and water skiing and other activities on department-owned or controlled lakes.

RELATES TO: KRS 150.025, 150.090, 150.620, 150.625, 150.640

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to allow multiple use of state waters within perimeters of safety, ability to enforce and noninterference with the primary users, fishermen.

Section 1. Water skiing is permitted on Guist Creek Lake and Lake Beshear beginning the third Thursday of May and continuing through September 30, annually, during the daylight hours of 10 a.m. to sunset and only in those areas designated and marked as "ski areas" by buoys and/or signs by the Department of Fish and Wildlife Resources. Water skiing is prohibited in coves or embayments of the lakes.

Section 2. Water skiing and/or the pulling of water skiers is permitted on Lake Malone beginning the third Thursday of May and continuing through October 31, annually, but only during the daylight hours of 10 a.m. to sunset and only in those areas designated and marked as "ski areas" by buoys and/or signs by the Department of Fish and Wildlife Resources. Water skiing and/or pulling of a water skier is prohibited in coves or embayments of Lake Malone.

Section 3. Boat speeding and/or reckless operation of a boat (see subsection (2) of this section) is not permitted at any time in any area of any lake owned and/or controlled by the Department of Fish and Wildlife Resources including the ski zones. All boats, except those being operated in the designated skiing areas during the annual summer water skiing period, shall in all areas of any lake maintain slow speed as defined in subsection (1) of this section when passing any other boat in which the occupants are actively engaged in fishing.

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(1) Slow speed is defined herein as that speed attained with the throttle of the motor set at its slowest forward position.

(2) Speeding and/or reckless operation in this administrative regulation is defined to be any operation of a boat in any area of a lake that may endanger other persons or craft using the lake by intimidation, direct contact or by waves created by the speed or reckless operation of a boat.

Section 4. Swimming in any lake controlled and/or owned by the Department of Fish and Wildlife Resources is prohibited, except in areas specifically set aside for swimming at which a qualified lifeguard is on duty.

Section 5. Camping is prohibited on property owned or controlled by the Department of Fish and Wildlife Resources that surrounds a lake owned or controlled by the Department of Fish and Wildlife Resources, except as designated by a department sign.

Section 6. All officers and agents of the Department of Fish and Wildlife Resources shall have full authority to enforce the provisions of this administrative regulation. Failure to comply with the rules and specifications set forth in this administrative regulation shall constitute grounds for revocation of the rights and privileges of any person to admittance to and to the use of these public waters.

DOUGLAS SCOTT PORTER, Assistant Attorney General
C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
TOM BAKER, Chairman

APPROVED BY AGENCY: August 27, 1999

FILED WITH LRC: March 21, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2000, 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 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: Jennifer Fetter Fields, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3400, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: Jennifer Fetter Fields

(1) Type and number of entities affected: The provisions of this administrative regulation affect those who camp on department owned property - this represents a very small population.

(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. This amendment to an existing administrative regulation should have no impact on costs of living or 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 comments received. This amendment to an existing administrative regulation should have no impact on costs 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 to an existing administrative regulation will not affect compliance, report-

ing or paperwork requirements.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment to an existing administrative regulation will create no significant additional direct or indirect costs or savings. There may be some minimal cost associated with developing the required signage.

2. Continuing costs or savings: Same as for first year.

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: Fish and Game 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) Geographical area in which administrative regulation will be implemented: No comments received. This amendment to an existing administrative regulation should have no negative impact, and may have some positive impact in the geographical areas where implemented.

(b) Kentucky: This amendment to an existing administrative regulation should have no negative impact, and may have some positive impact on Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative method would be to allow uncontrolled camping on public property. This alternative was undesirable due to the potential destruction and vandalism that could occur.

(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 environmental and public health would result if not implemented: Possible destruction and vandalism of public areas.

(c) If detrimental effect would result, explain detrimental effect: See above.

(9) Identify and 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:

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 1:075. Gigging, grabbing or snagging, tickling and noodling.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.235, 150.360, 150.440, 150.445, 150.470

STATUTORY AUTHORITY: KRS 13A.350, 150.170, 150.175, 150.360, 150.440, 150.445, 150.470

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to permit and govern methods of harvest to the benefit of the fishery resource. This amendment is necessary to open the tributaries of the North, Middle, and South Forks of the Kentucky River to tickling and noodling.

Section 1. Fish may be taken by snagging using a single hook or one (1) treble hook except in the Green River and its tributaries and Rolling Fork River and its tributaries where five (5) hooks, either single or treble hooks, may be used.

Section 2. A person may gig or snag from the stream or lake

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banks, but shall not use these fishing methods from a boat or platform, except gigging is permitted from a boat in any lake with a surface acreage of 500 acres or larger during the daylight hours.

Section 3. The season during which gigging and snagging is permitted is February 1 through May 10, annually, except persons may gig rough fish through the ice any time the surface is frozen thick enough to stand on, and gigger must gig while supported by the ice.

Section 4. Gigging or snagging for rough fish is permitted night and day in all lakes and streams, except where specifically prohibited in Sections 2 and 5 of this administrative regulation.

Section 5. Gigging or snagging is specifically prohibited in the following streams and their tributaries. (Exceptions: See subsection (1)(b) and subsection (2)(b) of this section.)

(1)(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, and in the Cumberland River in the area below Barkley Dam downstream to US 62 bridge.

(b) Those tributaries to the Cumberland River below Wolf Creek Dam downstream to the Tennessee line shall be open to gigging and snagging, in season, except that portion of each tributary which is within one-half (1/2) mile of its junction with the Cumberland River.

(2)(a) Within 200 yards of any dam on any stream;

(b) Snagging only is permitted in the Tennessee River below Kentucky Dam subject to restrictions in 301 KAR 1:020.

(3) Stream and counties:

Bark Camp Creek - Whitley;

Barren River Tailwaters, from the Barren River Lake Dam downstream to the Hwy. 101 bridge - Allen and Barren;

Beaver Creek - McCreary;

Beaver Creek - Wayne;

Beaver Dam Creek - Edmonson;

Big Double Creek - Clay;

Buffalo Creek, Right Fork - Owsley;

Canada Creek - Wayne;

Cane Creek - Laurel;

Caney Creek - Elliott;

Casey Creek - Trigg;

Clover Bottom Creek - Jackson;

Dogslaughter Creek - Whitley;

East Fork Little Sandy River - Boyd;

Elkhorn Creek - Pike;

Goose Creek - Casey and Russell;

Hawk Creek - Laurel;

Hood Creek - Johnson and Lawrence;

Indian Creek - Jackson;

Laurel Creek - Elliott;

Lick Creek - McCreary;

Lick Creek - Simpson;

Little Kentucky River, upstream from a point 200 yards below the low water dam at the Sulphur Road Bridge - Trimble;

Little South Fork - McCreary and Wayne;

Little Whipporwill Creek - Logan;

Lynn Camp Creek - Hart;

Middle Fork Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line - Perry;

Middle Fork Red River - Powell and Wolfe;

Peter Creek - Barren and Monroe;

Raven Creek - Harrison;

Rock Creek - McCreary;

Rockcastle Creek, from the junction of Hwy. 3 and Hwy. 40 in Inez north approximately five (5) miles to the Hwy. 3, Johnson Bottom Bridge - Martin;

Rough Creek - Hardin;

Rough River, below Rough River Lake Dam downstream to Hwy. 54 bridge - Breckinridge and Grayson;

Roundstone Creek - Hart;

Russell Fork, upstream from the junction of U.S. Highway 460 and

Ky. Highway 80 - Pike;

Sinking Creek - Breckinridge;

Skinframe Creek - Lyon;

Station Camp Creek, downstream from the confluence of War

Fork Creek - Estill;

Sturgeon Creek, downstream from the confluence of Wild Dog Creek - Lee;

Sulphur Spring Creek - Simpson;

Swift Camp Creek - Wolfe;

Trammel Fork, upstream from the Hwy. 1332 bridge at Butlersville - Allen;

War Fork - Jackson.

Section 6. All game fish caught by gigging or snagging, except those taken below Kentucky Dam in the Tennessee River, shall be returned to the water immediately, regardless of condition.

Section 7. Effective March 1, 2001, the tickling and noodling (hand grabbing) season for rough fish shall be June 1 [10] to August 31 (all dates inclusive) during daylight hours only. Tickling and noodling shall be permitted in all waters. The daily creel limit for tickling and noodling shall be fifteen (15) rough fish of which not more than five (5) may be catfish.

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

TOM BAKER, Chairman

APPROVED BY AGENCY: August 27, 1999

FILED WITH LRC: March 21, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2000, 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 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: Jennifer Fetter Fields, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3400, FAX (502) 564-6508.

— REGULATORY IMPACT ANALYSIS

Contact Person: Jennifer Fetter Fields

(1) Type and number of entities affected: The provisions of this administrative regulation affect a small population of sportsmen that participate in tickling and noodling.

(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. This amendment to an existing administrative regulation should have no impact on costs of living or 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 comments received. This amendment to an existing administrative regulation should have no impact on costs 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 to an existing administrative regulation will not affect compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment to an existing administrative

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regulation will create no additional direct or indirect costs or savings.

2. Continuing costs or savings: Same as for first year.

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: Fish and Game 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) Geographical area in which administrative regulation will be implemented: No comments received. This amendment to an existing administrative regulation should have no negative impact, and may have some positive impact in the geographical areas where implemented.

(b) Kentucky: This amendment to an existing administrative regulation should have no negative impact, and may have some positive impact on Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative would be to leave the season the same or to lessen it. There is no biological reason to shorten the season, and lengthening it would create more opportunity for sportsmen.

(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 environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify and 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:

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 1:201. Fishing limits.

RELATES TO: KRS 150.470, 150.990(2)

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)

authorizes the department to promulgate administrative regulations to protect fish species from overharvest, allocate their harvest, maintain ecological balance and improve fishing. This administrative regulation establishes size, daily, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure or fly:

(a) Made of:

1. Wood;

2. Metal;

3. Plastic;

4. Feathers;

5. Preserved pork rind; or

6. A similar inert material; and

(b) Not having attached:

1. An insect;

2. Minnow;

3. Fish egg;

4. A worm;

5. Corn;

6. Cheese;

7. Cut bait; or

8. Similar organic bait substance.

(2) "Daily limit" means the creel limit, the maximum number of a

particular species or group of species a person may legally take in a day or have in possession while fishing.

(3) "Daylight hours" are defined by KRS 150.010(6).

(4) "Kentucky bass" means the following with a patch of teeth on its tongue:

(a) Largemouth bass;

(b) Kentucky bass; or

(c) Coosa bass.

(5) "Lake" means impounded waters from the dam upstream to the first riffle on:

(a) The main stem river; and

(b) Tributary streams.

(6) "Length" means the distance from the tip of a fish's lower jaw to the tip of its tail, measured with the fish laid flat on a rule and its tail lobes squeezed together.

(7) "Possession limit" means the maximum number of fish a person may hold in the field after two (2) or more days of fishing.

(8) "Release" means to return a fish:

(a) In the best possible physical condition;

(b) Immediately after removing the hook;

(c) To the water from which it was taken; and

(d) In a place where the fish's immediate escape shall not be prevented.

(9) "Single hook" means a hook with no more than one (1) point.

(10) "Size limit" means the minimum legal length of a fish.

(11) "Slot limit" means that a person:

(a) Shall release fish within a specified minimum and maximum size; and

(b) May keep fish above and below the protected size range.

Section 2. Statewide Size and Creel Limits. (1) Except as specified in Section 4 of this administrative regulation or by 301 KAR 1:180, a person fishing in public or private waters shall observe the following daily possession and size limits.

(a) Black bass: daily limit, six (6); possession limit, twelve (12).

1. Largemouth bass, smallmouth bass or Coosa bass: size limit, twelve (12) inches.

2. Kentucky bass: no size limit.

(b) Rock bass: daily limit, fifteen (15); possession limit, thirty (30); no size limit.

(c) Walleye and their hybrids: daily limit, ten (10); possession limit, twenty (20); size limit, fifteen (15) inches.

(d) Sauger: daily limit, ten (10); possession limit, twenty (20); no size limit.

(e) Muskellunge: daily and possession limit, two (2); size limit, thirty (30) inches.

(f) Chain pickerel: daily limit, five (5); possession limit, ten (10); no size limit.

(g) White bass and yellow bass, singly or in combination: daily limit, thirty (30); possession limit, sixty (60); no size limit.

(h) Striped bass and their hybrids: daily and possession limit, five (5); size limit, fifteen (15) inches.

(i) Crappie: daily limit, thirty (30); possession limit, sixty (60); no size limit.

(j) Rainbow trout and brown trout, singly or in combination: daily and possession limit, eight (8), no more than three (3) of which shall be brown trout; no size limit on rainbow trout; beginning March 1, 2000, twelve (12) inch size limit on brown trout.

(k) Brook trout: daily and possession limit, two (2); size limit, ten (10) inches.

(2) A person shall release grass carp caught from a lake owned or managed by the department.

(3) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species, if a person has in his possession the daily limit for that species established by this administrative regulation.

(4) A person shall not remove any part of the head or tail of a fish for which there is a size or creel limit until he has completed fishing for the day and has left the water.

(5) A person who wishes to possess sport fish below the size limit

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or beyond the possession limit shall:

- (a) Obtain the fish from a licensed fish propagator or other legal source; and
- (b) Retain a receipt or other written proof that the fish were legally acquired.
- (6) A person shall release trout unless he:
 - (a) Has a valid trout permit;
 - (b) Is exempted from trout permit requirements by KRS 150.170(3); or
 - (c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

Section 3. Fishing Season. The fishing season shall be open year round.

Section 4. Exceptions to Statewide Administrative Regulations. A person fishing in the waters listed in this section shall observe the following special requirements. Except as specified in this section, all other provisions of this administrative regulation shall apply to these bodies of water.

- (1) Bad Branch, Letcher County. A person shall not fish except with an artificial bait with a single hook.
- (2) Bark Camp Creek in Whitley County. From October 1 through March 31, a person shall:
 - (a) Not fish except with an artificial bait; and
 - (b) Release trout.
- (3) Barkley Lake.
- (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
 - (b) Crappie: size limit, ten (10) inches.
 - (c) Sauger: size limit, fourteen (14) inches.
- (4) Barren River Lake, including:
 - (a) Barren River to the Highway 100 bridge;
 - (b) Long Creek to the Highway 100 bridge;
 - (c) Beaver Creek to the Highway 1297 bridge;
 - (d) Skaggs Creek to the Mathews Mill Road bridge; and
 - (e) Peter Creek to the Peter Creek Road bridge:
 - 1. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20); possession limit, forty (40); size limit, no more than five (5) fish in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.
 - 2. Crappie: size limit, nine (9) inches.
 - 3. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches. Daily limit may include no more than one (1) and the possession limit no more than two (2) fish less than fifteen (15) inches.
- (5) Beaver Lake.
- (a) Beginning March 1, 2000, largemouth bass: size limit, fifteen (15) inches.
 - (b) A person shall not possess shad or use shad for bait.
- (6) Bert Combs Lake: a person shall not possess shad or use shad for bait.
- (7) Boltz Lake: a person shall not possess shad or use shad for bait.
- (8) Briggs Lake: a person shall not possess shad or use shad for bait.
- (9) Buckhorn Lake: largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
- (10) Cane Creek in Laurel County. From October 1 through March 31, a person shall:
 - (a) Not fish except with an artificial bait; and
 - (b) Release trout.
- (11) Carpenter Lake: a person shall not possess shad or use shad for bait.
- (12) Carr Creek Lake.
- (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
 - (b) Crappie: size limit, nine (9) inches.
- (13) Carter Caves Lake.
 - (a) Fishing shall be during daylight hours only.
 - (b) Largemouth bass: daily and possession limit, one (1) fish; size limit, fifteen (15) inches.
 - (c) A person shall not possess shad or use shad for bait.
- (14) Cave Run Lake: largemouth bass and smallmouth bass: slot

limit - a person may keep fish less than thirteen (13) or greater than sixteen (16) inches and shall release fish between thirteen (13) and sixteen (16) inches.

(15) Corinth Lake: a person shall not possess shad or use shad for bait.

(16) Cumberland Lake.

(a) Largemouth [~~and smallmouth bass~~]: size limit, fifteen (15) inches.

(b) Smallmouth bass: size limit, fifteen (15) inches effective until February 28, 2001. On and after March 1, 2001, the size limit shall be eighteen (18) inches.

(c) Striped bass: size limit, twenty-four (24) inches; daily and possession limit, two (2) fish.

(d) [(e)] Crappie: size limit, ten (10) inches.

(17) Cumberland River downstream from Barkley Lake Dam.

(a) Striped bass: daily and possession limit, three (3).

(b) Sauger: size limit, fourteen (14) inches.

(18) Cumberland River from Wolfe Creek Dam downstream to the Kentucky-Tennessee state line. Brown trout: size limit, twenty (20) inches; creel limit, one (1).

(19) Cyprus AMAX and Robinson Forest Wildlife Management Areas. On impounded waters of the area:

(a) Largemouth bass: size limit, fifteen (15) inches; daily limit three (3); possession limit, six (6).

(b) Sunfish: daily limit, fifteen (15); possession limit, thirty (30).

(c) Channel catfish: daily and possession limit, four (4).

(d) A person shall not fish:

1. Except during daylight hours; or

2. On Starfire Lake between January 1 and May 31.

(20) Dale Hollow Lake.

(a) Smallmouth bass: daily limit, two (2); size limit, eighteen (18) inches.

(b) Walleye and their hybrids: daily limit, five (5);

3. Size limit, sixteen (16) inches.

(c) Sauger: daily limit, ten (10); size limit, fourteen (14) inches.

(d) Muskellunge: daily limit, one (1).

(e) Rainbow trout and lake trout.

1. Daily limit, April 1 - October 31: seven (7), no more than two (2) of which may be lake trout. No size limit.

2. Daily limit, November 1 - March 31: two (2); size limit, twenty-two (22) inches.

(f) Largemouth bass: size limit, fifteen (15) inches;

(g) Black bass: aggregate daily limit, five (5), no more than two (2) of which shall be smallmouth bass.

(h) Crappie: Size limit, ten (10) inches.

(21) Dewey Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

(22) Dix River for two (2) miles downstream from Herrington Lake Dam.

(a) A person shall not fish except with an artificial bait.

(b) Brown trout: size limit, fifteen (15) inches.

(23) Dix River upstream from Herrington Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20); possession limit, forty (40); size limit: no more than five (5) in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.

(24) Dog Fork, Wolfe County. Beginning March 1, 2000, a person shall:

(a) Not fish except with an artificial bait with a single hook;

(b) Release brook trout.

(25) East Fork Indian Creek in Menifee County. From October 1 through March 31, a person shall:

(a) Not fish except with an artificial bait; and

(b) Release trout.

(26) Elkhorn Creek downstream from the confluence of the North and South forks. Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and sixteen (16) inches. The daily limit shall not include more than two (2) fish greater than sixteen (16) inches long.

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- (27) Elmer Davis Lake.
 (a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.
 (b) A person shall not possess shad or use shad for bait.
 (28) Fishtrap Lake.
 (a) Largemouth bass or smallmouth bass: size limit, fifteen (15) inches.
 (b) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.
 (29) Game Farm Lakes.
 (a) A person shall not possess shad or use shad for bait.
 (b) Upper Game Farm Lake:
 1. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6).
 2. Channel catfish: daily limit, four (4); possession limit, eight (8).
 (c) Lower Game Farm Lake:
 1. A person thirteen (13) years or older shall not fish.
 2. Daily limit, three (3) fish regardless of species.
 (30) Grayson Lake.
 (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
 (b) White bass, yellow bass, striped bass and their hybrids, singly or in combination: size limit, fifteen (15) inches, daily and possession limit, five (5) fish.
 (31) Greenbo Lake. A person shall not possess shad or use shad for bait.
 (32) Green River Lake. Crappie: size limit, nine (9) inches.
 (33) Guist Creek Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.
 (34) Hawk Creek in Laurel County. From October 1 through March 31, a person shall:
 (a) Not fish except with an artificial bait; and
 (b) Release trout.
 (35) Herrington Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20); possession limit, forty (40); size limit: no more than five (5) in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches long or longer.
 (36) Kentucky Lake and the canal connecting Kentucky and Barkley lakes.
 (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
 (b) Crappie: size limit, ten (10) inches.
 (c) Sauger: size limit, fourteen (14) inches.
 (37) Laurel Lake.
 (a) Largemouth bass [and smallmouth bass]: size limit, fifteen (15) inches.
 (b) Smallmouth bass: size limit, fifteen (15) inches effective until February 28, 2001. On and after March 1, 2001, the size limit shall be eighteen (18) inches.
 (38) Lebanon City Lake.
 (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
 (b) Crappie: size limit, nine (9) inches; daily limit, fifteen (15).
 (c) Bluegill and shellcrackers (singly or in aggregate): creel limit, thirty (30).
 (d) Channel catfish: creel limit, five (5).
 (39) Leary Lake.
 (a) A person shall not fish except during daylight hours.
 (b) Largemouth bass: daily limit, three (3); possession limit, six (6).
 (c) Bluegill: daily limit, fifteen (15); possession limit, thirty (30).
 (d) Channel catfish: daily limit, four (4); possession limit, eight (8).
 (40) Lincoln Homestead Lake.
 (a) A person shall not fish except during daylight hours.
 (b) Largemouth bass: daily limit, three (3); size limit, fifteen (15) inches.
 (c) Channel catfish: daily limit, four (4); possession limit, eight (8).
 (e) A person shall not possess shad or use shad for bait.
 (41) Lake Malone. Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.
 (42) Marion County Lake.
 (a) Largemouth bass: size limit, fifteen (15) inches.
 (b) A person shall not possess shad or use shad for bait.
 (43) Mauzy Lake. Largemouth bass; no size limit.
 (44) McNeely Lake. A person shall not possess shad or use shad for bait.
 (45) Mill Creek Lake (Powell County). A person shall not possess shad or use shad for bait.
 (46) Nolin River Lake.
 (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.
 (b) Crappie: size limit, nine (9) inches.
 (47) Ohio River.
 (a) Walleye, sauger and their hybrids: no size limit; daily limit, ten (10) fish, singly or in combination.
 (b) White bass, yellow bass, striped bass and their hybrids: daily limit, thirty (30); no more than four (4) in a daily limit shall be fifteen (15) inches long or longer.
 (48) Paintsville Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
 (49) Parched Corn Creek, Wolfe County. A person shall:
 (a) Not fish except with an artificial bait with a single hook;
 (b) Beginning March 1, 2000, release brook trout.
 (50) Peabody Wildlife Management Area (Goose Lake, Island Lake or South Lake):
 (a) Largemouth bass: Size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6).
 (b) Bluegill: daily and possession limit, fifteen (15).
 (c) Redbreast sunfish: daily and possession limit, fifteen (15).
 (d) Channel catfish: daily limit, four (4); possession limit, eight (8).
 (e) Walleye: size limit, fifteen (15) inches; daily and possession limit, one (1).
 (f) A person shall not:
 1. Fish:
 a. Except during daylight hours;
 b. From October 15 through March 15.
 2. Take frogs.
 (51) Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall:
 (a) Not fish except with an artificial bait with a single hook.
 (b) After March 1, 2000, release brook trout.
 (52) Lake Reba.
 (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
 (b) A person shall not possess shad or use shad for bait.
 (53) Rock Creek from the Bell Farm Bridge to the Tennessee state line. From October 1 through March 31, a person shall:
 (a) Not fish except with an artificial bait; and
 (b) Release trout.
 (54) Rough River Lake.
 (a) Crappie: size limit, nine (9) inches.
 (b) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches, except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.
 (c) White bass: for size and creel limit purposes anglers shall consider fish of the Morone family with an unseparated, U-shaped rear tooth patch on the tongue to be white bass.
 (d) Hybrid striped bass: for size and creel limit purposes anglers shall consider fish of the Morone family with a separated rear tooth patch on the tongue to be hybrid striped bass.
 (55) Shanty Hollow Lake.
 (a) Largemouth bass: size limit, fifteen (15) inches.
 (b) A person shall not possess shad or use shad for bait.
 (56) Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall:
 (a) Not fish except with an artificial bait with a single hook.
 (b) Beginning March 1, 2000, release brook trout.
 (57) Spurlington Lake. A person shall not possess shad or use shad for bait.
 (58) Sympson Lake: Largemouth bass: size limit, fifteen (15) inches.
 (59) Taylorsville Lake.
 (a) Largemouth bass and smallmouth bass: size limit, fifteen (15)

inches.

(b) Crappie: daily limit, fifteen (15); possession limit, thirty (30); size limits, nine (9) inches.

(c) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

(60) Tennessee River downstream from Kentucky Lake Dam.

(a) Striped bass: daily and possession limit, three (3).

(b) Sauger: size limit, fourteen (14) inches.

(61) Wolf Creek Federal Fish Hatchery. Rainbow trout: beginning March 1, 2000, creel limit five (5) in the developed portion of Hatchery Creek from the galvanized culvert/tile upstream to the hatchery discharge.

(62) Yatesville Lake. Largemouth bass and smallmouth bass; size limit, fifteen (15) inches.

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

TOM BAKER, Chairman

APPROVED BY AGENCY: March 3, 2000

FILED WITH LRC: March 21, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2000, 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 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: Jennifer Fetter Fields, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3400, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: Jennifer Fetter Fields

(1) Type and number of entities affected: Approximately 1 million anglers fish Kentucky Waters each year. Only a fraction of those will be affected by the provisions of the amendments to this administrative regulation.

(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. This amendment to an existing administrative regulation should have no impact on costs of living or 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 comments received. This amendment to an existing administrative regulation should have no impact on costs 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 to an existing administrative regulation will not affect compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment to an existing administrative regulation will create no additional direct or indirect costs or savings.

2. Continuing costs or savings: Same as for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: To the extent that this administrative regulation improves fishing, the sale of fishing licenses and local tourist revenue could be positively impacted.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game 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) Geographical area in which administrative regulation will be implemented: No comments received. This amendment to an existing administrative regulation should have no negative impact, and may have some positive impact in the geographical areas where implemented.

(b) Kentucky: This amendment to an existing administrative regulation should have no negative impact, and may have some positive impact on Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The increase length for smallmouth on 2 bodies of water, the alternative chosen was considered the most viable means of protecting fishery resources while allowing optimum angling opportunity for the species involved.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will allow outdoor recreation while protecting the ecological balance of Kentucky's waters.

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

(c) If detrimental effect would result, explain detrimental effect: Fishing size and creel limits prevent overfishing and population imbalances between predator and prey species. Without the size and creel limits imposed by this administrative regulation, both the recreational fishery and ecological balance in Kentucky's waters would suffer.

(9) Identify and 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:

(11) TIERING: Is tiering applied? Tiering was used to the extent that specific regulations are applied to different bodies of water in an effort to create maximum recreational fishing opportunities while maintaining adequate fish populations and favorable environmental conditions. In other instances, tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:049. Small game and furbearer hunting on public areas.

RELATES TO: KRS 150.010, 150.025(1), 150.370(1), 150.399, 150.400, 150.410, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to set seasons, limits and other requirements for hunting, and to make these requirements apply statewide or to a limited area; KRS 150.620 authorizes the department to regulate the lands it has acquired for public recreation. This administrative regulation is necessary to specify exceptions on wildlife management areas to statewide small game and furbearer hunting regulations.

Section 1. The provisions of 301 KAR 2:251 shall apply on a wildlife management area unless specified otherwise by this administrative regulation.

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Section 2. On a wildlife management area owned or managed by the department:

(1) A person shall wear hunter orange as specified in Section 12 of 301 KAR 2:172 when a firearm is allowed for deer hunting.

(2) The hunter orange requirement in subsection (1) of this section shall not apply to a person hunting:

- (a) Waterfowl; or
- (b) Raccoon or opossum at night.

(3) When deer hunting with a breech-loading firearm is allowed, a person shall not:

- (a) Hunt small game or furbearers;
- (b) Trap; or
- (c) Allow an unleashed dog.

(4) A person may hunt small game or a furbearer during the modern gun deer season on a wildlife management area where gun deer hunting is not permitted during the modern gun deer season.

Section 3. Exceptions on Specific Wildlife Management Areas. (1) Barren River Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person shall not:

- 1. Hunt with a breech-loading firearm;
- 2. Except as authorized by the department, carry a breech-loading firearm with ammunition in the chamber or magazine; or
- 3. Hunt small game with shot larger than number two (#2).

(2) Beaver Creek Wildlife Management Area, including private inholdings.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearer: December 5 through December 31. A trapper shall complete a harvest survey.

(d) Trapping: according to statewide trapping administrative regulations.

(3) Big South Fork National River and Recreation Area, McCreary County.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(4) Cane Creek Wildlife Management Area, including private inholdings.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearer: December 5 through December 31. A trapper shall complete a harvest survey.

(5) Central Kentucky Wildlife Management Area.

(a) Closed to small game and furbearer hunting except squirrels.

(b) A person shall not allow a dog to be unleashed:

1. April 1 until the third Saturday in August, except as provided in Section 2(5) of this administrative regulation; or

2. At other times of the year, except on a Tuesday, Thursday, Saturday, Sunday, or during an authorized field trial.

(c) A trapper shall obtain prior written permission from the area manager.

(d) A hunter or dog trainer shall check in and out daily at the designated check station.

(6) Clay Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) Grouse: October 1 through December 31.

(c) A hunter or dog trainer shall check in and out daily at the designated check station.

(7) Curtis Gates Lloyd/Mullins Wildlife and Recreation Area.

(a) Quail and rabbit: closed after December 31.

(b) A person shall not allow a dog to be unleashed from April 1 until the third Saturday in August, except as provided in Section 2(5) of this administrative regulation.

(c) A hunter or dog trainer shall check in and out daily at the designated check station.

(8) Daviess County Wildlife Management Area. Closed to hunting [and trapping] for small game and furbearers. Area open to trapping according to statewide administrative regulations.

(9) ~~Dewey Lake Wildlife Management Area:~~

~~(a) Quail and rabbit: closed after December 31.~~

~~(b) Furbearers: closed after December 31.~~

~~(10) Fishtrap Lake Wildlife Management Area:~~

~~(a) Quail and rabbit: closed after December 31.~~

~~(b) Furbearers: closed after December 31.~~

~~(11) Fleming Wildlife Management Area.~~

~~(a) Quail and rabbit: closed after December 31.~~

~~(b) Grouse: October 1 through December 31.~~

~~(10) [(12)] Grayson Lake Wildlife Management Area.~~

~~[(a) Quail and rabbit: closed after December 31.~~

~~(b)] A hunter or dog trainer shall check in and out daily at a designated check station.~~

~~(11) [(13)] Green River Lake Wildlife Management Area.~~

~~(a) Quail and rabbit: closed after December 31.~~

~~(b) Grouse: closed to hunting and trapping.~~

~~(c) A hunter or dog trainer shall check in and out daily at a designated check station.~~

~~(12) [(14)] Higginson-Henry Wildlife Management Area.~~

~~(a) Quail and rabbit: closed after December 31.~~

~~(b) A hunter or dog trainer shall check in and out daily at the designated check station.~~

~~(13) [(15)] Kleber Wildlife Management Area.~~

~~(a) Quail and rabbit: closed after December 31.~~

~~(b) A hunter or dog trainer shall check in and out daily at the designated check station.~~

~~(14) [(16)] Lake Cumberland Wildlife Management Area.~~

~~(a) Grouse: October 1 through December 31.~~

~~(b) Quail and rabbit: closed after December 31.~~

~~(15) [(17)] Mill Creek Wildlife Management Area, including private inholdings.~~

~~(a) Grouse: October 1 through December 31.~~

~~(b) Quail and rabbit: closed after December 31.~~

~~(c) Furbearer: December 5 through December 31. A trapper shall complete a harvest survey.~~

~~(d) Area open to trapping according to statewide administrative regulations.~~

~~(16) [(18)] Nolin Lake Wildlife Management Area. Quail and rabbit: closed after December 31.~~

~~[(19) Paintsville Lake Wildlife Management Area:~~

~~(a) Quail and rabbit: closed after December 31.~~

~~(b) Furbearers: closed after December 31.]~~

~~(17) [(20)] Peal Wildlife Management Area.~~

~~(a) Furbearer hunting: twenty (20) day season beginning the day after the modern gun deer season.~~

~~(b) Furbearer trapping: December 1 through 10, water sets only. Trappers shall be selected by drawing conducted by the area manager.~~

~~(c) Quail and rabbit: closed after December 31.~~

~~(18) [(21)] Pennyrite Forest Wildlife Management Area. Grouse: December 1 through December 31; daily limit, two (2).~~

~~(19) [(22)] Pioneer Weapons Wildlife Management Area. A person shall not:~~

~~(a) Hunt with a breech-loading firearm.~~

~~(b) Except as authorized by the department, carry a breech-loading firearm with ammunition in the chamber or magazine; or~~

~~(c) Hunt small game with shot larger than number two (#2).~~

~~[(23) Redbird Wildlife Management Area:~~

~~(a) Quail and rabbit: closed after December 31.~~

~~(b) Furbearers: closed after December 31.]~~

~~(20) [(24)] Robinson Forest Wildlife Management Area. Hunting is permitted under the requirements of 301 KAR 4:200.~~

~~(21) [(25)] Taylorsville Lake Wildlife Management Area.~~

~~(a) The area east of Van Buren Boat Ramp shall be closed to public access from November 1 through the last day of February.~~

~~(b) Quail and rabbit: closed after December 31.~~

~~(c) A hunter or dog trainer shall check in and out daily at a designated check station.~~

~~(22) Pennyrite- [(26)] Tradewater Wildlife Management Area. Grouse: December 1 through December 31; daily limit, two (2).~~

~~(23) [(27)] West Kentucky Wildlife Management Area, McCracken County.~~

~~(a) A person shall not hunt on a tract designated by numbers followed by the letter "A".~~

~~(b) Quail and rabbit:~~

~~1. Tracts 2, 3, 6 and 7: closed after December 31.~~

2. Tracts 1, 4 and 5: January 1 through 10, unless maximum acceptable harvest levels have been reached prior to January 10 as determined from hunter use data.

3. If a tract is closed before January 10, a sign announcing closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure.

(c) A hunter or dog trainer shall check in and out daily at the designated check station.

(d) A person shall not:

1. Use a rifle or ball or slug ammunition;

2. Allow an unleashed dog except as provided in Section 2(5) of this administrative regulation; or

3. Operate a vehicle on Tract 6 from February 1 through April 16.

(24) [(28)] Westvaco Public Hunting Areas. A person hunting on a Westvaco Public Hunting Area shall possess a valid Westvaco Hunting Permit.

(25) [(29)] White City Wildlife Management Area. Quail and rabbit: closed after December 31.

(26) [(30)] Yatesville Wildlife Management Area.

(a) For three (3) years from the effective date of this administrative regulation, a person shall not hunt grouse.

(b) A hunter or dog trainer shall check in and out daily at a designated check station.

(27) [(31)] Yellowbank Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) A hunter or dog trainer shall check in and out daily at the designated check station.

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

TOM BAKER, Chairman

APPROVED BY AGENCY: March 3, 2000

FILED WITH LRC: April 14, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 2000 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business 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: Jennifer F. Fields, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338 FAX (502)564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: Jennifer Fields

(1) Type and number of entities affected: Approximately 60,00 small game and furbearer hunters utilize the wildlife management areas covered by this administrative regulation.

(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. This administrative regulation, which continues long-standing hunting and trapping seasons, will have no impacts on cost of living or 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 received. This administrative regulation will have no impact 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 administrative regulation imposes no new paperwork or reporting requirements.

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: This administrative regulation imposes no new direct or indirect costs.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation imposes no new reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not impact state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game 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) Geographical area in which administrative regulation will be implemented: Hunting on, and other recreational uses of, wildlife management areas create positive economic impacts upon local economies in the vicinity of these areas. Each small game hunters spends approximately \$200 annually for equipment, transportation, food and lodging.

(b) Kentucky: Same as for local areas.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative is applying statewide hunting seasons to wildlife management areas. This alternative was rejected because these areas, because of high public use, require different seasons or other 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: Wildlife management areas represent environmentally valuable natural areas. This regulation allows public recreation on these areas while affording them needed protection from overuse.

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

(c) If detrimental effect would result, explain detrimental effect: Without special regulations, wildlife management areas could lose valuable wildlife populations or other natural features.

(9) Identify and 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:

(11) TIERING: Is tiering applied? Tiering was used in setting different seasons dates for various wildlife management areas, taking into account both biological concerns and hunter preference. Specific season dates or other requirements for wildlife areas allow public recreation while at the same time helping protect the flora and fauna of these areas.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:142. Spring wild turkey hunting.

RELATES TO: KRS 150.175(1)(r), 150.305, 150.360, 150.390, 150.990(11)

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.390(1) authorize the department to promulgate administrative regulations governing wild turkey hunting. This administrative regulation establishes season dates, shooting hours and other requirements for spring turkey hunting.

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Section 1. Definitions. (1) "Quota hunt" means a hunt whose participants register in advance and are selected by a random drawing.

(2) "Youth hunt" means a hunt open to a person ~~at least ten (10)~~ years old but who has not reached his 16th birthday by the day of the hunt.

Section 2. A person may take a wild turkey:

(1) For twenty-one (21) consecutive days beginning on the Monday closest to April 15;

(2) Using firearms or archery equipment as specified in Section 5 of 301 KAR 2:140;

(3) From one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

Section 3. A person shall not take more than:

(1) One (1) male turkey or turkey with a visible beard per day; or

(2) Two (2) male turkeys or turkeys with visible beards during the spring season.

Section 4. (1) Unless otherwise specified in this section, spring season dates and the requirements of 301 KAR 2:140 shall apply to wildlife management areas.

(2) A person shall not hunt a wild turkey during the spring on the areas listed in this section except on the dates specified in this administrative regulation.

(3) A turkey listed as a bonus bird shall not:

(a) Count against statewide limits.

(b) Require a carcass tag portion of the turkey permit be attached to the carcass.

(4) Ballard Wildlife Management Area.

(a) Season. Quota youth hunt, the Saturday and Sunday before the Monday closest to April 15.

(b) An applicant for the quota youth hunt shall participate in a drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(c) Shooting hours are one-half (1/2) hour before sunrise until noon.

(d) A person hunting wild turkey shall:

1. Check in and out daily.

2. Not take more than one (1) turkey.

(5) Barren River Wildlife Management Area. On the peninsula unit, including Narrows, Goose and Grass Islands, a person:

(a) Shall not:

1. Hunt turkey with a breech-loading firearm;

2. Except as authorized by the department, carry a breech-loading firearm with ammunition in the chamber or magazine;

(b) May hunt turkey with a crossbow.

(6) Fort Campbell Wildlife Management Area.

(a) Season. The last Saturday in March through the second Sunday in May.

(b) A turkey taken on Fort Campbell shall be a bonus bird.

(c) A person shall:

1. Obtain a post combination hunting-fishing permit before hunting.

2. Attach a Fort Campbell game check card to the turkey before leaving the post.

(7) Fort Knox Wildlife Management Area.

(a) Seasons. The last Saturday in March through the second Sunday in May.

(b) A person shall:

1. Hunt in assigned areas.

2. Not take more than one (1) turkey during the spring season.

(c) A turkey taken on Fort Knox shall be a bonus bird.

(8) Grayson Lake Wildlife Management Area in Carter County and the portion in Elliott County east of Bruin Creek.

(a) ~~Seasons:~~ Quota youth hunts.

1. The Saturday and Sunday before the Monday closest to April 15.

2. The Saturday and Sunday two (2) weeks after the first quota youth hunt.

(b) An applicant for the quota youth hunt shall participate in a drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(c) The area shall be open to spring turkey hunting after the second quota youth hunt.

(d) Shooting hours are one-half (1/2) hour before sunrise until noon.

(e) ~~(f)~~ A person hunting a wild turkey:

1. Shall check in and out daily.

2. Shall not take more than one (1) turkey.

(9) Green River Wildlife Management Area.

(a) This area shall be open during the spring season.

(b) Quota youth hunt, the Saturday and Sunday before the Monday closest to April 15.

(c) An applicant for the quota youth hunt shall participate in a drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(d) Shooting hours for the youth hunt shall be one-half (1/2) hour before sunrise until noon.

(e) A person participating in the youth hunt shall:

1. Check in and out daily.

2. Not take more than one (1) turkey.

(10) Higginson-Henry Wildlife Management Area. During the spring season a person:

(a) Shall not use or possess a firearm while turkey hunting.

(b) Shall check in and check out daily.

(11) Land Between the Lakes.

(a) Seasons.

1. Quota hunts of no more than six (6) days beginning on or after the first Saturday in April.

2. Up to sixteen (16) days between the first Saturday in April and the second Saturday in May.

(b) A person shall:

1. Check in and out, as required by the USDA Forest Service.

2. Hunt in assigned areas.

3. Check turkeys at a Land Between the Lakes check station before leaving Land Between the Lakes, as required by the USDA Forest Service.

4. Affix a Land Between the Lakes game check card and the carcass tag portion of the state turkey permit to the carcass, as required by the USDA Forest Service.

5. Not take more than one (1) turkey in the spring.

(c) Shooting hours shall be from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(12) Pioneer Weapons Wildlife Management Area. During the spring season a person:

(a) Shall not use a breech-loading shotgun.

(b) May use a crossbow with a working safety device.

(13) Reelfoot National Wildlife Refuge.

(a) Season. Quota hunt, the Friday closest to April 1 for three (3) consecutive days.

(b) A person shall:

1. Not take more than one (1) turkey.

2. Obtain written permission from the area manager before hunting.

(14) The main block of Robinson Forest shall be closed to turkey hunting.

(15) Swan Lake Wildlife Management Area shall be closed to turkey hunting.

(16) West Kentucky Wildlife Management Area shall be closed to spring turkey hunting except for a quota youth hunt the Saturday and Sunday before the Monday closest to April 15.

(a) An applicant for the quota youth hunts shall participate in a drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(b) Shooting hours are one-half (1/2) hour before sunrise until noon.

(c) A person hunting a wild turkey shall:

1. Check in and out daily; and

2. Not take more than one (1) turkey.

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

TOM BAKER, Chairman

APPROVED BY AGENCY: March 3, 2000

FILED WITH LRC: April 14, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 2000 at 10 a.m. at the Depart-

ment of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business 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: Jennifer F. Fields, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338 FAX (502)564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: Jennifer Fields

(1) Type and number of entities affected: Approximately 15,000 persons hunt wild turkey in Kentucky. Most of this activity occurs during the spring firearms season.

(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. The amendment to this administrative regulation will have no impact on cost of living or 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 received. The amendment to this administrative regulation will have no impact on 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: No additional paperwork requirements.

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 additional costs or savings.

2. Continuing costs or savings: Same as for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(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: Fish and Game 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) Geographical area in which administrative regulation will be implemented: Implemented statewide.

(b) Kentucky: No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 150.360 specifies that a person shall not take wildlife unless the department opens a season for a particular species; there is no alternate way of opening a season on wild turkey except by administrative regulation. Alternatives to the specifics contained within this administrative regulation were considered and rejected because they would not provide the desired combination of protection for Kentucky's wild turkey flock and optimal recreational opportunities for hunters.

(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 environmental and public health would result if not implemented: Possibly

(c) If detrimental effect would result, explain detrimental effect: Possible overharvest of wild turkey, leading to reduced seasons and

lessened hunter opportunity.

(9) Identify and 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: None

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers and small game.

RELATES TO: KRS 150.025(1), 150.340, 150.370(1), 150.399, 150.400, 150.410, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) gives the department authority to establish hunting seasons and to regulate bag and possession limits for, and the methods of taking and the devices use to take wildlife. This administrative regulation is necessary to insure the permanent and continued supply of small game and furbearer species by protecting them from overharvest.

Section 1. Definitions. (1) "Conibear-type trap" means a commercially manufactured spring-loaded trap designed to kill the animal upon capture.

(2) "Dry land set" means a trap not set to drown an animal upon capture.

(3) "Foot-hold trap" means a commercially manufactured spring-loaded trap with smooth, metallic jaws which close upon an animal's foot.

(4) "Furbearers" means mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, weasels or striped skunk.

(5) "Hunter" means a person hunting small game or furbearers with gun, gun and dog, bow and arrow, dog, or by falconry.

(6) "Modern gun deer season" means the five (5) or ten (10) day period established by 301 KAR 2:172 during which hunters may take deer with breech-loading firearms.

(7) "Nonlocking snare" means a wire, cable or string loop without a device to keep the loop from loosening.

(8) "Padded trap" means a commercially manufactured foot-hold trap with metal jaws padded with a soft, nonmetallic substance.

(9) "Small game" means squirrels, rabbits, quail or grouse.

(10) "Squirrel" means gray squirrel or fox squirrel.

(11) "Water set" means a trap set to drown an animal upon capture.

Section 2. Hunting and Trapping Seasons. Except as otherwise allowed by 301 KAR 2:049 or 301 KAR 2:125, a person shall not take the following wildlife except during the dates specified in this section:

(1) Squirrel:

(a) The first Saturday in June for fourteen (14) consecutive days; and

(b) The third Saturday in August through January 31. The season shall be closed during the modern gun deer season.

(2) Rabbits and quail: November 1 through January 31 except:

(a) The day after the modern gun deer season closes through January 31 in the first and second wildlife districts as stipulated in 301 KAR 4:010.

(b) The season shall be closed during the modern gun deer season in the third through ninth wildlife districts as stipulated in 301 KAR 4:010.

(3) Grouse: the day after the modern gun deer season closes through the last day in February in Adair, Bath, Bell, Boyd, Bracken, Breathitt, Campbell, Carter, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Harrison, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis,

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Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe Counties.

(4) Raccoon and opossum hunting: November 1 through noon on the day after the modern gun deer season.

(a) A person shall not trap during this period.

(b) During the modern gun deer season, a raccoon or opossum hunter shall not:

1. Hunt during daylight hours; or
2. Carry a firearm except a .22 caliber rimfire firearm.

(5) Furbearers, hunting and trapping: from noon the day after the modern gun deer season through noon, February 1.

(6) Extended beaver season: the month of February.

(7) Small game and furbearers taken by falconry: September 1 through March 30 [February 15].

(8) There shall not be a closed season on:

(a) Chasing red and gray foxes and rabbits during daylight hours for sport and not to kill.

(b) Chasing raccoons or opossums for sport and not to kill.

Section 3. Small Game Bag and Possession Limits.

| | Daily | Possession |
|-----------|-------|------------|
| Squirrels | 6 | 12 |
| Rabbits | 4 | 8 |
| Quail | 8 | 16 |
| Grouse | 4 | 8 |

Section 4. Furbearer Hunter Limits. (1) There shall not be a limit on furbearers except raccoons.

(2) A hunter shall not take more than one (1) raccoon within a twenty-four (24) hour period from noon to noon.

Section 5. Limits by Falconry. A falconer hunting within the falconry season but outside the dates specified in Section 2(1) through (6) of this administrative regulation shall not take more than two (2) of any small game or furbearer species, singly or in the aggregate per day.

Section 6. Shooting Hours. A person shall not take small game or furbearers except during the times specified in this section.

(1) Small game or furbearers, except opossum and raccoon: daylight hours only.

(2) Raccoon and opossum: day or night, except that a person shall not hunt during daylight hours during the modern gun deer season.

Section 7. Use of Calls. A hunter may use hand- or mouth-operated call or attracting device.

Section 8. A hunter shall not possess buckshot or a shotgun slug.

Section 9. Raccoon and Opossum Hunting Restrictions. (1) A hunter shall not use a light from a boat to take raccoon or opossum.

(2) Except as specified in subsection (3) of this section, a person chasing raccoon or opossum from noon, February 1 through October 31 shall not use or carry a:

- (a) Firearm;
- (b) Slingshot;
- (c) Tree climber;
- (d) Squealer; or
- (e) Similar device capable of killing, injuring or forcing a raccoon or opossum from a tree or den.

(3) A person participating in a department-approved raccoon dog trial sanctioned by one (1) of the following organizations may use a squealer:

- (a) The American Coon Hunters Association.
- (b) The American Kennel Club/American Coon Hunters Association.
- (c) The National Kennel Club.
- (d) The Professional Kennel Club.
- (e) The United Coon Hunters Association.

(f) The United Kennel Club.

Section 10. Trapping. (1) There shall not be daily or possession limit on a furbearer taken by trapping.

(2) A person trapping on dry land shall not:

(a) Set traps closer than ten (10) feet apart.

(b) Use a trap except a:

1. Deadfall;
2. Wire cage or box trap;
3. Number two (2) or smaller foot-hold trap;
4. Padded trap with a jaw spread of six (6) inches or less;
5. Number 220 or smaller conibear-type trap; or
6. A nonlocking snare.

(3) There shall be no restrictions on a trap used as a water set except during the extended beaver season as specified in Section 11 of this administrative regulation.

(4) A trap shall not be set in a trail or path commonly used by a human or a domestic animal.

(5) A trapper may use lights from a boat or a vehicle.

Section 11. During the extended beaver season a trapper shall not:

(1) A dry land set;

(2) A trap except a:

(a) Number three (3) or larger foot-hold trap;

(b) Padded trap with a jaw spread of at least five and one-half (5 1/2) inches;

(c) Conibear-type trap with a jaw spread of at least eight (8) inches; or

(d) A snare.

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

TOM BAKER, Chairman

APPROVED BY AGENCY: August 27, 1999

FILED WITH LRC: March 21, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2000, 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 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: Jennifer Fetter Fields, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3400, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: Jennifer Fetter Fields

(1) Type and number of entities affected: Approximately 251,000 small game hunters and 700 trappers participate in the seasons proposed by this regulation.

(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. This administrative regulation, which continues long-standing hunting and trapping seasons, will have no impacts on cost of living or 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 received. This administrative regulation will

have no impact 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 administrative regulation imposes no new paperwork or reporting requirements.

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: This administrative regulation imposes no new direct or indirect costs.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation imposes no new reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not impact state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game 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) Geographical area in which administrative regulation will be implemented: The provisions of this administrative regulation apply statewide.

(b) Kentucky: Small game hunters annually spend over \$50 million for equipment, transportation, food and lodging in Kentucky. This administrative regulation, by allowing for the continuance and slight expansion of hunting seasons, assures the perpetuation of this economic benefit.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative is closure of hunting seasons. This alternative was rejected because small game and furbearer populations are at levels which can sustain hunter or trapper harvest and provide recreational and economic benefits to the Commonwealth.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Hunting and trapping seasons help limit the population growth of some species, which could pose both environmental and public health problems if allowed to grow unchecked.

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

(c) If detrimental effect would result, explain detrimental effect: Without hunting or trapping, populations of some animals, particularly furbearers, could grow to levels that would pose threats to agricultural crops, increase the incidence wildlife diseases, or cause damage to ecosystems.

(9) Identify and 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:

(11) TIERING: Is tiering applied? Tiering was used in setting different seasons dates for various species, taking into account both biological concerns and hunter preference.

**TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 3:022. License, tag and permit fees.

RELATES TO: KRS 150.175, 150.195, 150.225, 150.235, 150.240, 150.280, 150.290, 150.485, 150.525, 150.603, 150.520, 150.660

STATUTORY AUTHORITY: KRS 150.195(4)(f), 150.225, 1998 RS HB 654

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.225

requires the department to prescribe reasonable license fees relating to hunting, fishing, and trapping. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. 1998 RS HB 654 establishes the senior/disabled combination license. This administrative regulation establishes fees and terms for licenses and the expiration dates for the licenses.

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year. This section shall only be effective for licenses with an effective beginning date prior to January 1, 2001. For licenses with an effective beginning date on or after January 1, 2001, this section shall expire and Section 2 shall become effective.

(1) Sport fishing licenses:

(a) Statewide annual fishing license (resident): twelve (12) dollars and fifty (50) cents;

(b) Statewide annual fishing license (nonresident): thirty (30) dollars;

(c) Joint statewide fishing license (resident): twenty-two (22) dollars and fifty (50) cents;

(d) Trout permit (resident or nonresident): five (5) dollars.

(2) Commercial fishing licenses:

(a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: \$100;

(b) Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: \$500.

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

(a) Commercial fishing gear tags (resident) block of 10 tags: ten (10) dollars;

(b) Commercial fishing gear tags (nonresident) block of ten (10) tags: seventy-five (75) dollars.

(4) Hunting licenses:

(a) Statewide hunting license (resident): twelve (12) dollars and fifty (50) cents;

(b) Statewide hunting license (nonresident): ninety-five (95) dollars;

(c) Statewide junior hunting license (resident or nonresident): six (6) dollars and twenty-five (25) cents;

(d) Statewide waterfowl permit (resident or nonresident): seven (7) dollars and fifty (50) cents;

(e) Migratory game bird permit (resident or nonresident): four (4) dollars.

(5) Combination hunting and fishing license (resident): twenty (20) dollars.

(6) Senior/disabled combination hunting and fishing license (resident): five (5) dollars.

(7) Trapping licenses:

(a) Trapping license (resident): fifteen (15) dollars;

(b) Trapping license (resident landowner/tenant): seven (7) dollars and fifty (50) cents;

(c) Trapping license (nonresident): \$115.

(8) [Big] Game permits:

(a) [Big] Game permit, deer (resident or nonresident): twenty-one (21) dollars;

(b) Junior [big] game permit, deer (resident or nonresident): twelve (12) dollars and fifty (50) cents;

(c) Bonus Zone 1 deer permit (two (2) tags per permit) (resident or nonresident): ten (10) dollars;

(d) Bonus archery only deer permit (resident or nonresident): ten (10) dollars;

(e) Bonus quota hunt deer permit (resident or nonresident): ten (10) dollars;

(f) [Big] Game permit, turkey (resident or nonresident): seventeen (17) dollars and fifty (50) cents;

(g) [Big] Game permit, fall firearm turkey (resident or nonresident): ten (10) dollars;

(h) [Big] Game permit, fall archery turkey (resident or nonresident): ten (10) dollars.

(9) Peabody or Addington Enterprises [Cyprus-AMA]-Robinson Forest individual permit: ten (10) dollars.

(10) Commercial mussel licenses:

(a) Musseling license (resident): \$300;

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- (b) Musseling license (nonresident): \$1,500;
- (c) Mussel buyer's license (resident) : \$500;
- (d) Mussel buyer's license (nonresident): \$1,500.

Section 2. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year. This section shall become effective for licenses and permits with an effective beginning date on or after January 1, 2001.

(1) Sport fishing licenses:

(a) Statewide annual fishing license (resident): fifteen (15) dollars;

(b) Statewide annual fishing license (nonresident): thirty-five (35) dollars;

(c) Joint statewide fishing license (resident): twenty-seven (27) dollars;

(d) Trout permit (resident or nonresident): ten (10) dollars.

(2) Commercial fishing licenses:

(a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: \$125;

(b) Commercial fishing license (nonresident) plus ten (10) non-resident commercial gear tags: \$600.

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

(a) Commercial fishing gear tags (resident) block of 10 tags: fifteen (15) dollars;

(b) Commercial fishing gear tags (nonresident) block of ten (10) tags: ninety (90) dollars.

(4) Hunting licenses:

(a) Statewide hunting license (resident): fifteen (15) dollars;

(b) Statewide hunting license (nonresident): \$115 dollars;

(c) Statewide junior hunting license (resident or nonresident): eight (8) dollars and seventy-five (75) cents;

(d) Statewide waterfowl permit (resident or nonresident): ten (10) dollars;

(e) Migratory game bird permit (resident or nonresident): five (5) dollars.

(5) Combination hunting and fishing license (resident): twenty-two (22) dollars and fifty (50) cents.

(6) Senior/disabled combination hunting and fishing license (resident): five (5) dollars.

(7) Trapping licenses:

(a) Trapping license (resident): seventeen (17) dollars and fifty (50) cents;

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

(c) Trapping license (nonresident): \$120.

(8) Game permits:

(a) Game permit, deer (resident or nonresident): twenty-five (25) dollars;

(b) Junior game permit, deer (resident or nonresident): fifteen (15) dollars;

(c) Bonus Zone 1 deer permit (two (2) tags per permit) (resident or nonresident): twelve (12) dollars and fifty (50) cents;

(d) Bonus archery only deer permit (resident or nonresident): twelve (12) dollars and fifty (50) cents dollars;

(e) Bonus quota hunt deer permit (resident or nonresident): fifteen (15) dollars;

(f) Game permit, turkey (resident or nonresident): twenty (20) dollars;

(g) Game permit, fall firearm turkey (resident or nonresident): fifteen (15) dollars;

(h) Game permit, fall archery turkey (resident or nonresident): fifteen (15).

(9) Peabody or Addington Enterprises-Robinson Forest individual permit: twelve (12) dollars and fifty (50) cents.

(10) Commercial mussel licenses:

(a) Musseling license (resident): \$400;

(b) Musseling license (nonresident): \$1,600;

(c) Mussel buyer's license (resident) : \$600;

(d) Mussel buyer's license (nonresident): \$1,600.

(11) Sportsman's license (resident) (includes resident hunting and fishing combination, spring turkey permit, trout permit, state waterfowl permit and game permit for deer): eighty (80) dollars

Section 3. Licenses, tags and permits, listed in this section shall be valid for the calendar year in which they are issued. This section shall only be effective for licenses with an effective beginning date prior to January 1, 2001. For licenses with an effective beginning date on or after January 1, 2001, this section shall expire and Section 4 of this administrative regulation shall become effective.

(1) Live fish and bait dealer's licenses:

(a) Live fish and bait dealer's license (resident): thirty (30) dollars;

(b) Live fish and bait dealer's license (nonresident): sixty (60) dollars.

(2) Commercial taxidermist license: \$100.

(3) Commercial guide licenses:

(a) Commercial guide license (resident): \$100;

(b) Commercial guide license (nonresident): \$250.

(4) Nonresident hunting preserve license: ten (10) dollars.

(5) Shooting preserve permit: \$100.

(6) Commercial fox hound training enclosure permit: \$250.

(7) Collecting permits:

(a) Educational wildlife collecting permit: ten (10) dollars;

(b) Scientific wildlife collecting permit: \$200.

(8) Food permits:

(a) Food permit for selling bobwhite quail from propagation farms only: \$150;

(b) Retail food permit for propagated quail: five (5) dollars.

(9) Pay lake license:

(a) First two (2) acres or less: \$100.

(b) Per additional acre or part of acre: twenty (20) dollars.

(10) Commercial wildlife pet and propagation permit: fifty (50) dollars.

(11) Commercial fish propagation permit: fifty (50) dollars.

Section 4. Licenses, tags and permits, listed in this section shall be valid for the calendar year in which they are issued. This section shall become effective for licenses and permits with an effective beginning date on or after January 1, 2001.

(1) Live fish and bait dealer's licenses:

(a) Live fish and bait dealer's license (resident): fifty (50) dollars;

(b) Live fish and bait dealer's license (nonresident): \$100.

(2) Commercial taxidermist license: \$125.

(3) Commercial guide licenses:

(a) Commercial guide license (resident): \$125;

(b) Commercial guide license (nonresident): \$300.

(4) Nonresident hunting preserve license: twenty (20) dollars.

(5) Shooting preserve permit: \$150.

(6) Commercial fox hound training enclosure permit: \$275.

(7) Collecting permits:

(a) Educational wildlife collecting permit: ten (10) dollars;

(b) Scientific wildlife collecting permit: \$200.

(8) Food permits:

(a) Food permit for selling bobwhite quail from propagation farms only: \$150;

(b) Retail food permit for propagated quail: five (5) dollars.

(9) Pay lake license:

(a) First two (2) acres or less: \$125.

(b) Per additional acre or part of acre: twenty (20) dollars.

(10) Commercial wildlife pet and propagation permit: \$100.

(11) Commercial fish propagation permit: \$100.

Section 5. [3:] Licenses, tags and permits listed in this section shall be valid for three (3) years from the date of issue.

(1) Falconry permit: forty-five (45) dollars; effective for permits with an effective beginning date on and after January 1, 2001, the cost shall be seventy-five (75) dollars.

(2) Noncommercial wildlife pet and propagation permit: seventy-five (75) dollars.

Section 6. [4:] Licenses, tags and permits listed in this section shall be valid for the date or dates specified on each. This section shall only be effective for licenses with an effective beginning date prior to January 1, 2001. For licenses with an effective beginning date on or after January 1, 2001, this section shall expire and Section 7 shall become effective.

(1) Short-term nonresident licenses:

- (a) Three (3) day fishing license: twelve (12) dollars and fifty (50) cents;
- (b) Fifteen (15) day fishing license: twenty (20) dollars;
- (c) Five (5) day hunting license (not valid for deer or turkey hunting [big game]): twenty-seven (27) dollars and fifty (50) cents;
- (d) Three (3) day fur bearer's license: forty (40) dollars.
- (2) Wildlife transportation permit: twenty-five (25) dollars.
- (3) Special commercial fishing permit: \$500.
- (4) Commercial waterfowl shooting area permit: \$100.
- (5) Shoot to retrieve field trial permits:
 - (a) Per trial (maximum four (4) days): fifty (50) dollars;
 - (b) Single day: fifteen (15) dollars.
- (6) Boat dock permits (per year): five (5) dollars.
- (7) Peabody or Addington Enterprises [Gyprus-AMAX]-Robinson Forest event permit: twenty-five (25) dollars.

Section 7. Licenses, tags and permits listed in this section shall be valid for the date or dates specified on each. This section shall become effective for licenses and permits with an effective beginning date on and after January 1, 2001.

- (1) Short-term licenses:
 - (a) One (1) day resident fishing license: six (6) dollars;
 - (b) Two (2) day resident fishing license: twelve (12) dollars;
 - (c) One (1) day nonresident fishing license: seven (7) dollars;
 - (d) Two (2) day nonresident fishing license: fourteen (14) dollars;
 - (e) Fifteen (15) day nonresident fishing license: twenty-five (25) dollars;
 - (f) Five (5) day nonresident hunting license (not valid for deer or turkey hunting): thirty-two (32) dollars and fifty (50) cents;
 - (g) Three (3) day fur bearer's license: fifty (50) dollars.
- (2) Wildlife transportation permit: twenty-five (25) dollars.
- (3) Special commercial fishing permit: \$600.
- (4) Commercial waterfowl shooting area permit: \$125.
- (5) Shoot to retrieve field trial permits:
 - (a) Per trial (maximum four (4) days): fifty (50) dollars;
 - (b) Single day: fifteen (15) dollars.
 - (6) Boat dock permits (per year): five (5) dollars.
 - (7) Peabody or Addington Enterprises-Robinson Forest event permit: twenty-five (25) dollars.

Section 8. [5-] Licenses, tags and permits listed in this section shall be valid on a per unit basis as specified.

- (1) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.
- (2) Horse stall rental (per space, per day): two (2) dollars.
- (3) Dog kennel rental (per dog, per day): fifty (50) cents.
- (4) Pond stocking fee (per stocking): twenty-five (25) dollars.

Section 9. [6-] The following licenses shall be valid from April 1 through March 31 of the following year:

- (1) The following provisions shall be effective for licenses with an effective beginning date prior to January 1, 2001. For licenses with an effective beginning date on and after January 1, 2001, this section shall not apply and be replaced by subsection (2) of this section.
 - (a) Fur processor's license (resident): \$150.
 - (b) [2] Fur buyer's license (resident): fifty (50) dollars.
 - (c) [3] Fur buyer's license (nonresident): \$230.
- (2) The following provisions shall be effective for licenses with an effective beginning date on and after January 1, 2001.
 - (a) Fur processor's license (resident): \$175.
 - (b) Fur buyer's license (resident): seventy-five (75) dollars.
 - (c) Fur buyer's license (nonresident): \$300.

DOUGLAS SCOTT PORTER, Assistant Attorney General
C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
TOM BAKER, Chairman

APPROVED BY AGENCY: March 3, 2000
FILED WITH LRC: April 14, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 2000 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the

Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business 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: Jennifer F. Fields, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338 FAX (502)564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: Jennifer Fields

(1) Type and number of entities affected: Approximately 1,000,000 sport and commercial license and permit buyers will be affected by this administrative regulation.

(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 comment received. This administrative regulation as amended should have no significant impact on costs of living.

(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. This administrative regulation as amended should have no significant impact on costs 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 amendment to this administrative regulation will increase fees for licenses and permits which will be issued by license agents through the Kentucky Direct Sales System. Because this system is automated, there will be no additional paperwork or reporting.

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: The amendment to this administrative regulation will increase revenue to the department to offset increased costs to the department.

2. Continuing costs or savings: Same as first year

3. Additional factors increasing or decreasing costs: No additional factors have been identified.

(b) Reporting and paperwork requirements: This administrative regulation imposes no reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect to local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game 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) Geographical area in which administrative regulation will be implemented: Implemented statewide. The regulation will increase the cost of permits and licenses to participated in wildlife related activities. The cost of permits and licenses have not been increased in seven years and the increase is needed to compensate for inflationary factors.

(b) Kentucky: No public comments received. See above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative method was not to increase fees. The original strategic plan for the department called for an increase 5 years after the last license increase. Through effective budgeting, department has been able to delay raising license and permit fees for 2 years beyond the original 5. However, this fee increase is necessary to meet the requirements of the department

without significantly reducing programs.

(8) Assessment of expected benefits: The fee increases will allow the department to maintain existing programs.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No identified effects on public health or environmental welfare.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None have been identified.

(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: None

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates.

**TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 5:010. License agent selection criteria.

RELATES TO: KRS 150.195

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: To establish application procedures for becoming a license agent and requirements for inventory agents.

Section 1. License Agent Applications and Agreements. (1) Before receiving authorization to serve as license agents, businesses or governmental agencies shall:

(a) Complete and submit a license agent application form;

(b) Enter into a formal contract with the department by agreeing to the provisions of, and signing, the appropriate agent agreement;

(c) Pay a security deposit as required in the agent agreement; and

(d) Sign an electronic fund transfer authorization form which authorizes the department to make electronic fund transfers from a bank account into which the agent shall deposit the proceeds from transactions.

1. Agents with multiple business locations wishing to consolidate payments shall make suitable arrangements with the department.

2. State agencies serving as license agents shall remit payment through the state accounting system.

(2) The following application and agent agreement forms are incorporated by reference. They may be inspected or copied at the Division of Fiscal Control, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601 (502) 564-4224 between 8 a.m. and 4:30 p.m. (eastern time) on normal business days:

(a) License Agent Application Form, 1995.

(b) Electronic Fund Transfer Authorization Form, 1995.

(c) Agent Agreement, 1995.

(d) Governmental Agent Agreement, 1995.

(e) Out-of-state Agent Agreement, 1995.

(f) Inventory Agent Agreement, 1995.

(g) Inventory Agent Reporting Form, 1995.

(3) The department shall not appoint as agents:

(a) Individuals; or

(b) Businesses that do not have:

1. A valid federal identification number; and

2. Except for out-of-state agents, a Kentucky sales tax number.

Section 2. Inventory Agents. (1) County clerks who are license agents may become inventory agents by written request to the department.

(2) In exchange for an additional fifteen (15) cents for each license sold in the inventory agent's county, an inventory agent shall:

(a) Maintain a supply of spare POS terminals, ribbons, paper stock, literature and other items as the department may direct;

(b) Make these items available to license agents during the county clerk's normal business hours;

(c) Keep accurate records, on forms provided by the department, of inventory items received and delivered; [and]

(d) Collect and ship defective POS devices to a designated maintenance facility; and

(e) For licenses and permits sold with an effective beginning date on or after January 1, 2001, the fifteen (15) cent fee to license inventory agent mentioned in paragraph (a) of this subsection will be discontinued and will not be paid.

(3) The department shall not appoint an inventory agent for counties in which the county clerk has chosen not to be an inventory agent.

Section 3. Out-of-state Agents. The department may grant license agent status to business locations outside Kentucky if the out-of-state agent:

(1) Was the agent of a county clerk; and

(2) Posts a surety bond as stipulated in the out-of-state agent agreement.

DOUGLAS SCOTT PORTER, Assistant Attorney General
C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
TOM BAKER, Chairman

APPROVED BY AGENCY: March 3, 2000

FILED WITH LRC: April 14, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 2000 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business 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: Jennifer F. Fields, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338 FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: Jennifer Fields

(1) Type and number of entities affected: Approximately 1,000,000 sport and commercial license and permit buyers will be affected by this administrative regulation.

(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 comment received. This administrative regulation as amended should have minimal impact on costs of living.

(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. This administrative regulation as amended should have no significant impact on costs 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 amendment to this administrative regulation will be affect licenses and permits that are already issued by license agents through the Kentucky Direct Sales System. Because this system is automated, there will be no additional paperwork or reporting.

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: The amendment to this administrative regulation will increase revenue to the department to offset increased costs.

2. Continuing costs or savings: Same as first year

3. Additional factors increasing or decreasing costs: No additional factors have been identified.

(b) Reporting and paperwork requirements: This administrative regulation imposes no reporting or paperwork requirements.

(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: Fish and Game 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) Geographical area in which administrative regulation will be implemented: Implemented statewide.

(b) Kentucky: No public comments received. No economic impact anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative was to not increase fees. This alternative was accepted for 7 years. The regulations is changed not to avoid losses to the department which would result in lost programs.

(8) Assessment of expected benefits: Continuation of existing programs.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No identified effects on public health or environmental welfare.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None have been identified.

(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: None

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates.

**TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)**

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

RELATES TO: KRS 150.195, 150.990

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195(4) authorizes the department to promulgate administrative regulations governing the issuance of licenses. This administrative regulation is necessary to specify requirements for issuing licenses and electronically reporting license sale data and license revenue; to detail the procedures for suspending or revoking license agent status, and to specify the methods for appealing a suspension or revocation of agent status.

Section 1. Issuing Licenses. (1) A license agent shall not issue a license to a person who does not provide the agent with:

(a) His date of birth; and

(b) An identification number, which shall be:

1. A driver's license number;

2. A state identification card number;

3. A Social Security number;

4. The number from an identification form printed by the POS device; or

5. If the purchaser is under age sixty-five (65) and buying a senior/disabled license, the number from a disability authorization card issued to the person to whom the license is issued.

(2) A license agent shall not issue:

(a) A junior hunting license unless the parent or guardian of the license recipient signs the license at the time of purchase.

(b) A Peabody or Addington Enterprises [Cypress/AMAX]-Robinson Forest user permit to a person who does not sign the liability waiver required by 301 KAR 4:100 or 301 KAR 4:200; or

(c) A senior/disabled license to:

1. A person age sixty-five (65) or over who does not provide proof of age and Kentucky residency; or

2. A person under the age of sixty-five (65) who does not show a disability authorization card issued to the person to whom the license is issued and a second item of personal identification.

Section 2. Agent Commission and Depositing of Funds. (1) The license agent shall retain as a commission:

(a) Forty (40) cents for each Peabody or Addington Enterprises [Cypress/AMAX]-Robinson Forest permit issued pursuant to 301 KAR 4:100 or 301 KAR 4:200. Beginning with permits that have an effective beginning date on or after January 1, 2001, fifty (50) cents for each Peabody or Addington Enterprises-Robinson Forest permit issued pursuant to 301 KAR 4:100 or 301 KAR 4:200.

(b) Twenty-five (25) cents each for other transactions. Beginning with licenses and permits that have an effective beginning date on or after January 1, 2001, fifty (50) cents shall be paid for other transactions.

(2) A license agent shall promptly deposit transaction fees, less the commissions described in subsection (1) of this section, into the bank account required by 301 KAR 5:010.

Section 3. Uploading License Sale Information. (1) The department shall provide each license agent a schedule of dates when license sale information will be uploaded from his POS device.

(2) A license agent shall:

(a) Connect his POS device to a telephone line on the date of the scheduled upload;

(b) Leave the POS device connected to the telephone line until the upload has been completed;

(c) Retain the receipts printed with each transaction until after the information about that transaction has been successfully uploaded; and

(d) Telephone the department within twenty-four (24) hours if the amount of funds to be transferred, as reported by the POS device, does not agree with the license agent's records.

Section 4. Electronic Transfer of Funds to the Department. (1) The department shall provide each license agent a schedule of dates when an electronic fund transfer from his bank account will be initiated.

(2) At the close of banking hours on the day of the scheduled electronic fund transfer, a license agent shall have sufficient funds in his account to cover the amount of the transfer.

Section 5. Voiding Licenses. (1) A license agent may void a license if:

(a) The license does not print correctly; or

(b) After the license is printed, the purchaser:

1. Discovers that he was issued an incorrect license;

2. Will not pay for the license; or

3. Otherwise refuses to accept the license.

(2) An agent shall retain a voided license and return them to the department as stipulated in Section 6 of this administrative regulation.

Section 6. Materials Retained and Returned to the Department.

(1) A license agent shall retain:

(a) A voided license;

(b) The completed identification form required by 301 KAR 5:030;

(c) The signed waiver of liability form required by 301 KAR 4:100 and 301 KAR 4:200;

(d) Ruined or unusable license stock; and

(e) Discarded printer ribbons.

(2) A license agent shall return the materials listed in this section

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to the department on the working day after each scheduled or unscheduled upload of information.

(3) The department shall charge the license agent for a voided license not returned as stipulated in subsection (2) of this section, and shall not issue credit for a voided license returned later than (30) days after the upload in which the void was reported.

Section 7. Suspensions and Revocation of Agent Status. (1) In addition to any penalties provided by KRS 150.990, the department shall suspend for one (1) year a license agent who twice in a twelve (12) month period:

(a) Causes an electronic fund transfer failure; or

(b) Violates a provision of:

1. The agent agreement;

2. KRS 150.195; or

3. An administrative regulation adopted pursuant to KRS 150.195.

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

(a) Commits for the second time an offense for which he has been previously suspended;

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

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

(d) Closes his business seasonally without notifying the department and settling his account;

(e) Knowingly issues a license containing false information; or

(f) Fails to notify the department within twenty-four (24) hours of discovering the loss or theft of a POS device or paper stock.

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

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

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

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

(5) A suspended or revoked agent shall:

(a) Surrender upon demand the POS devices and license stock in his possession to an authorized agent of the department;

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

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

Section 8. Appeal of Suspension or Revocation of Agent Status.

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

(2) Upon receipt of the request for a hearing, the department shall:

(a) Appoint a hearing officer qualified to conduct hearings under the provisions of KRS Chapter 13B; and

(b) Schedule a hearing to be held:

1. Prior to the next regularly scheduled meeting of the commission, if the request for a hearing is received more than thirty (30) days before the scheduled commission meeting; or

2. Within thirty (30) days, if the request for a hearing is received within thirty (30) days of the next scheduled commission meeting.

(3) The hearing officer shall conduct the hearing and present his recommendation at the commission meeting immediately following the hearing date.

(4) At the hearing, the license agent:

(a) May be represented by counsel; and

(b) May present evidence which he feels should be considered, including the calling of witnesses.

(5) The department may present evidence and call witnesses to support the suspension or revocation.

(6) The commission shall make its decision by majority vote.

(7) An agent may appeal a decision of the commission to Franklin Circuit Court pursuant to KRS 150.195.

(8) The department shall conduct suspension or revocation

hearings according to the provisions of KRS Chapter 13B.

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

TOM BAKER, Chairman

APPROVED BY AGENCY: March 3, 2000

FILED WITH LRC: April 14, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 2000 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business 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: Jennifer F. Fields, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338 FAX (502)564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: Jennifer Fields

(1) Type and number of entities affected: Approximately 1,000,000 sport and commercial license and permit buyers will be affected by this administrative regulation.

(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 comment received. This administrative regulation as amended should have minimal impact on costs of living.

(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. This administrative regulation as amended should have no significant impact on costs 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 amendment to this administrative regulation will be affect licenses and permits that are already issued by license agents through the Kentucky Direct Sales System. Because this system is automated, there will be no additional paperwork or reporting.

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: The amendment to this administrative regulation will increase revenue to the department to offset increased costs.

2. Continuing costs or savings: Same as first year

3. Additional factors increasing or decreasing costs: No additional factors have been identified.

(b) Reporting and paperwork requirements: This administrative regulation imposes no reporting or paperwork requirements.

(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: Fish and Game 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) Geographical area in which administrative regulation will be implemented: Implemented statewide.

(b) Kentucky: No public comments received. No economic impact anticipated.

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(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative was to not increase fees. This alternative was accepted for 7 years. The regulation is changed not to avoid losses to the department which would result in lost programs.

(8) Assessment of expected benefits: Continuation of existing programs.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No identified effects on public health or environmental welfare.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None have been identified.

(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: None

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates.

JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

501 KAR 6:070. Kentucky Correctional Institution for Women.

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.

Section 1. Incorporation by Reference. (1)(a) Kentucky Correctional Institution for Women policies and procedures, April 14, 2000 [May 12, 1999] are incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Kentucky Correctional Institution for Women Policies and Procedures include:

KCIW 01-08-01 News Media Access
KCIW 02-01-01 Comprehensive Insurance Coverage
KCIW 02-02-01 Fiscal Management: Audits
KCIW 02-02-04 Institution Purchasing Procedures
KCIW 02-03-01 Inventory Control of Nonexpendable Personal Property
KCIW 02-03-02 Inventory and Control of Stores [(Amended 5/12/99)]
KCIW 02-04-01 Accounting Procedures [(Amended 5/12/99)]
KCIW 02-05-01 Inmate Canteen and Staff Canteen (Amended 4/14/00)
KCIW 06-01-01 Inmate Records [(Amended 5/12/99)]
KCIW 06-01-02 Transfers to Community Centers and the Minimum Security Unit
KCIW 06-01-03 Storage of Expunged Records
KCIW 10-01-01 Special Management Unit General Operations [Operation] and Regulations (Amended 4/14/00)
KCIW 10-01-02 Special Management Unit Programs, Placement and Review

KCIW 10-01-04 Special Security
KCIW 11-01-01 Food Service Operation Inspections
KCIW 11-01-02 Budgeting, Accounting, and Purchasing Procedures for Food Products
KCIW 11-02-01 Menu Preparation/Special Diets
KCIW 11-03-01 General Guidelines for Food Service Workers
KCIW 11-04-01 Health Regulations and General Guidelines for the Food Service Area
KCIW 11-07-01 Special Religious Diets
KCIW 12-01-01 Control of Pests and Vermin
KCIW 12-02-01 Laundry and Clothing Issuance
KCIW 12-02-03 Donated Items
KCIW 12-04-02 Hair Care Services
KCIW 13-01-01 Provision of Medical and Dental Care
KCIW 13-01-02 Preliminary Health Screening and Appraisal
KCIW 13-01-03 Use of Pharmaceutical Products
KCIW 13-03-01 Emergency Care
KCIW 13-03-02 Infirmary Care and Outside Services
KCIW 13-04-01 Medical Alert System
KCIW 13-04-02 Psychiatric/Psychological Services
KCIW 13-06-01 Informed Consent
KCIW 13-07-01 Detoxification and Alcohol or Chemical Dependency Guidelines
KCIW 13-08-01 Medical Examination for Employees
KCIW 13-09-01 Suicide Prevention and Intervention Program
KCIW 13-11-01 Infection Control
KCIW 14-01-02 Inmate Rights
KCIW 14-02-01 Access to Attorneys and Designated Counsel Substitutes
KCIW 14-04-01 Inmate Grievance Procedure
KCIW 15-06-01 Restriction Guidelines
KCIW 16-01-01 Inmate Correspondence (Amended 4/14/00)
KCIW 16-02-01 Inmate Access to Telephones [Telephone] (Amended 4/14/00)
KCIW 16-03-01 Inmate Visiting Regulations (Amended 4/14/00)
KCIW 16-03-02 Unauthorized Items for Picnic Lunches, Food Packages and Regular Packages
KCIW 16-04-01 Inmate Indigent and Low Income Fund (Amended 4/14/00)
KCIW 16-05-01 Inmate Packages (Amended 4/14/00)
KCIW 17-01-01 Assessment Center Operation and Reception Programs
KCIW 17-01-02 Assessment/Classification Center Operations, Rules and Regulations
KCIW 17-01-03 Assessment and Classification Unit Property Guidelines
KCIW 17-02-01 Identification Department Admissions
KCIW 17-05-01 Inmate Personal Property Guidelines
KCIW 18-01-02 Institutional Housing Assignments
KCIW 18-01-03 Honor Program
KCIW 18-02-01 Classification Procedures
KCIW 18-05-01 Special Needs Inmates
KCIW 18-06-01 Institutional Status Codes
KCIW 19-01-01 Inmate Work/Program Assignments
KCIW 19-03-01 Landscape and Maintenance Work Details
KCIW 20-01-01 Education Programs
KCIW 20-01-03 Vocational Education: Curriculum Flexible Schedule, Upgrade Programs and Release Preparation Program
KCIW 20-01-04 Entry - Exit Vocational School
KCIW 20-01-05 Vocational Programs: Approved, Assessed and Contain Guidelines for Vocational Records
KCIW 20-01-06 Vocational Education: Staffing Patterns/Requirements
KCIW 20-01-07 Vocational Counselor
KCIW 20-01-08 Vocational Education: Community Resources and the Integration with Academic Progress
KCIW 20-01-09 Vocational Education: Support Equipment
KCIW 20-01-10 Control of Flammable, Hazardous, Toxic and Causative Materials in the Vocational Area
KCIW 22-01-04 Inmate Club Activities
KCIW 23-01-01 Religious Services
KCIW 25-02-02 Furloughs

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KCIW 25-03-01 Escorted Community Leave

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: April 7, 2000

FILED WITH LRC: April 14, 2000 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000, at 9 a.m., in the State Office Building Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 2000, 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 T. 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

Contact person: Tamela Biggs, Staff Attorney

(1) Type and number of entities affected: 210 employees of the correctional institutions, 637 inmates, 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 1998-2000 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

(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.

CABINET FOR WORKFORCE DEVELOPMENT (Amendment)

780 KAR 3:100. Employee actions.

RELATES TO: KRS 151B.035

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035

requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations with the provisions of KRS 151B.035. KRS 151B.035 specifies that the state board promulgate comprehensive administrative regulations for the certified and equivalent staff governing promotion, demotion, transfer, and reemployment.

Section 1. Definition: Work Station. (1) The official work station of an employee assigned to an office is the street address where the office is located.

(2) The official work station of a field employee is that address to which the employee is assigned at the time of appointment to the employee's position.

(3) Each employee shall be assigned to a work station by the appointing authority. A work station may be changed to better meet the needs of the agency. An employee may be temporarily assigned to a different work station in a different county for a period of up to sixty (60) calendar days, provided that such employee is reimbursed for his travel expenses in accordance with regulatory provisions and the appointing authority notifies the employee in writing prior to the effective date of the action. Nothing within this administrative regulation shall be construed as prohibiting the appointing authority from assigning an employee to work in a different site within the county of employment. Reassignment within a county is not an appealable action.

Section 2. Promotion. Any employee in the certified and equivalent personnel system may be promoted to a position of greater scope of discretion and responsibility or to the unclassified system in the Department for Technical Education or Department for Adult Education and Literacy [Adult and Technical Education].

Section 3. Demotion. An appointing authority may demote an employee who makes a written request for voluntary demotion. The written request shall be on a form prescribed by the Commissioner of the Department for Technical Education or the Department for Adult Education and Literacy [Adult and Technical Education] and shall include a statement of the reason for the request, the effective date of the demotion, identifying information concerning the position demoted from and to, and a waiver of the right of appeal concerning the demotion. A copy of the request shall be placed in the employee's official file.

Section 4. Transfer. (1) Any employee in the certified and equivalent personnel system may be transferred from one office to another and from one (1) district [region] to another.

(2) Transfers may be on a voluntary or involuntary basis. Unless an employee requests a transfer in writing, such transfer shall be deemed to have been made on an involuntary basis. The appointing authority shall establish a reasonable basis for selecting an employee for involuntary transfer.

(3) If the transfer is on an involuntary basis, the employee shall receive written notice of his transfer. Following notification of an involuntary transfer, an employee shall report for work at the work station to which transferred on the effective date of the transfer. The notice

shall be in writing, shall state the effective date of the transfer, the reason for the employee's selection for transfer, and the employee's obligation to report to the new work station. The notice shall also advise the employee that he has the right to appeal the transfer to the State Board for Adult and Technical Education within thirty (30) days of receipt of the notice excluding the day that he received notification. When the employee is notified, copies of the notice shall be forwarded to the Commissioner of the Department for Technical Education or the Department for Adult Education and Literacy [Adult and Technical Education].

(4) If an involuntary transfer is to a position with a work station in a different county, the employee shall receive the notice specified in subsection (3) of this section at least thirty (30) days prior to the effective date of the transfer. The appointing authority shall pay the employee's travel expenses following transfer for up to thirty (30) days following the effective date of transfer in accordance with administrative regulations relating to reimbursement of travel expenses, and shall pay the employee's reasonable moving expenses, if any, in accordance with the Finance and Administration Cabinet's Policy Procedures relating to Moving Expenses and Reimbursement. The notice specified in subsection (3) of this section shall advise the employee of these provisions.

(5) If an employee with status requests in writing that he be transferred, the appointing authority may make a voluntary transfer. The written request shall be on a form prescribed by the Commissioner of the Department for Technical Education or the Department for Adult Education and Literacy [Adult and Technical Education] and shall include a statement of the reason for the request, the effective date of the transfer, identifying information concerning the position transferred from and to, and a waiver of the right to appeal concerning the transfer. A copy of this request shall be forwarded to the Commissioner of the Department for Technical Education or the Department for Adult Education and Literacy [Adult and Technical Education].

Section 5. Reemployment. Reemployment in the certified and equivalent personnel system may occur in accordance with KRS 151B.080 [Chapter 151B, Section 14]. Former employees on a reemployment list shall meet all qualifications in order to be considered for a position.

Section 6. Resignations. An employee who desires to terminate his service with the state shall submit a written resignation to the appointing authority. Resignations shall be submitted at least thirty (30) calendar days before the final working day. A copy of an employee's resignation shall be attached to the advice effecting the separation and be filed in the employee's service record in the department. Failure of an employee to give thirty (30) calendar days notice with his resignation may result in forfeiture of accrued annual leave. Part-time hourly employees who have not worked for six (6) months [two (2) consecutive years] shall be deemed to have resigned.

Section 7. Temporary Overlap. The appointing authority for training purposes may place an employee in a position currently occupied by another employee for a period not to exceed sixty (60) calendar days.

Section 8. Retirement. If an employee voluntarily retires, he is considered as separated without prejudice.

ALLEN D. ROSE, Secretary

SHERRY R. DEATRICK, General Counsel

APPROVED BY AGENCY: March 28, 2000

FILED WITH LRC: March 29, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 31, 2000 at 1 p.m., prevailing local time in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by May 23, 2000, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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 tran-

script 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: Sherry R. Deatruck, General Counsel, Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, telephone: (502) 564-6606, fax number: (502) 564-9990.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatruck, General Counsel

(1) Type and number of entities affected: The proposed 780 KAR 3:100 will affect approximately 800 employees in the Department of Technical Education and 26 employees in the Department for Adult Education and Literacy within the Cabinet for Workforce Development.

(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 impact.

(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 impact. None anticipated.

(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 significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change is anticipated.

(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: Recurring agency base budgets.

(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: No alternative methods were 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: No impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The regulation does not affect environment or public health. It relates to employees within the Department for Adult Education and Literacy, and the Department for Technical Education.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies in conflict, to our knowledge.

(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 emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent is filed simultaneously with this emergency regulation.

(11) TIERING: Is tiering applied? Yes. Although this administra-

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tive regulation applies to all employees in the certified and classified service under KRS Chapter 151B, it does not apply to the unclassified service.

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 what unit, part or division of local government this administrative regulation will affect:

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

WORKFORCE DEVELOPMENT CABINET Department of Vocational Rehabilitation (Amendment)

781 KAR 1:010. Department of Vocational Rehabilitation appeal procedures.

RELATES TO: KRS 151B.190, 34 CFR Part 361, 29 USC 722

STATUTORY AUTHORITY: KRS 13B.170, 151B.185(2), 151B.195(1)

NECESSITY, FUNCTION, AND CONFORMITY: 29 USC 722(d) requires state procedures for the review of determinations made by rehabilitation personnel for basic rehabilitation services; KRS 151B.200 accepts and agrees to comply with federal vocational rehabilitation Acts; and KRS 151B.195(1) sets forth rulemaking authority with respect to the state vocational rehabilitation agency. This administrative regulation is necessary, pursuant to KRS Chapter 13B and 34 CFR 361.57, to establish hearing and appeal procedures for a person seeking vocational rehabilitation benefits.

Section 1. Definitions. (1) "Applicant" means an individual who submits an application for vocational rehabilitation services.

(2) ~~"Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.~~

(3) "Commissioner" means the Commissioner of the Department of Vocational Rehabilitation.

(3) "Department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(4) "Eligible individual" means an applicant for vocational rehabilitation services who the department determines is an individual with a disability who requires vocational rehabilitation services to prepare for, secure, retain or regain ~~(enter, engage in, or retain gainful)~~ employment.

(5) ~~"[Impartial] Hearing officer"~~ means an individual who:

(a) Is not an employee of a public agency other than an administrative law judge, hearing examiner, or employee of an institution of higher education;

(b) Is not a member of the Vocational Rehabilitation ~~[Advisory]~~ Council;

(c) Has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual;

(d) Has knowledge of the delivery of vocational rehabilitation services, the federal and state laws and administrative regulations governing the provision of vocational rehabilitation services;

(e) Has training with respect to the performance of official duties; and

(f) Has no personal or financial interest that would be in conflict with the objectivity of the individual.

Section 2. Administrative Review. (1) An applicant or eligible individual may request an informal administrative review conducted by a department staff member from the director of program services or a designee.

(2) The director or designee shall select an administrator from a district not involved in the action in question who shall conduct the administrative review within ten (10) days.

(3) The administrator shall conduct the administrative review either in person or by teleconference.

(4) The administrator shall make a determination and forward a copy to the individual and the department within five (5) days.

(5) The applicant or eligible individual shall attend and may be represented by an advocate or counsel.

Section 3. Mediation. (1) The department and the applicant or eligible individual may agree voluntarily to submit a request concerning the provision or denial of benefits to mediation.

(2) The department shall maintain a list of qualified mediators.

(3) The Director of Program Services or a designee shall choose a mediator from the list and schedule a mediation meeting within five (5) days from the receipt of the request for mediation.

(4) A representative of the department shall attend who is authorized to bind the department to an agreement.

(5) The applicant or eligible individual shall attend and may be represented by an advocate or counsel.

(6) Discussions or agreements arising from the mediation process shall not be used as evidence in any subsequent hearing or civil proceeding.

Section 4. Right of Appeal and Information. (1) An applicant or eligible individual shall have the right to appeal [an action] to the Director of Program Services ~~determinations made by the department affecting [concerning the]:~~

(a) Furnishing of vocational rehabilitation benefits; or

(b) Denial, reduction, suspension or cessation of vocational rehabilitation services;

(2) An applicant or eligible individual shall:

(a) Be informed of the:

1. Entitlements available under this administrative regulation;

2. Right to appeal; [and]

3. Right to be represented by an advocate or counsel; and

4. Names and addresses of department individuals with whom an appeal shall be filed.

(b) Request an appeal:

1. In writing;

2. By telephone through direct contact with the Director of Program Services or a designee; or

3. On tape, except that a voice mail message shall not constitute a request for a hearing.

(3) The director of program services or a designee shall convene a hearing within forty-five (45) days [from receipt] of a request made pursuant to subsection (1) of this section. Reasonable time extensions, not to exceed one (1) year, may be made for good cause with the agreement of both parties. The hearing shall be conducted pursuant to:

(a) KRS Chapter 13B; and

(b) This administrative regulation.

(4) Pending a final determination of a hearing or other final resolution, the department shall not suspend, reduce, or terminate services provided under the individualized plan for employment [written rehabilitation program] unless:

(a) It has evidence that the service was obtained by an applicant or eligible individual through:

1. Misrepresentation;

2. Fraud;

3. Collusion; or

4. Criminal conduct;

(b) The applicant or eligible individual [client], or an authorized representative, requests this action.

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Section 5. [3:] Client Assistance Program. The department shall advise an applicant or eligible individual of:

- (1) The existence of the Client Assistance Program, created by KRS 151B.225;
- (2) The services provided by the program; and
- (3) How to contact a program representative.

Section 6. [4:] Appeal Time and Hearing Procedures. (1) Only within sixty (60) days of becoming aware, through the exercise of due diligence, of a department determination affecting the provision or denial of vocational rehabilitation services [agency action or inaction], an applicant or eligible individual may appeal by contacting the Director of Program Services, pursuant to Section 4 [2(4)] of this administrative regulation.

(2) An applicant or eligible individual shall, at the time of requesting a [an appeal] hearing:

- (a) Identify accommodations required; and
- (b) Submit an issue statement for the hearing.

(3) [The department shall randomly select] A hearing officer shall be selected on a random basis from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General approved by the department and Statewide Council for Vocational Rehabilitation [and trained hearing officers].

[Section 5. Conduct of the Hearing. (1) The rules of civil procedure shall not apply to a hearing conducted under the provisions of this administrative regulation.

(2) Order of proof:

(a) The department shall:

1. Present its case first;
2. Examine witnesses; and
3. Submit documentation, subject to cross examination.

(b) The applicant or eligible individual shall:

1. Present its case second;
2. Examine witnesses; and
3. Submit documentation, subject to cross examination.

(3) A party shall provide three (3) copies of a document that is to be introduced into evidence.]

Section 7. [6:] Findings and Decision. (1) The hearing officer shall complete and submit to both parties and the Secretary of the Workforce Development Cabinet [commissioner] the written recommended order within thirty (30) days of receipt of the transcript of the hearing [the completion of the hearing] unless both parties agree to a time extension.

(2) Either party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the Secretary of the Workforce Development Cabinet. [If the commissioner decides to review the recommended order of the hearing officer, the commissioner shall:

(a) Notify the applicant or eligible individual within twenty (20) days of the mailing of the hearing officers order;

(b) Provide the applicant or eligible individual the opportunity to submit additional evidence or information relevant to the final decision;

(c) Not overturn or modify a decision unless it is concluded, based on clear and convincing evidence, that the decision is erroneous because it violates the:

1. State plan;
2. Federal vocational rehabilitation law or regulations; or
3. State administrative regulations or policies that are consistent with federal requirements.]

(3) The Secretary of the Workforce Development Cabinet shall consider the record, including the recommended order and any timely exceptions filed to the recommended order. [Within thirty (30) days of providing notice of intent to review the hearing officer's recommendation, the commissioner shall:

(a) Make a final decision; and

(b) Provide a full written report of the decision to the applicant or eligible individual, including:

1. Findings; and
2. Statutory, regulatory, or policy grounds for the decision.]

(4) The Secretary of the Workforce Development Cabinet shall issue the final order within thirty (30) days of issuance of the recom-

mended order. [If the commissioner fails to provide notice of the intent to review the recommendation within twenty (20) days, the recommended order of the hearing officer shall become a final decision.]

SAM SERRAGLIO, Commissioner

SUE G. SIMON, Legal Counsel

APPROVED BY AGENCY: March 30, 2000

FILED WITH LRC: April 6, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 2000 at 10 a.m. eastern time in the DVR Training Room, 209 St. Clair, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by May 15, 2000, of their desire to appear and testify at the hearing: George Parsons, Department of Vocational Rehabilitation, 209 St. Clair, Frankfort, Kentucky 40601, (502) 564-4440, (502) 564-6745 (FAX). The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

REGULATORY IMPACT ANALYSIS

Contact person: George Parsons

(1) Type and number of entities affected: All applicants and eligible individuals requesting services from the Department of Vocational Rehabilitation.

(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 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: Paperwork requirements will be contingent upon number of appeals received but these reporting and paperwork requirements currently exist.

(4) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds under the federal Rehabilitation Act of 1973, as amended, will be used for implementation and enforcement.

(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: Counsel has advised that the material is designated by KRS Chapter 13A and federal law and regulation as regulatory in nature with specific requirements imposed by the Rehabilitation Act Amendments of 1998, and KRS Chapter 13B.

(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 detrimental effect on those issues will ensue.

(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 statute, regulation or policy which is in conflict, overlaps, or duplicates this regulation which enumerates settlement procedures to be conducted for applicants and individuals eligible for vocational rehabilitation services from the department as prescribed by the Rehabilitation Act Amendments of 1973 as amended.

(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 is being amended to provide for informal settlement procedures including mediation, in order to comply with the standards established in the Rehabilitation Act of 1973, as amended and pursuant to KRS Chapter 13B.

(11) TIERING: Is tiering applied? No. The federal law requires that all applicants and eligible individuals for vocational rehabilitation services be afforded an opportunity for mediation, settlement and appeal. This administrative regulation identifies the procedures for those formal and informal settlement procedures.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361.

2. State compliance standards. This administrative regulation establishes procedures for dispute resolutions pursuant to the federal mandate and KRS Chapter 13B.

3. Minimum or uniform standards contained in federal mandate. State agencies are required to adopt policies and procedures necessary to assure applicants and eligible individuals an administrative avenue for resolving disputes.

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

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

CABINET FOR WORKFORCE DEVELOPMENT Department of Vocational Rehabilitation (Amendment)

781 KAR 1:050. Carl D. Perkins Comprehensive Rehabilitation Center.

RELATES TO: KRS 151B.190, 34 CFR 361.42, 29 USC 706(8)(A)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to promulgate administrative regulations governing the services and administration of the Department of Vocational Rehabilitation. This administrative regulation establishes the criteria for admission to and discharge from the Carl D. Perkins Comprehensive Rehabilitation Center.

Section 1. Definitions. (1) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(2) "Director" means Division Director of the Carl D. Perkins Comprehensive Rehabilitation Center.

(3) "Discharge" means an individual shall:

(a) Not have a further CDPCRC service provided; and

(b) Be transported to the home area; and

(c) Not have a per diem charged against the case by the Carl D. Perkins Comprehensive Rehabilitation Center (CDPCRC).

(4) "Eligible individual" means an individual who has been determined by an appropriate department staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR Part 361 [361.42].

~~[(5) "Expulsion" means that the individual has been dismissed from CDPCRC pursuant to Section 5 of this administrative regulation.~~

~~(6) "Suspension" means that an applicant or eligible individual shall:~~

~~(a) Not receive a CDPCRC service for the period of suspension;~~

~~(b) Be transported to the home area;~~

~~(c) Remain enrolled in the program for the period of the suspension with a per diem charged against the case; and~~

~~(d) Resume receiving the service after the period of suspension.]~~

Section 2. Admissions Policy. (1) An individual admitted to CDPCRC shall:

(a) Be an applicant of the Department of Vocational Rehabilitation for whom an assessment is needed prior to making an eligibility or ineligibility decision;

(b) Be an eligible individual of the Department of Vocational Rehabilitation who requires services of the type provided by CDPCRC, in order to benefit in terms of an employment outcome; or

(c) Have made arrangements to reimburse CDPCRC for the cost of services provided.

(2) A prospect for admission shall provide the following:

(a) A consent for CDPCRC to provide emergency medical care signed by:

1. The individual; or

2. If the individual is a minor or a person for whom the court has determined some form of guardianship or conservatorship is necessary [who has been adjudged legally disabled], the individual's parent or guardian, as appropriate, subject to the limitations of KRS Chapter 387 [387.660(3)];

(b) An agreement assuming responsibility for living arrangements upon the individual's discharge from CDPCRC by:

1. The individual; or

2. If the individual is a minor or a person for whom the court has determined some form of guardianship or conservatorship is necessary [who has been adjudged legally disabled], the individual's parent or guardian, as appropriate, subject to the limitations of KRS Chapter 387; and

(c) A description of each limitation that the individual has in performing an activity of daily living.

(3) An individual or client shall not be admitted to a CDPCRC program if there is evidence that a medical or behavioral condition represents a direct threat to the health or safety of self or others. The determination of whether a condition exists shall be made by a written opinion from a CDPCRC professional with expertise concerning the identified condition, based upon documentation submitted at referral, and other information the professional shall gather as needed.

(4) When it is determined that the documentation submitted indicates the possibility that the individual's medical or behavioral condition represents a direct threat to self or others, the CDPCRC admissions counselor shall select a CDPCRC professional with expertise concerning the identified condition, and shall submit the documentation to that professional for an opinion.

(5) When the admissions counselor has requested an opinion from a CDPCRC professional, the decision of the professional shall determine whether the individual shall be admitted to CDPCRC during that referral. If the individual is referred at a later time, a new opinion shall be submitted.

(6) The admissions counselor or the admissions committee, as appropriate, shall, at the time that the individual is accepted for CDPCRC services for evaluation or treatment and training, establish a list of recommended services for the individual and make a referral to the appropriate service area.

(7) When a decision is made to accept an individual for admission, the individual shall be notified in writing of the decision, and the date of admission, and a copy of that notification shall be sent to the referral sources, as appropriate.

(8) The individual shall agree to and abide by the terms of the signed Individualized Plan for Employment and the Individualized Behavior Management Plan, as appropriate.

(9) When a decision is made not to admit an applicant or eligible individual to CDPCRC the referral source shall be notified in writing of the decision with [giving] justification for that decision. The applicant or eligible individual shall be notified in writing of the decision with justification and informed of the availability of the Client Assistance Program and the right to appeal [a hearing].

(10) [(9) If an appeal is desired:] An applicant or eligible individual may [who is dissatisfied with an admissions decision shall] appeal the admissions decision pursuant to 706 KAR 1:100.

Section 3. Retention Policy. The decision to provide further services after an individual has completed a CDPCRC program shall be based upon the following:

- (1)(a) A further program shall be requested by the referral source; or
- (b) A CDPCRC professional shall believe that the individual requires an additional service;
- (2) The program requested for the individual shall be available; and
- (3) If applicable, the individual shall have made arrangements to reimburse CDPCRC for the cost of services provided.

Section 4. Discharge Policy. (1) An individual shall be voluntarily discharged from the CDPCRC if:

- (a) The individual has completed a program of services, and is not qualified for another CDPCRC program;
- (b) The individual does not desire further services from CDPCRC;
- (c) The individual's medical condition requires treatment away from the CDPCRC for an extended period of time; or
- (d) The individual wishes to leave CDPCRC and cannot be convinced to stay.

(2) An individual shall be involuntarily discharged from CDPCRC if:

- (a) The individual fails to make progress in the program of services and efforts to resolve the problem have been unsuccessful;
- (b) The individual is no longer qualified for the program and no other needed program is available;
- (c) The individual's behavioral condition deteriorates to the point of direct threat to the safety of others;
- (d) [The individual has had an unexcused absence or unexcused tardy, as established in Section 6(3) of this administrative regulation; more than:

1. Five (5) days in a three (3) month training program; or
2. Ten (10) days in a training program that exceeds three (3) months in duration; or

(e) The individual is expelled for cause.

(3) When a decision is made to discharge an individual for failure to make progress for medical, psychological, behavioral, or personal reasons, these procedures shall be followed:

(a) The decision to discharge from a particular program shall:

1. Be made by the program manager, with documentation and participation by staff within the department; and
2. Not automatically be considered a discharge from the facility; and

(b) If the reason for discharge necessitate services outside the facility (e.g., medical, psychological), the individual shall be eligible for readmission when the problem is resolved.

(4) An individual shall be discharged from CDPCRC without prior notice if necessary to prevent harm to a person or property, or to prevent serious disruption of a CDPCRC program.

Section 5. Due Process. (1) [Suspension and Expulsion Policy. The director or a designee shall suspend or expel an individual from CDPCRC pursuant to the requirements established in this section.

(1) Suspension:

(a) An individual shall be suspended for any of the following specific reasons:

1. Physical abuse of another person;
2. The threat or use of violence;
3. The possession or use of alcohol, a controlled substance, or being under the influence of alcohol or a controlled substance on CDPCRC grounds, or at a CDPCRC-sponsored activity;
4. Stealing, destruction of, or defacing of CDPCRC or private

property;

5. The carrying or use of a weapon;

6. Documented, persistent refusal to participate in a planned program of services; or

7. Flagrant violations of the CDPCRC rules of conduct that upset the order of the institution.

(b) Suspension shall mean a dismissal from CDPCRC for a period not to exceed twenty (20) class days.

(c) Except as provided in paragraph (d) of this subsection, an individual shall not be suspended until after the following due process procedures have been followed:

1. The individual, or the parent or guardian if under eighteen (18) years of age or a person for whom the court has determined some form of guardianship or conservatorship is necessary, [legally disabled, and] the referring counselor, or representative if applicable, shall be notified in writing or other appropriate format of the intent to discharge involuntarily with justification [given oral or written explanation of the charges];

(2) [2. The individual shall be given an explanation of the evidence on which the charges are based; and

3.] The individual shall be given an opportunity to present facts and views in rebuttal [relating to the charges] to the director or a designee;

(3) The director or designee shall notify the individual, in writing or other appropriate format, with justification, of the involuntary discharge decision or of intent to rescind the intent to discharge.

[(d) The due process procedures established in paragraph (c) of this subsection shall be followed within five (5) class days following the effective date of a suspension if, in the judgment of the director or a designee, immediate suspension from CDPCRC was necessary to:

1. Protect a person or property; or
2. Prevent disruption of a CDPCRC program.

(2) Expulsion:

(a) The director or a designee shall expel an individual if:

1. The offense results in the individual being convicted of a felony or misdemeanor committed on CDPCRC property, or while under the CDPCRC's jurisdiction;

2. The offense is a repeat of an earlier offense for which the individual was suspended;

3. The offense is an instance of a history of persistent misconduct, and efforts to cause a change in the individual's behavior have been unsuccessful;

4. The offense involves violence, and in the opinion of the director or a designee, another person is likely to be harmed if the individual remains at CDPCRC; or

5. The offense is a flagrant and willful violation of the CDPCRC rules of conduct, and in the opinion of the director or a designee, there is little likelihood that efforts to deter the individual from committing similar offenses will be successful.

(b) An individual shall not be expelled until the following procedures have been followed:

1. The director or a designee shall review the intent to expel;
2. The person designated to review the intent to expel shall set a time for a review, within ten (10) class days of the proposed date of the expulsion;

3. The individual involved, and the parents or guardian if the individual is under eighteen (18) years of age or legally disabled, shall be informed of the nature of the charges and the time and date set for the review;

4. The individual involved and the parents or guardian, if the individual is under eighteen (18) years of age or legally disabled, shall be informed of the right to appear at the review and to be represented by counsel or other representation and that failure to participate in the review shall result in a decision to expel; and

5. An applicant or eligible individual and the representative shall be informed of the right to appeal.]

(4) [(c)] At the time an applicant or eligible individual is informed of the involuntary discharge decision [intent to suspend or expel], the individual shall be also informed of the availability of the Client Assistance Program and the right to appeal.

(5) [(d) If an appeal is desired:] An applicant or eligible individual may appeal [who is dissatisfied with the results of the director's review of] the discharge [expulsion] decision [shall request an impartial hear-

ing] pursuant to 781 KAR 1:010.

[Section 6. Attendance Policy. (1) A student shall be treated uniformly in terms of attendance at GDCRC. Each classroom instructor shall maintain a uniform attendance accounting procedure:

(2) The instructor or training supervisor shall determine if an absence or tardy from a scheduled class is excused or unexcused according to requirements established in this subsection:

(a) An absence shall be considered excused if the absence was due to:

1. The student's personal illness, injury, or accident;
2. A serious illness of a family member;
3. The death of a spouse, brother, sister, child (including a step-child or foster child), a parent of the student or the student's spouse, or a grandparent of the student or the student's spouse;
4. A requirement to appear in court;
5. A military assignment; or
6. Another compelling circumstance making it unwise or inadvisable for the student to attend class.

(b) An absence shall be considered unexcused if the absence was not due to a reason listed in paragraph (a) of this subsection:

(c) A tardy shall be considered unexcused if the individual:

1. Is late for class; and
2. Does not have a note describing the reason for the tardiness from counseling, medical, or other professional staff.

(d) An individual shall present a medical statement as proof of an absence due to illness:

(e) An individual shall notify the counselor, teacher, or appropriate administrator of each absence and the reason for the absence:

1. Prior to the absence; or
2. As soon as possible after the absence.]

SAM SERRAGLIO, Commissioner

SUE G. SIMON, Legal Counsel

APPROVED BY AGENCY: March 30, 2000

FILED WITH LRC: April 6, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000 at 10 a.m. Eastern Time in the DVR training room, 209 St. Clair Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by May 15, 2000, 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 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 the contact person.

CONTACT PERSON: George Parsons, Department of Vocational Rehabilitation, 209 St. Clair Street, Frankfort, Kentucky 40601, (800) 372-7172 (V/TDD), (502) 564-6745 (FAX).

The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

REGULATORY IMPACT ANALYSIS

Contact person: George Parsons

(1) Type and number of entities affected: Individuals who wish to access rehabilitation services at the Carl D. Perkins Comprehensive

Rehabilitation Center.

(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, 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

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be no 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: No revenue implications.

(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: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(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: Not applicable.

(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:

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

(10) Any additional information or comments: The administrative regulation is being amended to reduce internal process requirements. Applicants and eligible individuals will develop and abide by individualized plans for employment and individualized behavior management plans as a condition for admission and retention at the Carl D. Perkins Comprehensive Rehabilitation Center. The plans encourage individual ownership and greater participation in their rehabilitation programs. The plans will also clearly communicate behavioral expectations as a condition for admission and retention at the center.

(11) TIERING: Is tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or individuals eligible for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361, July 1, 1997.

2. State compliance standards. This administrative regulation sets standards for admission to and discharge from the Carl D. Perkins Comprehensive Rehabilitation Center.

3. Minimum or uniform standards contained in federal mandate. The federal mandate requires states to adopt policies and procedures as are necessary for the administration of the vocational rehabilitation program.

4. Will this administrative regulation impose stricter require-

ments, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification or imposition of the stricter standards, or additional or different responsibilities or requirements. No federal standards exist for the governance of state owned and operated facilities. This regulation sets standards for admission, retention and discharge which are necessary for service delivery as the Carl D. Perkins Comprehensive Rehabilitation Center.

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 what unit, part or division of local government this administrative regulation will affect. 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 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:

WORKFORCE DEVELOPMENT CABINET Department for the Blind (Amendment)

782 KAR 1:040. Appeal procedures.

RELATES TO: KRS 163.450 to 163.470, 29 USC 722 [704], 34 CFR Part 361

STATUTORY AUTHORITY: KRS 13B.170, 163.470(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(6) requires the Department for the Blind to implement policies and procedures for carrying out programs of services for persons of the Commonwealth who are blind or visually impaired. Under its State Plan for Vocational Rehabilitation authorized under Title I of the Rehabilitation Act of 1973, as amended, the department is required to establish procedures so that a person seeking [an applicant for or client of] vocational rehabilitation services who is dissatisfied with determinations made by staff of the department concerning the furnishing or denial, reduction, suspension or cessation of services may request a timely review of those determinations.

Section 1. [Impartial] Hearing Officer. To conduct a hearing under this administrative regulation, a [an impartial] hearing officer shall:

- (1) Be trained with respect to the performance of official duties;
- (2) Have knowledge of:

- (a) The delivery of vocational rehabilitation services;
- (b) Federal and state laws; and

(c) Administrative regulations governing the provision of vocational rehabilitation services;

(3) Not:

(a) Be an employee of a public agency other than an:

1. Administrative law judge;
2. Hearing examiner; or
3. Employee of an institution of higher education;

(b) Be a member of the Department for the Blind State Rehabilitation Council [Advisory Council];

(c) Have been involved in a previous decision regarding the vocational rehabilitation of the [an] applicant or eligible individual;

(d) Have a personal or financial interest that would conflict with the objectivity of the individual.

Section 2. Mediation. (1) The department and the applicant or eligible individual may agree voluntarily to submit a request concerning the provision or denial of benefits to mediation.

(2) The department shall maintain a list of qualified mediators.

(3) The director of client services or a designee shall choose a mediator from the list and schedule a mediation meeting within five (5) days from the receipt of the request for mediation.

(4) A representative of the department shall attend who is authorized to bind the department to an agreement.

(5) The applicant or eligible individual shall attend and may be represented by an advocate or counsel.

(6) Discussions or agreements arising from the mediation process shall not be used as evidence in any subsequent hearing or civil proceeding.

Section 3. Right of Appeal and Information. (1) An applicant or eligible individual shall have the right to appeal [an action] to the director of client services determinations made by the department affecting [concerning the]:

(a) Furnishing of vocational rehabilitation benefits; or

(b) Denial, reduction, suspension or cessation of vocational rehabilitation services.

(2) An applicant or eligible individual shall:

(a) Be informed of the:

1. Entitlements available under this administrative regulation;

2. Right to appeal; [and]

3. Right to be represented by an advocate or counsel; and

4. Names and addresses of department individuals with whom an appeal shall be filed.

(b) Request an appeal:

1. In writing;

2. By telephone through direct contact with the director of client services or a designee; or

3. On tape, except that a voice mail message shall not constitute a request for a hearing.

(3) The director of client services or a designee shall convene a hearing within forty-five (45) days [from receipt] of the request. Reasonable time extensions, not to exceed one (1) year, may be made for good cause with the agreement of both parties. The hearing shall be conducted pursuant to:

(a) KRS Chapter 13B; and

(b) This administrative regulation.

(4) Pending a final determination of a hearing or other final resolution, the department shall not suspend, reduce, or terminate a service provided under the individualized plan for employment [written rehabilitation program] unless:

(a) It has evidence that the service was obtained by an applicant or eligible individual through:

1. Misrepresentation;

2. Fraud;

3. Collusion; or

4. Criminal conduct; or

(b) This action is requested by an:

1. Applicant;

2. Eligible individual [Client]; or

3. Authorized representative of an applicant or eligible individual [client].

Section 4. [3-] Client Assistance Program. The department shall advise an applicant or eligible individual of:

(1) The existence of the Client Assistance Program, created by KRS 151B.225;

(2) The services provided by the program; and

(3) How to contact a program representative.

Section 5. [4-] Appeal Time and Hearing Procedures. (1) Only within sixty (60) days of becoming aware, through the exercise of due diligence, of a department determination affecting the provision or denial of vocational rehabilitation services [agency action or inaction], an applicant or eligible individual may appeal by contacting the director of client services, pursuant to Section 3 [2](1) of this administrative regulation.

(2) An applicant or eligible individual shall, at the time of requesting a [an appeal] hearing:

(a) Identify accommodations required; and

(b) Submit an issue statement for the hearing.

(3) [The department shall randomly select] A hearing officer shall

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be selected on a random basis from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General approved by the department and the State Rehabilitation Council [and trained hearing officers].

(4) The applicant or eligible individual may disqualify for cause up to three (3) hearing officers randomly assigned by the Administrative Hearings Division of the Office of the Attorney General.

~~[Section 5. Conduct of the Hearing. (1) The rules of civil procedure shall not apply to a hearing conducted under the provisions of this administrative regulation.~~

~~(2) Order of proof.~~

~~(a) The department shall:~~

~~1. Present its case first;~~

~~2. Examine witnesses; and~~

~~3. Submit documentation, subject to cross-examination.~~

~~(b) The applicant or eligible individual shall:~~

~~1. Present its case second;~~

~~2. Examine witnesses; and~~

~~3. Submit documentation, subject to cross-examination.~~

~~(3) A party shall provide three (3) copies of a document that is to be introduced into evidence.]~~

Section 6. Findings and Decision. (1) The hearing officer shall complete and submit to both parties and the Secretary of the Cabinet for Workforce Development [Commissioner of the Department for the Blind] the written recommended order within thirty (30) days of receipt of the transcript [the completion] of the hearing unless both parties agree to a time extension.

(2) Either party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the Secretary of the Cabinet for Workforce Development.

(3) The Secretary of the Cabinet for Workforce Development shall consider the record including the recommended order and any timely exceptions filed to the recommended order.

(4) The Secretary of the Cabinet for Workforce Development shall issue the final order within thirty (30) days from issuance of the recommended order. [If the Commissioner of the Department of the Blind decides to review the recommended order of the hearing officer the commissioner shall:

(a) Notify the applicant or eligible individual within twenty (20) days of the mailing of the hearing officers order;

(b) Provide the applicant or eligible individual the opportunity to submit additional evidence or information relevant to the final decision;

(c) Not overturn or modify a decision unless it is concluded, based on clear and convincing evidence, that the decision is erroneous because it violates the:

1. State rehabilitation act;

2. Federal vocational rehabilitation regulations; or

3. State administrative regulations or policies that are consistent with federal requirements.

(3) Within thirty (30) days of providing notice of intent to review the hearing officer's recommendation, the Commissioner of the Department for the Blind shall:

(a) Make a final decision; and

(b) Provide a full written report of the decision to the applicant or eligible individual, including:

1. Findings; and

2. Statutory, regulatory, or policy grounds for the decision.

(4) If the Commissioner for the Department of the Blind fails to provide notice of his intent to review the recommendation within twenty (20) days, the recommended order of the hearing officer shall become a final decision.]

DENISE M. PLACIDO, Commissioner

SUE SIMON, Legal Counsel

APPROVED BY AGENCY: March 31, 2000

FILED WITH LRC: April 13, 2000 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 24, 2000, at 10 a.m. eastern time in the first floor conference room of the McDowell Center, 8412 Westport Road, Louisville, Kentucky 40242. Individuals interested in be-

ing heard at this hearing shall notify this agency by May 17, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Sue G. Simon, Department for the Blind, 209 Saint Clair Street, Frankfort, Kentucky 40601. Phone (800) 321-6668, TDD: (502) 564-2929, FAX (502) 564-2951.

The Department for the Blind does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964, and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The department will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Sue G. Simon at the address above.

REGULATORY IMPACT ANALYSIS

Contact person: Sue G. Simon

(1) Type and number of entities affected: Applicants and eligible individuals who wish to appeal the provision or denial of vocational rehabilitation services from the Department for the Blind.

(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, 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

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be no 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: No revenue implications.

(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: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(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: Not applicable.

(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:

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

(10) Any additional information or comments: The administrative regulation is being amended to conform the existing appeal entitlements for applicants or eligible individuals to the federal Rehabilitation Act Amendments of 1998 and proposed implementing regulations. The changes will result in additional informal dispute resolution options for consumers of vocational rehabilitation services.

(11) TIERING: Is tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or individuals eligible for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Rehabilitation Act Amendments of 1998, 29 USC 722; 34 CFR 361.57, revised by Federal Register 65 FR 10661-10663, February 28, 2000.

2. State compliance standards. This administrative regulation amends the appeal procedures for applicants and eligible individuals concerning the provision or denial of benefits available under the Rehabilitation Act Amendments of 1998.

3. Minimum or uniform standards contained in federal mandate. The federal mandate require states to adopt policies and procedures as are necessary for the administration of the vocational rehabilitation program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification or imposition of the stricter standards, or additional or different responsibilities or requirements. The federal law requires each state vocational rehabilitation agency to establish procedures by which applicants and eligible individuals may appeal decisions affecting their individualized plan for employment. This regulation delineates the precise steps by which to request mediation and/or a hearing concerning the provision or denial of vocational rehabilitation services. It is not more rigorous; simply more explanatory.

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 what unit, part or division of local government this administrative regulation will affect.

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

4. Estimate the effect of this administrative regulation on 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:

WORKFORCE DEVELOPMENT CABINET Department for Employment Services Division of Unemployment Insurance (Amendment)

787 KAR 1:210. Employer contribution rates.

RELATES TO: KRS 341.270

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.270

requires the Secretary of the Cabinet for Workforce Development to determine the rate schedule for employer's contributions. This administrative regulation establishes the method by which the secretary shall publish the rate schedule in effect each year. (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. Annual Employer Rate Notice. Within the first calendar quarter of each year, the Division of Unemployment Insurance, on behalf of the secretary, shall issue to each active employer liable to pay unemployment contributions for that year a "Notice of Contribution Rate (UI-29, Rev. 1/99)" setting forth the rate schedule determined by the secretary to be in effect for that year. The rate notice shall also inform each employer of the rate applicable to the employer's account for that year; the tax, wage and benefit charge information regarding the employer's account; and the statutory provisions used to calculate and assign the rate in accordance with KRS 341.270 and 341.272. The rate notice may be issued in either paper or electronic format.

Section 2. Incorporation by Reference. (1) The "Notice of Contribution Rate (UI-29, Rev. 1/99)" is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Office of the Commissioner for the Department for Employment Services, 275 E. Main Street, 2W, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Trust Fund Balance. The secretary finds the following to exist:

(1) The "trust fund balance" as of December 31, 1997 was \$571,366,293.68:

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

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, because the "trust fund balance" equals or exceeds \$350,000,000 on December 31, 1997. 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% |

MARGARET WHITTET, Commissioner
SHERRY DEATRICK, General Counsel

APPROVED BY AGENCY: March 24, 2000

FILED WITH LRC: April 5, 2000 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, May 23, 2000, at 9 a.m. at the Department for Health Services Auditorium, 275 East Main Street, First Floor, Health Services Building, Frankfort, Kentucky 40621. Individuals interested in being heard at this hearing shall notify this

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agency in writing by Tuesday, May 16, 2000, five workdays 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: Margaret Whittet, Commissioner, Cabinet for Workforce Development, Department for Employment Services, 275 East Main Street, 2nd Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-5331, Fax: (502) -564-7452.

REGULATORY IMPACT ANALYSIS

Contact Person: Margaret Whittet

(1) Type and number of entities affected: All active contributory employers, approximately 85,000.

(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 cost or savings: Minimal cost associated with production and issuance of the rate notice. This is not a new notice or process, and thus no new cost is associated with the promulgation of this administration regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: By providing for electronic issuance of the rate notice, the agency may experience a reduction in the cost of issuance; however, as noted this is a minimal cost to begin with.

(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 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: 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: No

(c) If detrimental effect would result, explain detrimental effect:

(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: Prior to this amendment, it was necessary to amend this administrative regulation each year to publish the rate schedule in effect. As amended, it will no longer be necessary to do this since the necessary publica-

tion of the schedule is already accomplished through the issuance of the annual rate notice to each liable employer. This will result in a time savings for the staff of the promulgating agency and the LRC and the legislators serving on committees with oversight and approval authority.

(11) **TIERING:** Is tiering applied? Tiering was not applied as all contributory employers are equally subject to the provisions of this administrative regulation and the supporting statutes.

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. Although most local governmental entities are reimbursing employers for unemployment insurance purposes, some entities have chosen to be contributory employers and are thus subject to the provisions of this regulation.

3. State the aspect or service of local government to which this administrative regulation relates. For those contributory local government entities, this regulation provides for annual notice to them of their unemployment tax rate on their payrolls.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation in itself has no fiscal impact on local governments. The annual rate notice referenced in the administrative regulation informs contributory local governmental entities of the unemployment tax rate calculated and assigned in accordance with KRS 341.270, which is a percentage applied against their payrolls to yield the unemployment tax due for each calendar quarter. The rate schedule in effect for 2000 is the same as was in effect for 1999. The individual tax rate assigned to each liable employer may have increased or decreased from the prior to the current year based on the tax paid and benefits attributable to their employment.

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 2:180. Recordkeeping; statistics.

RELATES TO: KRS 338.161, 29 CFR Part 1904

STATUTORY AUTHORITY: KRS 338.061 [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to the authority granted the Kentucky Department of Workplace Standards by KRS 338.161, this administrative regulation provides for recordkeeping and reporting by employers covered under KRS Chapter 338 as necessary and appropriate for the enforcement of KRS Chapter 338, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics.

Section 1. Definitions. (1) "Act" means the Kentucky Occupational Safety and Health Act of 1972 (KRS Chapter 338).

(2) "Recordable occupational injuries or illnesses" means any occupational injuries or illnesses which result in:

(a) Fatalities, regardless of the time between the injury and death, or the length of the illness; or

(b) Lost workday cases, other than fatalities, that result in lost workdays; or

(c) Nonfatal cases without lost workdays which result in transfer to

another job or termination of employment, or require medical treatment (other than first aid) or involve: loss of consciousness or restrictions of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

(3) "Medical treatment" means treatment administered by a physician or by registered professional personnel under the standing orders of a physician but does not include first aid treatment even though provided by a physician or registered professional personnel.

(4) "First aid" means any one (1) time treatment, and any follow-up visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one (1) time treatment, and follow-up visit(s) for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel.

(5) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: a factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities operated from the same physical location as a lumberyard), each activity shall be treated as a separate establishment. For firms engaged in activities such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, which may be physically dispersed, records may be maintained at a place to which employees report each day. Records for personnel who do not primarily report to work at a single establishment, and who are generally not supervised in their daily work, such as traveling salesmen, technicians, engineers, etc., shall be maintained at the location from which they are paid or the base from which personnel operate to carry out their activities.

(6) "Lost workdays" means the number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of his normal assignment during all or any part of the workday or shift, because of the occupational injury or illness.

Section 2. Standard Industrial Classification Codes. (1) Establishments classified in standard industrial classification codes (SIC) 52-89 shall include:

(a) Establishments classified in SIC's 52-59 whose primary activity constitutes retail trade, finance, insurance, real estate and services.

(b) Retail trades establishments classified as SIC's 52-59 which are engaged in selling merchandise to the general public for personal household consumption. Some examples are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

(c) Finance, insurance, and real estate establishments classified as SIC's 60-67 which are engaged in banking, credit other than banking, security dealings, insurance, and real estate.

(d) Service establishments classified as SIC's 70-89 which provide a variety of services for individuals, businesses, government agencies, and other organizations. Those include personal, business, legal, educational, social, and cultural services, as well as membership organizations.

(2) The primary activity of an establishment is determined in the following way:

(a) For finance, insurance, real estate, and service establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity.

(b) In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue shall identify the primary activity.

(c) In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll shall be used in place of the normal basis for determining the primary activity.

Section 3. Log and Summary of Occupational Injuries and Illnesses. (1) Each employer shall, except as provided in subsections (2), (3), and (4) of this section, Section 15, and Section 16 of this administrative regulation: maintain in each establishment a log and

summary of all recordable occupational injuries and illnesses for that establishment; and enter each recordable injury and illness on the log and summary as early as practicable but not later than six (6) working days after receiving information that a recordable injury or illness has occurred. For this purpose, Occupational Safety and Health Administration OSHA Form No. 200 or an equivalent which is as readable and comprehensible to a person not familiar with it shall be used. The log and summary shall be completed in the detail provided in the form and instructions on Form OSHA No. 200.

(2) Any employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment or by means of data processing equipment, or both, under the following circumstances:

(a) There is available at the place where the log and summary are maintained sufficient information to complete the log and summary to a date within six (6) working days after receiving information that a recordable case has occurred, as required by subsection (1) of this section.

(b) At each of the employer's establishments, there is available a copy of the log and summary which reflects separately the injury and illness experience of that establishment complete and current to a date within forty-five (45) calendar days.

(3) For firms engaged in activities such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, which may be physically dispersed, records may be maintained at a place to which employees report each day.

(4) Records for personnel who do not primarily report to work at a single establishment, and who are generally not supervised in their daily work, such as traveling salesmen, technicians, engineers, etc., shall be maintained at the location from which they are paid or the base from which personnel operate to carry out their activities.

Section 4. Period Covered. Records shall be established on a calendar year basis.

Section 5. Supplementary Record. In addition to the log and summary of occupational injuries and illnesses provided for under Section 3 of this administrative regulation, each employer shall have available at each establishment within six (6) working days after receiving information that a recordable case has occurred, a supplementary record for each occupational injury or illness for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying Occupational Safety and Health Administration Form OSHA No. 101. Workers' Compensation, insurance, or other reports are acceptable alternative records if they contain the information required by Form OSHA No. 101. If no acceptable alternative record is maintained for other purposes, Form OSHA No. 101 shall be used or the necessary information shall be otherwise maintained. The Kentucky workers' compensation form 1A-1 [SF-1] is an acceptable alternative record for those employers covered by the Workers' Compensation Act.

Section 6. Annual Summary. (1) Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from the Form OSHA No. 200 and the following information from that form: calendar year covered, company name, establishment name, establishment address, certification signature, title, and date. A Form OSHA No. 200 shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeroes must be entered on the totals line, and the form must be posted.

(2) The summary shall be completed by February 1 beginning with calendar year 1979. The summary of 1977 calendar year's occupational injuries and illnesses shall be posted on Form OSHA No. 102.

(3) Each employer, or the officer or employee of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer or the officer or employee of the employer who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary or by appending a separate statement to the summary certifying that the summary is true and

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complete.

(4)(a) Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under 803 KAR 2:060. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report for work at a single establishment, or who do not report to any fixed establishment on a regular basis, employer shall satisfy this posting requirement by presenting or mailing a copy of the summary portion of the log and summary during the month of February of the following year to each such employee who receives pay during that month. For multiestablishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

(b) A failure to post a copy of the establishment's annual summary may result in the issuance of citations and assessment of penalties pursuant to KRS 338.991.

Section 7. Retention of Records. Records provided for in Sections 3, 5, and 6 of this administrative regulation (including Form OSHA No. 200 and its predecessor Form OSHA No. 100 and OSHA No. 102, which are incorporated herein by reference) shall be retained in each establishment for five (5) years following the end of the year to which they relate.

Section 8. Access to Records. (1) Each employer shall provide, upon request, records provided for in Sections 3, 5, and 6 of this administrative regulation for inspection and copying by:

(a) Compliance safety and health officers of the Occupational Safety and Health Program, Kentucky Department of Labor, during an inspection or by other representatives of the Commissioner [Commissioner] of the Department of Workplace Standards authorized to make statistical compilations, pursuant to the authority of KRS Chapter 338;

(b) Representatives of the Bureau of Labor Statistics, United States Department of Labor; and

(c) Representatives of the Secretary of Health, Education, and Welfare during any investigation under Section 20(b) of the Williams-Steiger Occupational Safety and Health Act of 1970.

(2) The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in Section 3 of this administrative regulation shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

(3) Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

(4) Access to the log, provided under this section, shall pertain to all logs retained under the requirements of Section 7 [5] of this administrative regulation.

Section 9. Reporting of Fatality or Multiple Hospitalization Accidents. (1) Within eight (8) hours after the death of any employee from a work-related incident or the inpatient hospitalization of three (3) or more employees as a result of a work-related incident, the employer of any employees so affected shall orally report the fatality/multiple hospitalization by telephone or in person to the Commission of the Department of Workplace Standards, or to the Occupational Safety and Health Administration (OSHA) by using the OSHA toll-free central telephone number.

(2) This requirement applies to each such fatality or hospitalization of three (3) or more employees which occurs within thirty (30) days of an incident.

(3) Exception: If the employer does not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under paragraphs (1) and (2) of this section, the employer shall make the report within eight (8) hours of the time the incident is reported to any agent or employee of the employer.

(4) Each report required by this section shall relate the following information: establishment name, location of the incident, time of the

incident, number of fatalities or hospitalized employees, contact person, phone number, and a brief description of the incident.

Section 10. Falsification, or Failure to Keep Records or Reports. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in KRS 338.991.

Section 11. Change of Ownership. Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this part. These records shall be retained at each establishment to which they relate, for the period, or remainder thereof, required under Section 7 of this administrative regulation.

Section 12. Petitions for Recordkeeping Exceptions. (1) Petitions for recordkeeping exceptions shall be filed in accordance with the provisions of 29 CFR Part 1904.13.

(2) Any employer filing a petition for recordkeeping exceptions in accordance with CFR Part 1904.13 shall notify the Commissioner of the Department of Workplace Standards that he is making such application and the results thereof;

(3) Exceptions granted pursuant to 29 CFR Part 1904.13 shall be recognized by the commissioner.

Section 13. Employees not in Fixed Establishments. Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of Sections 3, 5, and 6 of this administrative regulation with respect to such employees by:

(1) Maintaining the required records for each operation or group of operations, which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

(2) Having the address and telephone number of the central place available at each worksite; and

(3) Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

Section 14. Duties of Employer. Upon receipt of an occupational injuries and illnesses survey form, the employer shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the aforesaid instructions.

Section 15. Small Employers. An employer who had no more than ten (10) employees at any time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this part except the following:

(1) Obligation to report under Section 9 of this administrative regulation concerning fatalities or multiple hospitalization accidents; and

(2) Obligation to maintain a log and summary of occupational injuries and illnesses under Section 3 of this administrative regulation and to make reports under Section 14 of this administrative regulation upon being notified in writing by the Bureau of Labor Statistics or the Kentucky Department of Workplace Standards that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

Section 16. Private Sector Establishments Classified in Standard Industrial Classification Codes (SIC) 52-89, (except 52-54, 70, 75, 76, 79 and 80). A private sector employer whose establishment is classified in SIC's 52-89, (excluding 52-54, 70, 75, 76, 79 and 80) need not comply, for such establishment, with any of the requirements of this part except the following:

(1) Obligation to report under Section 9 of this administrative regulation concerning fatalities or multiple hospitalization accidents; and

(2) Obligation to maintain a log of occupational injuries and illnesses under Section 3 of this administrative regulation, upon being notified in writing by the Bureau of Labor Statistics or the Kentucky Department of Workplace Standards that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

Section 17. Public Notice. (1) In accordance with KRS Chapter 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

MR. JOE NORSWORTHY, Chairman
MS. KEMBRA SEXTON TAYLOR, Attorney

FILED WITH LRC: April 5, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 26, 2000, 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 May 19, 2000, 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, Telephone: (502) 564-3070, Fax: (502) 564-1682.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendment to this regulation affects all employers within the jurisdiction of the Kentucky Occupational Safety and Health Program that employ 10 or more employees.

(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 proposed amendment to this administrative regulation. This revision will amend the regulation to update the reference in Section 5 for the "Workers Compensation - First Report of Injury or Illness" form, changing "SF1" to "IA-1," correct typing errors in Section 8 changing "Commission of Department of Workplace Standards" to "Commissioner of Department of Workplace Standards," a reference in paragraph (4) which now references Section 5, but should reference Section 7, and changes the "NECESSITY, FUNCTION, AND CONFORMITY" paragraph to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

(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 will increase or decrease costs. There will be no effect on competition.

3. 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 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: There will be no reporting or paperwork requirements as a result of these changes.

(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 revision updates the regulation and corrects typing and reference errors.

(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 to this administrative regulation will enable those keeping the required occupational injury and illness records to better understand the requirements.

(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 the proposed amendment to this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(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. This revision will amend the regulation to update the reference in Section 5 for the "Workers Compensation - First Report of Injury or Illness" form, changing "SF1" to "IA-1," correct typing errors in Section 8 changing "Commission of Department of Workplace Standards" to "Commissioner of Department of Workplace Standards," a reference in paragraph (4) which now references Section 5, but should reference Section 7, and changes the "NECESSITY, FUNCTION, AND CONFORMITY" paragraph to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The requirements of this administrative regulation and the federal mandate are identical. This administrative regulation differs from the federal mandate in numbering to comply with KRS Chapter 13A and references to federal agencies are changed to the appropriate state agencies.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements of this administrative regulation and the federal mandate are identical.

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 that employ 10 or more employees.

3. State the aspect or service of local government to which this administrative regulation relates. The administrative regulation updates a reference to a workers' compensation form, corrects typing errors, and amends the NECESSITY, FUNCTION, AND CONFORMITY" paragraph, allowing those who keep the occupational injury and illness records to better understand the requirements.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment 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. This proposed amendment will not affect the number of local government employees.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(Amendment)

808 KAR 10:030. Conduct of broker-dealers, agents, and employees; investment advisers and representatives.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.330(12)(f), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.330(12)(f) authorizes the commissioner to prescribe rules for the conduct of business by broker-dealers and investment advisers which he finds appropriate and in the public interest. This administrative regulation establishes requirements relating to the conduct of a broker-dealer, agent, employee, investment adviser, or representative.

Section 1. Suitability. A [registered] broker-dealer, [registered] agent, investment adviser, or investment adviser representative who recommends to a customer the purchase, sale or exchange of a security shall have reasonable grounds to believe that the recommendation is not unsuitable for the customer on the basis of:

(1) information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs; and

(2) Other information known by the broker-dealer, agent, investment adviser or investment adviser representative.

Section 2. Supervision of Broker-dealer Agents. (1) Each agent shall be subject to the supervision of a supervisor designated by the broker-dealer employing the agent. The responsibilities of a designated supervisor with respect to each agent under his supervision shall include but are not limited to the prompt review and written approval of:

(a) The opening of each new customer account by the agent;

(b) Each securities transaction by the agent;

(c) All incoming or outgoing correspondence including, but not limited to, postal mail, electronic mail, and faxes;

(d) All advertising, sales literature, and seminars; and

(e) The handling of any customer complaint.

(2) Either a registered principal of the broker-dealer or an agent's designated supervisor shall:

(a) Review outside business activity by the agent;

(b) Review any brokerage account owned by the agent;

(c) Periodically review customer accounts of the agent; and

(d) Regularly inspect the records of the agent at the agent's place of business. [A registered agent of a registered broker-dealer shall be subject to the supervision of a supervisor designated by the

broker-dealer. The supervisor may be a partner, officer, office manager or other qualified person, or in the case of a sole proprietor, the broker-dealer.]

Section 3. Written Supervisory Procedures. (1) Broker-dealers. Each [As part of his responsibility under this administrative regulation; a registered] broker-dealer shall establish, maintain and enforce written procedures that are reasonably designed to detect and prevent violations of:

(a) KRS Chapter 292 and the administrative regulations and orders issued under that chapter;

(b) The rules promulgated by the Securities and Exchange Commission pursuant to 15 USC 78w; and

(c) If the broker-dealer is a member of a self-regulatory organization as defined in 15 USC 78c(a)(26), the rules of the self-regulatory organization pursuant to 15 USC 78s(b).

The written procedures shall include the procedures adopted by the broker-dealer to comply with the requirements of Section 2 of this administrative regulation. The broker-dealer shall keep a copy of the procedures in each office where an agent transacts business in securities.

(2) Investment advisers.

(a) Each investment adviser shall establish, maintain, and enforce written procedures that are reasonably designed to detect and prevent violations of KRS Chapter 292 and the administrative regulations and orders issued under that chapter. The investment adviser shall keep a copy of the procedures in each office where a representative provides investment advice to a client.

(b) The requirement of paragraph (a) of this subsection shall not apply to an investment adviser that:

1. Has its principal place of business in a state other than Kentucky so long as the investment adviser is registered in that state and is in compliance with the that state's written supervisory procedures requirements; or

2. Has two (2) or fewer persons registered as an investment adviser representative of the investment adviser.

Section 4. Written Disclosure Statement. (1) An investment adviser shall furnish each advisory client and prospective advisory client with a written disclosure statement. This statement may be either a copy of Part II of its Form ADV or a written document containing at least the information required by Part II of the Form ADV.

(2)(a) An investment adviser, except as provided in paragraph (b) of this subsection, shall deliver the statement required by this section to an advisory client or prospective advisory client:

1. Not less than forty-eight (48) hours prior to entering into any written or oral investment advisory contract with the client or prospective client; or

2. At the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five (5) business days after entering into the contract.

(b) Delivery of the statement required by paragraph (a) of this subsection need not be made in connection with entering into an investment company contract or a contract for impersonal advisory services.

(3)(a) Except as provided in paragraph (b) of this subsection, an investment adviser shall annually and without charge deliver or offer in writing to promptly deliver upon written request the statement required by this section to its advisory clients.

(b) The delivery or offer required by paragraph (a) of this subsection need not be made to advisory clients receiving advisory services solely pursuant to an investment company contract or a contract for impersonal advisory services.

(4) If an investment adviser renders substantially different types of investment advisory services to different advisory clients, then any information required by Part II of the Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if the information is not applicable to services rendered to that client.

(5) This section shall not relieve an investment adviser from an obligation pursuant to a provision of the Kentucky Securities Act or administrative regulations under the Act or other federal or state law to disclose information to its advisory clients or prospective advisory

clients not specifically required by this section.

Section 5. Multiple Registration. (1) No person may be concurrently registered as an agent of more than one (1) broker-dealer or issuer unless the person obtains prior written consent from the commissioner.

(2) No person may be concurrently registered as an investment adviser representative of more than one (1) investment adviser unless the person obtains prior written consent from the commissioner.

(3) The commissioner may consent to multiple registration under subsections (1) and (2) of this section if each employer files a written statement with the commissioner indicating the effective date of the multiple employment and stating that the employer:

(a) Consents to the multiple employment of the agent or representative; and

(b) Agrees to assume joint and several liability with all other employers for an act or omission of the agent or representative during the employment period that violates the Securities Act of Kentucky or administrative regulations or orders pursuant to the Act.

(4) The commissioner may consent to multiple registration in other cases if the commissioner finds that the multiple registration does not impair determination of the respective supervisory responsibilities of each employer with respect to the employee. [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:

(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; and

(4) The prompt review and written approval of the handling of all customer complaints.]

RONALD MCCLOUD, Secretary
ELLA D. ROBINSON, Commissioner
J. RICK JONES, General Counsel

APPROVED BY AGENCY: April 10, 2000

FILED WITH LRC: April 13, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for May 22, 2000 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify the contact person indicated below in writing by May 15, 2000 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to May 15, 2000. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person indicated below.

CONTACT PERSON: Colleen Keefe, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, (502) 573-3390 Telephone, (502) 573-8787 Fax.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe

(1) Type and number of entities affected: Broker-dealers, agents, investment advisers, and investment adviser representatives doing business 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: Not applicable because this regulation merely clarifies existing requirements.

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: This requirements of this regulation are similar to requirements imposed in other states and by other regulators. Alternatives were rejected because of necessity of being uniform with other states and other regulators.

(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? Yes. Tiering is applied to the requirement of written supervisory procedures for investment advisers. Investment advisers who do not employ representatives are not required to maintain written supervisory procedures; these procedures are intended to supervise activities of representatives. Investment advisers whose principal place of business is in another state are subject to the requirements of that state and, per federal law, Kentucky may not impose different requirements:

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (Amendment)

808 KAR 10:040. Dishonest or unethical practice defined.

RELATES TO: KRS 292.330(13)(a)7

STATUTORY AUTHORITY: KRS 292.330(12)(e), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3)

authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.330(13)(a)7 authorizes the commissioner to take disciplinary action against the registration of a broker-dealer, agent, investment adviser, or investment adviser representative if a person has engaged in dishonest or unethical practice in the securities business. KRS 292.330(12)(e) authorizes the commissioner to prohibit unreasonable charges, profits, commissions, or other compensation of broker-dealers and investment advisers. This administrative regulation provides examples of dishonest and unethical practices. The commissioner may determine that another activity constitutes a dishonest or unethical practice if the activity is sufficiently similar to one (1) or more enumerated activities. [This administrative regulation establishes what activities are considered as dishonest or unethical practice.]

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Section 1. Definition. "Investment adviser solicitor" means a person or entity that, directly or indirectly, solicits a prospective client for, or refers a prospective client to an investment adviser.

Section 2. Broker-dealer. Dishonest and unethical practices by a broker-dealer shall include, but are not limited to, the following: [Dishonest or unethical practice shall include:]

- (1) Unreasonable delay or failure to:
 - (a) Execute an order;
 - (b) Liquidate a customer's account; or
 - (c) Make delivery of:
 1. A security purchased; or
 2. A remittance (or credit) of a security sold;
- (2) Selling a security:
 - (a) At an unfair price in relation to market value; or
 - (b) With an unreasonable or excessive markup or commission;
- (3)(a) Effecting a transaction in the account of a customer without his knowledge or consent; or
- (b) Maintaining a discretionary account without written authorization;
- (4) A willful switch, churning, overtrading or reloading of a security in a customer's account for the purpose of accumulating or compounding a commission;
- (5) Inducing a customer to invest:
 - (a) Beyond his known immediate financial resources; or
 - (b) Without regard to the nature and character of the customer's account;
- (6) Engaging or aiding in:
 - (a) Boiler room operations, including high pressure tactics to promote a speculative offering; or
 - (b) The promotion of a hot issue by an intensive telephone campaign in which the prospective purchaser is encouraged to make a hasty decision to buy a security irrespective of the purchaser's investment need or objective;
- (7)(a) Participation in the solicitation or offer for sale of a security without the use and dissemination of a prospectus (if required); or
- (b) Making an oral or written statement contrary to or inconsistent with an enclosure contained in a prospectus;
- (8) Making a false, misleading, deceptive, exaggerated or flamboyant representation or prediction in the solicitation or sale of a security, including:
 - (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 an investment;
 - (d) With respect to the issuer's financial condition, anticipated earnings, potential growth or success; or
 - (e) That there is a guarantee against risk loss;
- (9)(a) Failing to disclose a dual agency capacity; or
- (b) Effecting a transaction upon a term or condition not stated in a confirmation;
- (10)(a) Failing to make a bona fide public offering pursuant to an underwriting agreement; or
- (b) Entering into an underwriting agreement which establishes an unfair or unreasonable term, condition, or compensation;
- (11) Establishing a fictitious account in order to execute a transaction which would otherwise be prohibited;
- (12) Entering into an agreement for selling a concession, discount, commission, or allowance as consideration for a service in connection with the distribution or sale of a security in Kentucky with a broker-dealer, agent, investment adviser, or investment adviser representative who is not:
 - (a) Licensed in Kentucky; and
 - (b) Exempt from the registration requirements for conducting a securities business in Kentucky;
- (13) Failure or refusal to:
 - (a) Furnish a customer, upon reasonable request, information to which he is entitled; or
 - (b) Respond to a formal written demand or complaint; or
- (14) Attempting to enforce a condition, stipulation or provision against a customer in this state if the result will:
 - (a) Leave the customer without the choice of a forum for dispute

resolution in this state; or

(b) Limit the timeliness of an action to a period less than that established in KRS 292.480(3).

Section 3. Broker-dealer Agent or Issuer Agent. Dishonest and unethical practices by a broker-dealer agent or issuer agent shall include, but are not limited to, the following:

- (1) An activity set forth in Section 2 of this administrative regulation;
- (2) Loaning money to a customer;
- (3) Borrowing money or securities from a customer; or
- (4) Effecting securities transactions not recorded on the books and records of the broker-dealer that the agent represents, unless the broker-dealer authorizes the transactions in writing prior to execution of the transactions.

Section 4. Investment Adviser and Investment Adviser Representative. Dishonest and unethical practices by an investment adviser shall include, but are not limited to, the following:

- (1) An activity set forth in Section 2 of this administrative regulation;
- (2) Borrowing money or securities from a customer unless the customer is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds or securities;
- (3) Loaning money to a customer unless the customer is an affiliate of the investment adviser or the investment adviser is a financial institution engaged in the business of loaning funds;
- (4) Misrepresenting or omitting to state to a customer, or prospective customer, a material fact with respect to:
 - (a) The qualifications of the investment adviser or a representative of the investment adviser; or
 - (b) The nature of the advisory services offered or fees charged for the services;
- (5) Entering into, extending, or renewing an investment advisory contract unless the contract is in writing and discloses the following:
 - (a) The nature of the advisory services to be provided;
 - (b) The time period that the contract remains in effect;
 - (c) The advisory fee and the formula for computing the fee;
 - (d) The amount of prepaid fee to be returned in the event of contract termination or nonperformance;
 - (e) Whether the contract grants discretionary power to the advisor and, if so, the terms of the discretionary power;
 - (f) Whether the contract grants custody of customer funds to the advisor and, if so, the terms of the custody;
 - (g) That the adviser may not assign the contract without the prior written consent of the customer;
- (6) Charging a customer an unreasonable fee in light of the fee charged by other investment advisers providing similar services in Kentucky;
- (7) Failing to disclose in writing to a customer before entering into an investment advisory contract with the customer:
 - (a) A material conflict of interest relating to the investment adviser or a representative of the adviser which a reasonable person would consider to impair the rendering of unbiased investment advice; and
 - (b) A material fact with respect to the financial and disciplinary information required to be disclosed by 17 CFR 275.206(4)-4 (SEC Rule 206(4)-4);
- (8) Guaranteeing a customer that the advice provided by the investment adviser will achieve a specific result;
- (9) Disclosing information about the investments of a customer to a third party unless required by law to do so or unless authorized by the customer;
- (10) Publishing or distributing an advertisement that would be a fraudulent, deceptive, or manipulative act, practice, or course of business under 17 CFR 275.206(4)-1 (SEC Rule 206(4)-1); or
- (11) Paying a cash fee, directly or indirectly, to an investment adviser solicitor unless the investment adviser makes the payment in accordance with the requirements of 17 CFR 275.206(4)-3 (SEC Rule 206(4)-3).

Section 5. Adoption Without Change. (1) 17 CFR 275.206(4)-1,

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as effective May 22, 1997, is adopted without change.

(2) 17 CFR 275.206(4)-3, as effective July 24, 1998, is adopted without change.

(3) 17 CFR 275.206(4)-4, as effective May 22, 1997, is adopted without change.

(4) These federal regulations may be inspected, copied, or obtained from the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m., EST.

RONALD MCCLOUD, Secretary
ELLA D. ROBINSON, Commissioner
J. RICK JONES, General Counsel

APPROVED BY AGENCY: April 10, 2000

FILED WITH LRC: April 13, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for May 22, 2000 at 10 a.m., local prevailing time, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify the contact person indicated below in writing by May 15, 2000 of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the hearing will not be made unless a written request for a transcript is made prior to May 15, 2000. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation to the contact person indicated below.

CONTACT PERSON: Colleen Keefe, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, (502) 573-3390 Telephone, (502) 573-8787 Fax.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe

(1) Type and number of entities affected: Broker-dealers, agents, investment advisers, and investment adviser representatives doing business 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: Not applicable because this regulation merely clarifies existing requirements.

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: This requirements of this regulation are similar to requirements imposed in other states and by other regulators. Alternatives were rejected because of necessity of being uniform with other states and other regulators.

(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

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Long Term Care (Amendment)

907 KAR 1:025. Payment for services provided by an intermediate care facility for the mentally retarded and developmentally disabled, a dually-licensed pediatric facility, an institution for mental diseases, a nursing facility with an all-inclusive rate unit, and a hospital with federally-defined swing beds. [Payments for nursing facility and intermediate care facility for the mentally retarded services.]

RELATES TO: 42 CFR Parts 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 [KRS 205.520]

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520, 1998 Ky. Acts ch. 615 [194.050; 42 GFR 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.]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid Program. KRS 205.520 authorizes [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 establishes [sets forth] the method for determining amounts payable by the Medicaid Program [cabinet] for nursing care facility services provided by an intermediate care facility for the mentally retarded and developmentally disabled, a dually-licensed pediatric facility, an institution for mental diseases, a nursing facility with an all-inclusive rate unit, and a hospital with federally-defined swing beds. [and intermediate care facility for the mentally retarded services.]

Section 1. Definitions. (1) "All other costs" means:

(a) Other care-related costs;

(b) Other operating costs;

(c) Capital costs; and

(d) 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 cabinet, i.e., the allowable cost is "reasonable."]

(3) "Ancillary service [services]" means a direct service for which a charge is customarily billed separately from the per diem rate and shall include [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) Ancillary services pursuant to 907 KAR 1:023; and

(b) If ordered by a physician:

1. [physical, occupational and speech therapy;

(b)] Laboratory procedures; and

2. [(c)] X-ray;

(d) Oxygen and other related oxygen supplies;
(e) Respiratory therapy (excluding the routine administration of oxygen);

(c) [(f)] Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded and developmentally disabled only); and

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

(4) "Basic per diem cost" means that for each major cost category (nursing services costs and all other costs), there shall be the calculated rate arrived at after otherwise allowable costs are trended and adjusted in accordance with the:

(a) DRI [computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the] inflation factor; and

(b) [the] Occupancy factor, [-and the Median cost-center per diem upper limits-]

(5) "Calculated rate" means the rate effective July 1, 1999 and each July 1 thereafter for:

(a) An intermediate care facility for the mentally retarded and developmentally disabled; or

(b) A nursing facility certified as:

1. A dually-licensed pediatric facility; or

2. An institution for mental diseases (IMD).

(6) "Cost-based facility" means a facility which:

(a) The department shall reimburse for all allowable costs; and

(b) Is either:

1. A dually-licensed pediatric facility;

2. An intermediate care facility for the mentally retarded and developmentally disabled; or

3. An institution for mental diseases (IMD).

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

(8) "DRI" means an indication of change in health care costs from year to year developed by the Data Resource Incorporated. ["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.

(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.]

(9) [(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 a total projected current year allowable cost [costs].

(10) [(8)] "ICF-MRs" means intermediate care facilities for the mentally retarded and developmentally disabled.

(11) [(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.

(12) [(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.

[(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" or "NF" [(NFs)] means that:

(a) The state survey agency has:

1. Granted an NF license to a facility;

2. Recommended the NF to the department for certification as a Medicaid provider; and

(b) The department has granted certification for Medicaid participation to the NF. [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 facility's Medicaid participating beds (but not less than ten (10) 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.

(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.]

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

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

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

(16) [(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 in Section 4(14) of this administrative regulation the prospective rate shall not be retroactively adjusted, either in favor of the facility or the department [cabinet].

(17) [(18)] "Routine services" means services that shall be provided pursuant to 42 CFR 483.10(c)(8)(i). [the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services 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 mouth-washes 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.)

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

Section 2. Reimbursement for a Cost-based Facility. (1) [Nursing Facilities, (NFs) (including Nursing Facilities with Waiver, f)] 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 cost-based [nursing] facility desiring to participate in Medicaid shall be required to have the greater of:

(a) Ten (10) of its Medicaid certified beds participating in the Medicare Program; or

(b) Twenty (20) percent of its Medicaid certified beds participating in the Medicare Program.

(2) If a cost-based facility has less than ten (10) beds, all of its beds shall participate in the Medicare Program.

(3) [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, 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 a 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 less than ten (10) beds, if the facility has less than ten (10) beds, all beds) participate in the Medicare Program.

(4) The Medicaid Program does not recognize a multilevel facility, [nursing facilities, and] therefore, all participating beds in a cost-based facility (except for and ICF-MR [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. Public Notice of Payment Rates for a Cost-based Facility. The department shall notify the public of the proposed rates of payment [Basic Principles of Reimbursement (1) Payment shall be on the basis of rates which have been determined by the 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 established [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 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 for a Cost-based Facility. [The 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 department's [cabinet's] reimbursement system shall include the following specific policies, components or principles:

(1)(a) 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 this [the] administrative regulation; [including the provisions contained in subsections (13) and (14) of this section.]

(b) [(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;]

(c) [(b)] An adjustment to a [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. A governmentally imposed minimum wage increase; or [increases;]

2. A staffing ratio increase; and

3. If the increase was not included in the DRI; or

4. A [The direct effect of] new licensure requirement [requirements] or new interpretation of an existing requirement [interpretations of existing requirements] by the appropriate governmental agency as issued in an administrative regulation that [or written policy which] affects all facilities within the class; and [or]

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

(d) [(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, costs shall be classified into the following two (2) general areas:

a. Salaries;

b. Other; and [salaries and other.]

2. The effective date of an 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 cost-based facilities [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 data has 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.]

(b) [(3)] Partial year, or budgeted cost data shall [may] be used if a full year's data is unavailable. Unaudited reports shall be subject to an 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 ventilator-dependent care

shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate 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.]

(c) [4:] Other factors relating to costs [and upper limit determination] shall be:

1. [a:] If the department [cabinet] has made a separate rate adjustment as compensation to the facilities for minimum wage updates, the department [cabinet] shall:

a. Not pay the facilities twice for the same costs; and

b. [then] Adjust downward the 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.]

2. If the trending and indexing factors include costs related to a minimum wage increase:

a. The department [cabinet] shall not make a separate rate adjustment; and

b. 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).]

3. [d:] The maximum payment amounts for the prospective universal [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; and

4. [e:] For purposes of administrative ease in computations, normal rounding shall [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 subsection.]

(3) The reasonable direct cost of ancillary services provided by a [the] facility as a part of total care shall be reimbursed [compensated] on a [reimbursement] cost basis as an addition to the prospective rate except for a ventilator [therapy] and a 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 pursuant to 42 CFR 413.106 [under federal regulations].

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

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

2. If [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)(a) Except as provided in paragraph (b) of this subsection,

interest expense used in setting a prospective rate shall be an allowable cost if permitted pursuant to 42 CFR 413.153 and if the interest expense:

1. Represents interest on:

a. Long term debt existing at the time the provider enters the program; or

b. New long-term debt, if the proceeds are used to purchase fixed assets relating to the provision of the appropriate level of care.

(i) If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable; and

(ii) 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

2. Is for working capital and operating needs that directly relate to providing patient care. The form of indebtedness may include notes, advances and various types of receivable financing.

(b) Interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(5) Each July the department shall notify a provider (except for an administrator of an intermediate care facility for the mentally retarded and developmentally disabled, a dually-licensed pediatric facility or an IMD) of the provider's reimbursement rate and compensation upper limits for an administrator or an owner who is an administrator. The compensation shall:

(a) Be for a service necessary for the efficient and effective operation of a facility;

(b) Include the total benefit received by the owner who is an administrator for the services he renders to the institution, excluding fringe benefits routinely provided to all employees;

(c) Not be paid for services requiring a licensed or certified professional performed on an intermittent basis; and

(d) Be based on total licensed beds. [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 a related organization [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)] pos-

sesses 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 a cost-based facility [nursing facilities] entering into a lease arrangement [lease/rent arrangements] as an intermediate care facility [facilities] prior to April 22, 1976, an intermediate care facility [facilities] for the mentally retarded and developmentally disabled entering into a lease arrangement [lease/rent arrangements] prior to February 23, 1977, and a nursing facility [nursing facilities] entering into a lease arrangement [lease/rent arrangements] as a skilled nursing facility [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 of the original lease arrangement.

(8) Certain costs not directly associated with patient care shall not be considered allowable costs. A cost shall be allowable and eligible for reimbursement if the cost is:

(a) Reflective of a provider's actual expenses of providing a service; and

(b) Related to Medicaid patient care pursuant to 42 CFR 413.9.

(9) The following costs shall be allowable:

(a) Costs to related organizations pursuant to 42 CFR 413.17;

(b) Costs of educational activities pursuant to 42 CFR 413.85;

(c) Research costs pursuant to 42 CFR 413.90;

(d) Value of services of nonpaid workers pursuant to 42 CFR 413.94;

(e) Purchase discounts and allowances, and refunds of expenses pursuant to 42 CFR 413.98;

(f) Depreciation on buildings and equipment if a cost is:

1. Identifiable and recorded in the provider's accounting records;

2. Based on historical cost of the asset or, if donated, the fair market value; or

3. Prorated over the estimated useful life of the asset using the straight-line method;

(g) Interest on current and capital indebtedness; or

(h) Professional costs of services of full-time or regular part-time employees not to exceed what a prudent buyer would pay for comparable services.

(10) The following are not allowable costs:

(a) The value of services provided by nonpaid members of an organization if there is an agreement with the provider to furnish the services at no cost;

(b) Political contributions;

(c) Legal fees for unsuccessful lawsuits against the Cabinet for Health Services;

(d) Travel and associated costs outside the Commonwealth of Kentucky to conventions, meetings, assemblies, conference or any related activities that are not related to NF training or educational purposes; or

(e) Costs related to lobbying. [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 cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs unless the costs are incurred by administrators or owners.]

(11) [(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 a [the]

seller's depreciated basis as computed under program policies at the time of a [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 [owner(s)] to a new owner [owner(s)] for reasonable compensation, which shall usually be fair market value. A lease purchase agreement [Lease-purchase agreements] or other similar arrangement [arrangements] which does [do] not result in a transfer of legal ownership from the original owner to the new owner shall not be considered a sale [sales] until legal ownership of the property is transferred; and

(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 pursuant to [in the manner set forth in] paragraphs (a) through (d) of this subsection.

(12) [(10)] Valuation of capital assets. An [(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.

(13)(a) A facility shall maintain and make available, in a form acceptable to the department, any records and data necessary to justify and document:

1. Costs to; and

2. Services performed by the facility; and

(b) The department shall have unlimited on-site access to all of a facilities fiscal and service records for the purpose of:

1. Accounting;

2. Auditing;

3. Medical review;

4. Utilization control; and

5. Program planning. [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, 1995:

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 applicable. 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 cabinet) which the cabinet may require to justify and document all costs to and services performed by the facility. The 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.]

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

(c) Department [Cabinet] approval or rejection of a projection or

expansion [projections or expansions] shall be made on a prospective basis in the context that if an expansion [expansions] and related costs are approved they shall be considered when actually incurred as an allowable cost. Rejection of an item [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 a projection or expansion [projections or expansions] is made, absence of a response by the department [cabinet] shall not be construed as approval of the item or expansion.

(15)(a) [(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 an [a-field] audit in relation to routine and ancillary service cost;

(b) If a field audit is not necessary, the report shall be settled without an [a-field] audit. [Field audits shall be conducted when determined necessary.];

(c) 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; and

(d) Audits may be conducted annually or at less frequent intervals. [An audit of ancillary cost shall be conducted as needed.];

(16) A [(14)] year-end adjustment [adjustments] of the prospective rate and a retroactive cost settlement shall be made if:

(a) An incorrect payment has [incorrect payments have] been made due to a computational error [computational errors] (other than an [the] omission of cost data) discovered in the cost basis or establishment of the prospective rate;

(b) An incorrect payment has [incorrect payments have] been made due to a 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; or

(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.

(17) A facility shall provide the services mandated in 42 CFR 483.10(c)(8)(i). [(15) The cabinet may develop and utilize a methodology to assure an adequate level of care. Facilities determined by the cabinet to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.];

(18) A [(16) Each] facility shall submit to the department the data required for determining [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)].

(19) [(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 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.

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

(d) [2.] The department [cabinet] may impose a lower occupancy rate during the first two (2) full [facility] fiscal years an existing cost-based [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 (GHF) allowance based on a comparison of the facility rate with the GHF schedule shown in this subsection. No return for investment risk shall 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 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 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.]

(20) [(24)] The provider tax on cost-based [nursing] facilities shall be considered an 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 for a Cost-based Facility. The prospective rate for a cost-based [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; and

(2) Occupancy limits. [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 Reim-

bursement 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 for a Nursing Facility With a Distinct Part Ventilator Unit. (1) A nursing facility 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 for services provided in the distinct part ventilator unit;

(2) A distinct part ventilator unit shall:

(a) Have a minimum of twenty (20) beds;

(b) Maintain a census of fifteen (15) patients; and

(c) The patient census shall be based upon:

1. The quarter preceding the beginning of the rate year; or

2. 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;

3. The fixed rate for hospital-based facilities shall be \$460 per day;

4. The fixed rate for freestanding facilities shall be \$250 per day;

5. The rates shall be increased or decreased based on the Data Resource Incorporated rate of inflation indicator for the nursing facility services for each rate year beginning with the July 1, 1997 rate year; and

(6) Costs of distinct part ventilator nursing facility units shall be excluded from allowable costs for purposes of rate setting and settlement of cost-based nursing facility cost reports.

Section 7. Reimbursement for a Nursing Facility With a Brain Injury Unit. (1) A nursing facility with a distinct part brain injury unit shall in order to participate in the Medicaid Program as a brain injury provider, the facility shall:

(a) Be Medicare and Medicaid certified;

(b) Designate at least ten (10) certified beds that are physically contiguous and identifiable; and

(c) Be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) after the first year of participation;

(d) Include administration and operations policies;

(e) Governing authority; and

(f) Quality assurance and program evaluation.

(2) A nursing facility with a Medicaid certified brain injury unit 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 for services provided in the brain injury unit.

(3) A facility 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 facility's usual and customary charges.

Section 8. Reimbursement for a Hospital With Federally-defined Swing Beds. The reimbursement rate for a federally defined hospital swing bed shall be:

(1) The average rate per patient day paid to freestanding price-based nursing facilities for routine services furnished during the preceding calendar year; and

(2) Established effective January 1 of each year.

Section 9. Reimbursement Review and Appeal. Participating facilities may appeal department [cabinet] decisions as to application of this administrative regulation [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].

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Section 10. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR) for a Nursing Facility With a Ventilator Unit, a Nursing Facility With a Brain Injury Unit, an IMD, and a Dually-licensed Pediatric Facility. (1) Prior to an admission of an individual, a facility shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4;

(2) The department shall reimburse a facility for a service delivered to an individual if the facility complies with the requirements of 907 KAR 1:755; and

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of the facility's participation in the Medicaid Program.

Section 11. Reimbursement Provisions. (1) Each of the following types of facilities participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation:

(a) A nursing facility with a certified brain injury unit;

(b) A nursing facility with a distinct part ventilator unit;

(c) A hospital with federally-defined swing beds;

(d) A nursing facility designated as an institution for mental diseases;

(e) A dually-licensed pediatric facility; or

(f) An intermediate care facility for the mentally retarded and developmentally disabled.

(2) Payment shall be made in accordance with the requirements established in 907 KAR 1:022.

Section 12. Prospective Rate Methodology. (1) Medicaid expenditures in the aggregate for cost-based facilities and price-based nursing facilities pursuant to 907 KAR 1:065E during the rate year beginning July 1, 1999 and ending June 30, 2000 shall not exceed \$534,600,000, including appeal and ancillary settlements.

(2) In order to ensure that expenditures do not exceed the amount established in subsection (1) of this section, the department shall:

(a) Compile a spreadsheet of cost-based facilities which contains actual data by facility, for each month and year beginning with July 1, 1999 and includes the following items:

1. Patient days paid;

2. Routine costs paid;

3. Ancillary costs paid;

4. Medicare crossovers paid;

5. Patient liability collected;

6. Third-party liability collected;

7. Appeal settlements; and

8. Year-end ancillary settlements;

(b) Compile a detailed listing of licensed cost-based facility beds and current approved certificates of need that shall be included in the projected \$534,600,000 budgeted limit; and

(c) Distribute monthly the Medicaid spreadsheets containing the data identified in subsection (2) of this administrative regulation to:

1. The Technical Advisory Committee on Nursing Home Care;

2. The Advisory Council for Medical Assistance;

3. The Budget Review Subcommittee on Human Resources; and

4. Upon request, other interested parties.

Section 13. Reimbursement Methodology for a Cost-based Facility for State Fiscal Year 1999. (1) The provisions of this section shall apply to cost-based facilities made for the state fiscal year 1999;

(2) Payments to facilities specified in subsection (1) of this section are included in the \$534,600,000 biennium budget cap for state fiscal year 1999.

(3) The department shall remain at risk for increases in total cost-based facility payments which result from higher utilization of beds by Medicaid recipients than the utilization used to establish the 1999 rate.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Cost-based Facility Reimbursement Cost Report Instructions", April 2000 Edition;

(b) "Cost-based Facility Reimbursement Cost Report", April

2000 Edition;

(c) MAP-703, "Request for Reconsideration Ancillary Therapy Billing", April 2000 Edition.

(2) This material 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.]

DENNIS BOYD, Commissioner
JOHN H. WALKER, Attorney
JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: March 29, 2000

FILED WITH LRC: April 11, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2000, five workdays 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Selina Riley, 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).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen Doyle or Sharon Rodriguez

(1) Type and number of entities affected: 18

(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: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$29.8 million cost.

2. Continuing costs or savings: 3.1% annual cost increase.

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 implement and enforce administrative regulation: Federal and state matching funds. Federal matching funds of 70.55% equaling \$21,031,087 and state matching funds of 29.45% equaling \$8,779,100 will be expended. State revenues will come from biennial budget.

(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:

(7) Assessment of alternative methods; reasons why alterna-

tives 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: health and welfare needs of Medicaid recipients receiving services from cost-based nursing facilities and nursing facilities with all-inclusive rates will be met.

(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 health, safety, and welfare of some Medicaid recipients because cost-based nursing facilities and nursing facilities with all-inclusive rates would lack funding for providing services to these individuals.

(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.

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 FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (Amendment)

921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.

RELATES TO: KRS 205.245, 216.557(1), 20 CFR 416.2095, 416.2096, 8 USC 1621, 1641
STATUTORY AUTHORITY: KRS 194B.050(1), 205.245, 42 USC 1382e-g, EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is authorized to administer a state funded program of supplementation to all December, 1973, former recipients of aid to the aged, blind and disabled, disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 provides for the mandatory supplementation program and also for supplementation to other needy persons who are aged, blind, or have a disability. The cabinet shall operate a supplement program for certified personal care homes which accept state supplementation recipients and have thirty-five (35) percent of the residents in the personal

care home's occupied licensed personal care beds who have a diagnosis of mental illness or mental retardation. This administrative regulation sets forth the provisions of the supplementation program.

Section 1. Definitions. (1) "Aid to the Aged, Blind and Disabled Program" means the former state funded program for an individual who was aged, blind or had a disability.

(2) "Cabinet" means the Cabinet for Families and Children.

(3) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, is an alien as pursuant to [defined in] Section 1(13) [(49)] of 921 [904] KAR 2:006.

(4) [(3)] "Specialized personal care home" means a licensed personal care home that [which] receives funding from the Department for Mental Health and Mental Retardation Services to employ a mental health professional who has specialized training in the care of a resident with mental illness or mental retardation.

Section 2. Mandatory State Supplementation. (1) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December, 1973, plus any other income available to the recipient as of that month; and

(b) The total of the Supplemental Security Income Program payment and other income for the current month.

(2) A recipient shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for the Supplemental Security Income Program due to income but whose special needs entitled him to an Aid to the Aged, Blind and Disabled Program payment as of December, 1973.

(3) A mandatory payment shall continue until:

(a) The needs of the recipient as recognized in December, 1973, have decreased; or

(b) Income has increased to the December, 1973 level.

(4) The mandatory payment shall not be increased unless:

(a) Income as recognized in December, 1973, decreases;

(b) The Supplemental Security Income Program payment is reduced but the recipient's circumstances are unchanged; or

(c) The standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(5) In a case of a husband and wife living together, an income change after September, 1974, shall not result in an increased mandatory payment unless total income of the couple is less than December, 1973, total income.

Section 3. Optional State Supplementation. (1) Optional state supplementation shall be available to a person who:

(a) Except pursuant to [as specified in] Sections 5, 6, and 7 of this administrative regulation, meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or have a disability pursuant to [as contained in] 907 KAR 1:011, Sections 1(4), 5(5), (6), (7), (12), (13), 9, 10, and 11, 907 KAR 1:640, Sections 1(1), (5), (6), (9), 3(3), 5(3), 907 KAR 1:645, 907 KAR 1:650, Sections 1(6), 3, and 907 KAR 1:660, Sections 1(1), (3), (5), (6), 2(1), 2(b), (c), (e), (3), (4), (5), (7); and

(b) Requires a special living arrangement; and

(c) Has insufficient income to meet the need for care.

(2) A special living arrangement shall include:

(a) Residence in a personal care home that [which]:

1. Meets the requirements and provides services pursuant to [as specified in] 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(b) Residence in a family care home that [which]:

1. Meets the requirements and provides services pursuant to [as specified in] 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(c) A situation in which a caretaker must be hired to provide care other than room and board.

(3) A person applying for or receiving state supplementation shall be required to:

(a) Furnish a Social Security number; or

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(b) If a Social Security number has not been issued, apply for a Social Security number.

(4) If potential eligibility exists for Supplemental Security Income Program, application for Supplemental Security Income Program shall be mandatory.

Section 4. Eligibility for Caretaker Services. (1) A service by a caretaker shall be made to enable the individual with an illness or infirmity to:

(a) Remain safely and adequately:

1. At home;
2. In another family setting; or
3. In a room and board situation; and

(b) Prevent institutionalization.

(2) A service by a caretaker shall be made at regular intervals by:

- (a) A live-in attendant; or
- (b) One (1) or more persons hired to come to the home.

(3) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if:

(a) The client is taken daily or periodically to the home of the caretaker; or

(b) The caretaker service is provided by the following persons living with the applicant:

1. The spouse;
2. Parent of an adult child who has a disability or a minor child; or
3. Adult child of a parent who is aged, blind or has a disability.

(4) Eligibility for caretaker supplementation shall be verified by agency contact with the caretaker to establish:

- (a) How often the service is provided;
- (b) The service prevents institutionalization; and
- (c) Payment is made for the service.

Section 5. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy pursuant to [as contained in] 907 KAR 1:640, Sections 1(1), (5), (6), (9), 3(3), 5(3), 907 KAR 1:645, 907 KAR 1:650, Sections 1(6), 3, and 907 KAR 1:660, Sections 1(1), (3), (5), (6), 2(1), (2)(b), (c), (e), (3), (4), (5), (7).

(2) The individual or couple shall not be eligible if countable resources exceed the limit of:

- (a) \$2000 for individual; or
- (b) \$3000 for couple.

Section 6. Income Considerations. (1) Except as noted in subsections (2) through (9) of this section, income and earned income deductions shall be considered according to the policy for the medically needy pursuant to [in] 907 KAR 1:640, Sections 1(1), (5), (6), (9), 3(3), 5(3), 907 KAR 1:645, 907 KAR 1:650, Sections 1(6), 3, and 907 KAR 1:660, Sections 1(1), (3), (5), (6), 2(1), (2)(b), (c), (e), (3), (4), (5), (7).

(2) The optional supplementation payment shall be determined by adding:

(a) Total net income of the applicant or recipient, or applicant or recipient and spouse; and

(b) Except for a payment for medical insurance or medical care and services, a payment made to a third party in behalf of an applicant or recipient; and

(c) Subtracting the total of paragraphs (a) and (b) of this subsection from the standard of need in Section 7 of this administrative regulation.

(3) Income of the ineligible spouse shall be:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the Supplemental Security Income Program standard for an individual for:

1. Himself; and
2. Each minor dependent child.

(4) Income of the eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent children.

(5) Income of the child shall be considered when conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and spouse shall be combined prior to the application of the earnings disregard of sixty-five

(65) dollars and one-half (1/2) of the remainder.

(7) If one (1) member of a couple is institutionalized and the spouse maintains a home, income in the amount of the Supplemental Security Income Program standard for one (1) shall be conserved for the spouse, if this spouse is a recipient of the Supplemental Security Income Program.

(8) A husband and wife residing in the same personal care or family care home may be considered to be living with each other if treating the husband and wife as living apart would prevent either of them from receiving state supplementation.

(9) The Supplemental Security Income Program twenty (20) dollars general exclusion shall not be an allowable deduction from income.

Section 7. Standard of Need. (1) The standard shall be based on living arrangement as follows:

(a) [1-] For an eligibility determination for a resident of a personal care home made on or after January 1, 2000, \$906; [1999, \$894.]

[2.a. After June 30, 1999, if funds remain available, the standard shall remain at \$894.

b. After June 30, 1999, if funds are not available, the standard shall be \$834.]

(b) For an eligibility determination for a resident of a family care home made on or after January 1, 2000, \$651 [1999, \$639];

(c) Caretaker.

1. For an eligibility determination for a single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability made on or after January 1, 2000, \$545 [1999, \$533];

2. For an eligibility determination for an eligible couple, both aged, blind, or have a disability and one (1) requiring care made on or after January 1, 2000, \$797 [1999, \$779];

3. For an eligibility determination for an eligible couple, both aged, blind or have a disability and both requiring care made on or after January 1, 2000, \$841 [1999, \$823].

(2) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need. One-half (1/2) of the deficit shall be payable to each.

(3) The personal care or family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance that [which] shall be retained by the client.

Section 8. Temporary Stay in a Medical Institution. (1) A recipient of optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for any of the first three (3) full months of medical confinement if:

(a) Admitted to a:

1. [A] Hospital;
2. [A] Psychiatric hospital; or
3. [A] Nursing facility;

(b) The recipient's physician shall certify that he expects the recipient to be medically confined for ninety (90) full consecutive days or less; and

(c) The state supplementation recipient receives benefits from the Supplemental Security Income Program.

(2) If discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 9. Citizenship requirements. An applicant or recipient shall be a:

- (1) [A] Citizen of the United States; or
- (2) [A] Qualified alien pursuant to Section 1(3) [(2)] of this administrative regulation.

Section 10. Residence Requirements. (1) The applicant or recipient shall be a resident of Kentucky.

(2) A supplemental payment may be made to a Kentucky resident residing outside the state if:

- (a) The individual has been placed in the other state by this state.
- (b) Except with regard to the requirement shown in Section 8 of this administrative regulation, the other requirements for eligibility contained in this administrative regulation shall be applicable.

(c) For an out-of-state placement, the licensure shall be in accordance with a similar licensure act of the other state.

(d) [H] There is no similar licensure act in the other state, the payment shall not be made unless this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131.

(e) To be eligible for a supplemental payment while placed out-of-state:

1. The individual shall require the level of care provided in the out-of-state placement;
2. There shall not be a suitable placement available in Kentucky; and

3. The placement shall be preauthorized by staff of the Department for Community-Based Services.

(3) Except as specified in subsection (9) of this section, an applicant placed in Kentucky by another state shall not be considered a resident of Kentucky.

(4) The state of residence shall be Kentucky for an applicant or recipient of state supplementation if the individual:

- (a) Is age twenty-one (21) and over;
- (b) Is residing in the state; and
1. Intends to remain permanently or for an indefinite period; or
2. Entered the state with a job commitment or to seek employment.

(5) The applicant or recipient residing in a personal care home shall be considered incapable of indicating intent to become a Kentucky resident if the individual:

(a) Has an I.Q. of forty-nine (49) or less or has a mental age of seven (7) or less, based on the following tests:

1. Bayley Scales of Infant Development;
2. McCarthy Scales of Children's Abilities;
3. Stanford-Binet;
4. Wechsler Adult Intelligence Scale - Revised (WAIS-R);
5. Wechsler Intelligence Scale for Children-III (WISC-III);
6. Wechsler Intelligence Scale for Children - Revised (WISC-R); or
7. Wechsler Preschool and Primary Scale of Intelligence (WPPSI);

or

(b) Is judged legally incompetent; or

(c) Is found incapable of indicating intent based on medical or other documentation acceptable to the state.

(6) For an applicant or recipient residing in a family care home or requiring caretaker services, the state of residence shall be Kentucky if the individual is:

- (a) 1. Under age twenty-one (21);
2. Eligible for a supplemental payment based on blindness or disability; and
3. Residing in the state; or
- (b) 1. Age twenty-one (21) or over;
2. Incapable of indicating intent; and
3. Residing in the state.

(7) For an applicant or recipient residing in a personal care home who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence shall be Kentucky if Kentucky is the state of residence of the individual's:

- (a) Parents; or
- (b) If one has been appointed, his legal guardian; or
- (c) Parent applying for the supplemental payment on behalf of the individual if:

1. The other parent lives in another state; and
2. There is no appointed legal guardian.

(8) For an applicant or recipient residing in a personal care home who became incapable of indicating intent at or after age twenty-one (21), the state of residence shall be Kentucky if:

- (a) He was living in Kentucky when he became incapable of indicating intent; or
- (b) If this cannot be determined, he was not living in another state when he was first determined to be incapable of indicating intent.

(9) For an individual subject to a determination of residency pursuant [according] to subsections (7) or (8) of this section, the state of residence shall be Kentucky if Kentucky and the state that would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status.

(10) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky if he continues to reside in Kentucky.

(11) An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(12) A former Kentucky resident who becomes incapable of indicating intent while residing out of this state, may reestablish Kentucky residency if he:

- (a) [He] Returns to Kentucky; and
- (b) [He] Has a guardian, parent or spouse residing in Kentucky.

Section 11. Persons with Mental Illness or Mental Retardation Supplement. A certified personal care home may qualify for quarterly supplement payments of fifty (50) cents per diem for each state supplementation recipient in their care as of the first calendar day of each qualifying month. The personal care home shall meet the following criteria to qualify for a supplementation payment:

(1) The personal care home shall be licensed pursuant to [in accordance with] KRS 216B.010 to 216B.131; and

(2) The personal care home shall care for a resident who has:

(a) A primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home; or

(b) A primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

(c) A medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis.

(3) The personal care home shall care for a thirty-five (35) percent mental illness or mental retardation population in all of its occupied licensed personal care home beds.

(4) The personal care home shall not be eligible for a payment during the days it received a Type A citation pursuant to KRS 216.557(1) by the Office of Inspector General.

(5) The personal care home shall have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day. The personal care home shall not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement.

(6) The personal care home shall file an Application for MI or MR Supplement Program Benefits with the Department for Community-Based Services by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

(a) Quarters shall begin in January, April, July and October.

(b) Once certified, unless eligibility is discontinued, a new application shall not be required.

(c) The personal care home shall provide the Department for Community-Based Services with its tax identification number and address as part of the application process.

(d) "Notice of Decision to Personal Care Home" shall be provided to the personal care home following approval or denial of the application.

(7) The personal care home shall provide the Department for Community-Based Services with a monthly report.

(a) The report shall list:

1. Every resident of the personal care home who was a resident on the first day of the month; and

2. The resident's Social Security number.

(b) In order to maintain confidentiality, the personal care home shall annotate the monthly report as follows:

1. A star shall indicate a resident has a mental illness or mental retardation diagnosis.

2. A check mark shall indicate a resident receives state supplementation.

3. A star and a check mark shall indicate the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation.

(c) The monthly report shall be used for:

1. Certification;
2. Payment; and

3. Audit purposes.

(d) The monthly report shall be postmarked to the Department for Community-Based Services by the fifth working day of the month.

(8) The personal care home shall notify the Department for Community-Based Services if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents. A facility may be randomly audited to verify percentages and payment accuracy.

Section 12. Training. (1) The personal care home licensed nurse or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Mental Health and Mental Retardation Services. Other staff may attend the basic training workshop in order to assure the facility always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration.

(b) Side affects and adverse medication reactions with special attention to psychotropics.

(c) Signs and symptoms of an acute onset of a psychiatric episode.

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bi-polar disorder, or mental retardation.

(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation.

(f) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator. The individual shall be trained in the quarter during which the application is filed.

(4) To assure that a staff member who has received basic training is always employed at the facility, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and five (5) staff have been trained, the personal care home shall request in writing to the Department for Community-Based Services an exemption of the five (5) staff rule.

(b) The personal care home shall have on staff a licensed nurse or individual who has successfully completed certified medication technician training who:

1. Has received the mental illness or mental retardation basic training; or

2. Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The Department for Mental Health and Mental Retardation Services may provide advanced level training for personal care homes.

(a) Advanced level training shall be provided through one (1) day workshops.

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with a resident who has a diagnosis of mental illness or mental retardation.

(d) Attendance of advanced level training workshops shall be optional for a Persons with Mental Illness or Mental Retardation Supplement Program participant.

(6) The Department for Mental Health and Mental Retardation Services shall provide within five (5) working days:

(a) A certificate to direct care staff who complete the workshop; and

(b) A listing to the Department for Community-Based Services of staff who completed the training workshop.

(7) The Department for Community-Based Services shall pay twenty-five (25) dollars for each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year to a personal care home who has applied for the Persons with Mental

Illness or Mental Retardation Supplement Program.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 13. Persons with Mental Illness or Mental Retardation Supplement Program Certification. (1) The Office of the Inspector General, Division of Licensing and Regulation, shall visit the personal care home to certify eligibility to participate in the Persons with Mental Illness or Mental Retardation Supplement Program:

(a) The personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey may be separate from the annual survey;

(b) The initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey shall be in effect until the next licensure survey that may be greater than or less than twelve (12) months;

(c) A personal care home's annual Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey may be completed during the annual licensure survey;

(d) The Department for Community-Based Services shall notify the Division of Licensing and Regulation that the facility is ready to be certified.

(2) The Division of Licensing and Regulation shall review records, observe and interview residents and staff during the certification process. The Division of Licensing and Regulation shall review records to assure the following criteria is met:

(a) Certification is on file at the personal care home to verify staff attended basic training provided by the Department for Mental Health and Mental Retardation Services. This provision shall be waived for a specialized personal care home.

(b) The personal care home's certified staff have trained all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop. The personal care home shall maintain documentation of attendance at the in-service training for all direct care staff.

(c) An activity is being regularly provided and meets the needs of the resident. When a resident does not attend a group activity, an activity shall also be designed to meet the needs of an individual resident, for example, reading or other activity that may be provided on an individual basis. An individualized care plan is not required to meet this criteria.

(d) Medication administration meets licensure requirements and licensed nurse or individual who has successfully completed certified medication technician training demonstrates a knowledge of psychotropic drug side affects.

(3) The Division of Licensing and Regulation shall review the personal care home copy of the training certification prior to performing their record review during the Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey process.

(4) If thirty-five (35) percent mental illness or mental retardation population is met on the day of the visit, the personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification. The personal care home shall notify the Department for Community-Based Services, within ten (10) working days, if the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility.

(5) The Office of the Inspector General, Division of Licensing and Regulation, shall provide a monthly statement to the Department for Community-Based Services identifying certified personal care homes eligible for the Persons with Mental Illness or Mental Retardation Supplement Program. This information shall be provided by the fifth working day of each month for the prior month.

(6) The Office of Inspector General, Division of Licensing and Regulation, shall inform the Department for Community-Based Services monthly of a personal care home which receives a Type A citation. This information shall be provided by the fifth working day of each month for the prior month.

(7) The personal care home shall receive a reduced payment for the number of days the Type A citation occurred on the first administratively feasible quarter following notification by the Office of Inspector General, Division of Licensing and Regulation, pursuant to 921 KAR 2:050.

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(8) "Notice of Decision to Personal Care Home" shall be provided to a personal care home following the certification survey by the Division of Licensing and Regulation if a criteria for certification is not met.

Section 14. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Notice of Decision to Personal Care Home", edition 3/99;
- (b) "Monthly Report Form", edition 3/99;
- (c) "Application for MI or MR Supplement Program Benefits", edition 3/99; and

(d) "Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey", edition 3/99.

(2) This material may be inspected, copied, or obtained at the Cabinet for Families and Children, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: March 31, 2000

FILED WITH LRC: April 13, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2000, of their intent to attend. If no notification 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 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: Judy Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: As of January 2000, there are approximately 5,028 recipients of State Supplementation benefits who will be affected by the increase in the State Supplementation standards due to the mandated cost of living adjustment.

(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 comment received: A public hearing was not requested and written comments were not received as a result of the publication of the Notice of Intent.

(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: A public hearing was not requested and written comments were not received as a result of the publication of the Notice of Intent.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: For increases in the state supplementation standards:

1. First year following implementation: The standards for State Supplementation recipients increased by \$12 for recipients in personal care homes and family care homes, \$12 for recipients of caretaker services for single individual or individual with ineligible spouse, and \$18 for caretaker services for couple (1 or both requiring care). Therefore, the standard of need is as follows:

Personal care - \$906

Family care - \$651

Caretaker:

Single - \$545

Individual with ineligible spouse - \$545

Eligible couple, 1 requiring care - \$797

Eligible couple, both requiring care - \$841

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body: For increases in the state supplementation standards:

(a) Direct and indirect costs or savings (costs to the agency):

1. First year (costs to agency in benefits): \$388,000

2. Continuing costs: \$776,000. The cost of living increase is funded in the SFY 2000 and SFY 2001 State Supplementation Program budgets. The first year fiscal impact is based on January 1, 2000 through June 30, 2000. The continuing fiscal impact is based on SFY 2001.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(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: A public hearing was not requested and written comments were not received as a result of the publication of the Notice of Intent.

(b) Kentucky: A public hearing was not requested and written comments were not received as a result of the publication of the Notice of Intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since State Supplementation pass along provisions are set forth through an agreement with the Department of Health and Human Services.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amendment implements the mandated pass along of the 2000 Supplemental Security Income cost of living increases for eligibility determinations made on or after January 1, 2000, for State Supplementation applicants and recipients. The State Supplementation recipients residing in personal care or family care homes or receiving caretaker services will be assured of the ability to continue to purchase these services.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Since 1977, the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass along any Supplemental Security Income benefit increases to State Supplementation recipients. This amended administrative regulation includes the 2000 cost of living increases to place Kentucky in compliance with federal Supplemental Security Income guideline. In order to be in compliance, we must assure that the State Supplementation benefits are not reduced due to the cost of living increase granted by the Social Security Administration to its beneficiaries. This assures their continued ability to purchase the personal care they need in order to avoid costly institutional care under Title XIX (Medicaid).

(9) 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: 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: Since 1977 the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass along any cost of living Supplemental Security Income benefit increases to State Sup-

plementation recipients.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all State Supplementation recipients as set forth through an agreement with the Department of Health and Human Services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 CFR 416.2095 and 20 CFR 416.2096.

2. State compliance standards. This amended administrative regulation includes the 2000 cost of living increases to place Kentucky in compliance with federal Supplemental Security Income guideline.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation is needed to comply with the agreement the Commonwealth of Kentucky has with the Department of Health and Human Services to pass along any cost of living increases in Supplemental Security Income benefits to State Supplementation recipients.

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (Amendment)

921 KAR 2:490. Welfare to Work Grant Program.

RELATES TO: KRS 205.2003, 20 USC 2832, 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194B.050, 205.200(2), 205.2003, 42 USC 601 et seq., EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is required to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive Kentucky Transitional Assistance Program (K-TAP) money grants be prescribed by administrative regulations in conformity with 42 USC 601 et seq. and federal regulations. KRS 205.2003 requires administrative regulations for the development of a work program for recipients of public assistance to provide for immediate employment or preparation for employment and to provide supportive services to assist in the pursuit of work and self-sufficiency. This administrative regulation is necessary to enable the Cabinet for Families and Children to qualify to receive federal funds under the Welfare to Work Grant Program pursuant to [in accordance with] 20 CFR Part 645.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Families and Children.

(2) "Characteristics associated with long-term welfare dependence" means the following traits as defined in this section:

- (a) School dropout;
- (b) Teen parent;
- (c) Poor work history; or
- (d) Requires substance abuse treatment for employment.

(3) "Community service" means a work assignment with a public or private nonprofit agency, which provides a public service, and assists a participant to move promptly into regular public or private employment.

(4) [~~"Has not completed secondary school"~~] means an individual who has not graduated from high school or obtained a certificate of general equivalency, and has skills in reading or mathematics at the 8-9 grade level or below.

(5) "Job creation through wage subsidies" means the establishment of new jobs through the expansion of an existing industry, the introduction of a new industry, or the establishment of a self-

employment opportunity [opportunities] in a community, in which the wages of the participant who is placed in a newly created job are subsidized for a specific period of time.

(5) [(6)] "Job placement" means placement of an individual into a unsubsidized employment or into a transitional employment opportunity that leads [opportunities which lead] to lasting unsubsidized employment and self-sufficiency.

(6) [(7)] "Job readiness" means preemployment preparation that familiarizes an individual [individuals] with general work place expectation [expectations] and appropriate work behavior. Preparation includes:

- (a) Self-assessment;
- (b) Motivation;
- (c) Communication;
- (d) Attitude [Attitudes];
- (e) Conflict resolution;
- (f) Interviewing technique [techniques];
- (g) Completion of employment application or resume;
- (h) Personal hygiene; and
- (i) Life skills.

(7) [(8)] "Job retention" means services to assist an individual [individuals] in retaining newly obtained employment. Job retention services may include:

- (a) Secondary support providers;
- (b) Life skills;
- (c) Parenting services;
- (d) Substance abuse treatment;
- (e) Support groups;
- (f) Assistance in locating and arranging:
 - 1. Child care; and
 - 2. Transportation services; and
- (g) Advocacy and mediation in client and employer conflicts.

(8) [(9)] "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) program, means a money payment program for a child [children] pursuant to 921 [904] KAR 2:006, Section 1;

(9) "Local Workforce Investment Board (WIB)" means a local board established under section 117 of PL 105-220 that amends 29 USC 2832; formerly referred to as Private Industry Council (PIC).

(10) "Labor market deficiencies" means the following traits as defined in this section:

- (a) Has not completed secondary school;
- (b) Requires substance abuse treatment for employment; or
- (c) Poor work history.

(11) [(12)] "Long-term recipient" means a recipient of K-TAP, or its predecessor Aid to Families with Dependent Children, for thirty (30) or more months or whose K-TAP benefits will terminate within twelve (12) months due to the [twenty-four (24)-month-or] sixty (60) month limit on receipt pursuant to 921 [904] KAR 2:006, Section 19.

(11) [(12)] "Medical substance abuse treatment" means hospital or clinic-based substance abuse treatments and methadone maintenance, or services performed by a member of the medical profession.

(12) [(13)] "Noncustodial parent" means the mother or father of a dependent child not residing in the home with the child. A noncustodial parent is eligible if [in order to participate]:

(a) The custodial parent or the minor child is eligible for, or receiving K-TAP benefits (with a preference for a noncustodial parent whose child or custodial parent is a long-term recipient) [shall be a long-term recipient whose noncustodial parent has two (2) of three (3) labor market deficiencies]; or

(b) His minor child received K-TAP benefits during the preceding year, or is eligible for, or receiving assistance under the Food Stamp Program, the Supplemental Security Income Program, Medicaid, or the Children's Health Insurance Program; or

(c) The noncustodial parent is unemployed, underemployed, or having difficulty making child support payments; and

(d) The noncustodial parent enters into a personal responsibility contract under which he commits to establish paternity, pay child support, and participate in services to increase his employment and earnings, and to support his child, [personally possesses at least one (1) characteristic associated with long-term welfare dependence];

(13) [(14)] "Nonmedical substance abuse treatment" means a treatment [all treatments] other than hospital and clinic-based substance abuse treatment [treatments] and methadone maintenance, and services performed by those not in the medical profession including:

- (a) Counselor;
- (b) Technician;
- (c) Social worker; and
- (d) Psychologist.

(14) [(15)] "On-the-job training" means a participant is hired by a private or public employer and receives job training or skills essential to the full and adequate performance of that job.

(15) [(16)] "Other services" means services deemed necessary by the case manager and not available from any other source in order for the Welfare to Work Grant Program participant:

- (a) To participate in a work activity; or
- (b) To obtain or retain employment.

(16) [(17)] "Poor work history" means the individual has worked full time (thirty (30) hours or more per week at minimum wage or above) no more than three (3) consecutive months in the past twelve (12) calendar months.

(17) [(18)] "Postemployment services" means services provided after a Welfare to Work Grant Program participant is placed in an employment activity or any other subsidized or unsubsidized job that include:

- (a) Basic educational training;
- (b) Occupational training;
- (c) English as a second language;
- (d) Referral to vocational rehabilitation; and
- (e) Mentoring.

(18) "Preemployment vocational education" means no more than six (6) months of education or skills training provided by a technical school or college.

(19) "Preemployment job training" means up to a six (6) month opportunity that fosters skills to help obtain a job. ["Private Industry Council (PIC)" means a council established under 29 USC 1512.]

(20) "Regular employee" means an unsubsidized employee of an employer who employs a Welfare to Work Grant Program participant.

(21) "Requires substance abuse treatment for employment" means a person for whom a community mental health center professional has performed a formal substance abuse assessment and recommended a treatment plan.

(22) "School dropout" means a person who is at least seventeen (17) years of age, has not achieved high school graduation or equivalency, and is not enrolled or has quit attending high school or equivalent training (other than a regular holiday or school break period).

(23) "Supportive services" means services that enable an individual to participate in a job readiness activity, an employment activity or to obtain and retain employment. Services include:

- (a) Child care;
- (b) Transportation;
- (c) Substance abuse treatment;
- (d) Emergency or short-term housing assistance;
- (e) Supplies or uniform [uniforms];
- (f) Item [Items] needed to participate in work activities; and
- (g) Referral [Referrals] to other agencies for provision of services that include:

- 1. Life skills;
- 2. Parenting;
- 3. Family counseling; and
- 4. Family stability.

(24) "Teen parent" means a person less than age twenty (20) who is currently pregnant or a person of any age who became a parent prior to age twenty (20).

(25) ["Welfare to work" means a program which assists long-term welfare recipients with labor market deficiencies, welfare recipients who have characteristics associated with long-term welfare dependence, or noncustodial parents of welfare recipient children who are hard to employ become self-sufficient.

(26) "Work experience" means a work assignment with a public or private employing entity for a participant who needs assistance in

becoming accustomed to basic work requirements and is designed to promote the development of good work habits and basic work skills for those who have never worked or who have been out of the labor force for an extended period of time.

Section 2. Program Participation. The Welfare to Work Grant Program shall target a:

(1) [A] long-term welfare recipient as defined in Section 1(10) of this administrative regulation. [recipient with at least two (2) of three (3) labor market deficiencies which include:

- (a) Has not completed secondary school;
- (b) Requires substance abuse treatment for employment; or
- (c) Has a poor work history;

(2) [A] Welfare recipient who has a characteristic [characteristics] associated with long-term welfare dependence as defined in Section 1(2) of this administrative regulation.

(3) Welfare recipient who shall become ineligible for K-TAP assistance within twelve (12) months due to the sixty (60) month limit on receipt.

(4) Former welfare recipient who no longer receives K-TAP assistance due to the sixty (60) month limit on receipt.

(5) [A] Noncustodial parent as defined in Section 1(12) [(13)] of this administrative regulation. For a child born out-of-wedlock, the following is required in order for the noncustodial father to receive Welfare to Work Grant Program services:

- (a) Legal paternity; or
- (b) Administrative establishment of paternity pursuant to 921 [904] KAR 2:006, Section 11.

(6) Custodial parent with income below 100 percent of the poverty level.

(7) Person, age eighteen (18) to twenty-five (25), who was a recipient of a foster care maintenance payments before turning eighteen (18), or was in foster care under the responsibility of the state.

(8) K-TAP recipient determined to have a barrier to self-sufficiency pursuant to criteria established by the local workforce investment board.

Section 3. Allowable Activities. (1) Welfare to Work Grant Program funds may be used for the following activities:

(a) Job readiness activities with a public or private provider; [providers:]

(b) Preemployment vocational education for up to six (6) months; or

(c) Preemployment job training for up to six (6) months;

(d) Employment activities that [which] consist of any of the following:

- 1. Community service;
- 2. Work experience;
- 3. Job creation through wage subsidy [subsidies]; and
- 4. On-the-job training;

(e) [(e)] Job placement services with a public or private provider; [providers:]

(f) [(f)] Postemployment services that [which] are provided after an individual is placed in one (1) of the employment activities listed in paragraph (b) of this subsection, or in any other subsidized or unsubsidized job. Postemployment services shall include:

- 1. Basic educational skills training;
- 2. Occupational skills training;
- 3. English as a second language training; and
- 4. Mentoring;

(g) [(g)] Job retention services and support services that [which] are provided after an individual is placed in a job readiness activity, in one (1) of the employment activities, or in any other subsidized or unsubsidized job. These services may be provided with Welfare to Work Grant Program funds only if they are not otherwise available to the participant. Job retention and support services include:

- 1. Transportation assistance;
- 2. Nonmedical substance abuse treatment [(except Welfare to Work Grant Program funds may not be used to provide medical treatment)];
- 3. Child care assistance;
- 4. Emergency or short-term housing assistance; and

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5. Other supportive services necessary to assure success in employment;

(h) [(ff)] Individual development accounts that [which] are established pursuant to [in accordance with] 42 USC 604(h).

(2) The following may be incorporated in the design of any of the allowable activities listed in subsection (1) of this section:

- (a) Intake;
- (b) Assessment;
- (c) Eligibility determination;
- (d) Development of an individualized service strategy; and
- (e) Case management.

(3) The following are designed to meet the K-TAP participation requirements pursuant to 921 [in accordance with 904] KAR 2:370:

- (a) Welfare to Work Grant Program job readiness;
- (b) Job placement; and
- (c) Employment activity [activities].

Section 4. Duration of Service. A participant in the Welfare to Work Grant Program shall remain eligible for Welfare to Work services until the conclusion of the service period if the participant becomes ineligible for K-TAP benefits during participation, provided that participation requirements are met pursuant to Section 3(3) of this administrative regulation.

Section 5. Safeguards. (1) A participant in the Welfare to Work Grant Program:

(a) Shall not be discriminated against because of:

- 1. Race;
- 2. Color;
- 3. Religion;
- 4. National origin;
- 5. Age;
- 6. Disability;
- 7. Political belief or affiliation; or
- 8. Gender;

(b) Shall be subject to the same gender, health and safety standards established under state and federal law that [which] are applicable to a regular employee;

(c) May fill an established position vacancy unless:

1. An individual is on layoff from the same or any substantially equivalent job within the same organizational unit; or

2. The employer has terminated the employment of a regular employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy created with the Welfare to Work Grant Program participant; or

3. The employer has caused an involuntary reduction to less than full time in hours, wages or employment benefits of a regular employee in the same or substantially equivalent job within the same organizational unit; and [or]

(d) Shall not infringe upon the promotional opportunity [opportunities] of a regular employee in an employment activity.

(2) An employment activity operated with Welfare to Work Grant funds shall not violate an existing contract [contracts] for services or collective bargaining agreement [agreements] unless the appropriate labor organization and employer shall provide written concurrence before the employment activity is undertaken.

Section 6. Resolution of Grievances. (1) A resolution of a grievance [grievances] shall be conducted:

(a) At the request of the Welfare to Work Grant Program participant; or

(b) At the request of a regular employee.

(2) The resolution of a grievance [grievances] shall be conducted by the cabinet, or its agent, and the employer with a Welfare to Work Grant Program participant in an employment activity.

(3) If no informal resolution can be reached within seven (7) days, the dissatisfied party may:

(a) Ask questions about or direct or mail a complaint [complaints] alleging a violation of Section 5(1)(a)1 through 7 of this administrative regulation to the Director, Civil Rights Center, United States Department of Labor, Room N4123, 200 Constitution Avenue, NW, Washington, D.C. 20210; or

(b) Request an administrative hearing on a complaint [com-

plaints] involving gender discrimination, violation of health and safety standards, or displacement of a regular employee pursuant to Section 7 of this administrative regulation.

Section 7. Hearing Rights. (1) A Welfare to Work Grant Program participant shall have the same hearing rights for a K-TAP recipient pursuant to 921 KAR 2:055.

(2) A regular employee who alleges a violation of a safeguard pursuant to Section 5 of this administrative regulation may file a complaint and may be afforded a hearing pursuant to [in accordance with] KRS Chapter 13B.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "WW-1, Applicant's Identifying Information", edition 03/00, [Welfare to Work (WtW) Information Exchange/Certification], edition 09/98;] Cabinet for Families and Children;

(b) "WW-1.1, Consent for Release of Substance Abuse Information to Local Workforce Investment Agencies (LWIA)", edition 07/00, [Private Industry Councils (PIC)], edition 09/98;] Cabinet for Families and Children;

(c) "WW-2, Welfare-to-Work Participant Rights and Responsibilities", edition 03/00, [WW-2A, WtW Participant Rights and Responsibilities for K-TAP Recipients], edition 09/98, Cabinet for Families and Children; _

(d) "WW-2B, WtW Participant Rights and Responsibilities for the Noncustodial Parent", edition 09/98;] Cabinet for Families and Children.

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

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: April 5, 2000

FILED WITH LRC: April 13, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2000, of their intent to attend. If no notification 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 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: Judy Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: The affected entities are hard-to-employ present and former welfare recipients; noncustodial parents that are unemployed, underemployed, or having difficulty making child support payments; noncustodial parents for which the custodial parent or the minor child are eligible for, or have received K-TAP benefits for 30 or more months or are in a K-TAP case that will terminate within 12 months due to the 60 month limit (with a preference for noncustodial parents whose children or custodial parent are long-term recipients); noncustodial parents whose minor children received K-TAP benefits during the preceding year, or are eligible for, or receiving assistance under the Food Stamps Program, the Supplemental Security Income Program, Medicaid, or the Children's Health Insurance Program; custodial parents with

income below 100% of the poverty level; persons, age 18 to 25, who were recipients of foster care maintenance payments before turning 18, or were in foster care under the responsibility of the state; and K-TAP recipients determined to have a barrier to self-sufficiency pursuant to criteria established by the local workforce investment board. The funding to implement the Welfare to Work Grant Program is included in Title IV-A. As of January 2000, there were 39,084 K-TAP cases with 24,968 adult recipients in those cases and 774 unemployed parent cases with 1,534 adults in those cases. As of December 1999, there were 2,182 Welfare to Work 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 comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments 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 hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

1. First year following implementation: Compliance, reporting and paperwork requirements should not affect K-TAP recipients required to participate in Kentucky Works. Compliance, reporting and paperwork requirements for non-K-TAP recipients should be minimal.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to the agency:

1. First year: Federal funds \$17,722,913 for FFY 1998. Funds must be expended between 4/23/98 and 4/22/2001. A state match of \$8,861,457 is required and available from General Funds carry forward authorized by the 1998 General Assembly. The cost generates a two-to-one ratio of new federal funds.

Second year: New federal funds \$16,520,839 for FFY 1999. Funds must be expended between 9/29/99 and 9/28/02. A state match of \$8,260,419.50 is required and available from General Funds carry forward authorized by the 2000 General Assembly. The cost generates a two-to-one ratio of new federal funds.

2. Continuing cost or savings: Same

3. Additional factors increasing or decreasing cost: None

(b) Reporting and paperwork requirements: Quarterly financial reports to the United States Department of Labor; quarterly participant reports to United States Department of Health and Human Services.

(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 funds and state 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 hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: The same as item (6)(a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement the requirements for the program funded under 42 USC 601 et seq.

(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 anticipated effect is that hard-to-employ present and former welfare recipients; noncustodial parents that are unemployed, underemployed, or having difficulty making child support payments; noncustodial parents for which the custodial parent or the minor child are eligible for, or have received K-TAP benefits for 30 or more months

or are in a K-TAP case that will terminate within 12 months due to the 60 month limit (with a preference for noncustodial parents whose children or custodial parent are long-term recipients); noncustodial parents whose minor children received K-TAP benefits during the preceding year, or are eligible for, or receiving assistance under the Food Stamps Program, the Supplemental Security Income Program, Medicaid, or the Children's Health Insurance Program; custodial parents with income below 100% of the poverty level; persons, age 18 to 25, who were recipients of foster care maintenance payments before turning 18, or were in foster care under the responsibility of the state; and K-TAP recipients determined to have a barrier to self-sufficiency pursuant to criteria established by the local workforce investment board; will obtain the skills necessary to obtain unsubsidized employment and to become economically self-sufficient.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this new administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: Failure to implement the mandated provisions of 42 USC 601 et seq. would result in loss of federal funds.

(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: None

(10) Any additional information or comments: This administrative regulation will provide transitional assistance to hard-to-employ present and former welfare recipients; noncustodial parents that are unemployed, underemployed, or having difficulty making child support payments; noncustodial parents for which the custodial parent or the minor child are eligible for, or have received K-TAP benefits for 30 or more months or are in a K-TAP case that will terminate within 12 months due to the 60 month limit (with a preference for noncustodial parents whose children or custodial parent are long-term recipients); noncustodial parents whose minor children received K-TAP benefits during the preceding year, or are eligible for, or receiving assistance under the Food Stamps Program, the Supplemental Security Income Program, Medicaid, or the Children's Health Insurance Program; custodial parents with income below 100% of the poverty level; persons, age 18 to 25, who were recipients of foster care maintenance payments before turning 18, or were in foster care under the responsibility of the state; and K-TAP recipients determined to have a barrier to self-sufficiency pursuant to criteria established by the local workforce investment board; and help them move into unsubsidized employment and become economically self-sufficient.

(11) TIERING: Is tiering applied? Yes. Federal regulations require that 70 percent of federal grant funds be spent on long-term TANF recipients; noncustodial parents that are unemployed, underemployed, or having difficulty making child support payments; noncustodial parents for which the custodial parent or the minor child are eligible for, or have received K-TAP benefits for 30 or more months or are in a K-TAP case that will terminate within 12 months due to the 60 month limit (with a preference for noncustodial parents whose children or custodial parent are long-term recipients); noncustodial parents whose minor children received K-TAP benefits during the preceding year, or are eligible for, or receiving assistance under the Food Stamps Program, the Supplemental Security Income Program, Medicaid, or the Children's Health Insurance Program; up to 30 percent may be spent on recipients who have characteristics associated with long-term welfare dependence; custodial parents with income below 100% of the poverty level; persons, age 18 to 25, who were recipients of foster care maintenance payments before turning 18, or were in foster care under the responsibility of the state; and K-TAP recipients determined to have a barrier to self-sufficiency pursuant to criteria established by the local workforce investment board.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.; and Welfare-to-Work and Child Support

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Amendments of 1999 contained in Title VIII of H.R. 3424, the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act 2000.

2. State compliance standards. KRS 205.200

3. Minimum or 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 the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

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

921 KAR 3:020. Financial requirements.

RELATES TO: KRS [194.050;] 7 CFR 273.1, 273.2, 273.8, 273.9, 273.10, 273.11, 273.12, 7 USC 2014, 2017(d); ~~PL 104-193, sec. 911~~ STATUTORY AUTHORITY: KRS 194B.050(1), [194.050;] 7 CFR 271.4, 7 USC 2014, EO 98-731 [96-862]

NECESSITY, FUNCTION, AND CONFORMITY: ~~[Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.]~~ The Cabinet for Families and Children shall ~~[has responsibility to]~~ administer a Food Stamp Program. KRS 194B.050(1) [194.050] provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the financial eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Financial Eligibility Requirements. (1) Pursuant to federal regulations promulgated by the Food and Nutrition ~~[Consumer]~~ Service, of the United States Department of Agriculture, national uniform standards of financial eligibility for the Food Stamp Program shall be composed of the following criteria:

(a) Income limitations; and

(b) Resource limitations.

(2) Participation in the program shall be limited to a household that is prevented from obtaining a more nutritious diet because of its income.

(3) The income eligibility standards shall be:

(a) Derived from the federal income poverty guidelines pursuant to 42 USC 9902(2) for the forty-eight (48) contiguous states; and

(b) Adjusted annually each October 1, as published in the Federal Register~~[, Volume 62, Number 73, on April 16, 1997].~~

Section 2. Countable Income. All nonexcluded income shall be considered in determining eligibility, including the following:

(1) Wages earned by a household member, including ~~[all]~~ wages received by a striker pursuant to ~~[in accordance with the provision at]~~ 921 KAR 3:035, Section 5(9).

(2) The gross income of a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the cost of doing business;

(3) Training allowance from vocational and rehabilitative programs recognized by federal, state or local governments, to the extent that they are not reimbursements;

(4) Payments under 42 USC 4951 et seq. ~~[1454]~~ shall be considered earned income unless specifically excluded in Section 3 of this administrative regulation;

(5) The earned or unearned income of an ineligible household member or nonhousehold member pursuant to 921 KAR 3:035, Section 5(3) and 4;

(6) Assistance payments from federal or federally aided public assistance including:

(a) Supplemental security income;

(b) Kentucky Transitional Assistance Program;

(c) General assistance programs; or

(d) Other assistance programs based on need;

(7) Annuities;

(8) Pensions;

(9) Retirement, veteran's or disability benefits;

(10) Worker's or unemployment compensation;

(11) Strike pay;

(12) Old-age survivors or Social Security benefits;

(13) Foster care payments for a child or adult ~~[children or adults]~~, except as excluded in Section 3(16) of this administrative regulation;

(14) Gross income derived from rental property:

(a) Minus the cost of doing business; and

(b) Shall be considered as earned income if the household member is actively engaged in the management of the property an average of twenty (20) hours or more per week;

(15) Wages earned by a household member which are garnished or diverted by an employer and paid to a third party for a household expense;

(16) Support or alimony payments made directly to the household from a nonhousehold member. This shall include any portion of a payment returned to the household by the cabinet;

(17) A ~~[Any]~~ portion of the following, that is ~~[are]~~ not excludable pursuant to Section 3(6) of this administrative regulation:

(a) Scholarship;

(b) Education grant;

(c) Fellowship;

(d) Deferred payment education loan; or

(e) Veterans educational benefit;

(18) A payment from:

(a) A government sponsored program;

(b) A dividend;

(c) Interest;

(d) A royalty;

(e) Similar direct money payments, from a [any] source, that ~~[which]~~ could be construed as a gain or benefit;

(19) Money ~~[Monies]~~ withdrawn or a dividend that is ~~[dividends which are]~~ or could be received from a trust fund;

(20) That amount of monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien as set forth in 921 KAR 3:035, Section 5(11);

(21) The portion of means tested assistance monies:

(a) From a:

1. Federal welfare program;

2. State welfare program; or

3. Local welfare program; and

(b) Withheld for the purpose ~~[purposes]~~ of recouping an overpayment resulting from the household's intentional failure to comply with that program's requirements;

(22) Earnings of an individual who is participating in an on-the-job training program ~~[programs]~~ under 29 USC 1501 unless the individual is under:

(a) Nineteen (19) years of age; and

(b) The parental control of another adult member; ~~[and]~~

(23) Portions of Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261, and 25 USC 1401 in excess of \$2,000 per payment per individual, effective September 1, 1989.

Section 3. Income Exclusions. The following payments shall not be considered as income:

(1) Money:

(a) Withheld from an assistance payment;

(b) From earned income;

(c) From another income source; or

(d) Received from another income source that ~~[which]~~ is voluntarily or involuntarily returned to repay a prior overpayment received from that income source, except as pursuant to ~~[specified in]~~ Section 2(21) of this administrative regulation;

(2) Child support income shall be considered as follows:

(a) A child support payment shall be excluded if:

1. Received by a recipient of the Kentucky Transitional Assistance Program; and

2. It must be transferred to the Division of Child Support Enforcement to maintain eligibility in K-TAP;

(b) A [Any] portion of child support money [monies] returned to the household receiving Kentucky Transitional Assistance Program benefits by the cabinet shall not be excluded;

(3) A [Any] gain or benefit that [which] is not in the form of money payable directly to the household;

(4) A money payment that is not legally obligated and otherwise payable directly to a household, but is paid to a third party for a household expense;

(5) Income:

(a) Received:

1. In the certification period; and

2. Too infrequently or irregularly to be reasonably anticipated; and

(c) Not in excess of thirty (30) dollars per quarter;

(6) Educational income:

(a) Including a:

1. Deferred payment educational loan on which repayment does not begin within sixty (60) days after receipt;

2. Grant;

3. Scholarship;

4. Fellowship;

5. Veterans educational benefit; and

6. Similar form of income;

(b) Awarded to a household member enrolled in one (1) of the following recognized institutions as defined by 921 KAR 3:010, Section 1(23) [(22)]:

1. Institution of postsecondary education;

2. School for a disabled person;

3. Vocation education program; or

4. Program providing for completion of a secondary school diploma or its equivalent;

(c) To the extent that it does not exceed the amount used for or made available as an allowance as determined by the:

1. School;

2. Institution;

3. Program; or

4. Grantor;

(d) For payment of:

1. Tuition;

2. Transportation;

3. Miscellaneous personal expense [expenses], other than room and board;

4. An origination fee for an educational loan;

5. An insurance premium for an educational loan;

6. Dependent care, except the [that] costs that exceed the amount excludable from income shall be deducted pursuant to Section 5 of this administrative regulation;

(e) For payment of mandatory fees relating to the course of study, including the rental or purchase of:

1. Equipment;

2. Material;

3. Books;

4. Supplies;

(7) A loan, other than an educational loan on which payment is deferred, from a:

(a) Private individual; or

(b) Commercial institution;

(8) A reimbursement for a past or future expense, other than normal living expenses, to the extent they do not:

(a) Exceed actual expenses; and

(b) Represent a gain or benefit to the household;

(9) Money received and used for the care and maintenance of a third-party beneficiary who is not a household member;

(10) The earned income of a child who is:

(a) A member of the household;

(b) An elementary or secondary school student; and

(c) Age seventeen (17) years or younger;

(11) Money received in the form of a nonrecurring lump-sum payment;

(12) The cost of producing self-employment income. If the cost of producing farm self-employment income exceeds the income derived from self-employment farming, the loss shall be offset against any other countable income in the household;

(13) Income specifically excluded by a federal statute from con-

sideration as income for the purpose of determining Food Stamp Program eligibility;

(14) An energy assistance payment or allowance that are made pursuant to:

(a) Any federal law, except 42 USC 601 et seq., including utility a reimbursement [reimbursements] made by:

1. The Department of Housing and Urban Development; and

2. Rural and Economic Community and Development; or

(b) A one (1) time payment or allowance made pursuant to a federal or state law for the costs of:

1. Weatherization; or

2. Emergency repair; or

3. Replacement of an:

a. Unsafe; or

b. Inoperative furnace; or

c. Other heating or cooling device.

(15) A cash donation based on need received from nonprofit charitable organization [organizations], not to exceed \$300 in a federal fiscal year quarter;

(16) A foster care payment for a foster child if the household requests that the child be excluded from the household in determining eligibility;

(17) Up to \$12,000 to Aleuts and \$20,000 to individuals of Japanese ancestry for payments made by the U.S. to compensate for a hardship [hardships] experienced during World War II;

(18) Money [Monies] received under Section 3507 of the Internal Revenue Code (advanced payment of earned income credit);

(19) An Indian per capita payment [payments] made pursuant to 25 USC 459, 25 USC 1261 and 25 USC 1401, as distribution from a judgment award [awards] and trust fund [funds] of \$2,000 or less per individual per payment.

(20) An [Any] amount of income necessary for the fulfillment of an approved plan for achieving self-support of a household member pursuant to 42 USC 1382a(b)(4)(B)(iv);

(21) An on-the-job training payment [payments] that is [are] received pursuant to 29 USC 1630 through 1635.

Section 4. Income Eligibility Standards. Participation in the Food Stamp Program shall be limited to a household [those households] whose income falls [incomes fall] at or below the applicable standards as established by the Food and Nutrition [Consumer] Service and which are set forth below:

(1) A household which contains a member who is elderly or has a disability as defined in 921 KAR 3:010, Section 1(9) or (12) [(11)], shall have their net income compared to 100 percent of the federal income poverty guidelines.

(2) A household in which any member receives or is authorized to receive cash, in-kind, or other benefits funded under temporary assistance to needy families shall:

(a) Be categorically eligible; and

(b) Not be required to meet either the eligibility standards for:

1. Gross income; or

2. Net income.

(3) A household in which all members are recipients of SSI [the Kentucky Transitional Assistance Program or Supplemental Security Income] shall:

(a) Be categorically eligible; and

(b) Not be required to meet the eligibility standards for:

1. Gross income; or

2. Net income;

(4) [(3)-(4)] All other households shall have their gross income (total income after excluded income has been disregarded but before any deductions have been made) compared to 130 percent of the federal income poverty guidelines and their net income compared to 100 percent of the federal income poverty guidelines.

Section 5. Income Deductions. The following shall be allowable income deductions:

(1) A standard deduction per household per month that [which] shall be periodically adjusted by the Food and Nutrition [Consumer] Service to reflect a change [changes] in the cost of living for a prior period of time as determined by the Food and Nutrition [Consumer] Service;

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(2) Twenty (20) percent of gross earned income that is reported within ten (10) days of the date that the change of income becomes known to the household;

(3) A payment:

(a) For the actual cost for the care of:

1. A child; or
2. Other dependent;

(b) Not to exceed:

1. \$200 per month per dependent child under age two (2); and
2. \$175 per month for each other dependent; and

(c) Necessary for a household member to:

1. Seek, accept, or continue employment;
2. Attend training; or
3. Pursue education preparatory to employment;

(4) The cabinet shall use a homeless standard allowance of shelter expense for a household [expenses for households] in which all members are homeless and are not receiving free shelter throughout the calendar month, unless that household verifies higher expenses.

(5) Allowable medical expenses in excess of thirty-five (35) dollars per month incurred by a household member who meets the definition of being elderly or having a disability as specified by 921 KAR 3:010, Section 1(9) and (12) [(11)]:

(a) Including:

1. Medical and dental care;
2. Hospitalization or outpatient treatment and nursing care;
3. Medication and medical supplies;
4. Health and hospitalization premiums;
5. Dentures, a hearing aid, eyeglasses, prosthetics; and
6. Similar medical expense [expenses]; and

(b) Excluding special diet cost [costs];

(6) Actual child support payment [payments] made by a household member shall be allowed as a deduction if:

(a) The household member is legally obligated to pay child support; and

(b) Verification is provided showing a payment is [payments are] currently being made.

Section 6. Monthly Shelter Cost Deduction. (1) The monthly shelter cost deduction shall be that amount in excess of fifty (50) percent of the household's income after [all] allowable deductions have been made.

(2) The shelter deduction shall not exceed the current [excess] shelter maximum [of \$250], except that a household shall not be subject to the maximum if a member is:

- (a) Elderly; or
- (b) Disabled.

(3) The excess shelter maximum shall be adjusted periodically by the Food and Nutrition [Consumer] Service to reflect change in the cost of living.

(4) Allowable monthly shelter expense [expenses] shall include the following:

(a) Continuing charge [charges] for the shelter occupied by the household including:

1. Rent;
2. Mortgage;
3. Payment on mobile home loan;
4. Interest on a payment [payments]; and
5. Similar charge [charges] leading to ownership of the shelter;

(b) Property tax [taxes];

(c) State and local assessment [assessments];

(d) Insurance on the structure itself;

(e) The cost of:

1. Heating and cooking fuel;
2. Cooling;
3. Electricity;
4. Water and sewage;
5. Garbage and trash collection fee [fees];
6. Telephone standard deduction;
7. A fee charged by a utility provider for the initial installation of the utility;

(f) The shelter cost [costs] for the home if:

1. Temporarily unoccupied by the household because of:
 - a. Employment or training away from home;

b. Illness; or

c. Abandonment caused by a natural disaster or casualty loss;

2. The current occupant is [occupants are] not claiming shelter cost [costs] for food stamp purpose [purposes]; and

3. The home is not leased or rented during the absence of the household;

(g) A charge for the repair of the home if substantially damaged or destroyed by fire, flood, or other natural disaster, except to the extent the cost is [costs are] reimbursed by:

1. A private or public relief agency;
2. Insurance; or
3. A similar source;

(5) The standard utility allowance shall be used to calculate shelter cost for a household:

(a) Receiving Low Income Home Energy Assistance Program benefits; or

(b) Incurring cost [costs], separate from its rent or mortgage payment, for:

1. Heating; or
2. Cooling (by air conditioning unit only).

(6) The standard utility allowance shall be adjusted periodically. [:

(a) \$168 for a household of one (1);

(b) \$187 for a household of two (2);

(c) \$189 for a household of three (3); and

(d) \$196 for a household of four (4) or more;]

(7) If the household is not entitled to the utility standard or homeless standard allowance, it shall be given the option of choosing the:

(a) Actual utility expense; or

(b) Basic utility allowance of \$122;

(8) The basic utility allowance shall be:

(a) Adjusted annually; and

(b) Allowed as an option to a household billed for:

1. Electricity (nonheating and noncooling);
2. Water or sewage;
3. Garbage or trash; or
4. Cooking fuel.

Section 7. Resources. (1) Uniform national resource standards of eligibility shall be utilized.

(2) Eligibility shall be denied or terminated if the total value of a household's liquid and nonliquid resources, not exempt under Section 8 [7] of this administrative regulation exceed:

- (a) \$3000 for a household [all households] with one (1) or more members, when at least one (1) member is sixty (60) years or older; or
- (b) \$2000 for any other household.

(3) A household that [which] is categorically eligible as specified in Section 4(2) and (3) of this administrative regulation shall be considered as having met the food stamp resource requirement.

(4) A household member who receives benefits from [Kentucky Transitional Assistance Program or] supplemental security income shall be considered categorically eligible and to have satisfied the Food Stamp Program's resource limit [limits] as specified in subsection (2) of this section.

(5) In a household in which any member receives cash, in-kind or other benefits funded under temporary assistance to needy families shall be considered categorically eligible and to have satisfied the Food Stamp Program's resource limit as specified in subsection (2) of this section.

Section 8. Exempt Resources. The following resources shall not be considered in determining eligibility:

(1) The home and surrounding property that [which] is not separated from the home by intervening property owned by others:

- (2) Household goods;
- (3) Personal effects;
- (4) One (1) burial plot per household member;
- (5) The cash value of life insurance policies;
- (6) A pension fund, except:

(a) A Keogh plan that does not involve a contractual relationship with an individual who is not a household member; and

(b) An Individual Retirement Account;

(7) The value of one (1) prepaid burial plan per household member shall be excluded as follows:

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(a) The entire value of a prepaid burial plan shall be excluded if, prior to the date the household member becomes eligible to participate in the Food Stamp Program, the money is not accessible to the household because it is held in an active irrevocable funeral trust agreement with the funeral home as the agent; or

(b) The equity value of a prepaid burial plan that is accessible to the household shall be excluded up to an amount of \$1,500;

(8) A licensed or unlicensed vehicle that is excluded pursuant to Section 9 [8] of this administrative regulation;

(9) Property ~~that~~ [which] annually produces income consistent with its fair market value, even if only used on a seasonal basis;

(10) Property ~~that~~ [which] is essential to the employment or self-employment of a household member;

(11) An installment contract for the sale of land or building [buildings] if the contract or agreement is producing income consistent with its fair market value;

(12) A governmental payment that is designated for the restoration of a home damaged in a disaster, if the household is subject to legal sanction if funds are not used as intended;

(13) A resource, of which the cash value is not accessible to the household;

(14) A resource which has been prorated as income;

(15) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs;

(16) A resource ~~that~~ [which] is excluded for food stamp purpose [purposes] by express provision of federal statute;

(17) Up to \$12,000 to Aleuts and \$20,000 to an individual [individuals] of Japanese ancestry for payment [payments] made by the U.S. to compensate for hardships experienced during World War II;

(18) Income ~~that~~ [which] is withheld by the employer to pay a certain expense [expenses] directly to a third party as a vendor payment to the extent that the remainder of the withheld income is not accessible to the household at the end of the year;

(19) Indian per capita payment [payments] made pursuant to 25 USC 459, 25 USC 1261, and 25 USC 1401, as distribution from a judgment award [awards] and trust fund [funds], of \$2,000 or less per individual per payment.

(20) A purchase [Purchases] of \$2,000 or less ~~that is~~ [which are] made solely with an Indian per capita payment [payments] after December 31, 1981 but prior to January 12, 1983;

(21) The earned income tax credit income received by a [any] member of the household for a period of twelve (12) months from receipt if the member was:

(a) Participating in the Food Stamp Program at the time the credit ~~was~~ [credits were] received; and

(b) Participated in the program continuously during the twelve (12) month period of exclusion; and

(22) A resource, except a vehicle, ~~that~~ [which] cannot be sold for a significant amount of funds for the support of the household.

Section 9. Vehicles. (1) The entire value of a licensed vehicle shall be excluded from the resource [resources] of a household if it is:

(a) Used for an income producing purpose over fifty (50) percent of the time;

(b) Annually producing income consistent with its fair market value, even if used only on a seasonal basis;

(c) Necessary for long distance travel, other than daily commuting, essential to the employment of a:

1. Household member;

2. Ineligible alien; or

3. Disqualified person;

(d) Used as the household's home;

(e) Necessary to transport, regardless of the purpose, a:

1. Household member with a physical disability;

2. Ineligible alien; or

3. Disqualified person;

(f) The sole means to carry:

1. Fuel for heating the home; or

2. Water for home use;

(2) The exclusion in subsection (1)(a) through (e) of this section shall be applicable if a vehicle is not in use because of temporary unemployment;

(3) An exclusion [~~The exclusions~~] under subsection (1)(c) and (e) of this section shall be:

(a) Applicable if the resource [resources] of the individual ~~is~~ [are] being considered available to the household; and

(b) Limited to one (1) vehicle per physically disabled household member;

(4) A vehicle shall be considered necessary for the transportation of a household member with a physical disability, regardless of special equipment, if it:

(a) Meets the specific need [needs] of the person with a disability; or

(b) Makes it possible to transport the disabled person;

(5) A licensed vehicle not excluded under subsection (1) of this section shall be:

(a) Individually evaluated for fair market value; and

(b) Attributed in full toward the household's resource level:

1. For that portion of the value exceeding \$4,650; and

2. Regardless of the amount of an encumbrance on the vehicle;

(6) A licensed vehicle shall be evaluated for its equity value, unless it is:

(a) Excluded in subsection (1) of this section;

(b) The only licensed vehicle for the household, regardless of use;

(c) Used:

1. As transportation for:

a. Employment;

b. Training;

c. Education preparatory to employment; or

d. Seeking employment in compliance with the Food Stamp Employment and Training Program, pursuant to 921 KAR 3:042; or

2. By the following, whose resource is [resources are] considered available to the household:

a. Household member;

b. Ineligible alien; or

c. Disqualified household member;

(7) A vehicle customarily used to commute to and from employment shall be covered by this equity exclusion during a temporary period of unemployment;

(8) The following shall be attributed to a household's resource level:

(a) The equity value of a licensed vehicle not covered by this exclusion; and

(b) An unlicensed vehicle not excluded by Section 8 [7](8) through (10) of this administrative regulation;

(9) If a licensed vehicle is assigned a fair market value in excess of \$4,650 and an equity value, the greater of these two (2) amounts shall be counted as a resource.

Section 10. Transfer of Resources. A household ~~that~~ [which] has transferred a resource [resources] knowingly for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer.

Section 11. Failure to Comply with Other Programs. (1) Except as provided in subsection (2) of this section, if the benefits of a household are reduced under a federal, state, or local law relating to a means-tested public assistance program for the failure of a member of the household to perform an action required under the law or program, for the duration of the reduction, the food stamp allotment of the household shall be reduced by twenty-five (25) percent.

(2) If the benefits of a household are reduced pursuant to a federal, state, or local law relating to a means-tested public assistance program for the failure of a household member to perform a work requirement, the individual shall be subject to the disqualification procedure [procedures] pursuant to the 921 KAR 3:042.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: March 31, 2000

FILED WITH LRC: April 13, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000, at 9 a.m. in the Health

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Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2000, of their intent to attend. If no notification 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 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: Judy Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: The affected entities are individuals and households who are eligible to participate in the Food Stamp Program. As of February, 2000, there were 168,147 participating families and 403,922 participating individuals.

(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 comment received: No requests for a hearing or written comments were received as a result of the publication of the Notice of Intent.

(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 requests for a hearing or written comments were received as a result of the publication of the Notice of Intent.

(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 administrative regulation will not create any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(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: None

(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: 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 requests for a hearing or written comments were received as a result of the publication of the Notice of Intent.

(b) Kentucky: The same as item (6)(a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the cabinet is responsible to meet the federal requirements pursuant to 7 CFR 274.12.

(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 cabinet is required to administer the Food Stamp Program pursuant to 7 USC 2011 et seq. This administrative regulation is necessary in order to comply with the federal requirements.

(b) State whether a harmful effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: No 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: 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? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 USC 2014

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation are promulgated pursuant to 7 USC 2011 et seq., as amended, and applied in a like manner on a statewide basis.

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (Amendment)

921 KAR 3:030. Application process.

RELATES TO: KRS 194B.050(1), 7 CFR 273.2, 273.10, 42 USC 1973gg-10, 7 USC 2020(e)(2)(B)(ii), (iii), (iv)

STATUTORY AUTHORITY: KRS 13A.120, 116.048, 194B.050(1), 7 USC 2020(e)(2)(B)(ii), (iii), (iv), EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children shall administer a Food Stamp Program as prescribed under 7 USC 2011-2029. KRS 194B.050(1) provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of citizens of the Commonwealth. This administrative regulation sets forth the application process used by the cabinet in the administration of the Food Stamp Program. KRS 116.048 designates the cabinet to have responsibility for the administration of the Food Stamp Program as a voter registration agency in accordance with 42 USC 1973gg-10. Therefore, this administrative regulation sets forth policy and procedures necessary to provide an eligible Food Stamp Program participant the opportunity to register, or to decline from registering, to vote.

Section 1. Right to apply or Reapply. (1) An individual shall have the right to apply or reapply for food stamp benefits on the same day that the household first contacts the food stamp office in person during office hours.

(2) The cabinet shall make the application process readily accessible to a household.

(3) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for a person who is:

(a) Deaf; or

(b) Hard of hearing.

(4) Interpreter services shall be provided for a non-English speaking individual, utilizing procedures and forms specified by 920 KAR 1:070.

(5) An application shall be considered to have been filed when:

(a) An application form containing the name, address and signature of the applicant is received by the food stamp office;

(b) The applicant or representative is interviewed;

(c) Required information on the application is provided to the food stamp office and verified; and

(d) The application is received by the appropriate office.

Section 2. Who May Sign an Application. An application for food

stamps shall be signed by:

- (1) An adult or emancipated child who is a responsible member of the household; or
- (2) The household's authorized representative.

Section 3. Where an Application is Filed. (1) Except as provided in subsection (2) of this section, an application shall be filed in any office of the Department for Community-Based Services and processed in the county in which an applicant resides.

(2) A concurrent application for Supplemental Security Income (SSI) and Food Stamps shall be filed in the service area office of the Social Security Administration.

Section 4. Prompt Action on an Application. The cabinet shall provide an eligible household, that completes the initial application process, an opportunity to participate as soon as possible but not later than:

- (1) Thirty (30) days after the application is filed for a household ineligible for expedited services; or
- (2) The fifth calendar day following the date an application is filed for a household eligible for expedited services.

Section 5. Expedited Service. A household eligible for expedited services shall be:

- (1) A household in which:
 - (a) Monthly gross income is less than \$150; and
 - (b) Liquid resources do not exceed \$100; or
- (2) A destitute migrant or seasonal farm work household whose liquid resources do not exceed \$100; or
- (3) ~~[A household containing a homeless individual; or~~
- (4) A household for whom monthly rent or mortgage and actual utilities exceed the household's combined monthly gross income and liquid resources.

Section 6. Public Assistance Application Process. (1) A household in which every member is applying for Kentucky Transitional Assistance Program (K-TAP) shall be allowed to simultaneously apply for food stamp benefits. A single interview shall be conducted for both programs.

(2) Time standards specified in Section 4 of this administrative regulation shall apply to a public assistance application.

(3) A household in which every member receives, or is authorized to receive, ~~[K-TAP or]~~ SSI shall be considered categorically eligible unless the entire household is:

- (a) Institutionalized; or
- (b) Disqualified from receiving food stamps.
- (4) A household in which any member receives, or is authorized to receive cash, in-kind, or other benefits funded under temporary assistance for needy families shall be considered categorically eligible unless the entire household is:

- (a) Institutionalized; or
- (b) Disqualified from receiving food stamps.
- (5) A categorically eligible household shall not be required to verify the following eligibility factors:
 - (a) Resources;
 - (b) Gross and net income limits;
 - (c) Social Security number information;
 - (d) Sponsored alien information; and
 - (e) Residency.

Section 7. Joint SSI and Food Stamp Application Process. A household in which every member is an applicant or recipient of SSI shall be allowed to simultaneously apply for both SSI and food stamps at the appropriate Social Security Administration office.

Section 8. Voter Registration. (1) In accordance with KRS 116.048 and 42 USC 1973gg-10, an applicant or recipient meeting ~~[all of]~~ the following criteria shall be provided the opportunity to complete an application to register to vote or update his current voter registration:

- (a) Be age eighteen (18) or over; and
- (b) Be present in the office at the time of the interview or when a change of address is reported; and
- (c) Not be registered to vote or not registered to vote at his current

address.

(2) An individual not included in the assistance application shall not be registered to vote in this process, including an:

- (a) Authorized representative; or
- (b) Individual acting as a responsible party.
- (3) An individual providing a voter registration service who seeks to unlawfully influence an applicant's political preference or party registration as prohibited by KRS 116.048(4) may be fined or imprisoned, not to exceed five (5) years, or both.

(4) A form [Forms] and information utilized in the voter registration process shall remain confidential and be used only for voter registration purposes.

(5) Only a Board of Elections official may view a form [forms] and information utilized directly in the voter registration process.

(6) Completion of the Voter Registration Form is only an application to apply to register to vote. The State Board of Elections shall approve the application to register to vote and send a confirmation or denial notice to the applicant.

(7) Forms necessary to register a Food Stamp Program participant to vote are incorporated by reference in this administrative regulation.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "KIM-77, Intent to Apply", edition 4/99;
- (b) "KIM-100, KAMES Application", edition 4/99;
- (c) "KIM-100, Supplement A, Representative/Interested Party", edition 3/97;
- (d) "KIM-100, Supplement B, Utility/Shelter Information", edition 4/99;
- (e) "KIM-100, Supplement C, Additional Members/Striker and Boarder Information", edition 1/98;
- (f) "KIM-100, Supplement D, Farm/Self-Employment/Rental Income", edition 10/97;
- (g) "KIM-100, Supplement E, Vehicles", edition 10/97;
- (h) "KIM-100, Supplement F, Emergency Shelter/Foster Care", edition 10/97;
- (i) "KIM-100, Supplement G, Member General Information", edition 4/99;
- (j) "KIM-100, Supplement H, IM Alien Information", edition 10/97;
- (k) "KIM-100, Supplement I, State Supplementation/Pass Through", edition 10/97;
- (l) "KIM-100, Supplement J, Long Term Care", edition 4/99;
- (m) "KIM-100, Supplement L, General Deprivation", edition 10/97;
- (n) "KIM-100, Supplement M, Incapacity/Unemployment", edition 4/99;
- (o) "KIM-100, Supplement N, Deprivation", edition 10/97;
- (p) "KIM-100, Supplement P, DCSE Cooperation/Absence Verification", edition 10/97;
- (q) "KIM-100, Supplement PP, AP Referral", edition 12/96;
- (r) "KIM-100, Supplement Q, KWP/Work Registration", edition 4/99;
- (s) "KIM-100, Supplement R, Earned Income", edition 10/97;
- (t) "KIM-100, Supplement S, Unearned Income", edition 10/97;
- (u) "KIM-100, Supplement SS, Lump Sum/Pass Income", edition 10/97;
- (v) "KIM-100, Supplement T, Resources", edition 10/97;
- (w) "KIM-100, Supplement U, Medical Expenses", edition 10/97;
- (x) "KIM-100, Supplement V, Health Insurance", edition 10/97;
- (y) "KIM-100, Supplement W, KAMES-Integration Supplement - Lock-In & KenPAC", edition 3/97;
- (z) "KIM-100, Supplement X, IM Nonmember", edition 4/99;
- (aa) "KIM-100, Supplement XX, KAMES-Integration Supplement - FS Nonmember", edition 3/97;
- (bb) "KIM-100, Supplement Y, Student Information", edition 10/97;
- (cc) "PAFS-706, Voter Registration Rights and Declination", edition 4/95;
- (dd) "Voter Registration Application for U.S. Citizens Only", edition 4/99.
- (2) This material may be inspected, copied, or obtained at the Department for Community Based Services, 275 East Main Street,

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Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner
VIOLA P. MILLER, Secretary
CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: March 31, 2000

FILED WITH LRC: April 13, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2000, of their intent to attend. If no notification 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 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: Judy Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: The affected entities are individuals and households who are eligible to participate in the Food Stamp Program. As of February, 2000, there were 168,147 participating families and 403,922 participating individuals.

(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 comment received: No requests for a hearing or written comments were received as a result of the publication of the Notice of Intent.

(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 requests for a hearing or written comments were received as a result of the publication of the Notice of Intent.

(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 administrative regulation will not create any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(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: None

(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: 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 requests for a hearing or written comments were received as a result of the publication of the Notice of Intent.

(b) Kentucky: The same as item (6)(a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the cabinet is responsible to meet the federal requirements pursuant to 7 CFR 274.12.

(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 cabinet is required to administer the Food Stamp Program pursuant to 7 USC 2011 et seq. This administrative regulation is necessary in order to comply with the federal requirements.

(b) State whether a harmful effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: No 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: 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? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 USC 2020(e)(2)(B)(ii), (iii), and (iv).

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation are promulgated pursuant to 7 USC 2011 et seq., as amended, and applied in a like manner on a statewide basis.

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (Amendment)

922 KAR 1:300. Standards for child-caring facilities (residential and emergency shelter).

RELATES TO: KRS 189.125(3), 198B.050 to 198B.090, 199.011(2), (3), (4), (6), (7), (10), (11), 199.640, 199.645, 199.650, 199.660, [to] 199.670, 211.350 to 211.380, 214.034(4), Chapter 271B.08, 273.161(7), Chapter 424, 600.020(19), 610.110(6), 615.010, 615.030, 615.040, 620.020

STATUTORY AUTHORITY: KRS 194B.050(1) [194.030, 194.050], 199.640(3), (5), 199.645, 615.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.640(3) authorizes the Cabinet for Families and Children to issue administrative regulations relating to standards of care and service for child-caring facilities. [This proposed administrative regulation consolidates the provisions of 905 KAR 1:065, 905 KAR 1:091, 905 KAR 1:110, 905 KAR 1:120, and 905 KAR 1:200.]

Section 1. Definitions. (1) ["Advisory board" means a group of citizens approved by the board of directors who lends advice, counsel, and support to an agency.

(2) "Aftercare" means a service [services] provided to the child after discharge from a child-caring facility.

(2) "Board of directors" is defined at KRS 273.161(7). [means that group which is by law or charter delegated the responsibility for governing the facility.]

(3) "Cabinet" means the Cabinet for Families and Children.

(4) "Child" is defined at KRS 199.011(4), 600.020(5), and 610.110(6). ["Case coordinator" means the individual on the treatment team who has responsibility for the coordinated implementation of the child's individual treatment plan.]

(5) "Child-caring facility" is defined at KRS 199.011(6) and 199.641(1)(b).

(6) "Child-placing agency" is defined at KRS 199.011(7).

(7) "Child-caring program" means the method of delivering a child-caring service [services].

(8) "Community resources" means a service or activity [services and activities] available in the community that supplements [supplement] those provided by the child-caring facility or child-placing agency in the care and treatment of a child [children].

(9) "Corporal physical discipline" is defined at KRS 199.640(6).

(10) "Department" means the Department for Community Based Services.

(11) "Crisis intervention unit" means a unit operated as part of a residential treatment program that serves a child in need of short-term intensive treatment and to avoid risk of placement to a higher level of care.

(12) "Direct child-care staff" means an employee or volunteer [any employee] providing face-to-face care and supervision of a child [children].

(13) "Discharge" means a planned release of a child from a program.

(14) "Division" means the Division of Licensing and Regulation, Cabinet for Health Services [Families and Children], 275 East Main Street, Frankfort, Kentucky 40621.

(15) "Emergency discharge" means the release of a child from a program as a result of circumstances that presents a risk to the health or safety of a child.

(16) "Emergency shelter" is defined at KRS 600.020(19).

(17) "Emergency shelter child-caring facility" means a child-caring facility which meets the requirements of 922 KAR 1:380.

(18) "Executive director" means the person employed by the board of directors to be responsible for the administration and management of a child-caring facility [an agency].

(19) "Group home" is defined at KRS 199.011(10).

(10) "Independent living program" means a planned program designed to teach youth life skills that will enable them to become self-sufficient.

(20) "Individual treatment plan (ITP)" means a plan of action developed and implemented to address the needs of a [an individual] child.

(21) "Indoor living area" means an area in the child-caring facility that is separate from a hallway, bedroom, kitchen, stairway, vestibule, bathroom, closet, unfinished basement, and attic. [areas] means those areas in the facility that are separate from hallways, bedrooms, kitchens, stairways, vestibules, bathrooms, closets, unfinished basements, and attics.]

(22) "Institution" is defined at KRS 199.011(11).

(13) "Latching device" means an instrument used to secure a seclusion room door that does not require the use of a key or combination.]

(23) "Living unit" means a building or part thereof in which a child resides [children reside], not exceeding sixteen (16) beds.

(24) "Permanence" is defined at KRS 620.020(7).

(25) "Residential child-caring facility" means a child-caring facility that meets the requirements of 922 KAR 1:390.

(26) "Residential treatment program" means a residential child-caring facility that meets the requirements of 922 KAR 1:390, Section 4.

(27) "Service coordination" means a service provided by the individual on the treatment team who has responsibility for the coordinated implementation of the child's ITP.

(15) "Safe physical restraint" means the use of the human body to safely control the actions of another.

(16) "Seclusion room" means a room in a youth treatment center for the temporary seclusion of a child in danger of harming self or others which may use a latching device to secure the door.]

(28) "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and his social environment.

(29) "Therapeutic hold" means the use of the human body to safely control the action of another.

(18) "Temporary shelter" means a facility which provides nonsecure, residential care on a temporary or emergency basis.]

(30) "Time-out" means a treatment intervention utilized by child-caring staff to separate a child from others in a nonsecure area for a

time limited period to permit the child to regain control over his behavior.

(31) "Treatment" means individualized management and care of a child utilizing professionally credentialed and certified staff, and a component [professional staff and components] of the treatment environment to assist the child in resolving his emotional conflict or behavioral disorder.

(21) "Treatment director" means the person responsible for supervising the day-to-day operation of the program for children served by the agency or facility.]

(32) "Treatment team" means a representative group of people who provide services to the child and the child's family.

(23) "Youth treatment center" means a residential treatment facility as defined in KRS 600.020 providing intensive professional treatment-oriented services.]

(33) "Unplanned discharge" means the release of a child from the child-caring facility that is not in accordance with the ITP.

Section 2. Scope of Operations and Services. (1) The standards for a child-caring facility [These standards] pertain to the out-of-home care of a child [children] who may benefit by the experience that a residential service, including aftercare service may offer [experiences residential services may offer. Child-caring programs function within a continuum of care, providing an array of services to families and children].

(2) The type of a child-caring facility program covered by this administrative regulation include:

(a) An emergency shelter child-caring facility pursuant to 922 KAR 1:380;

(b) An emergency shelter child-caring facility with treatment pursuant to 922 KAR 1:380, Section 3(1);

(c) A residential child-caring facility pursuant to 922 KAR 1:390 to include:

1. A group home; and

2. An institution.

(d) A residential treatment program pursuant to 922 KAR 1:390, Section 4, to include:

1. Crisis intervention unit pursuant to 922 KAR 1:390, Section 5;

2. Group home pursuant to 922 KAR 1:390, Section 6; and

3. An institution.

(3) A child-caring facility shall not be located or operated on the grounds of a hospital. [Types of child-caring programs covered by this regulation are temporary shelter, group homes, residential child care, and residential treatment services.]

Section 3. Administration and Operation. (1) The licensing procedure for a child-caring facility shall:

(a) Be administered pursuant to 922 KAR 1:305; and

(b) Meet the requirements of this administrative regulation and 922 KAR 1:380 or 922 KAR 1:390. [Licensing procedures:

(a) Initial licensure:

1. If applying for an initial license, the facility shall provide the following:

a. A complete application as determined by the cabinet;

b. A licensure fee of \$155;

c. A copy of the Articles of Incorporation;

d. A mission statement of purposes, objectives, scope of services provided; and intake policy specifying kinds of children to be accepted for care;

e. A copy of the constitution and bylaws;

f. A list of officers, board members, and advisory board members; if any, including addresses and professions;

g. Names and titles of officers and terms of office;

h. A list of all staff including positions or title and qualifications; and

i. Applications for a child-caring facility license shall be in compliance with the applicable regulations or shall have submitted an acceptable plan for correction of violations relating to the particular child-caring facility. Compliance with licensure regulations shall be ascertained through on-site inspections of the child-caring facility. Representatives of the division shall have access to the child-caring facility at any time. Regulatory violations identified during these inspections shall be transmitted in writing to the child-caring facility by the division. The child-caring facility shall submit a written plan for the elimination or

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correction of the regulatory violations to the inspecting agency within ten (10) days. The plan shall specify the dates by which each of the violations shall be corrected. Following a review of the plan, the Division shall notify the child-caring facility in writing of the acceptability of the plan. If a portion or all of the plan is unacceptable, the division shall specify the reasons for the unacceptability. In these cases, the child-caring facility shall modify or amend the plan and resubmit it to the division within ten (10) days.

2. A license shall be issued by the Cabinet for Families and Children when:

- a. The facility has been approved by the State Fire Marshal; and
- b. The facility has been surveyed by the Cabinet for Families and Children and it is determined that the facility qualifies for licensure.

(b) Renewal licensure. Facilities shall be relicensed annually from the date of issuance of the original license. To be eligible for relicensure, the facility shall:

1. Submit a renewal application;
2. Submit a relicensure fee of eighty (80) dollars; and
3. Comply with the applicable portions of this regulation.

(c) Every child-caring facility shall provide the following information as part of the annual inspection:

1. A list of officers, board members, and advisory board members;

if

any, including addresses and professions;

2. Names and titles of officers and terms of office; and
3. A list of all staff including positions or title and qualifications.

(d) The facility shall have an annual audit completed by an independent accounting firm or certified public accountant.

(e) The facility shall comply with its mission statement, child-caring program narrative, and all applicable federal and state regulations in regard to child-caring program operations.

(f) Applications for renewal licenses shall, as a condition precedent to licensure or relicensure, be in compliance with the applicable regulations relating to the particular child-caring facility. Compliance with licensure regulations shall be ascertained through on-site inspections of the child-caring facility. The inspection procedures for relicensure shall be the same as set forth in paragraph (a) 11 of this subsection.

(g) The license shall specify the types of care and service the facility is authorized to provide based upon the application and inspection.

(h) The facility shall provide only the types of care and services for which they are licensed.

(i) The licensed capacity of the facility shall not exceed the capacity specified by the State Fire Marshal's Office and the division.

(j) A license shall be issued for a specific physical location and for operation by a sponsoring organization.

(k) Licenses shall not be transferable.

(l) If a circumstance covered by the license changes, notification of the following shall be made to the division in advance to allow for approval before implementation:

1. Ownership or sponsorship;
2. Location;
3. Capacity; and
4. Services.

(m) The facility shall post its license in a place visible to the public.]

(2) Board of directors.

(a) The child-caring facility shall have a board of directors pursuant to KRS Chapter 271B.08 [consisting of a minimum of seven (7) members, the majority of whom shall be residents of Kentucky].

(b) The board of directors shall consist of a minimum of seven (7) members.

(c) The board of directors shall meet at least quarterly. Minutes of the meeting [these meetings] shall be taken and kept in written form.

[(c) At least one (1) board meeting shall be held at each facility or agency in every calendar year. If a board of directors has responsibility for multiple facilities, a board committee:

1. May be appointed to meet at least once a year at each facility; and
2. Shall submit a written report of this meeting to the full board.

(d) The board of directors shall employ an executive director. The division shall be notified in writing of a change of the facility's executive

director within seven (7) days.]

(d) [(e)] The board of directors shall be responsible for and have the authority to ensure the continuing compliance with the requirements of this administrative regulation and all other relevant federal, state or local laws or regulations.

(e) The board of directors shall have procedures in place to insure that its staff receives ongoing training pursuant to 922 KAR 1:300, Section 3(6)(h).

(f) [The board of directors shall conduct and approve an annual evaluation of the performance of the executive director.

(g) The board of directors shall approve a written annual budget for the agency which ensures funding to meet all operating requirements.

(h) The board of directors shall in consultation with the executive director approve and annually review all written policies of the facility.

(i) The board of directors shall obtain a criminal records check of prior convictions or pleas of guilty of the executive director prior to employment.

(g) [(f)] The board of directors shall approve a mission statement delineating:

1. The purpose;
 2. Objective; and
 3. Scope of service to be provided. [purposes;
 2. Objectives;
 3. Scope of services to be provided; and]
- (3) Executive director.

(a) The duty [duties] of the executive director shall be determined by the board of directors [and shall include the following responsibilities:

1. Select, employ, and terminate staff;
2. Develop and implement facility policies as approved by the board of directors;
3. Provide professional help to the board of directors in:
 - a. Carrying out their responsibilities;
 - b. Interpreting the needs of the children and families served; and
 - c. Assisting in periodic evaluation of the facility's services;
4. Supervise the preparation of an annual budget for board consideration;
5. Keep the board informed of financial needs;
6. Provide financial statements on at least a quarterly basis;
7. Operate within the established budget;
8. Attend board meetings;
9. Ensure that orientation is provided for all new employees and continual training for all staff; and
10. Delegate appropriate duties to other staff.

(b) The executive director shall be responsible for the child-caring facility and its affiliates in accordance with the child-caring facility's written policy.

(c) If the executive director is not on the premises, a designated staff person shall be responsible for the day-to-day operation [operations] of the child-caring program.

(d) The executive director shall oversee and report to the board on a quarterly basis:

1. An evaluation of program services and address measurable goals, staff training, and incident reports; and
2. The criteria and process of this evaluation shall be approved by the board.

(4) Staff qualifications.

(a) A person [Persons] employed as an executive director after the effective date of this administrative regulation shall possess the following qualifications:

1. A master's degree in a human services field, supplemented by two (2) years of work experience in management of a human services program, including: [(a) An executive director shall possess a Master's degree in the human services field including:]

- a. [1.] Social work;
- b. [2.] Sociology;
- c. [3.] Psychology;
- d. [4.] Guidance and counseling;
- e. [5.] Education;
- f. [6.] Religion;
- g. [7.] Business administration;
- h. [8.] Criminal justice;

i. [9:] Public administration; or
 j. [10:] Child care administration;
 k. [11:] Christian education;
 l. [12:] Divinity;
 m. [13:] Pastoral counseling;
 n. [14:] Nursing;
 o. Family studies; or
 p. [15:] Other human service field related to working with a family and a child; or

2. A bachelor's degree in a human services field, supplemented by four (4) years work experience in management of a human services program, including:

- a. Social work;
- b. Sociology;
- c. Psychology;
- d. Criminal justice;
- e. Guidance and counseling;
- f. Education;
- g. Christian education;
- h. Divinity;
- i. Pastoral counseling;
- j. Religion;
- k. Business administration;
- l. Public administration; or
- m. Child care administration. [families and children; and]

(b) A person employed by the child-caring facility in a position [Two (2) years of work experience in management of a human services program or a Bachelor's degree with a major in social work, sociology, psychology, criminal justice, guidance and counseling, education, Christian education, divinity, pastoral counseling, religion, business administration, public administration, or child care administration and four (4) years work experience in human services programs:

(c) Persons employed after the effective date of this regulation other than the executive director employed in positions] responsible for supervising, evaluating, or monitoring social work and related activities [or other treatment staff] shall possess at least:

1. A Master's degree in the human services area including the areas of:

- a. Social work;
- b. Sociology;
- c. Psychology;
- d. Guidance and counseling;
- e. Pastoral counseling and religion; and
- 2. Two (2) years work experience in the human services field.

(c) An employee [(d) Employees] responsible for social work, counseling, or planning and coordinating these services to a child [children] shall have at least a Bachelor's degree in the human services field.

(d) A person [(e) Persons] employed in a position [positions] responsible for supervising, evaluating, or monitoring the daily work of direct child-care staff shall possess at least:

- 1. Two (2) years of college and two (2) years of work experience in a child-caring facility; or
- 2. A high school diploma or an equivalence certificate and at least five (5) years work experience in a child-caring facility.

(e) A person [(f) Persons] employed in a position [positions] responsible for the daily direct care or supervision of a child shall possess at least [children after the effective date of this regulation shall possess] a high school diploma or equivalency certificate.

(f) [(g)] If an employee is responsible for varied job responsibilities and falls within more than one (1) of the categories specified, the employee shall meet those qualifications that [which] are the most rigorous.

(5) Staffing requirements.

(a) The child-caring facility shall have a written policy describing a child-to-direct-child-care staff ratio that is at least consistent with the staff-to-child ratios or those required for the types of a child-caring facility program in Section 2(2) of this administrative regulation and an explanation of [-This policy shall explain] the assignment of these staff to:

- 1. Ensure the health and safety of a child; [children] and
- 2. [to] Implement the child-caring program.

(b) Staff who are required to meet the state or national profes-

sional standards set forth in their job description shall document compliance with those standards.

(c) There shall be at least one (1) staff member present in each child-caring facility building if a child is present and [facility-building-if children are present-if] the staff-to-child ratios pursuant to paragraph (d) of this subsection [specified in subsection (c) of this section] are met.

(d) [(e)] There shall be at least one (1) direct care staff member to provide supervision for the following:

1. Each ten (10) children or fraction thereof if children are present; and

2. At least [-There shall be at least] one (1) direct care staff member for each five (5) children or fraction thereof under age six (6) if children are present.

(e) The child-caring [(d) The] facility shall have a written work schedule and a policy that provides [providing] for utilization of relief staff.

(f) The child-caring [(e) The] facility shall employ an individual who is responsible for the overall planning and coordinating of social services to a family and child [families and children].

[(f) If a staff member is required to work more than six (6) consecutive days he shall be granted at least twenty-four (24) consecutive hours off duty. If a staff member is required to work seven (7) consecutive days, he shall be granted at least forty-eight (48) consecutive hours off.]

(g) Social services staff shall not carry a case load of more than fifteen (15) children and their families.

(6) Personnel policy.

(a) A child-caring facility shall have written personnel policy and procedure.

(b) An employee of the child-caring facility shall be eighteen (18) years of age. [policies:

(a) All employees shall be at least eighteen (18) years of age. This does not include children involved in the facility's work program.

(b) There shall be a written job description which shall be reviewed and revised if necessary for each position which describes:

- 1. The duties of the position;
- 2. The skills necessary to fill the position; and
- 3. Identifies the immediate supervisor of the position.]

(c) An individual shall not be employed if a criminal records check reveals a prior criminal conviction or plea of guilty to charges:

- 1. Pursuant to KRS Chapter 510 offense or a Class A or Class B felony;
- 2. Of a sexual offense pursuant to KRS 510.040 to 510.140, 510.150, 529.020 to 529.050, 530.020, 530.064, or 531.300 to 531.370;
- 3. Of a crime of abuse, neglect or exploitation of a child, pursuant to KRS 508.100, 508.110, or 508.120, or a crime resulting from a criminal charge filed pursuant to KRS 620.120; or

- 4. As a violent offender, pursuant to KRS 17.165(2).
- (d) An individual shall not be employed if he:
- 1. Has had an allegation of abuse, neglect or exploitation of a child, pursuant to KRS 600.020(1), substantiated by the cabinet pursuant to 922 KAR 1:330 and, if appealed, 922 KAR 1:320; or
- 2. Is listed on the Nurse's Aide Abuse Registry by the Kentucky Board of Nursing.

(e) An employee under indictment or legally charged with felonious conduct shall be immediately removed from contact with a child within the child-caring facility until the employee is cleared of the charge. [Upon employment personnel shall receive written facility policies and procedures to include the following:

- 1. Salary plan;
- 2. Leave provisions;
- 3. Working conditions;
- 4. Fringe benefits;
- 5. Employment and termination;
- 6. Job descriptions;
- 7. Staff evaluation;
- 8. Provisions for staff development;
- 9. Employee grievance;
- 10. Disciplinary action; and
- 11. Child-caring program narrative.

(d) Personnel orientation. Within one (1) month of initial employ-

ment personnel shall receive an orientation to facility policies and procedures.]

(f) A current personnel record [(e) Current personnel records] shall be maintained for an employee that includes [each employee which include] the following:

1. Name, address, Social Security number, date of employment, and date of birth;
2. Evidence of a current registration, certification, or licensure;
3. Record [Records] of participation of staff development;
4. Record [Records] of performance evaluation;
5. Criminal records check pursuant to paragraph (c) of this subsection;
6. Record [Records] of physical exam [exams] related to employment as specified in the child-caring facility's policy;
7. Personnel action [actions];
8. Application for employment and resume or contract; and
9. Evidence of personnel orientation.

[(f) If a criminal records check reveals a prior criminal conviction or plea of guilty pursuant to KRS Chapter 510 or a Class A felony, the applicant shall not be employed.]

(g) The child-caring facility shall assure that at least one (1) staff person who is certified in first aid and cardiopulmonary resuscitation (CPR) is on the premises if a child is [children are] present.

(h) The child-caring facility shall have an ongoing staff and volunteer development program [for the administrative, professional, volunteer, and support personnel].

1. [Records of attendance at workshops, conferences, and academic courses related to work responsibilities shall be kept on all employees.

2. The staff development program shall be under the supervision of a designated staff member; and

2. [3- All] Direct child care staff shall have at least forty (40) hours of annual training in the following:

- a. Emergency and safety procedure [procedures];
- b. Principle and practice of child residential [Principles and practices of child] care;
- c. Behavior management including de-escalation training; [and]
- d. First aid; and
- e. Personnel orientation.

(i) A volunteer who functions as a professional or direct staff member without compensation [An employee under indictment or legally charged with felonious conduct shall be immediately removed from contact with children within the facility until the employee is cleared of the charge.

[(j) Volunteers who perform similar functions as paid staff] shall meet the same general requirements and qualifications.

[(7) Facility policies. There shall be written administrative policies which the facility follows covering all aspects of operation including:

- (a) Administration;
- (b) Personnel;
- (c) Fiscal management;
- (d) Physical plant;
- (e) Case records;
- (f) Child-caring program;
- (g) Health and safety;
- (h) Internal review and evaluation;
- (i) Transportation of children;
- (j) A description of organization structure, staffing, and allocation of responsibility and accountability;

(k) A child-caring program narrative describing in detail:

1. The services offered;
2. Methods and protocols for service delivery;
3. Goals of the services; and
4. Grievance procedures for children.

(8) Internal review and evaluation:

(a) Each facility shall provide and conduct a self-evaluation of its services at least every three (3) years from the effective date of this regulation:

(b) Specific written criteria and procedures for evaluating the facility performance and management shall be established. These shall be approved by the board of directors.

(c) The required evaluation shall examine the following factors:

1. Child-caring program content in relation to the stated role and

purpose of the facility:

2. Child-caring program effectiveness based on stated and measurable goals:

3. Roles of the board of directors and management staff:

4. Personnel policies:

5. Staffing patterns and job responsibilities:

6. Staff effectiveness:

7. Staff turnover, causes, and effects:

8. Staff training program:

9. Budgeting and fiscal management:

10. Physical facility management:

11. Classification of children:

12. Admissions, planned and unplanned discharges, and length of stay of children in care:

13. Emergency and safety procedures:

14. Dietary and menu evaluation:

15. Content of the treatment program as related to the needs of the child and family based upon a random review of treatment plans:

16. The service continuum from intake through aftercare:

17. The care-giving program, including practices in regard to food, sleep, personal possessions, clothing, health, discipline, recreation, religion, and education:

18. Review of incident reports:

(d) A copy of each three (3) year evaluation shall be kept on file at the facility and a copy shall be given to each member of the board of directors:

(e) Accreditation by the Council on Accreditation sponsored by the Child Welfare League of America or the Joint Commission on Accreditation of Health Care Organizations shall substitute for the three (3) year evaluation:

(f) The facility shall ensure that the rights of children and their families, including that of confidentiality, are protected in all phases of evaluation. Services shall not be denied or restricted to any client based upon his participation or lack thereof in the evaluation process:]

(7) [(9)] Interstate placement [placements].

(a) Prior to accepting a child from another state or prior to placing a child outside Kentucky, the child-caring facility shall be in compliance with:

1. [comply with all] Applicable provisions of KRS 615.030 to 615.040, Interstate Compact on Placement on Children; and

2. KRS 615.010, Interstate Compact on Juveniles.

(b) If a child committed to the cabinet makes a brief visit out of state, not accompanied by child-caring facility personnel, the child-caring facility shall obtain prior consent from the social services worker in the cabinet [Department for Community-Based Services] who has case responsibility.

(c) If an emergency placement of a child into a licensed child-caring facility is made, compliance with KRS 615.030 to 615.040 shall be the responsibility of the placement source [placing agency]. If the receiving child-caring facility is aware of noncompliance by the placement source, the child-care facility shall notify the cabinet's interstate compact coordinator [placing agency], then compliance shall become the responsibility of the receiving facility.]

Section 4. Physical Plant. (1) A child-caring facility [Facilities] shall comply with applicable state and local law and administrative regulation [laws and regulations] relating to:

(a) Construction;

(b) Sanitation; and

(c) Maintenance of the building [buildings].

(2) The child-caring facility shall conform to the life safety code standards adopted by the State Fire Marshal's Office.

(3) A climate control system shall be provided as follows:

(a) A minimum temperature of sixty-five (65) degrees Fahrenheit [shall be] maintained in occupied areas in cold weather conditions;

(b) In warm weather conditions and periods of extreme heat, an [the facility shall assure that] occupied area is to be [areas are] properly ventilated;

(c) If [a facility is] not air-conditioned and the temperature in an occupied area exceeds eighty-five (85) degrees Fahrenheit, the child-caring [-the] facility director shall assure that the following occurs:

1. A fan is [if the facility temperature in occupied areas exceeds eighty-five (85) degrees Fahrenheit that fans are] utilized to circulate

air;

2. The child-caring facility is properly ventilated to outside air;
3. ~~[that] Ice water is readily available and served to residents; and~~
4. ~~[that] Staff frequently monitor residents for a sign and symptom of a [signs and symptoms of] heat related illness.~~

(4) The water supply shall be from an approved source and easily available from the following:

1. Drinking fountain;
2. Refrigerator; or
3. ~~[fountains, the refrigerator, or] Cold water tap.~~

(5) A plumbing and waste disposal system ~~[systems]~~ shall comply pursuant to KRS 198B.050 to 198B.090, and ~~[with state plumbing standards regarding waste disposal systems as governed by KRS] 211.350 to 211.380.~~

(6) Housekeeping and maintenance service ~~[services]~~.

(a) ~~[Housekeeping:]~~ The building and its content ~~[buildings]~~ shall be maintained in a clean and safe condition and in good repair.

(b) A maintenance plan shall be maintained.

(c) [Maintenance. Requirements shall include:

1. Gas stoves, gas furnaces, gas heaters, and gas water heaters shall be ventilated to ensure the safety of the building's occupancy;

2. The child-caring facility shall ensure that the grounds and outdoor equipment are well kept and the exterior of the building is in good repair.

(d) ~~[including the sidewalks, steps, porches, ramps, and fences are in good repair;~~

3. The interior of the building and its content shall be in good repair.

(e) ~~[including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair. Windows and doors which may be opened for ventilation shall be screened;~~

4. Garbage and trash shall be:

1. Stored in an area ~~[areas]~~ separate from those used for the preparation and storage of food;
2. ~~[and shall be] Removed from the premises regularly; and~~
3. Placed in a container that is ~~[Containers shall be] cleaned regularly.~~

(f) ~~[and~~

5. A pest control program shall be in operation in the child-caring facility as follows:

1. ~~[Pest control services shall be] Provided by maintenance personnel of the child-caring facility; or~~
2. By contract with a pest control company; and
3. ~~[The] Pest control compounds [shall be] stored in a locked area.~~

(7) Bedroom.

(a) A bedroom shall be:

1. [Bedrooms:

(a) ~~Bedrooms shall be] Of adequate size to permit at least three (3) linear feet between each bed or set of bunk beds; and~~

2. Constructed to allow no ~~[Newly constructed buildings after the effective date of this regulation shall have bedrooms housing not] more than four (4) residents per room.~~

(b) A bedroom sleeping a child ~~[Bedrooms sleeping children] above age three (3) shall be equipped with an individual bed for a child that shall be:~~

1. [Individual beds for each child. Each bed shall not be less than thirty (30) inches wide nor less than five (5) feet in length and shall be] Long and wide enough to accommodate the child's size;

2. Developmentally appropriate for the child; and

3. [Children under the age of three (3) shall be provided with a standard-size crib or baby bed. Each bed shall be] Equipped with a support mechanism and a clean mattress.

(c) A bed occupied by a child ~~[Beds occupied by children] shall be placed so that a child shall not experience discomfort because of:~~

1. Proximity to a radiator;
2. ~~[radiators:] Heat outlets; and~~
3. ~~[or] Exposure to drafts.~~

(d) Except for a sibling that is indicated by an ITP, there shall be separate sleeping quarters for boys and girls over the age of five (5). ~~[There shall be separate sleeping quarters for boys and girls over the age of five (5), except for siblings if indicated by individualized treat-~~

ment plans.]

(e) Closet space and drawer space shall be provided for a [each] child to accommodate personal belongings.

(f) A child ~~[Children]~~ shall not be housed in a room, detached building, or enclosure that has ~~[rooms, detached buildings, or other enclosures which have]~~ not been previously inspected and approved for resident use.

(g) A ~~[Each]~~ child shall be provided with appropriate clean bed linens laundered once a week at the minimum and a waterproof mattress covering ~~[clean sheets, pillowcases, a pillow, and blankets. Sheets and pillowcases shall be changed and laundered at least weekly or more frequently if needed. Waterproof mattress coverings shall be provided].~~

(8) Indoor living area. An indoor living area shall be: ~~[areas:]~~

(a) [An indoor living area] Of at least thirty-five (35) square feet per child ~~[shall be] provided by the child-caring facility; and [facility:]~~

(b) [Indoor living areas shall be] Provided with comfortable furnishings for the number of children served.

(9) Bathroom.

(a) For every six (6) children residing with the living unit, a ~~[Bathrooms:]~~

(a) Each living unit shall have a minimum of:

1. One (1) wash basin with hot and cold water;
2. One (1) flush toilet; and
3. One (1) bath or shower with hot and cold water ~~[for every six (6) children, or fraction thereof, residing within the living unit].~~

(b) A child shall be provided with access to:

1. [Each bathroom shall be supplied with] Toilet paper;
2. Towels;
3. Soap; and
4. Wastebasket ~~[wastebaskets].~~

(c) A bathtub and shower shall have an enclosure or screen ~~[Bathtubs and showers shall have enclosures or screens] for individual privacy. If more than one (1) toilet is located in the same bathroom, a [each] toilet shall:~~

1. Be partitioned; and
2. Include a door capable of remaining closed.

(d) A ~~[Each]~~ bathroom shall contain at least one (1) nondistorting mirror secured to the wall at a convenient height.

Section 5. Health, Safety, and Nutritional Requirements. (1) Health.

(a) A child-caring ~~[Every]~~ facility shall have written policy and procedure ~~[policies and procedures]~~ for:

1. Health; and
2. Medical care to include:
 - a. A provision ~~[including provisions]~~ for illness; and
 - b. Emergency care.

(b) The service ~~[Services]~~ of a physician shall be made available to a child. If a service ~~[the children, if services]~~ of a licensed physician is ~~[are]~~ not available in the community, the child-caring facility shall request the assistance of the:

1. County health department; or
2. The Cabinet for Health Services, Department for Public Health, Division of Adult and Child Health, located at 275 East Main Street, ~~[the Cabinet's Division of Maternal and Child Health located in] Frankfort, Kentucky.~~

(c) Staff shall follow licensed physician orders for:

1. Medicine;
2. Prescription; ~~[medicines, prescriptions;]~~ and
3. Medical care.

(d) With the exception of a weekend and holiday, within forty-eight (48) hours of admission to a child-caring facility, a ~~[facility excluding weekends and holidays, and annually thereafter, each] child shall have scheduled:~~

1. An initial health screening for illness, injury, and communicable disease by a nurse or trained child-care staff;

2. A physical examination by a licensed physician or under the supervision of a licensed physician within two (2) weeks of admission unless it has been documented that the child has received an examination during the past twelve (12) months; and

3. The examining licensed physician or under the supervision of a licensed physician shall report in writing observations and findings

including:

- a. ~~[1- The]~~ Developmental history of the child, illnesses, operations, and immunizations if available to the physician;
- b. ~~A limitation [2- Any limitations]~~ the child may have ~~that~~ [which] may prevent participation in ~~an activity~~ [activities] scheduled by the ~~child-caring facility~~;
- c. ~~[3-]~~ Visual and auditory examination;
- d. ~~Recommendation and order~~ [examinations];
- e. ~~Recommendations and orders~~ for future care, treatment, and examinations;
- e. ~~[5-]~~ TB skin test [tests] unless contraindicated by a physician; and
- f. ~~[6- Any]~~ Other tests for communicable disease as indicated by the medical and social history of the child.
- (e) ~~An annual physical examination shall be scheduled and documented pursuant to paragraph (d)3 of this subsection.~~
- (f) Upon admission, the ~~child-caring~~ facility shall consult with a physician if there is evidence that the child may require medical attention.
- (g) ~~The child-caring [(f) The]~~ facility shall develop ~~a procedure for a child requiring a specific provision for an infectious medical condition.~~
- (h) ~~[procedures for children requiring specific provisions for infectious medical conditions.~~
- (g) A separate health record shall be maintained for ~~a child,~~ [each child. ~~Health records shall be~~] kept on the premises, and be made available to a:
 1. Physician;
 2. Nurse; or
 3. Designated staff.
- (i) The health record shall contain the following:
 1. Copy of ~~each~~ [annual] physical examination, including any recommendations for treatment;
 2. Previous and continuing health and medical history if available;
 3. ~~Record or report of each test, immunization, periodic reexamination, and physician order and instruction;~~
 4. ~~Report and date of each dental examination and treatment;~~ [Records or reports of tests, immunizations, periodic reexaminations, and physicians' orders and instructions;
 4. ~~Reports and dates of dental examinations and treatments;~~
 5. Authorization for regular and emergency medical, dental, and surgical care signed by the legal custody holder upon admission;
 6. Documentation of [all] medication administered to the child; and
 7. Documentation of a ~~special provision~~ [all special provisions] made for the child ~~pursuant to a physician order.~~
- (j) ~~A [in accordance with physician orders.~~
- (h) ~~Each~~ child's medical ~~need~~ [needs] shall be provided for as recommended by a licensed physician.
- (k) ~~A [(f) Each]~~ child cared for by the ~~child-caring~~ facility shall be immunized within thirty (30) days of admission and comply with the requirements ~~pursuant to KRS 214.034(4).~~
- (l) ~~[of KRS 214.034 and all other statutes and regulations pertaining to immunizations.~~
- (j) If a child dies while in the care of a ~~child-caring~~ facility or in a [any] home operated or supervised by the ~~child-caring~~ facility:
 1. The ~~child-caring~~ facility shall immediately notify the:
 - a. County coroner;
 - b. ~~[and the]~~ Child's parent;
 - c. Guardian or custodian; and
 - d. ~~[the]~~ Caseworker;
 2. A verbal report of the death shall be made immediately to the Commissioner of the Department for Community-Based Services;
 3. A written comprehensive report from the executive director outlining the ~~circumstance~~ [circumstances] shall be forwarded to the Office of the Commissioner, Department for Community-Based Services, on the next working day following the verbal report; and
 4. If a child's death occurred as a result of alleged abuse or neglect, the executive director of the ~~child-caring facility~~ shall follow reporting ~~procedure pursuant to~~ [procedures specified in] KRS 620.030(1) and (2).
- (k) ~~Every facility shall take immediate action for medical care in cases of illnesses and emergencies.]~~
- (m) [(f)] Upon discharge, medical information shall follow the child if ~~a release form has~~ [release forms have] been obtained.

- (n) With the exception of a dental examination that has been performed in the six (6) months preceding admission, the ~~child-caring [(m) The]~~ facility, within one (1) week after a child's admission, shall:
 1. Schedule an appointment for a dental examination; and
 2. ~~Treat [unless an examination has been performed in the six (6) months preceding the admission.]~~ emergency dental needs [shall be treated] by a licensed dentist as they arise.
- (o) ~~A [(n) Every]~~ child age two (2) years and above shall be examined at least annually by a licensed dentist.
- (p) ~~The child-caring [(o) The]~~ facility shall:
 1. Document the information required by [in] this subsection; and
 2. ~~[shall]~~ Assure the confidentiality of ~~the~~ [this] information.
- (q) ~~The child-caring [(p) The]~~ facility shall maintain a continuous program of personal hygiene.
- (2) Safety.
 - (a) ~~A child [The facility shall provide a safe environment and shall comply with the life safety code standards adopted by the State Fire Marshal's Office.~~
 1. ~~Children with physical and mental handicaps shall be protected.~~
 2. ~~Children shall be instructed in fire prevention, safety and fire emergency procedures.~~
 1. ~~The child-caring [- Matches, open flame, or combustible materials shall be used by children only under direct supervision of staff. Staff shall instruct children in fire emergency procedures.~~
 3. ~~The] facility shall maintain and post a current, written emergency fire evacuation plan and diagram to include:~~
 - a. ~~An evacuation route and procedure; and~~
 - b. ~~Location of fire extinguishers.~~
 2. ~~Documentation of fire evacuation plan and [diagrams, including evacuation routes and procedures and locations of fire extinguishers. Documented fire and other] emergency drills shall be performed quarterly.~~
 3. ~~An emergency plan [monthly.~~
 4. ~~Emergency plans] shall designate a suitable shelter [suitable shelters] in case of:~~
 - a. Severe storm warning;
 - b. Flash flood;
 - c. Tornado; and
 - d. ~~[warnings, flash flooding, tornadoes, and] Other emergency situations.~~
 - (b) ~~A child-caring facility with a swimming pool shall be staffed with a Red Cross certified lifeguard pursuant to 902 KAR 10:120, Section 13(2)(c). [Sports activities shall be supervised by staff. The presence of a Red Cross Certified Lifeguard shall be required if children swim. If the facility has a swimming pool, it shall conform to applicable state statutes and regulations.]~~
 - (c) ~~Donated home processed foods are prohibited.~~
 - (d) Transportation.
 1. If transportation is provided directly, contracted for, or arranged, ~~a child-caring facility shall require:~~
 - a. ~~Compliance [by a facility, these requirements shall apply:~~
 - a. ~~The facility shall comply] with state laws pertaining to vehicles, drivers, and insurance;~~
 - b. ~~A seat for each child and that the child [Each child shall have a seat and] remain seated while the vehicle is in motion;~~
 - c. ~~A seat belt[, if provided, shall] be used to secure the child [each individual children];~~
 - d. ~~A vehicle used to transport a child off campus to provide a seat [All vehicles used to transport children off campus shall have seats] for each passenger as manufactured standard equipment; and~~
 - e. ~~That a child [A vehicle containing children shall] never be left unattended in a vehicle.~~
 2. ~~[and~~
 - f. ~~The maximum number of children, including a child [if any are] under the age of six (6), a driver shall supervise alone is five (5). The applicable staff-child ratios pursuant to Section 3(5)(c) of this administrative regulation shall apply after this number.~~
 3. ~~A child [Children] under forty (40) inches tall or forty (40) pounds in weight shall not be transported unless restrained in an approved safety seat pursuant to KRS 189.125(3).~~
 4. ~~A [2- The] vehicle shall not pick up and deliver a child [children] under the age of six (6) to a location that [which] requires the child to cross a [the] street or highway unless accompanied by an adult.~~

5. If transportation is provided by a [3. The following standards shall be met if transportation is provided by any] means other than licensed public transportation:

- a. The vehicle shall be maintained in a safe mechanical and operable condition;
- b. A thorough inspection of the vehicle shall be made and documented by a qualified mechanic at least annually; and
- c. If the driver is not in his seat, the motor shall be turned off, keys removed, and brake set.

(3) Nutritional requirements.

(a) A child [Children] shall be served nutritious meals that:

1. [Meals shall] Meet the nutritional guidelines of the U.S. Department of Agriculture that include [which includes] foods from the five (5) basic food groups; and

2. The amount accommodates the needs of a [Amounts shall accommodate the needs of each] child as to age, activity [of each child in care], and prescribed diet or ITP.

(b) A [Each] child shall be encouraged to eat the food served, but shall not be subjected to coercion.

(c) An order for a modified diet from a licensed physician [Orders for modified diets from licensed physicians] shall be followed by the child-caring facility.

(d) A menu [Menus] shall be planned at least one (1) week in advance, dated, posted, and [shall be dated and posted. Menus shall be] kept on file for one (1) year.

(e) With the exception of a child receiving a meal at school, three (3) meals a day shall be provided at regular intervals and, except for weekends and holidays, no more than fourteen (14) hours lapse between the evening meal and morning meal [At least three (3) meals a day shall be provided at regular intervals except if children receive meals at school. No more than fourteen (14) hours shall lapse between the evening meal and the morning meal except for weekends and holidays].

1. A nourishing snack [Nourishing snacks] shall be provided and may be part of the daily food needs but [they shall] not replace a regular meal and [regular meals. These snacks shall] be recorded on the menu.

2. A meal [Meals] shall be scheduled at set times each day so that one (1) minimum hot meal a day is [meals are] not hurried, allowing time for conversation.

3. Food shall not be used as a punishment.

4. Only pasteurized milk and milk products and U.S. Government inspected meat shall be served to a child [the children].

5. Food [Foods] shall be prepared to preserve nutritive value and heighten flavor and appearance.

6. A child and staff shall [Children and staff are to] be served the same food unless there is a difference in age or a special dietary or religious preference need is a factor [foods unless differences in age or special dietary needs are factors].

(f) Table service shall be provided for a child [all these] capable of eating at a table.

1. Tables and chairs shall be:

a. Of a height that [which] corresponds to the size of the child served; and

b. [children served. They shall be] Constructed of material that can be easily sanitized.

2. A child who has not had an opportunity [Children who have not had opportunities] to learn how to handle food with the usual table service shall be managed in a way that he shall [they will] not be embarrassed or subjected to ridicule.

(g) A written report of a food inspection [Persons handling food shall wear clean outer garments and shall keep their hands and fingernails clean while handling food, drink, utensils, or equipment.

(h) Written reports of sanitary inspections by municipal, county, or federal authorities shall:

1. Be kept on file at the child-caring facility; and

2. [facility. The sanitation of facilities shall] Meet local, state, and federal regulations.

(h) [(f)] If a child-caring facility subcontracts a food service, [food services, all] applicable federal and state administrative regulations shall apply.

Section 6. General Requirements. (1) An incident of suspected

child abuse or neglect shall be reported pursuant to KRS 620.030(1) and (2).

(2) A child shall not be exploited, abused or neglected:

(a) For promotional purposes; and

(b) In a manner that shall cause the child or family to [Promotional use of children:

(a) Exploitation of children for promotional purposes is prohibited.

(b) Children shall not be used in any manner in which they or their family could suffer discomfort or embarrassment.

(c) Except as indicated in paragraph (d) of this subsection, a child [Children] shall not be used personally for a fund-raising purpose for the child-caring facility [fund-raising purposes for the facility, except as indicated in paragraph (d) of this subsection].

(d) If pictures, slides, recordings, or other private and personal effects of a child [children] are used in a fund-raising or promotional effort of a child-caring facility, written permission shall be obtained from a [efforts of facilities]:

1. Parent or guardian; or [Written permission shall be obtained from parents or guardians:]

2. [If the child is committed to the Cabinet for Families and Children, permission shall be obtained from an] Authorized representative of the cabinet, Department of Juvenile Justice or authorized legal representative.

(3) [(2)] Clothing and personal possessions.

(a) Through agreement with the child's custody holder, the child-caring facility shall provide a [each] child with clothing and footwear that [which] is clean, well-fitting, and seasonal.

(b) A [Clothing shall be age and sex appropriate and acceptable according to the standards of the surrounding community:

(c) Each child shall be provided individual articles of personal hygiene.

(c) The child-caring [(d) The] facility shall allow a child [children] to have personal belongings and property consistent with this administrative regulation and child-caring facility policy [the regulations and facility policies].

(4) A child's [(3) Children's] money.

(a) The child-caring facility shall have written policy and procedure [policies and procedures] relating to money belonging to a child [children].

(b) A child shall have access to information regarding balance of his fund.

(c) [If arrangements are not made with a financial institution for the establishment and maintenance of children's accounts, the facility shall:

1. Establish an account for each child who wishes to have an account; and

2. Shall provide each child who maintains an account with a quarterly written report of the account's balance, deposits, withdrawals, and interest earned, if any;

(c) The facility shall give each school-age child a weekly allowance:

(d) Within thirty (30) days of discharge, funds belonging to a child shall be transferred with or returned to the child.

(5) [(4)] Visitation and communication shall include:

(a) Written policy on [The facility shall have written policies concerning] visitation and communication;

(b) An arrangement for visitation that is [The facility shall ensure that arrangements for visitation are] not in conflict with the ITP;

(c) Documentation of the visit in the case record; and [All scheduled visits shall be documented in the case record:]

(d) Access to a telephone to make and receive a telephone call pursuant to the ITP and child-caring policy [The facility, in accordance with the ITP and agency policy, shall allow a child access to a telephone to permit the child to make and receive phone calls].

(6) [(5)] Religion, culture, and ethnic origin [heritage].

(a) Consideration and sensitivity shall be given to:

1. [The facility shall demonstrate consideration for and sensitivity to] The racial, cultural, ethnic, or religious background of a child [backgrounds of children] in care; and

2. An activity appropriate to the child's cultural or ethnic origin.

(b) With the exception of a religious practice that is destructive, an opportunity shall be provided and encouraged for a child to:

1. Practice the religious belief and faith of the child's individual or

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family preference; and

2. ~~The facility, in conjunction with the custodian, shall make available to a child in care cultural or ethnic activities appropriate to the child's cultural or ethnic background.~~

~~(b) Opportunity shall be provided each child in care to practice the religious beliefs and faith of the child's individual or family preference if the practice is not destructive. A child may be encouraged to participate in a religious activity without coercion.~~

~~(7) [religious activities, but shall not be coerced to do so.~~

~~(6) Education.~~

(a) If a child-caring facility operates its own school program, it shall have written policy and procedure [policies and procedures] regarding the development and implementation of the educational program. The policy and procedure [These policies and procedures] shall include:

1. School attendance;
2. Teaching staff;
3. School records;
4. Educational supplies, equipment, ~~and facilities~~;
5. Individual educational plan [plans] and use of community school.

(b) A child-caring facility [Facilities] shall ensure that a child attends [the children attend] an accredited educational program the number of days required by law.

(c) A [Each] child shall be enrolled in an accredited educational program within one (1) week of admission.

(d) A school-age child who is [School-age children who are] ineligible or unable to attend an accredited school shall have an educational program specific to the individualized need of the child that [needs of the child which] may include a General Education Diploma or vocational training.

(e) If a child-care facility operates [facilities operate] their own educational program [programs], maintenance of school records shall comply with state law and administrative regulations of the educational body [bodies] having jurisdiction.

(f) The child-caring facility shall provide a quiet area and designated time for study.

~~(8) [(7)]~~ Work and chore assignment [assignments].

(a) An assigned chore or work assignment shall not place the child in physical danger.

(b) A chore assignment shall be posted within the child's living quarters.

(c) A child may be given a job in compliance with child labor laws for which he receives payment that [Children may be given jobs for which they receive payment which] shall be clearly differentiated from a chore [chores] expected of him [any child] in relation to the routine [routines] of daily living to be completed. [This work shall be done in compliance with child labor laws.]

(d) If a child intentionally destroys or damages property or equipment, the child may be required to make restitution.

(e) A work assignment outside of a daily routine chore at the child-caring [Work assignments outside of daily routine chores at the] facility shall not be used as a form of punishment. An [+] additional chore assignment [assignments] beyond what is regularly assigned to a child may be:

1. Performed as restitution for intentional property damage made by the child; or

2. [Additional chore or work assignments may be] Given to a child for violation of a child-caring facility rule [~~rules only~~] upon mutual agreement between the child and supervisory child-caring staff without the child being [~~The child shall not be~~] coerced to enter into an agreement.

(f) A child [Children] shall be given a rest period [rest periods] of at least ten (10) minutes during each hour worked.

(g) Use of a child to perform a chore or work assignment [children to perform chores or work assignments] shall not negate the child-caring facility's ultimate responsibility for the maintenance of the child-caring facility nor the employment of staff sufficient to maintain the child-caring facility.

~~(9) [(8)]~~ Discipline.

(a) A child-caring facility [Facilities] shall have written policy and procedure governing a disciplinary action [policies and procedures governing disciplinary actions].

(b) Discipline shall be:

1. Utilized as an educational tool and be related to the child's actions initiating the disciplinary process; and

2. Consistent [~~(c) Discipline shall be consistent both~~] with the child's ITP and in response to the child's lack of control or misbehavior.

~~(c) The entire group shall not be punished due to the misbehavior of one (1) or more individual group members.~~

(d) The following practices shall not be allowed:

1. Cursing;
2. Screaming;
3. Name calling;
4. Threatening of physical harm;
5. Intimidation;
6. Humiliation;
7. Denial of food or sleep;
8. Corporal physical discipline pursuant to KRS 199.640(6);

~~[Spanking;]~~

9. Hitting;
10. Unnecessarily rough handling;
11. ~~[Paddling; or~~
12. ~~Any~~ Other physical punishment; and
13. ~~Denial of visitation with family or custody holder as punishment.~~

~~(e) With the exception of a parent disciplining a child, a child~~ [Children] shall not directly discipline another child [other children].

(f) Handcuffs, weapons, mechanical restraining, chemical restraints, or other restraining devices shall not be used.

(g) A child [Children] placed in a time-out area shall be:

1. In sight or sound of staff; and
2. Checked by staff [~~shall check the child~~] at least every five (5) minutes until it is determined the child is ready to continue a normal activity [normal activities].

(h) Therapeutic hold [Safe physical restraint] shall be used only by trained staff and to prevent:

1. A child from injury to self or others; or
2. Serious property damage or [~~to prevent serious~~] disruption of the child-caring facility's program and only after attempts to deescalate a child.

(i) Therapeutic hold [Safe physical restraint] shall not be used as:

1. Punishment; or
2. For the convenience of staff.

(j) In a child-caring facility where therapeutic hold [facilities where safe physical restraint] is used, the child-caring facility shall require:

1. Clear [~~have clearly~~] written policy and procedure [procedures] governing the therapeutic hold of a child; and
2. [safe physical restraint of children:] Direct child-caring staff [~~shall be~~] trained in the method of de-escalation and therapeutic hold [methods of safe physical restraint] utilized by the child-caring facility shall have a minimum of sixteen (16) hours of annual training as part of the forty (40) hours training required in Section 3(6)(h)2 of this administrative regulation.

(k) The program director shall [daily] review and analyze instances of the therapeutic hold to:

1. Assure [~~the uses of safe physical restraint to assure~~] compliance with child-caring facility policy; and
2. Provide documentation of a plan of action to prevent repeat injury to a child or staff as a result of the use of therapeutic hold. [policies:

~~(f) The entire group shall not be punished due to the misbehavior of one (1) or more individual group members.~~

~~(9) Suspected child abuse or neglect. Staff shall report all incidents of suspected child abuse or neglect in accordance with KRS 620.030(1) and (2).]~~

Section 7. Child-caring Program Services. (1) Admissions and intake.

(a) The child-caring facility shall have clearly defined written policy and procedure for an admission that identifies [policies and procedures for admissions that identify] the age, sex, and detailed description of the type of child served.

(b) Acceptance of a referral shall be based on the assessment that the child's need is one that:

1. The service [~~which the services~~] of the child-caring facility is

[are] designed to address; and

2. [which] Cannot be met in a less restrictive setting.

(c) The child-caring facility shall not accept into care a [any] child for whom a service [services] cannot be provided based on the child-caring program's mission statement and [child-caring program's] narrative and the available resources.

(d) [(e)] The child-caring facility shall have a written placement agreement with the child's custodian.

(e) [(d)] There shall be a preadmission interview with the child.

(f) [(e)] The following information regarding the child shall be obtained by the child-caring facility from the child's custodian during intake or documentation that information was requested and not available:

1. Commitment order or signed voluntary admission form;

2. Verification of birth;

3. Immunization record; and

4. Social history and needs assessment that [which] includes medical, educational, developmental, and family history.

(g) A written consent [(f)] Written consents pertaining to the child's care shall be obtained from the child's custodian for:

1. Photograph [Photographs], video, and audio tape [tapes];

2. Emergency and routine medical care; and

3. Release of case record information.

(h) [(g)] Prior to admission, the child and custodian shall be informed in writing of their rights and child-caring facility responsibility including policy pertaining to a service [facility responsibilities including policies pertaining to services] offered to the child.

(i) A child shall be informed upon admission of the right to file a grievance.

(j) [(h)] Upon admission, the child shall be oriented to life at the child-caring facility including rules and consequences for violation of the rules.

[(i)] A child under age six (6) may be placed only in temporary shelter care unless the child is a member of a sibling group being placed in residential child care.]

(2) Casework planning.

(a) The child-caring facility shall have written policy and procedure for the ITP [procedures for the individual treatment planning (ITP)] process including:

1. Assessment;

2. Assignment;

3. [of a treatment team:] Designation of a case coordinator; and

4. Development, implementation, and evaluation of the ITP and family involvement.

(b) An initial assessment shall be completed by designated staff within twenty-four (24) [five (5)] hours of admission to include:

1. Identifying information;

2. Presenting problem;

3. History (developmental, social, emotional health, education); and

4. Current level of functioning including strength and weakness [strengths and weaknesses].

(c) An initial ITP shall be developed by designated staff and implemented within twenty-four (24) [five (5)] hours of admission.

(3) Comprehensive assessment and treatment plan.

(a) A comprehensive emotional and behavioral assessment of a [each] child shall be completed by the treatment team and entered in the case record within twenty-one (21) days of admission including the following:

1. A history of previous emotional, behavioral, and substance abuse problem [problems] and treatment;

2. The child's current emotional, behavioral, and developmental functioning including strength and weakness [strengths and weaknesses];

3. A psychiatric or psychological evaluation if recommended by the treatment team;

4. [A psychological evaluation if recommended by the treatment team];

5. Other functional evaluation [evaluations] of language, self-care, social affective, and visual-motor functioning if recommended by the treatment team;

5. [6:] Social assessment that [which] includes:

a. Environment and home;

b. Religion;

c. Ethnic group;

d. Developmental history;

e. Family dynamics and composition; and

f. Education; and

6. Recommendation [7. Recommendations] for provision of treatment.

(b) A coordinated treatment team approach shall be utilized in the development, implementation, and evaluation of a comprehensive ITP [ITPs].

(c) A comprehensive ITP [Comprehensive ITPs] shall be developed and implemented to improve child functioning per the individual need [needs] of the child pursuant to KRS 199.640(5)(a)4, and the child's family if appropriate, and shall include at a minimum a:

1. Short-term and long-term goal and objective for permanence;

2. Time frame [goals and objectives];

2. Time frames projected for completion of goal and objective;

3. Method [goals and objectives];

3. Methods for accomplishing a goal and objective including utilization of community provider;

4. Person [goals and objectives];

4. Persons responsible for completion of a goal and objective [goals and objectives]; and

5. Projected discharge date and placement plan [plans].

(d) The comprehensive ITP shall be developed within twenty-one (21) days of admission.

1. A treatment team review [reviews] of the child's and family's progress toward meeting treatment goal [goals] shall occur at least monthly.

2. Every effort shall be made to involve the child and his family in the monthly treatment team review.

3. [reviews:] Treatment team evaluation of the comprehensive ITP shall occur at least on a quarterly basis.

4. An additional assessment [Additional assessments] shall be completed upon the recommendation of the treatment team.

5. The [This] information shall be documented and maintained in the child's record.

(e) The child shall be offered the opportunity to sign an ITP and ITP review [ITPs and ITP reviews] signifying understanding of the ITP.

1. If the child refuses to sign or is developmentally unable [too young] to understand the circumstance [circumstances], this shall be documented in the record.

2. The child and his family or custodian shall receive a copy of the ITP.

(4) Treatment environment. The daily child-caring program shall be planned in the following manner to create an atmosphere conducive to treatment:

(a) The child-caring facility shall have written policy and procedure [policies and procedures] describing its daily routine, rules, activity [routines, rules, activities], and child and staff interaction [interactions].

(b) The daily child-caring program shall be:

1. Planned to provide a framework for daily living; and

2. [shall be] Reviewed and revised as the need of the individual child [needs of individual children] or living group change.

(c) The daily routine shall be written and available to a child [children].

(d) A rule [Rules] shall be clearly defined in language that a child [children] can understand.

(e) Staff shall interact with a child [children] in a warm, supportive, constructive, and confidential manner and treat the child [Children shall be treated] with respect.

(f) Counseling and interviewing [with] a child and the child's family shall be conducted in a private area.

(g) A daily recreational activity [Daily recreational activities] shall be available to promote mastery of:

1. Developmental tasks;

2. Development of relationships; and

3. Increase self-esteem in accordance with the child's ITP.

(h) The child-caring facility shall provide recreational equipment, maintained in usable and safe condition, to implement the recreational program. [Equipment necessary for the recreational program shall be maintained in usable and safe condition.]

(5) The child-caring facility shall make available a quality program

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for substance abuse prevention and treatment pursuant to KRS 199.640(5)(a)7.

(6) Discharge and aftercare.

(a) ~~The child-caring facility shall have written policy and procedure that describe the condition [procedures which describe the conditions] under which a child may be discharged including criteria for an unplanned or emergency discharge and a discharge not pursuant to [emergency discharges and discharges not in accordance with] the ITP.~~

(b) The approval of the program director shall be required for an unplanned or emergency discharge [all unplanned discharges].

(c) Discharge planning shall begin with the development of the ITP and subsequent ITP reviews the treatment team shall consider:

1. Identification of placement;

2. Community resource [resources] to provide support for youth; and

3. Family services.

(d) When a child is leaving a facility as a planned discharge, a predischARGE conference shall be held to ensure that the child and family are prepared for the successful transition into placement. The parent, guardian or custodian, the child, and the treatment team shall attend this conference.

(e) The child shall have at least one (1) preplacement visit prior to the planned discharge or the agency shall document efforts to arrange a visit.

(f) The child-caring facility [agency] shall prepare a written discharge summary within thirty (30) days following the date of discharge. A copy shall be provided to the custody holder. The [This] summary shall include:

1. Information related to progress toward completion of an ITP goal [ITP goals];

2. Barrier [Barriers] to treatment;

3. Treatment method [methods] used in working with the child;

4. Date of discharge;

5. Reason for discharge;

6. Name and telephone number; and

7. Address of person or child-caring facility [agency] to whom the child was discharged.

(g) An aftercare service shall be provided to a child [Aftercare services shall be offered in cases] where no other agency has responsibility for the child's transition or adjustment to a new environment. Upon discharge, the following need [needs] of the child shall be assessed and a referral made for needed aftercare service [for aftercare services]:

1. Education;

2. Medical;

3. Vocational;

4. Mental health services;

5. Legal; and

6. Social.

(7) Case record. The child-caring facility shall:

(a) Maintain a [(f) Case records:

(a) ~~The facility shall maintain~~ current individual case record on a [records on each] child in a confidential and secure manner including [which shall include the following]:

1. Identifying information on the child to include [including]:

a. Name, ethnic origin and gender of the child [The child's name];

b. Date of birth and Social Security number;

c. Former residence;

d. [The child's date of birth];

e. The child's former residences;

f. [The] Name, address, and occupation of each parent if available;

g. [parents];

h. [The] Date of admission; and

i. [The] Type of commitment;

j. Commitment order or custodian's consent form for admission;

k. Birth and immunization certificate [certificates];

l. Education;

m. Medical and dental record that [records which] may be maintained separately from the case record;

n. Assessment data or social history;

o. ITP and review [ITPs and reviews];

8. Incident report [reports];

9. Chronological recording [recordings];

10. Correspondence with court, family, and custody holder [courts, family, and Department for Community-Based Services];

11. Discharge summary; and

12. Written consent [A signed consent form].

(b) ~~[The facility shall] Document at least weekly progress made by the child and his family toward meeting the treatment goal; [treatment goals];~~

(c) ~~[The facility shall] Record the aftercare service it provides until the service is terminated; [aftercare services it provides until services are terminated];~~

(d) ~~[The facility shall] Have a written policy [which shall comply with applicable federal and state laws and regulations] regarding maintenance, security, and disposal of a case record [case records] maintained by the child-caring facility;~~

(e) ~~[The facility shall] Not disclose information concerning a child or his family to a [any] person not directly involved in the case without the written consent of the custodian of the child;~~

(f) If a request is made by an individual or an agency to review the case record of a respective committed child, [requests are made by individuals or agencies to review case records of committed children, the facility shall] immediately forward the request to the Commissioner, Department for Community-Based Services, Cabinet for Families and Children, Frankfort, Kentucky 40621, or other legal custody holder;

(g) With the exception of a sealed adoptive record, release identifying or personal information including a Social Security card, birth certificate [cards, birth certificates], or drivers license [shall be released] to the child at discharge; [if this information is not a part of adoptive records which have been sealed];

(h) ~~[The facility shall comply with KRS 199.640 regarding records.~~

(i) ~~After the discharge of a child;~~

1. Maintain the case record [shall be maintained] at the child-caring facility for a minimum of three (3) years; and

2. After three (3) years, the child-caring facility may archive the case record and have it transferred by the cabinet to one (1) of the designated records centers; or

3. Maintain the case record permanently at the child-caring facility; [may be either transferred to the Department for Community-Based Services' Records Section so that it shall be sent to the Library and Archives Department in the Education and Humanities Cabinet, Frankfort, Kentucky 40601, or maintained permanently at the facility.]

(i) If the child-caring [(f) If the] facility ceases to operate, transfer the case record to the Cabinet for Families and Children, [case records shall be transferred to the Department for Community-Based Services,] 275 East Main Street, Frankfort, Kentucky 40621;

(j) [(k)] If a case record is sent to one (1) of the cabinet's record centers, a file shall be maintained by the cabinet [the Archives and Library Department, the facility shall maintain a file] to include:

1. [The] Name, case number, date of birth; and

2. [The] Date the case record was sent to the cabinet, [Department for Community-Based Services;

Section 8. Youth Treatment Center. The following additional requirements shall apply to facilities providing intensive treatment-oriented services:

(1) Professional treatment services. If a child has an assessed need for professional psychological or psychiatric treatment services and other professional treatment services not provided by the facility, the facility shall secure these services either directly or by contract.

(a) After assessment and development of the ITP, the treatment team shall identify services to meet the needs of the child and his family. These services shall be provided by the facility or arranged through contract with another qualified agency or individual. These services may include the following:

1. Individual counseling;

2. Family counseling;

3. Group counseling;

4. Psychiatric counseling; and

5. Other recognized specialized therapies.

(b) The child shall receive individual counseling from a social worker or other treatment professional as determined by the treatment

team:

(c) The child and his family shall be offered family counseling from a social worker or other treatment professional staff as determined by the treatment team.

(d) Group counseling may be offered by the facility but shall be conducted by a trained social worker or other treatment professional as determined appropriate by the treatment team and under the supervision of the program director.

(2) Staffing requirements:

(a) If treatment or supervisory needs of the children require additional staff below the minimum staff/child ratios required in Section 3(5)(c) of this regulation, the treatment director shall provide additional direct care staff to ensure the safety of residents, facility staff, and visitors.

(b) There shall be a staff member designated as treatment director that is responsible for the supervision, evaluation, and monitoring of the treatment program, social work and other treatment staff. Facilities providing treatment services for more than thirty (30) children shall employ a separate treatment director other than the executive director.

(c) Facilities providing treatment services for thirty (30) or less children may utilize the executive director in a dual role as treatment director, provided that at least fifty (50) percent of his duties are spent supervising the treatment program.

(3) Seclusion rooms:

(a) Facilities shall have clearly defined written policies and procedures for placement of a child into a seclusion room:

(b) A seclusion room shall be only utilized if the child is in danger of harming self or others and efforts made to deescalate the child's behavior prior to placement into the seclusion room have been proven to be ineffective. The seclusion room shall not be utilized as punishment or for the convenience of staff.

(c) Approval from the program director or treatment staff designee shall be obtained prior to the individual placement of a child into a seclusion room:

(d) More than one (1) child shall not be placed into the seclusion room at one time:

(e) Objects that may be used for self harm shall be removed from the child before he is placed into the seclusion room:

(f) A child's clothing except belts and shoes shall not be removed while placed into a seclusion room:

(g) A child shall not be placed into a seclusion room with a latching device for longer than one (1) hour within a twenty-four (24) hour period. The child may be released from seclusion in less than one (1) hour provided his behavior is stabilized:

(h) If a child requires a second placement into a latched seclusion room, a treatment team meeting shall be conducted by the program director within twenty-four (24) hours of placement into the seclusion room to reassess the child's ITP:

(i) All staff shall have a copy of the policies and procedures for placement of a child into a seclusion room:

(j) Staff shall have at a minimum sixteen (16) hours of annual training on techniques of de-escalation, safe physical restraint, and proper use of the seclusion room:

(k) If a child is in the seclusion room, a staff member shall visually observe the child every five (5) minutes:

(l) Staff shall document the following in the client record:

1. Interventions to deescalate the child's behavior prior to placement into the seclusion room;
2. Date and time of placement into the seclusion room;
3. Date and time of removal from the seclusion room;
4. Reason for placement into the seclusion room;
5. Names of staff involved;
6. Program director's or designee's approval;
7. Five (5) minute visual observation by staff of the child's placement; and
8. Intervention provided by treatment staff if the child leaves the seclusion room:

(m) A room used for a seclusion room shall:

1. Be lighted, ventilated, and maintained at a temperature consistent with the rest of the facility and all areas observable if the door is closed:
2. The room shall be at least fifty-six (56) square feet in size:
3. The room shall be free from exposed objects that allow the child

to do self-harm:

(n) Immediately upon the child's exit from a seclusion room, treatment staff shall provide therapeutic intervention:

(o) If a latch is utilized to secure the door of the seclusion room, it shall not require the use of a key or combination:

(p) An incident report shall be completed on the child's placement into the seclusion room, reviewed, and signed by the program director.

Section 9. Temporary Shelter. (1) Temporary shelter facilities providing child care on an emergency basis shall have an intake service on a twenty-four (24) hour-a-day, seven (7) day-a-week basis:

(2) If a temporary shelter facility is part of a larger organization providing other child-caring or child-placing services, there shall be a designated person to act as director of the temporary shelter facility:

(3) The temporary shelter facility shall orient each child to the procedures regarding safety and evacuation. Upon admission, each child shall be screened by facility staff for signs of illness or communicable disease. This does not supersede the requirements of Section 5 (1)(d) of this regulation that the child be examined by a licensed physician:

(4) The temporary shelter shall maintain daily recordings on the behavior and attitudes of the child:

(5) Temporary shelters shall be exempt from the requirements of Sections 5 (1)(m), 6(3)(n) 1 and 2, and 7(1), (2), (3), (4), and (5) of this regulation. If a child remains in temporary shelter for more than sixty (60) days, the requirements of Section 7(1), (2), (3), (4), and (5) of this regulation shall apply and the facility shall document the reason the child remains:

(6) The facility shall have clearly defined written policies and procedures for admissions that identify the age, sex, and detailed description of the type of child served:

(7) The child shall be oriented to life at the facility including rules and consequences for violation of the rules:

(8) The facility shall comply with the recordkeeping provisions of KRS 199.640:

(9) Temporary shelter facilities shall employ nighttime staff who shall remain awake during the sleeping hours of the children:

Section 10. Group Homes. The following additional requirements apply to group home programs as defined in KRS 199.011:

(1) The group home shall present evidence of compliance with applicable local zoning ordinances prior to initial licensure from the Cabinet for Families and Children:

(2) The group home shall comply with KRS Chapter 424 by publishing a notice of intent to locate. The group home shall hold a public hearing if requested by citizens in the community or appropriate local governmental entity. Information obtained at the hearing shall be made available to the public and the Cabinet for Families and Children:

(3) The staff-to-child ratio shall be one (1) child-caring staff member for each four (4) children or fraction thereof. An on-duty staff member who is away from the group home with a child may be included for the computation of this ratio:

(4) The group home child-caring program shall utilize community resources; children shall be encouraged to participate in community activities:

(5) Group homes shall utilize the public school system or an accredited private school:

Section 11. Independent Living. The following additional requirements apply to facilities providing independent living programming:

(1) The child-caring facility shall develop and implement written policies and procedures which address its independent living program including:

(a) A curriculum for teaching and practicing of independent living skills including employment, education, money management, interpersonal skills, use of community resources, and basics of nutrition and food preparation;

(b) A plan for aftercare services; and

(c) A plan for services from cooperating agencies:

(2) If an independent living program exists outside of the facility, the program director shall document that local fire and building codes are met. This standard shall supersede the standard in Section 5(2) of

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this regulation:

~~(3) A staff person shall be responsible for and have daily direct contact with each child in the independent living program.~~

~~(4) The facility shall maintain documentation for each youth concerning:~~

~~(a) An assessment of the youth's readiness to live independently;~~

~~(b) Progress each youth has made in independent living skills training;~~

~~(c) Assistance to the youth in finding and keeping in touch with family if possible;~~

~~(d) Staff observation of the living arrangements; and~~

~~(e) Progress in educational program.~~

~~(5) The independent living programs shall be exempt from the following provisions of this regulation:~~

~~(a) Section 3(2)(a);~~

~~(b) Section 3(5)(b); (c); (d); (f);~~

~~(c) Section 5(3)(a); (b); (c); (d); (e); (f); (g); (h); (i);~~

~~(d) Section 6(7)(b); (c); (e); (f); and~~

~~(e) Section 7(3)(a); (b); (c); (d); (e).]~~

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: March 31, 2000

FILED WITH LRC: April 13, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2000, of their intent to attend. If no notification 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 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: Judy Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: The affected entities are 112 child-caring facilities.

(2) Direct and indirect costs or savings on those affected: None

(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 hearing was requested as a result of the Notice of Intent being published and no written 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 comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing cost (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 to the agency:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing cost: 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: No public hearing was requested as the result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received. To be determined after the public hearing on this ordinary administrative regulation.

(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: No detrimental effect.

(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: 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: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through regulatory and statutory requirements.

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (Amendment)

922 KAR 1:310. Standards for child-placing agencies.

RELATES TO: KRS 61.878, 158.135(1)(c), 199.011, 199.430(3), [199.473], 199.492, 199.493, 199.510, 199.520, 199.572, 199.590, 199.640, 199.650, 199.660, 199.670, 216.300, 271B.08, 600.020, 615.010, 615.030 to 615.040, 620.020, 625.040, 625.043

STATUTORY AUTHORITY: KRS 194B.050(1) [194.050], 199.640(3), (5)(a), 615.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) provides that the Secretary of the Cabinet for Families and Children shall, by administrative regulation, develop policies and operate programs concerned with the citizens of the Commonwealth. KRS 199.640 requires that the Cabinet for Families and Children issue administrative regulations relating to standards of care and service for child-placing agencies. [This administrative regulation establishes the new provision of KRS 199.473 relating to private adoptions, by permitting home investigations to be conducted by private adoption agencies, as well as, the Cabinet for Families and Children.]

Section 1. Definitions. (1) "Adoption" means the legal process by which a child becomes the child of a person or persons other than biological parents.

(2) ~~["Advisory board" means a group of citizens approved by the board of directors who lends advice, counsel, and support to an agency.~~

~~(3) "Aftercare" means services provided to the child after discharge from a child-placing agency.~~

~~(3) "Approved adoptive home" means a home that has had an adoptive home study completed and the adoptive parent has completed required training.~~

~~(4) "Approved foster home" means a home that has had a foster home study completed and the foster parent has completed required training.~~

~~(5) "Behavioral health professional" means:~~

~~(a) A physician licensed under the laws of Kentucky to practice~~

medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of an official duty;

(b) A psychologist licensed pursuant to KRS 319.050;

(c) A psychologist with autonomous functioning certified pursuant to KRS 319.056;

(d) A clinical social worker licensed pursuant to KRS 335.100;

(e) A person with a master's degree in social work from an accredited college or university who is employed by the Department for Community Based Services as a social worker and who is exempt from licensure pursuant to KRS 335.010(4);

(f) An advanced registered nurse practitioner licensed pursuant to KRS 314.042;

(g) A marriage and family therapist licensed pursuant to KRS 335.300;

(h) A professional counselor certified pursuant to KRS 33.500;

(i) A professional art therapist licensed pursuant to KRS 309.130;

(j) An alcohol and drug counselor certified pursuant to KRS 309.080;

(k) A psychologist certified pursuant to KRS 319.056; or

(l) A psychological associate certified pursuant to KRS 319.064.

(6) "Board of directors" is defined at KRS 273.161(7).

(7) "Cabinet" means the Cabinet for Families and Children.

(8) "Child-placing agency" is defined at KRS 199.011(7).

(9) [facility:

(4) "Board of directors" means that group which is by law or charter delegated the responsibility for governing the agency.

(5) "Community resource [resources]" means a service or activity [services and activities] available in the community that shall supplement those provided by the child-placing agency in the care and treatment of a child [children].

(10) [(6)] "Division" means the Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(11) [(7)] "Executive director" means the person employed by the board of directors to be responsible for the overall administration and management of a child-placing [an] agency.

(12) "Home study" means an assessment done on a prospective adoptive or foster home by a social services professional.

(13) "Independent living program" means a planned program designed to teach youth life skills that shall enable the youth to become self-sufficient.

(14) [(8)] "Individual treatment plan (ITP)" means a plan of action developed and implemented to address the needs of a [an individual] child.

(15) "Licensed health care professional" is defined at KRS 216.300.

(16) "Permanence" is defined at KRS 620.020(7).

(17) "Placement" means a foster or adoptive home that has been approved by completing the application process, home study and required training.

(18) [(9)] "Infant" means a child under two (2) years of age.

[(10)] "Placement services" means services pursuant to KRS 199.011(13).

[(19)] as governed by KRS 199.011.

[(11)] "Preschool child" means a child under six (6) years of age.

[(12)] "Program director" means the person responsible for supervising the day-to-day operation of the program for a child [children] served by the child-placing agency.

(20) "Respite care" means a temporary interlude of care which gives relief to the person who normally gives care for a child or providing for an adjustment period for the child. This care is provided by a person who has received the training required for placement of a child into a foster or adoptive home.

(21) [or facility:

[(13)] "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and his environment.

(22) "Social services professional" means the person responsible for social work, counseling or planning and coordinating services to a child and who has at least a bachelor's degree in social work or the human services field.

(23) "Therapeutic foster care" is defined pursuant to KRS 158.135(1)(c).

Section 2. Administration and Operation. (1) Licensing procedures. Licensing procedures for a child-placing agency shall be administered pursuant to 922 KAR 1:305.

[(a)] Initial licensure:

1. If applying for an initial license, the agency shall provide the following:

a. A complete application as determined by the cabinet;

b. A licensure fee of \$155;

c. A copy of the articles of incorporation;

d. A mission statement of purposes, objectives, scope of services provided, and intake policy specifying kinds of children to be accepted for care;

e. A copy of the constitution and bylaws;

f. A list of officers, board members, and advisory board members, if any, including addresses and professions;

g. Names and titles of officers and terms of office;

h. A list of all staff including positions or title and qualifications; and

i. Applications for child-placing facility licenses shall be in compliance with the applicable regulations or shall have submitted an acceptable plan for correction of violations relating to the particular child-placing facility. Compliance with licensure regulations shall be ascertained through on-site inspections of the child-placing facility. Representatives of the division shall have access to the child-placing facility at any time. Regulatory violations identified during inspections shall be transmitted in writing to the child-placing facility by the division. The child-placing agency shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days. The plan shall specify the dates by which each of the violations shall be corrected. Following a review of the plan, the division shall notify the child-placing facility in writing of the acceptability of the plan. If a portion or all of the plan is unacceptable, the division shall specify the reasons for the unacceptability. In these cases, the child-placing facility shall modify or amend the plan and resubmit it to the division within ten (10) days.

2. A license shall be issued by the cabinet when the agency has been surveyed by the cabinet and it is determined that the agency qualifies for licensure.

(b) Renewal licensure. Agencies shall be relicensed annually from the date of issuance of the original license. To be eligible for relicensure, the agency shall:

1. Submit a renewal application;

2. Submit a relicensure fee of eighty-five (85) dollars; and

3. Comply with the applicable portions of this administrative regulation.

(c) Every child-caring agency shall provide the following information as part of the annual inspection:

1. A list of officers, board members, and advisory board members, if any, including addresses and professions;

2. Names and titles of officers and terms of office; and

3. A list of all staff including positions or title and qualifications.

(d) The agency shall comply with its mission statement, child-caring program narrative, and all applicable federal and state regulations in regard to child-caring program operations.

(e) The agency shall have an annual audit completed by an independent accounting firm or a certified public accountant.

(f) All applications for licenses shall, as a condition precedent to licensure or relicensure, be in compliance with the applicable regulations relating to the particular child-placing facility. Compliance with licensure regulations shall be ascertained through on-site inspections of the child-placing facility. The inspection procedure for relicensure shall be the same as set forth in paragraph (a)1i of this subsection.

(g) The license shall specify the types of care and service the agency is authorized to provide based upon the application and inspection.

(h) The agency shall provide the types of care and services for which they are licensed.

(i) A license shall be issued for a specific physical location and for operation by a sponsoring organization.

(j) Licenses shall not be transferable.

(k) Notification of changes in the following shall be made to the division in advance to allow for approval before implementation:

1. Ownership or sponsorship;

2. Location;

3. Capacity; or

4. Services:

(f) The agency shall post its license in a place visible to the public.;

(2) Board of directors.

(a) The child-placing agency shall have a board of directors pursuant to KRS Chapter 271B.8.

(b) The board of directors shall consist of a minimum of seven (7) members.

(c) [consisting of a minimum of seven (7) members, the majority of whom shall be residents of Kentucky.

(b) The board of directors shall meet at least quarterly [in every calendar year]. Minutes of the meeting [these meetings] shall be taken and kept in written form.

(c) One (1) meeting of the board of directors shall be held at each agency location in every calendar year. If a board of directors has responsibility for multiple agency locations, a board committee may be appointed:

1. To meet at least once a year at each agency location; and

2. Shall submit a written report of this meeting to the full board.

(d) The board of directors shall employ an executive director. The division shall be notified in writing of a change in the facility's executive director within seven (7) days.;

(d) [(e)] The board of directors shall be responsible for and have the authority to ensure the continuing compliance with the requirements of this administrative regulation and [all] relevant federal, state or local laws or regulations.

[(f)] The board of directors shall conduct and approve an annual evaluation of the performance of the executive director.

(g) The board of directors shall approve a written annual budget for the agency which ensures funding to meet all operating requirements.

(h) The board of directors shall in consultation with the executive director approve and annually review all written policies of the agency.;

(e) [(f)] The board of directors shall obtain a criminal records check of a prior conviction or plea [prior convictions or pleas] of guilty of the executive director prior to employment.

(f) [(f)] The board of directors shall approve a mission statement delineating the:

1. Purpose;

2. Objective; [;

1. The purposes;

2. Objectives;]

3. Scope of services to be provided; and

4. Intake policy specifying the type of child [kinds of children] to be accepted for care.

(3) Executive director.

(a) The duty [duties] of the executive director shall be determined by the board of directors.

(b) The executive director shall be responsible for the child-placing agency and its affiliates pursuant to the child-placing facility's written policy.

(c) [and shall include the following responsibilities:

1. Select, employ, and terminate staff;

2. Develop and implement agency policies approved by the board of directors;

3. Provide professional help to the board of directors in:

a. Carrying out their responsibilities;

b. Interpreting the needs of the children and families served; and

c. Assisting in periodic evaluation of the agency's services;

4. Supervise the preparation of an annual budget for board consideration;

5. Keep the board informed of financial needs;

6. Provide financial statements to the board of directors on a quarterly basis;

7. Operate within the established budget;

8. Attend board meetings;

9. Ensure that orientation is provided for new employees and continual training for staff; and

10. Delegate appropriate duties to other staff.

(b) If the executive director is not available [on the premises], a designated staff person shall be responsible for the day-to-day operation of the child-placing [operations of the child-caring] program.

(4) Staff qualifications.

(a) A person [Persons] hired after the effective date of this administrative regulation as executive director shall possess the following qualifications:

[(a)] An executive director shall possess:;

1. A master's degree in any of the following human services fields:

a. Social work;

b. Sociology;

c. Psychology;

d. Guidance and counseling;

e. Education;

f. Religion;

g. Christian education;

h. Divinity;

i. Business administration;

j. Pastoral counseling;

k. Criminal justice;

l. Public administration;

m. Child-care administration;

n. Nursing;

o. Family studies;

p. Other human service fields [field] related to working with a family or child; and

q. [families and children; and;] Two (2) years of work experience in [management of] a human services program; or

2. A bachelor's degree with a major in the areas pursuant to subparagraph 1 of this paragraph, [listed above] public administration, or child-care administration and four (4) years work experience in a human services program [human services programs].

(b) A [Persons other than the executive director employed in positions responsible for supervising, evaluating, or monitoring social work or other professional staff shall possess:

1. A master's degree in the human services area including the areas of social work, sociology, psychology, guidance and counseling, education, business administration, criminal justice, public administration, or child-care administration; and

2. At least two (2) years work experience in the human services field.

(c) All [licensed child-placing agency [agencies] shall have one (1) member of the social work staff designated as program [placement] director who shall hold:

1. A master's degree in social work or in the areas pursuant to paragraph (a) 1 of this subsection [a related field]; or

2. A bachelor's degree in social work or a bachelor's degree in the areas pursuant to paragraph (a) 1 of this subsection [a related field] and a minimum of two (2) years professional [child-placing] experience in working with a child or family.

(c) [children and families including foster care or adoptive placements.

(d) A child-placing agency contracting for [using] the service of a social worker or social services professional not on the staff of the child-placing agency shall document that the social worker or social services professional meet the qualifications pursuant to Section 1(22) of this administrative regulation [meets the qualifications as required in paragraph (f) of this subsection]. An agreement for this provision of service shall be on file at the child-placing agency and shall specify the qualifications of the social worker or social services professional.

(d) The program director shall supervise social service staff.

(e) In a therapeutic foster care program, supervision of a foster parent shall be carried out by a person meeting the qualifications of a behavioral health professional pursuant to Section 1(5) of this administrative regulation.

(f) [(e)] Social workers shall be supervised by the placement director.

(f) Employees responsible for social work, counseling, or planning and coordinating services to children shall have at least a bachelor's degree in the human services field.

(g) Social services staff shall not carry a caseload of more than twenty (20) children.

(5) Personnel policy.

(a) A child-placing agency shall have written personnel policy and procedure.

(b) An employee [policies.

(a) Employees] shall be at least eighteen (18) years of age.

(c) An individual shall not be employed if a criminal record check reveals a prior criminal conviction or plea of guilty to charges:

1. Pursuant to KRS Chapter 510 or a Class A felony;

2. Of a sexual offense pursuant to KRS 510.040 to 510.140, 510.150, 529.020 to 529.050, 530.020, 530.064, or 531.300 to 531.370;

3. Of a crime of abuse, neglect or exploitation of a child, pursuant to KRS 508.100, 508.110, or 508.120, or a crime resulting from a criminal charge filed pursuant to KRS 620.120; or

4. As a violent offender, pursuant to KRS 17.165(2).

(d) An individual shall not be employed if he:

1. Has had an allegation of abuse, neglect or exploitation of a child, pursuant to KRS 600.020(1), substantiated by the cabinet pursuant to 922 KAR 1:330 and, if appealed, 922 KAR 1:320; or

2. Is listed on the nurse's aid abuse registry by the Inspector General's Office.

[(b) There shall be a written job description which shall be reviewed and revised for each position which:

1. Clearly describes the duties of the position and the skills necessary to fill the position; and

2. Identifies the position's immediate supervisor.

(c) Personnel upon employment shall receive written agency policies and procedures to include the following:

1. Salary plan;

2. Leave provisions;

3. Working conditions;

4. Fringe benefits;

5. Employment and termination;

6. Job descriptions;

7. Staff evaluation;

8. Provisions for staff development;

9. Employee grievance;

10. Disciplinary action; and

11. Child-caring program narrative.

(d) Personnel orientation. Personnel within one (1) month of initial employment shall receive an orientation to agency policies and procedures.:

(e) A current personnel record [Current personnel records] shall be maintained for an employee that includes [each employee which include] the following:

1. Name, address, Social Security number, date of employment, and date of birth;

2. Evidence of current registration, certification, or licensure;

3. Record [Records] of participation of staff development;

4. Record [Records] of performance evaluation;

5. Criminal records check pursuant to paragraph (c) of this subsection;

6. Record of a check with the cabinet for a substantiated report of child abuse, neglect, and exploitation pursuant to paragraph (d) of this subsection;

7. Record of a physical exam [Records of physical exams] related to employment as specified in the child-placing agency;

8. [7:] Personnel action [actions];

9. [8:] Application for employment and resume or contract; and

10. [9:] Evidence of personnel orientation.

(f) [If a criminal records check reveals a prior criminal conviction or plea of guilty to charges pursuant to KRS Chapter 510 or a Class A felony, the applicant shall not be employed.]

(g) The child-placing agency shall have an ongoing staff development program [for the administrative, professional, volunteer, and support personnel:

1. Records of attendance at workshops, conferences, and academic courses related to work responsibilities shall be kept on employees.

2. The staff development program shall be under the supervision of a designated staff member.

(g) [(h)] An employee under indictment or legally charged with felonious conduct shall be immediately removed from contact with a child [children] until the person is cleared of the charge and, if the charge resulted from an allegation of child abuse, neglect or exploitation, a records search of the cabinet shall reveal an unsubstantiated investigation before the employee shall be allowed to work with a

child.

(h) A volunteer who performs a similar function [(i) Volunteers who perform similar functions] as paid staff shall meet the same requirements and qualifications.

(6) [Agency policies. There shall be written administrative policies which the agency follows covering all aspects of operation including:

(a) Administration;

(b) Personnel;

(c) Fiscal management;

(d) Case records;

(e) Child-placing program;

(f) Internal review and evaluation;

(g) Transportation of children;

(h) A description of organization structure, staffing, and allocation of responsibility and accountability; and

(i) A child-placing program narrative describing in detail:

1. The services offered;

2. Methods and protocols for service delivery;

3. Qualifications of personnel involved in the delivery of the services; and

4. Goals of the services.

(7) Internal review and evaluation.

(a) A child-placing [Each] agency shall provide for and conduct a self-evaluation of overall child-placing agency performance and management of its services on a quarterly basis and document changes in the program as a result of the evaluation, pursuant to KRS 199.640(5)(a)6 [at least every three (3) years from the effective date of this administrative regulation].

(b) Specific written criteria and procedure [procedures] for evaluating the overall child-placing agency performance and management shall be established and approved by the board of directors. [These shall be approved by the board of directors.]

(c) The required evaluation shall examine the:

1. Placement [following factors:

1. Child-placing program content in relation to the stated role and purpose of the agency;

2. Child-placing program effectiveness based on stated and measurable goals;

3. Roles of the board of directors and management staff;

4. Personnel policies;

5. Staffing patterns and job responsibilities;

6. Staff effectiveness;

7. Staff turnover, causes, and effects;

8. Staff training program;

9. Budgeting and fiscal management;

10. Placements, planned and unplanned discharge [discharges], and length of stay of a child [children] in care;

2. [11:] Content of the child-placing program outcome-based treatment plan as related to the needs of the child and family, to include:

a. Child safety;

b. Improved child functioning;

c. Improved family functioning; and

d. Continuity and permanence of the child [based upon a random review of casework plans]; and

3. [12:] The service continuum to include the:

a. Initiation of discharge planning at admission; and

b. Provision of aftercare services. [from intake through aftercare.]

(d) A copy of an evaluation, or documentation of accreditation in good standing pursuant to paragraph (e) of this subsection, shall be:

1. Made available on file at the child-placing agency; and

2. Made available to a [each evaluation shall be kept on file at the agency and a copy shall be given to each] member of the board of directors.

(e) Accreditation by the Council on Accreditation of Services for Families and Children [sponsored by the Child Welfare League of America] or the Joint Commission on Accreditation of Healthcare Organization shall substitute for the quarterly [three (3) year] evaluation.

(f) The child-placing agency shall ensure that the rights of the child and his family [children and their families], including that of confidentiality, are protected in each phase of the [all phases of] evaluation. [Services shall not be denied or restricted to any client based upon participation in the evaluation process.]

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Section 3. Interstate Placement [Placements]. (1) Prior to accepting a child from another state or prior to placing a child outside Kentucky, the child-placing agency shall comply with:

(a) ~~[all applicable provisions of]~~ KRS 615.030 to 615.040, Interstate Compact on Placement of Children; and

(b) KRS 615.010, Interstate Compact on Juveniles.

(2) If a child committed to the cabinet makes a brief visit out of state, not accompanied by child-placing agency personnel, the child-placing agency shall obtain prior consent from the social services worker in the Department for Community Based Services who has case responsibility.

(3) If an emergency placement of a child into a licensed child-placing agency is made, compliance with KRS 615.030 to 615.040 shall be the responsibility of the placement source [placing agency].

Section 4. Orientation and Training of an Adoptive Home for a Child Under One (1) Year of Age and Under. A [Foster and Adoptive Homes: Each] child-placing agency shall:

(1) Maintain the orientation and training curriculum on file;

(2) Provide a minimum of four (4) hours of [provide] orientation and training to a prospective adoptive parent [prospective foster and adoptive parents] to include the following:

(a) Child-placing [(f)] agency program description with mission statement, information about the rights and responsibilities of the adoptive parent [parents], and background information about an adopted child and his family.

(b) Example of an actual experience from a parent who has adopted a child;

(c) Information regarding:

1. [foster or adopted children;

(2) Examples of actual experiences from parents who have fostered and adopted special needs children to include:

(a) Examination of] The stages of grief;

2. [(b)] Identification of the behavior [behaviors] linked to each stage; and

3. The long-term effect [(c) Consideration of the long-term effects] of separation and loss on a child;

4. Attachment; and

5. [children;

(3) Examination of] Family functioning, values, and expectation of the adoptive parent;

(d) [expectations of the adoptive or foster family:] Identification of a change that [changes which] may occur in the family unit when a placement occurs, to include:

1. Family adjustment and disruption;

2. Identify issues; and

3. Discipline; and

(e) Cardiopulmonary resuscitation, [with placement of a child and discipline issues:

(4) Examination of how a placement may affect family:

(a) Functioning;

(b) Adjustment problems;

(c) Identity issues; and

(d) Disruptions;

(5) Specific requirements and responsibilities of foster and adoptive families:]

Section 5. Orientation and Training of the Adoptive Home for a Child Older than One (1) Year. A child-placing agency shall:

(1) Maintain the orientation and training curriculum on file;

(2) Provide a minimum of twenty-four (24) hours of orientation and training to a prospective adoptive parent to include the following:

(a) Example of an actual experience from a parent who has adopted a child;

(b) Challenging behavior characteristic of adoptive older children;

(c) Referral resources for developmental delays;

(d) Transition issues with focus on stages of grief, and a honeymoon period;

(e) Loss and the long-term effect on a child;

(f) Attachment issues;

(g) Medical issues including referral resources;

(h) Family functioning, family values, and expectations of the adoptive parent; and

(i) Identification of change that may occur in the family unit upon the placement of a child to include:

1. Family adjustment and disruption;

2. Identity issues; and

3. Discipline.

Section 6. Orientation and Training of a Foster Home. A child-placing agency shall:

(1) Maintain the orientation and training curriculum on file;

(2) Provide a minimum of twenty-four (24) hours of orientation and training to a prospective foster parent to include the following:

(a) Child-placing agency program description with mission statement, information about the rights and responsibilities of the foster parent and background information about a foster child and his family; and

(b) Example of an actual experience a foster family who has fostered a child;

(c) Information regarding:

1. The stages of grief;

2. Identification of the behavior linked to each stage;

3. The long-term effect of separation and loss on a child;

4. Permanency planning for a child;

5. The importance of attachment on the growth and development; and how a child may maintain or develop a healthy attachment;

6. Family functioning, values, and expectation of the foster family;

(d) Identification of change that may occur in the family unit when a placement occurs, to include:

1. Family adjustment and disruption;

2. Identity issues; and

3. Discipline issues;

(e) Specific requirements and responsibilities of a foster family;

(f) Maintain an ongoing foster parent training program that:

1. Provides a minimum of six (6) hours ongoing foster parent training annually; and

2. Maintain a record of training.

Section 7. Evaluation of a Potential Foster Home. (1) The child-placing agency social service staff shall perform the function of recruitment.

(2) The foster home evaluation shall be completed and the home approved prior to the placement of a child and include documentation of the following information:

(a) A [Evaluation of Potential Foster Homes. (1) The functions of recruitment and response to inquiries by prospective foster parents shall be performed by the child-placing agency social work staff. An application shall not be given without an interview to determine if the application process may proceed.

(2) The agency shall be responsible for approving the home as acceptable for children based upon a home study and shall be conducted as a series of planned interviews and home visits by the social worker. Children shall be placed only in approved foster homes.

(3) The agency shall keep a written record of the findings of this study and the evidence on which these findings are based.

(4) The foster home study shall record] personal interview [interviews] both joint and separate with each member [all members] of the household;

(b) An assessment of the acceptance of each household member toward the placement of a foster child into the home;

(c) Documentation of the observation of the [;

(5) The foster home study shall include the following information:

(a) Attitudes of household members toward placement of a foster child into the home;

(b) Observations of] foster family functioning including interpersonal relationships and patterns of interaction;

(d) [(c)] The foster parents' ability to accept the child's relationship with the child's family of origin;

(e) [natural parents;

(f) Information regarding the foster family's support system;

(f) The family's ability to meet financial obligations of the child

based on agency criteria:

- (g) A signed statement [nonfamilial relationships;
- (e) Certification] by a licensed physician or licensed health professional, current within the last twelve (12) months, regarding the family's physical ability to provide necessary care for the child;
- (h) [(f)] Standards of household safety, housekeeping, and cleanliness are acceptable;
- (i) [(g)] Water supply and sanitation are in compliance with [all] state and local health requirements;
- (j) [(h)] Suitability of in- and out-of-door play space according to the age and need [needs] of the child;
- [(i)] Accessibility of the home to the community resources;
- (k) [(j)] A criminal record check, including an out-of-state check if the applicant resided out of state within the past ten (10) years and child and adult abuse registry and nurse's aide registry check on each [records check and child abuse registry check on any] adult residing in the household;

(l) [(k)] Verification of current marriage and any prior divorce or death of spouse [all marriages and divorces] of the prospective foster parent [parents]; and

(m) [(l)] A minimum of three (3) written personal references indicating the suitability of the home and of the potential foster parent.

(3) The child-placing agency shall keep a written record of the findings of this study and the evidence on which these findings are based.

(4) [references:

(6) An agency shall not have more than two (2) children under two (2) years of age placed in the same foster home at the same time except for:

- (a) Sibling groups who may remain together;
- (b) Temporary shelters that are limited to serving children under two (2) years of age;
- (c) Homes where three (3) or more adults reside and the maximum number of infants shall not exceed three (3) at one (1) time;

(7) A foster home shall be selected for a particular child based upon the individual need [needs] of the child.

[(8)] The worker shall explain the terms of each placement and the foster parents shall certify in writing that supervision from the agency will be allowed. This shall be documented in the case record.

(9) The total number of children shall not exceed six (6) in number, including the foster parent's own children, unless the needs of the individual child indicate the necessity of keeping sibling groups together. Justification for exceptions shall be documented in the record.

(10) A child shall not without prior notification to and written authorization from the Kentucky Interstate Compact Administrator:

(a) Be placed with persons who normally reside in another state; or

(b) Be permitted to go with any person to take up residence in another state.]

(5) A home [(11) Homes] providing care of a foster child [foster children] shall not be used simultaneously for any other social service [services], including a day care center or a home [day-care centers or homes] for the elderly. This shall not preclude a foster parent [foster parents] being approved for adoption or an adoptive parent [adoptive parents] being approved as a foster parent [foster-parents].

(6) Each [(12) All] approved foster home [homes] in use shall be evaluated on an annual basis. The results of the evaluation [evaluations] shall be recorded in the case record.

[(13)] Each agency shall have a written agreement which states the responsibilities of the agency and the foster parents.]

(7) [(14)] The child shall participate in the intake process and in the decision that placement is appropriate to the extent that the child's age, maturity and adjustment, family relationships; and a circumstance [circumstances] necessitating placement justifies [justify] participation.

(8) The child-placing [(15) The] agency shall maintain an ongoing orientation and training program for its foster families. A record of [Records of all] orientation and training shall be maintained.

Section 8. Placement of Foster Child. (1) The child-placing agency shall place a child only in an approved foster home.

(2) A child-placing agency shall have a maximum of two (2) children under two (2) years of age placed in the same foster home at the same time with the exception of:

(a) A sibling group who may remain together;

(b) A foster home where three (3) or more adult caregivers reside, the maximum number of children one (1) year of age and younger shall not exceed three (3) at one (1) time; and

(c) Justification for an exception shall be documented in the foster parent file.

(3) The child-placing agency shall:

(a) Have a written agreement with the foster parent that states the responsibility of the child-placing agency and the foster parent and the terms of each placement shall be explained to the foster parent;

(b) Require the foster parent to certify, in writing, that supervision from the child-placing agency shall be allowed; and

(c) Document the placement in the foster parent file.

(4) The total number of children residing in the foster home shall not exceed six (6), including the foster parent's own children. Justification for an exception shall be documented in the foster parent file.

(5) Without prior notification to and written authorization from the Kentucky Interstate Compact Administrator, a child shall not be:

(a) Placed with a family who normally resides in another state; or

(b) Permitted to go with a person to take up residence in another state.

(6) A foster home providing care of a foster child shall not be used simultaneously for any other social service, including a day care center or home for the elderly. This shall not preclude a foster parent being approved for adoption or an adoptive parent being approved as a foster parent.

(7) An approved foster home in use shall be evaluated on an annual basis for compliance with responsibilities listed in the written agreement pursuant to subsection (3)(a) of this section and training requirements pursuant to Section 6(2) of this administrative regulation, with results recorded in the foster parent file.

Section 9. Orientation and Training of a Therapeutic Foster Family Care Home. (1) A child-placing agency shall:

(a) Maintain the orientation and training curriculum on file; and

(b) Provide a minimum of thirty-six (36) hours of orientation and training for a prospective therapeutic foster care parent that shall incorporate the following topic areas:

1. Child-placing agency program description with mission statement, information about the rights and responsibilities of the foster parent, and background information about a foster child and his family;

2. Cardiopulmonary resuscitation and first aid;

3. Example of an actual experience of a foster family who has fostered a child;

4. Stages of grief;

5. Behaviors linked to each stage of grief;

6. Long-term effects on a child from separation and loss;

7. Permanency planning for a child;

8. Importance of attachment on the growth and development and the way a child maintains or develops a healthy attachment;

9. Family functioning, values and expectations of the foster family;

10. Change that may occur in the family unit with placement of a child regarding:

a. Family functioning;

b. Family adjustment;

c. Identifying a potential issue;

d. Discipline issue; and

e. Family disruption;

11. Specific requirements and responsibilities of a therapeutic foster family;

12. Behavior management;

13. Communication skills;

14. Skill teaching;

15. Behavior management de-escalation techniques;

16. The dynamics of the sexually abused child; and

17. The effect of chemical abuse or dependence by the biological parent or child.

(2) A therapeutic foster parent shall receive a minimum of twenty-four (24) hours of annual ongoing training.

Section 10. Therapeutic Foster Care. (1) A child-placing agency shall have a limit of two (2) therapeutic foster children, and four (4) minor children of their own, in the home at the same time. Justification for an exception with a therapeutic basis shall be documented in the therapeutic foster parent file.

(2) A behavioral health professional shall supervise a foster parent and participate in the development of the ITP and in the quarterly case conference.

(3) A child-placing agency shall provide or arrange for individualized therapeutic services on at least a semimonthly basis.

(4) A therapeutic foster care parent shall be responsible for:

(a) Participation in the development of an assessment and ITP that includes, but is not limited to, matters including visitation, health, education and permanency goals;

(b) Participation with weekly in-home supervision by a social service professional;

(c) Supervision of the child and implementation of components of the treatment plan including daily documentation when specified in the treatment plan; and

(d) Working with the child-placing agency to promote stability and avoid disruption for a child and, in the event of a disruption, work with the child-placing agency in the development of a plan for the smooth transition of the child to a new placement.

(5) With the exception of a committed child or a child who is the legal responsibility of the cabinet or the Department for Juvenile Justice, the child-placing agency shall be responsible for:

(a) With the exception of an emergency placement, a preplacement conference for the purpose of:

1. Developing permanency goals and a discharge plan for the child;

2. Developing a plan for the implementation of services;

3. Identifying the treatment goals; and

4. Developing a behavior management plan when applicable;

(b) Inviting and encouraging attendance to the preplacement conference of:

1. A therapeutic foster care parent;

2. A respite care parent;

3. The child, if appropriate; and

4. The child's family.

(6) The social services professional shall:

(a) Provide a minimum of weekly contact by telephone or face-to-face with at least one (1) of the therapeutic foster parents of each child on the therapeutic foster care professional's caseload;

(b) Visit the foster parent a minimum of two (2) times a month with at least one (1) visit being in the foster home;

(c) Visit the foster child face-to-face a minimum of two (2) times a month with at least one (1) visit in the therapeutic foster home and one (1) being outside the foster home; and

(d) Carry a caseload with a maximum not to exceed twelve (12) children, taking into account:

1. Required responsibilities other than the case management of a child in foster care;

2. Additional support, contact and training of a therapeutic foster parent, due to the extent of the needs of the child served; and

3. The extent of the intensive services provided to the child and the child's family;

(e) Conduct a quarterly case consultation, including the foster parent, the child's public agency worker, the child-placing agency behavioral health professional and social services professional and, to the extent possible, the respective child and his family of origin;

(f) Identify the support needed by the foster family, including a plan for respite care, a plan for twenty-four (24)-hour on-call crisis intervention, and a foster family support group.

Section 11. Private [Section-6:] Placement Process. The following shall be the responsibility of the child-placing agency when a private placement is conducted, with exception of a child [those children] committed or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice [for Families and Children]. In this exception, service [these cases, services] shall be coordinated by the cabinet, the Department of Juvenile Justice, and child-placing agency staff, [for Families and Children and agency staff; however,] Final casework [responsibility] shall be the responsibility of the cabinet or

the Department of Juvenile Justice [for Families and Children].

(1) For a child entering into care, the child-placing agency shall obtain an:

(a) Agreement for voluntary care signed by the custodian; or

(b) Order from a court of competent jurisdiction placing the child into child-placing agency custody.

(2) The child-placing agency shall:

(a) Complete an intake assessment of the strengths and needs of the child and his family; and

(b) Ascertain the appropriateness of the referral for a child for whom placement is being requested.

(3) The child-placing agency [social worker] shall be responsible for developing an ITP for a child and his family based on an individualized assessment of the child's and family's needs. The assessment shall be revised as needed. The assessment and ITP [individual treatment plan (ITP) for each child and their biological family. The plan] shall include the type and extent of service to be provided to the child and his family [services to be given the biological family to rehabilitate the home].

(4) The child, his parent, and caregiver [(2) The biological parents and child] shall be included in developing the assessment and ITP unless not in the best interest of the child [placement plan unless contraindicated].

(5) The foster home selected for [(3) The foster] placement shall be the most appropriate family for a child based on the child's needs and strengths of the foster family. The foster home shall be located as close [located as near] as possible to the family [biological parent's] home to facilitate visiting and reunification.

[(4) There shall be a semiannual review of the child's home of origin home.]

(6) The social services professional and the foster parent shall work collaboratively to prepare the child for placement. A [(5) Each] child shall have a period of preparation for the placement unless a circumstance precludes this preparation and is [circumstances preclude this preparation. The circumstances shall be] documented in the case record.

(7) A preplacement visit [(6) Preplacement visitation by the child under agency supervision] shall be scheduled before final placement in the foster home unless circumstances, that [which] shall be documented in the case record, preclude this visit.

(8) There shall be a semiannual review of the child's family home.

(9) The child-placing agency shall:

(a) Provide or arrange for basic support for the family of the child for whom family reunification is the goal;

(b) Quarterly assess the parent's capacity for reunification;

(c) Provide for the review of the child in foster care to evaluate the progress toward achieving the child's permanency goal; and

(d) Assure that foster care continues to be the best placement for the child.

(10) Services to the family [these visits:

(7) Prior to placement, the social worker shall hold meetings with the child to prepare him for the placement.

(8) Social services to the biological parents] and the child shall be adapted to their individual capacities, needs, and problems. A reasonable effort shall be made to return the child to the family.

(11) [If parents refuse social services, it shall be documented in the record.

(9)] Planning for the child regarding a matter [matters] including but not limited to visitation, health, [and] education, and permanency goal shall be developed with the:

(a) Family;

(b) Behavioral health professional;

(c) Social services professional; and

(d) Foster parent.

(12) The child-placing agency shall work with a foster parent to promote stability and avoid disruption for a child. A request for the [parents, the social worker, and foster parents:

(10) Requests for a removal of a child from a foster home shall be explored immediately and documented by the social services professional. If disruption is unavoidable, the child-placing agency and foster parent shall develop a plan for the smooth transition of the child to a new placement.

(13) ~~worker.~~

~~((11)) Preparation for the return of a child [a child's return] to the [biological or home of origin] family shall be supervised by a social services professional [worker]. The [biological] family shall participate in planning for the child's return. If the child has not had regular contact with his family, a plan [plans] for the child's return home shall include:~~

~~(a) A minimum of one (1) prior visit [prior visits] between the child and the family; and~~

~~(b) At least one (1) preliminary visit of the child to his family's home.~~

~~(14) Aftercare service shall be provided to the child and family to the extent the child and family continue to need supportive service. Documentation of a service provided to the child and family after return to the family home shall be kept by the child-placing agency. [parents' home. If the child is committed to the Cabinet for Families and Children and the parents reside a considerable distance from the agency, attempts shall be made for providing services to the parents. If the agency is unable to provide services directly to the child's parents, the executive director of the agency shall request the Cabinet for Families and Children to provide services. These efforts shall be documented in the case record. Provisions shall be made for exchange of information at least quarterly and more often if circumstances warrant.~~

~~(12) The agency shall provide for the semiannual review of the children in foster care to assure that foster care continues to be the best plan for each child.]~~

Section 12.[7:] Supervision of a Child in a Foster Home [Children in Foster Homes]. [(1)] The child-placing agency shall:

(1) Make a supervisory visit to the foster home at least one (1) time per month;

(2) Document each supervisory contact and the reason for the contact in the child's placement plan;

(3) Identify and make available necessary support to the foster family, including a plan for respite care, twenty-four (24) hour crisis intervention and a foster family support group;

(4) [maintain continuing supervision of the child and foster home while the child is in placement. The agency shall] Assure that the child is receiving care in accordance with his needs;

(5) [-The agency shall] Provide information to a foster parent [the foster parents] regarding the child's behavior and development;

(6) Document every effort to see that the legal rights of the family and the child are protected and that the family ties are maintained between the child and his family pursuant to the child's permanency plan;

(7) Assure that a child shall have clothing for his exclusive use comparable in quality and variety to that worn by another child with whom he will associate;

(8) Be responsible for seeing that a child complies with state school attendance laws;

(9) Secure psychological and psychiatric services, vocational counseling, and other service if indicated by the child's needs; and

(10) Assess the child's placement and permanence goal semi-annually.

[(2)] Upon placement of a child in a foster home, the responsible worker shall make at a minimum monthly supervisory visits to the home. The individual needs of the child shall dictate if more frequent visitation is necessary. The number of contacts and the rationale shall be specified in the plan.

(3) The agency shall document every effort to see that the legal rights of parents and the child are protected and that the family ties are maintained between the child and his parents:

(4) Each child shall have clothing for his exclusive use comparable in quality and variety to that worn by other children with whom he will associate:

(5) The agency shall be responsible for seeing that children comply with state school attendance laws:

(6) The agency shall secure psychological and psychiatric services, vocational counseling, and other services if indicated by the child's needs:

(7) If the plan for long-term foster care for a child has been determined and justified, the plan shall be reassessed annually.]

Section 13. [8:] Maintenance of the Foster Care Record [Foster Care Records]. (1) The child-placing agency shall maintain a record on a [records on each] child, his family, and [on] the foster parent. The record [families. These records] shall show the reason [reasons] for placement change [changes] and steps taken to insure success. A case record shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, pursuant to KRS 61.878, 199.430(3), 199.640, and 200 KAR 1:020.

(2) The record of the child shall include:

(a) Identifying information for child, parent, and foster parent;

(b) Commitment order or custodian's consent for admission;

(c) Birth and immunization certificate;

(d) Educational record;

(e) Medical and dental record since placement;

(f) Social history and assessment;

(g) ITP and review;

(h) Permanency goals;

(i) Incident report;

(j) Monthly progress notes based on the ITP;

(k) Correspondence with the court, family, Department for Community Based Services, Department for Juvenile Justice; and

(l) Discharge report.

(3) The foster parent's record shall include documentation relating to the:

(a) Orientation and training of the parent, including the narrative summary of the foster home evaluation;

(b) Required ongoing training hours and the topic covered;

(c) Placement of the child;

(d) Narrative summary of the annual foster home evaluation; and

(e) Supervision of the foster home, including critical incidents.

[(2)] Social work staff shall document in case records the results of regular social service and progress toward goals which have been established for the child and family:

(3) Copies of all correspondence relating to the child shall be maintained:

(4) The date of discharge and the name and address of the persons or organization to whom the child is discharged shall be recorded:

(5) The discharge recording shall reflect the reason for the discharge:

(6) All case records shall be maintained in conformity with existing laws and regulations pertaining to confidentiality, KRS 61.878, 199.430(3), 199.640, and 200 KAR 1:020.]

Section 14. [9:] Evaluation of Potential Adoptive Placement [Homes]. (1) The child-placing agency shall assess as an adoptive parent, an applicant who:

(a) Is [select as adoptive parents applicants:

(a) Who are] capable of providing for the child's care, support, education, and character development; and

(b) Has [Who have] the ability to understand and accept the child's characteristics, potential, and limitations.

(2) [Adoptive placement of a child shall not be made prior to the approval of a home as an adoptive home:

(3)] The child-placing agency shall complete a written study of the adoptive placement that [home which] shall include the following:

(a) A minimum of one (1) adoptive home visit by the adoption worker;

(b) A face-to-face interview [Face-to-face interviews], both joint and separate, [shall be] conducted with each member of the household;

(c) Social services professional's [Worker's] evaluation of the adoptive home situation;

(d) The functioning of the total adoptive family [household shall be] considered in determining the suitability of the placement; and [home:]

(e) Three (3) written personal references indicating the suitability of the adoptive home and of the potential adoptive parent;

(f) Attitude [parents:

(4) The written study of the home of the applicant documents:

(a) Attitudes] of household members toward placement of an adoptive child into the adoptive home;

(g) Observation [(b) Observations] of the functioning of the poten-

tial adoptive family including interpersonal relationships and patterns of interaction;

(h) ~~[(e)]~~ The nonfamilial relationship; ~~[relationships-]~~

(i) ~~[(d)]~~ Certification by a licensed physician or other licensed health care professional current within the last twelve (12) months, regarding the physical and mental ability of the adoptive family to provide necessary care for the child;

(j) Acceptable ~~[(e)]~~ standards of household safety, housekeeping, and cleanliness;

(k) ~~[are-acceptable-]~~

(f) Water supply and sanitation compliance with ~~[all]~~ state and local health requirements;

(l) ~~[(g)]~~ Suitability of indoor ~~[in-]~~ and out-of-door play space according to the age and needs of the child;

(m) ~~[(h)]~~ Accessibility of the adoptive home to the applicable ~~[home-to]~~ community resources;

(n) A criminal record check, including an out-of-state check if the parent has lived outside the state within the past ten (10) years, a child abuse and neglect registry check, adult protective services registry check and a nurse's aide registry check [:-

(t) A criminal records check] on each adult residing in the household;

(o) ~~[(j)]~~ Verification of a current marriage and a prior divorce or death of a spouse ~~[all-marriages-and-divorces]~~ of the potential adoptive parent;

(p) A minimum of three (3) written references; and

(q) ~~[parents-]~~

(k) The economic circumstance ~~[circumstances]~~ of the potential adoptive parent ~~is~~ ~~[parents-are]~~ sufficient to meet the needs of the child.

(3) A child-placing agency ~~[(5)-Agencies]~~ shall clearly define the qualifications required of the ~~[they-require-of]~~ potential adoptive applicant.

Section 15. ~~[10-]~~ Adoption Placement Process. (1) A child shall not be placed for adoption until the;

(a) Adoptive home has been approved;

(b) Parental rights of the mother, legal father and a putative father of the child, if not the same person as the legal father ~~[biological-parents-and-alleged-parents]~~ are terminated by a circuit court order pursuant to KRS Chapter 625; ~~[in-accordance-with-Kentucky-Revised-Statutes]~~ and

(c) ~~[the]~~ Child's custody is placed with the child-placing agency for the purpose of adoption placement ~~[purposes-of-adoption-placing]~~.

(2) A parent ~~[Parents]~~ shall not be induced to terminate parental rights by a promise of financial aid or other consideration.

(3) The authority granted to a child-placing agency ~~[agencies]~~ licensed by the cabinet authorizing them to place a child for adoption shall not be used to facilitate an adoptive placement planned by a doctor, lawyer, clergyman, or others outside the child-placing ~~[adoptive-placements-planned-by-doctors,-lawyers,-clergymen,-and-others-outside-the]~~ agency. The child-placing agency shall comply with provisions of 922 KAR 1:010; ~~[Application-for-permission-to-place-or-receive-a-child]~~.

(4) The following shall be obtained by the child-placing agency: ~~[A developmental-history-of-the-adoptive-child-and-social-history-of-the-biological-parents-shall-be-obtained. Information-shall-be-obtained from direct study and observation of the child by the social worker, pediatrician, foster parents, and if indicated, by the nurse, psychologist and other consultants. To comply with KRS 199.520 and 199.572, child-placing-agencies-shall-assist-the-biological-parents-in-completing forms-prescribed-by-Cabinet-for-Families-and-Children-policy-and-procedure-]~~

(a) A developmental history of the adoptive child to include: ~~[The child's developmental history shall include as much of the following as is available:]~~

1. Birth and health history;

2. Early development;

3. Characteristic ways of the child of responding to people and a situation ~~[situations];~~

4. Deviation ~~[Deviations]~~ from the range of normal development;

5. The experiences of the child prior to the decision to place him for adoption;

6. Maternal attitude ~~[attitudes]~~ during pregnancy and early infancy;

7. Continuity of parental care and affection;

8. Out-of-home placement history; ~~[Foster-care-placements;-and]~~

9. Separation experiences; and

10. Information about the mother and legal father and a putative father, if not the same person as the legal father, about family background that may affect the child's normal development to determine whether there are a significant hereditary factor or pathology, including an illness of the biological mother or father.

(b) A social history of the biological or legal parent may include:

1. Name;

2. Age;

3. Nationality;

4. Education;

5. Religion; and

6. Occupation.

(c) Information obtained from direct study and observation of the child by the:

1. Social services professional;

2. Physician or other licensed health care professional and if indicated;

3. Foster parent;

4. Nurse;

5. Psychologist; and

6. Other consultants.

(b) Information that may affect the child's normal development shall be obtained from biological mother and father about their family background may include:

1. Name;

2. Age;

3. Nationality;

4. Education;

5. Religion;

6. Occupation; and

7. Information to determine whether there are any significant hereditary factors or pathology, including illnesses of the biological mother or father.]

(d) ~~[(e)]~~ Information ~~[shall-be-obtained]~~ from the mother, if possible:

1. To the identity of the biological father or legal father, if different from the biological father, for the purpose of determining ~~[purposes-of-determination-of]~~ the father's parental rights; and

2. Establishment of the possible hereditary endowments.

(5) If either biological or legal parent is unavailable, unwilling, or unable to assist with the completion of information necessary to comply with KRS 199.520 and 199.572, the child-placing agency shall document information to the extent possible from the existing case record ~~[existing-case-records]~~.

(6) ~~[(5)]~~ A medical examination shall be made by a licensed physician or other licensed health professional to determine:

(a) The state of the child's health;

(b) Any significant factor ~~[Significant-factors]~~ that may interfere with normal development; and

(c) The implication ~~[implications]~~ of any medical problem ~~[problems]~~.

(7) The condition ~~[(6)-Before-placement-of-the-child,-conditions]~~ under which an adoptive parent agrees to ~~[adoptive-parents]~~ accept the child shall be decided upon, prior to placement of the child. The ~~[agreed-upon-This]~~ written agreement between the child-placing agency and the adoptive parent shall embody the following provisions:

(a) The adoptive parent shall agree to:

1. ~~[parents-shall]~~ Comply with KRS 199.470;

2. ~~[and-agree-to]~~ File an adoptive petition at a time agreeable to them and the child-placing agency; and

3. ~~[agency-]~~

(b) The adoptive parents agree to:

1-] Permit supervision by the child-placing agency during the period of time;

a. After placement; and

b. ~~[2-]~~ Preceding the final judgment by the circuit court;

(b) Pursuant to KRS 199.520(4)(a) the child-placing agency shall be [:-

(c) The agency is] responsible for providing the adoptive parents

with written information regarding the child's:

1. ~~Written information regarding the child's~~ Background;
2. Medical history;
3. Current behavior; and
4. Medical information necessary to comply with KRS 199.520.

(c) ~~[(d)]~~ The adoptive parent and the child-placing ~~parents and the~~ agency shall agree that the child may be removed from the placement, ~~[family]~~ at the request of either party, before the filing of the adoptive petition.

(8) ~~[(7)]~~ Preplacement visits ~~[meetings]~~ shall be arranged for the adoptive parent and a child with the pattern and number of visits based on the age, development, and needs of the child.

(9) ~~[parents and any child one (1) month of age or older.~~

(8) If preparing the child for placement with the selected adoptive parent, the child-placing ~~parents, the~~ agency shall discuss with the child his readiness to accept this placement pursuant to ~~[in accordance with]~~ the child's age and ability to understand.

(10) ~~[(9)]~~ Siblings who have had a relationship with one another shall be placed together unless it is determined to be more beneficial for them to be placed in separate adoptive homes. ~~[Continued contact between siblings in separate homes shall be maintained if possible.]~~ If siblings have been separated in placements:

(a) The case record shall reflect a valid basis for the separation;

(b) The decision to separate siblings shall be made by the executive director of the child-placing agency; and

(c) Continued contact between siblings shall be maintained, if possible, ~~[agency].~~

Section 16. ~~[(11)]~~ Supervision of an Adoptive Placement ~~[Adoptive Homes]~~. (1) The child-placing agency placing a child shall remain responsible for him until the adoption has been granted. This responsibility involves the following:

(a) Two (2) meetings by the social services worker with the child and the adoptive family including both adoptive parents if not a single parent adoption, one (1) of which shall be in the adoptive home before filing of the adoption petition.

(b) The continuation of supervisory visits and contacts until the adoption is legally granted.

(c) Awareness of a change ~~[changes]~~ in the adoptive family including health, education, and behavior.

(2) Upon request of the cabinet the child-placing ~~[for Families and Children, the]~~ agency shall:

(a) Provide information pursuant to KRS 199.510 that ~~[as required in KRS 199.510 which]~~ is necessary to report to the court to proceed with the adoption;

(b) ~~[Upon the request of the cabinet for filing with the appropriate circuit court, the agency placing the child shall:~~

(a) Prepare a confidential report to the court; and

(c) ~~[(b)]~~ Forward the original and one (1) copy of this report and a copy of information pursuant to ~~[required by]~~ KRS 199.520 and 199.572 to the cabinet ~~[for Families and Children]~~.

(3) If the court finds the adoptive parent ~~[parents]~~ to be unsuitable and refuses to grant a judgment, the child-placing agency shall remove the child from the home.

Section 17. ~~[(12)]~~ Maintenance of Adoptive Case Record. (1) The child-placing agency shall maintain a case record from the time of the application for services through the completed legal adoption and termination of child-placing agency service on:

(a) A ~~[Each]~~ child accepted for care;

(b) His family; and

(c) An ~~[Each]~~ adoptive applicant.

(2) The case record shall contain material on which the child-placing agency decision may be based and shall include or preserve:

(a) ~~[Include]~~ Information and documents needed by the court ~~[courts];~~

(b) ~~[Preserve]~~ Information about the child and his family;

(c) ~~[Include]~~ A narrative or summary of the services provided with a copy of ~~[copies of all]~~ legal and other pertinent documents; and

(d) ~~[Include all]~~ Information gathered during the intake study including the following:

1. A description of facts about the child's family situation that ~~[which]~~ necessitated placement of the child away from his family or

termination of parental rights;

2. A certified copy of the order of the circuit court terminating parental rights and committing the child to the child-placing agency for the purpose of adoption;

3. Verification of the child's birth record and the registration number;

4. A copy of the child's medical record up to the time of placement;

5. A copy of the required evaluation ~~[study]~~ of the adoptive placement ~~[home];~~

6. Date of adoptive placement ~~[in the adoptive home];~~

7. A statement of the basis of the selection of this adoptive home for the child;

8. A record of after-placement services with dates of visits, contacts and observations;

9. Dates of filing of petition and granting of judgments and other significant court proceedings relative to the adoption; and

10. Child's adoptive name.

(3) If there is need to share background information with a party ~~[one of the parties]~~ to a completed adoption or to have the benefits of information from a closed adoption record to offer services following completion of an adoption, the child-placing agency shall comply pursuant to ~~[with]~~ KRS 199.570.

(4) Records on adoption, that ~~[which]~~ contain pertinent information, shall be:

(a) Maintained indefinitely following final placement of a child; and

(b) ~~[Each individual record shall be]~~ Sealed and secured from unauthorized scrutiny.

Section 18. Independent Living. The following additional requirements apply to a child-placing agency providing independent living programming.

(1) The child-placing agency shall develop and implement written policy and procedure that address its independent living program including a:

(a) Curriculum for teaching and practicing of independent living skills including:

1. Employment;

2. Education;

3. Money management;

4. Housing and home management;

5. Use of community resources;

6. Interpersonal skills;

7. Basic knowledge of:

a. Nutrition;

b. Food preparation;

c. Health; and

d. Sexuality issues.

(b) Written plan for aftercare services; and

(c) Written plan for services from a cooperating agency.

(2) If an independent living program exists outside of the child-placing agency, the program director shall document that local fire and building codes are met.

(3) A staff person shall be responsible for and have daily contact with each child in the independent living program.

(4) The child-placing agency shall maintain documentation for each youth concerning:

(a) An assessment of the youth's readiness to live independently;

(b) Progress each youth has made in independent living skills training;

(c) Assistance to the youth in finding and keeping in touch with family if possible;

(d) Staff observation of the living arrangement; and

(e) Progress in an educational program.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: March 31, 2000

FILED WITH LRC: April 13, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000, at 9 a.m. in the Health

VOLUME 26, NUMBER 11 – MAY 1, 2000

Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2000, of their intent to attend. If no notification 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 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: Judy Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: The affected entities are 69 child-placing agencies.

(2) Direct and indirect costs or savings on those affected: None

(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 hearing was requested as a result of the Notice of Intent being published. Written comments were received and responded to.

(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 hearing was requested as a result of the Notice of Intent being published. Written comments were received and responded to.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing cost (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 to the agency:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing cost: 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: No public hearing was requested as a result of the Notice of Intent being published. The written comments received did not indicate impact on the geographical area.

(b) Kentucky: No public hearing was requested as a result of the notice of Intent being published. Written comments received did not indicate that there will be an economic impact from this administrative regulation.

(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: No detrimental effect.

(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: 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? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(Amendment)

922 KAR 1:350. Family preparation [section].

RELATES TO: KRS 199.462, 199.471, 600.020, 605.090-130, 42 USC 671, et seq.

STATUTORY AUTHORITY: KRS 194B.050(1) [194.050], 199.472, 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) [194.050] provides that the Secretary for the Cabinet for Families and Children shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. In compliance with KRS 199.472 and 605.150 the Department for Community-Based Services has promulgated administrative regulations that establish the process of determining an [shall enable staff to determine the] applicant's capacity for foster or adoptive [adoptive or foster] parenthood pursuant to KRS 605.090 through 130. This administrative regulation has been promulgated in compliance with KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Families and Children.

(2) "Resource home" means a home in which a parent has been certified to:

(a) Provide foster care services for a child placed in out-of-home care by the cabinet;

(b) Adopt a child;

1. Whose parental rights have been terminated; and

2. Is under the custodial control of the cabinet;

(c) Provide respite service for a family approved to care for a child under the custodial control of the cabinet; or

(d) Provide any combination of the services described in paragraphs (a) through (c) of this subsection.

Section 2. Out-of-home Placement in a Resource Home. (1) Except in the placement of a sibling group or approval by the service region administrator, no more than six (6) children, including children under the custodial control of the cabinet and the parent's own children living at home, shall reside in a resource home that provides only foster care services.

(2) If more than six (6) children are placed in a resource home that provides only foster care services, a plan shall be established within ten (10) working days of placement and document the:

(a) Reason the placement is in the best interest of the child; and

(b) Provision of specific support services by the cabinet.

(3) No more than three (3) children under age two (2), including children placed in out-of-home care by the cabinet and the parent's own children, may reside at the same time in a resource home that provides only foster care services.

Section 3. General Requirements for a Resource Home Parent. (1) Unless approved by the service region administrator, a resource home applicant shall be at least twenty-one (21) years of age.

(2) A resource home applicant between eighteen (18) to twenty-one (21) years of age may be approved as a resource home parent if:

(a) The individual is related to a child under the custodial control of the cabinet;

(b) The relative can meet the needs of the child; and

(c) Cabinet staff determines relative placement is in the best interest of the child.

(3) Except pursuant to approval by the service region administrator of a resource home applicant that has been married for more

than one (1) year but less than two (2) years and whose relationship has been continuous for at least a two (2) year period, a married applicant shall be married for at least two (2) years prior to approval.

(4) If related to a child under the custodial control of the cabinet, a resource home applicant who has been married for less than one (1) year may be approved if the family services office supervisor determines relative placement is in the best interest of the child.

(5) A single unmarried person may apply to become a resource home parent.

(6) A cabinet worker who provides protection and permanency services may become a resource home parent upon approval of the Commissioner of the Department for Community Based Services.

(7) The decision to foster or adopt a child shall be agreed to by each member of the applicant's household, including the applicant's children, if age appropriate.

(8) The health history and current health status of each member of the resource applicant family shall be obtained by the cabinet to assure that no member of the household has an illness or condition that presents a health or safety risk to a child placed in the resource home. Each parent's health history shall include a written statement from a medical professional regarding the parent's general health as specified on the OOH-107.

(9) A resource home applicant shall have a source of income separate from:

- (a) Foster or resource home care reimbursement; or
- (b) Adoption assistance.

(10) Unless specified in a contract between the cabinet and a child welfare agency that provides foster care service, a resource home parent shall only accept a child for foster care from the cabinet.

(11) An approved resource home parent shall be willing to:

- (a) Provide foster care services;
- (b) Adopt a child under the custodial control of the cabinet; or
- (c) Provide respite services by caring for a child under the custodial control of the cabinet.

(12) A resource home applicant shall provide to the cabinet:

- (a) The name of two (2) personal references;
- (b) The name of a neighbor who shall be interviewed by cabinet staff in person or by telephone; and
- (c) Two (2) credit references.

(13) Adult children of the resource home applicant who do not live in the home shall be contacted by cabinet staff regarding applicant's parenting history.

(14) If applicable, verification shall be obtained from the resource home applicant regarding:

- (a) Previous divorce;
- (b) Death of a spouse; and
- (c) Present marriage.

(15) A resource home applicant that does not have custody of his child shall provide:

- (a) A copy of the visitation order;
- (b) A copy of the child support decree; and
- (c) Proof of current payment of child support.

(16) A resource home applicant and any adult residing in the household shall authorize the release of criminal records to the cabinet.

(17) A resource home applicant shall not be selected for approval if an adult residing in the household has a:

- (a) Substantiated criminal record of child or spouse abuse; or
- (b) Criminal conviction, as evidenced by FBI, state, and local criminal record checks for a crime against a child;
- (c) Criminal conviction, as evidenced by FBI, state, and local criminal record checks for a crime involving violence, including rape, sexual assault, and murder; or
- (d) Felony conviction for physical assault, battery, or a drug-related offense.

(18) Approval of a resource home applicant with a conviction of a nonviolent felony or misdemeanor shall be handled on a case-by-case basis with consideration given to the:

- (a) Nature of the offense;
- (b) Length of time that has elapsed since the event; and
- (c) Applicant's life experiences during the ensuing period of time.

(19) If the resource home applicant has lived in another community or in another state, a request for a records search of those locations shall be made prior to approval. Court records shall be checked for the disposition of an arrest record.

Section 4. Home Environment. (1) Except for the operation of a certified family day care home, a resource home parent that provides only foster care services shall not be licensed to provide commercial day care services for an unrelated child or adult at the same time the resource home parent is approved to provide twenty-four (24) hour care for a child.

(2) If the resource home adjoins a place of business open to the public, potential negative impact on the family and the child shall be examined including the:

- (a) Hours of operation;
 - (b) Type of business; and
 - (c) Clientele.
- (3) The resource home parent shall have access to:
- (a) Reliable transportation;
 - (b) School;
 - (c) Recreation;
 - (d) Church;
 - (e) Medical care; and
 - (f) Community facilities.

(4) A resource home parent who drives shall possess:

- (a) A valid driver's license; and
- (b) Proof of liability insurance.

(5) Up to four (4) children, including the resource home parent's own child, may share a bedroom.

(6) Each child shall have his own separate bed.

(7) Each infant shall have a crib.

(8) Except for approval by cabinet staff, a resource home parent shall not share a bedroom with a child under the custodial control of the cabinet.

(9) The bedroom of a child under the custodial control of the cabinet shall be comparable to each bedroom in the house.

(10) The physical standard of the resource home shall:

- (a) Not present a hazard to the safety and health of a child; and
- (b) Be well heated and ventilated.

(11) The following shall be inaccessible to a child:

- (a) Medication;
- (b) Alcoholic beverage;
- (c) Poisonous or cleaning material;
- (d) Ammunition; and
- (e) Firearms.

(12) A dangerous animal shall not be allowed near the child.

(13) First aid supplies shall be available and stored in a place easily accessible to an adult.

(14) A telephone or other means for immediate access to communication with the outside community shall be available.

(15) The home shall be equipped with a working smoke alarm within ten (10) feet of each bedroom.

Section 5. Emergency Shelter Resource Home. (1) An applicant may be approved as an emergency shelter resource home and the resource home parent shall be eligible to receive the emergency shelter rate if the parent:

(a) Meets the requirements of Sections 3 and 4 of this administrative regulation;

(b) Cares for a child age twelve (12) and above who needs immediate, unplanned care for less than thirty (30) days. An exception to the minimum age of twelve (12) or an extension shall be approved by the service region administrator;

(c) Completes ten (10) hours of cabinet-sponsored training or training approved in advance by the cabinet beyond the required preservice; and

(d) Has a working telephone in the home.

(2) An approved emergency shelter resource home parent shall receive reapproval for the emergency shelter rate if the parent completes ten (10) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet:

- (a) Beyond the annual requirement; and
- (b) Before the anniversary date of approval as an emergency

shelter home.

Section 6. Medically Fragile Resource Home. (1) An applicant may be approved as a medically fragile resource home and the resource home parent shall be eligible to receive a medically fragile rate consistent with the parent's level of training and experience and child's medical acuity level if the resource parent:

(a) Meets the requirements in Sections 3 and 4 of this administrative regulation;

(b) Cares for a child approved by cabinet staff as medically fragile and has a:

1. Medical condition documented by a physician that may become unstable and change abruptly resulting in a life-threatening situation;

2. Chronic and progressive illness;

3. Severe disability that requires technology;

4. Need for a special service or ongoing medical support;

5. Need for twenty-four (24) hour care by a physician or licensed nurse for the child to survive; or

6. Health condition stable enough to be in a home setting only with frequent monitoring by an attending physician or care of a licensed nurse;

(c) Except for approval by cabinet staff, is a primary caretaker who is not employed outside the home;

(d) Has completed:

1. A medically fragile curriculum approved by the cabinet; or

2. An additional twenty-four (24) hours of cabinet-sponsored training or training approved in advance by the cabinet beyond the preservice requirement in the areas of:

a. Growth and development;

b. Nutrition; and

c. Medical disabilities;

(e) Has received training in how to care for the specific medically fragile child who shall be placed;

(f) Maintains current certification in:

1. CPR; and

2. First aid; and

(g) Has a home within:

1. One (1) hour of a medical hospital with an emergency room;

and

2. Thirty (30) minutes of a local medical facility.

(2) Professional experience related to the care of a medically fragile child may substitute for the training requirement specified in subsection (1)(d) of this section.

(3) Except for a sibling group or unless approved by the service region administrator, no more than four (4) children, including the parent's own children, shall reside in a medically fragile resource home.

(4) Unless approved by a service region administrator or if a medically fragile resource home has live-in or daily support staff to meet the needs of a medically fragile child:

(a) A one (1) parent medically fragile resource home shall:

1. Not care for more than one (1) medically fragile child; and

2. Demonstrate access to available support services;

(b) A two (2) parent medically fragile resource home shall not care for more than two (2) medically fragile children, including the resource parent's own children.

(5) An approved medically fragile resource parent shall receive annual reapproval for a medically fragile rate consistent with the parent's level of training and experience and child's medical acuity level if the parent:

(a) Annually completes twenty-four (24) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet before the anniversary date of approval as a medically fragile home; and

(b) Continues to meet the requirements of subsections (1) and (3) of this section.

Section 7. Family Treatment Home. (1) An applicant may be approved as a family treatment home and the parent shall be eligible to receive a family treatment home rate consistent with the parent's level of training and experience if the resource parent:

(a) Meets the requirements of Sections 3 and 4 of this administrative regulation;

(b) Cares for a child that:

1. Has a serious emotional problem;

2. Is due to be released from a treatment facility;

3. Displays aggressive, destructive, or disruptive behavior;

4. Is at risk of being placed in a more restrictive setting;

5. Is at risk of institutionalization; or

6. Has experienced numerous placement failures;

(c) Except for approval by the service region administrator, is a primary caretaker who is not employed outside the home;

(d) Completes the twenty-four (24) hour family treatment training beyond the preservice requirement;

(e) Maintains a daily log of the child's activities, behaviors, and intervention techniques; and

(f) Attends all treatment planning conferences.

(2) Except for a sibling group or unless approved by the service region administrator, no more than four (4) children, including the parent's own children, shall reside in a family treatment home.

(3) Unless approved by the service region administrator or if a family treatment home has live-in or daily support staff to meet the needs of a child described in subsection (1)(b) of this section:

(a) A one (1) parent family treatment home shall:

1. Not care for more than one (1) child as described in subsection (1)(b) of this section; and

2. Demonstrate access to available support services;

(b) A two (2) parent family treatment home shall not care for more than two (2) children as described in subsection (1)(b) of this section, including the family treatment home parent's own child.

(4) A family treatment home shall have access to respite care provided by an individual who has completed family treatment training.

(5) An approved family treatment home parent shall receive annual reapproval for the family treatment home rate consistent with the parent's level of training and experience if the parent:

(a) Annually completes twenty-four (24) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet before the anniversary date of approval as a family treatment home; and

(b) Submits to review of:

1. The family treatment home parent's intervention skills and techniques;

2. Records kept by the family treatment home parent; and

3. Ability to meet the goals established for the child.

Section 8. Preparation and Selection of a Resource Family. (1) An applicant shall complete a:

(a) Minimum of thirty (30) hours of initial family preparation; and

(b) Curriculum used statewide and approved by the cabinet.

(2) Except for a cabinet-approved individualized preparation program, family preparation for placement of a child under the custodial control of the cabinet shall be completed in a group setting by each adult who resides in the household and provides care.

(3) An adult child or elderly person who resides in the resource home shall not be required to complete family preparation if that individual shall not be responsible for care of a child placed in the home by the cabinet.

(4) The cabinet is not obligated to grant resource home approval or placement of a specific child to a family that completes family preparation.

(5) The purpose of family preparation shall be to:

(a) Orient the applicant to the philosophy and process of the cabinet's family foster and adoption care program;

(b) Develop greater self-awareness on the part of the applicant to determine strengths and needs;

(c) Prepare the applicant by sensitizing him to the kinds of situations, feelings, and reactions that are apt to occur with a child committed to the cabinet; and

(d) Effect behavior so that an applicant may better fulfill the role as parent of a foster or adopted child.

(6) The family preparation process shall emphasize:

(a) Self-evaluation;

(b) Participation in small group exercises; and

(c) Discussion with experienced foster and adoptive parents.

(7) In addition to completion of the family preparation curriculum, at least two (2) family consultations shall be conducted by cabinet staff in the home of an applicant and the applicant shall be informed during the consultation of his right to request an administrative review if a difference arises that cannot be resolved through a supervisory channel.

(8) A child already placed by the cabinet in the home of an approved resource parent that marries may remain and additional children may be placed if the new spouse completes the family preparation process within six (6) months of the marriage.

(9) An approved foster parent who moves to Kentucky from another state shall:

(a) Be assessed by cabinet staff to ascertain the parent's level of skill as a resource home parent; and

(b) Not be required to complete the family preparation process for approval as a Kentucky resource home parent if cabinet staff:

1. Determine that the parent possesses the necessary skills for fostering; and

2. Obtain records and recommendation from the other state.

(10) If cabinet staff determine that an approved foster parent who has moved to Kentucky from another state lacks necessary foster parent skills, an individualized preparation curriculum shall be developed to meet any unmet training needs.

Section 9. Completion of the Resource Home Certification Process. (1) A family services office supervisor may approve a resource home applicant if:

(a) A complete family profile signed by the applicant has been received;

(b) The applicant has completed family preparation as specified in Section 8(1) of this administrative regulation;

(c) The information required in Section 3(12) through (14) of this administrative regulation has been obtained;

(d) The recruitment and certification worker recommends approval; and

(e) The applicant's ability to provide a foster, adoptive, or respite service is consistent with the:

1. Cabinet's minimum resource home requirements; and

2. Needs of the families and children served by the cabinet.

(2) A resource home applicant shall not be denied approval solely due to:

(a) Age;

(b) Income;

(c) Marital status;

(d) Race;

(e) Religious preference;

(f) Sexual orientation;

(g) Physical or disabling condition; or

(h) Location of the resource home.

(3) If the family services office supervisor determines at any time that an applicant does not meet the minimum requirements for approval as a resource home parent, the cabinet shall recommend that the applicant withdraw his application.

Section 10. Denial of a Resource Home Application. (1) If the family services office supervisor determines that an applicant does not meet minimum requirements for approval as a resource home parent and the applicant is not willing to withdraw his application or if a resource home applicant who desires to adopt is not willing to adopt a child under the custodial control of the cabinet, written notification regarding denial of the application shall be sent to the applicant.

(2) If the resource home applicant disagrees with the family services office supervisor's decision to deny approval as a resource home, the service region administrator shall review the application and issue final written determination regarding approval.

Section 11. Home Study Requests. Except for a request received from the sending state's Interstate Compact on the Placement of Children Administrator in the interest of a child in the legal custody of the sending state's public agency, the cabinet shall not complete a home study as specified in 922 KAR 1:100, Section 6(6), or share a previously approved home study for a family who at-

tempts to receive a child for foster care or adoption through a public agency or licensed private adoption agency in another state or country.

Section 12. Annual Resource and Adoptive Parent Training Requirement. (1) A resource parent and waiting adoptive parent shall be required to participate in a minimum of six (6) hours of annual cabinet-sponsored training or training approved in advance by the cabinet before the anniversary date of approval.

(2) An individualized curriculum may be developed for a resource or adoptive parent who is unable to participate in annual group training because of employment or other circumstances.

(3) Except for a resource family that has developed a significant emotional attachment to a child placed with the family, the home of a resource parent that fails to meet the annual training requirement shall be closed. Additional children shall not be placed in the home until the training requirement has been satisfactorily met.

(4) When a resource home parent participates in ongoing training, the family services office supervisor may approve reimbursement for:

(a) Mileage;

(b) Babysitting; or

(c) Tuition or fees in the amount of \$100 per family per year or \$200 dollars per year for a:

1. Medically fragile foster home; or

2. Family treatment home.

(5) If the resource parent's request to attend training is denied, the cabinet shall provide written notice of the resource parent's right to a fair hearing.

Section 13. Resource Home Annual Reevaluation. (1) A personal interview conducted by cabinet staff in the home of a resource family shall be required annually during the anniversary month of initial approval to:

(a) Access a change in the family;

(b) Access the ability of the family to meet the needs of a child placed in the home; and

(c) Determine continuing compliance with cabinet requirements specified in Sections (3) and (4) of this administrative regulation.

(2) During the interview, the OOH-1289 is completed by cabinet staff.

Section 14. Resource Family Reviews. (1) Cabinet staff shall complete a review within thirty (30) days of notification of a factor that may place unusual stress on the family or create a situation that may place a child at risk.

(2) Factors that shall result in a review of a resource home parent shall include:

(a) Death or disability of a family member;

(b) Sudden onset of a health condition that would impair a parent's ability to care for a child placed in the home by the cabinet;

(c) Change in marital status;

(d) Sudden substantial decrease in or loss of income;

(e) Childbirth;

(f) Both resource home parents have reached the age of seventy (70);

(g) Use of a form of punishment that includes:

1. Cruel, severe, bizarre, or humiliating actions;

2. Corporal punishment inflicted in any manner upon the body;

3. Denial of food, clothing, or shelter;

4. Withholding implementation of the child's treatment plan;

5. Denial of visits, telephone or mail contacts with family members; and

6. Assignment of extremely strenuous exercise or work;

(h) A report of abuse, neglect, or dependency that results in a finding that is:

1. Substantiated; or

2. Reveals potential concern regarding the care of the child;

(i) The parent is cited, charged, or arrested with a violation of law; or

(j) Other factor identified by cabinet staff that jeopardizes the physical, mental, or emotional well being of the child.

(3) The narrative of the review shall contain:

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- (a) Identifying information;
- (b) Current composition of the household;
- (c) Description of the situation that initiated the review;
- (d) An evaluation of the family functioning to determine if the child's needs are met; and
- (e) A plan for corrective action that may include a recommendation for closure of the resource home.

Section 15. Closure of an Approved Resource Home. (1) An approved adoptive home shall be closed pursuant to 922 KAR 1:100, Section 10.

- (2) A resource home shall be closed if:
 - (a) Cabinet staff determine that the family does not meet the general requirements for a resource home family;
 - (b) A situation exists that is not in the best interest of the child;
 - (c) Substantiated sexual abuse or exploitation by the resource home parent occurs;
 - (d) Substantiated physical abuse of a child or spouse occurs that is serious in nature or warrants removal of the victim;
 - (e) A serious physical or mental illness develops that may impair or preclude adequate care of the child by the parent; or
 - (f) The parent is convicted of a felony offense.
- (3) If it is necessary to close an approved resource home, the reason shall be shared by cabinet staff in a personal interview with the family.
- (4) Written notice confirming the decision to close a home shall be completed:
 - (a) Within thirty (30) days of the interview with an adoptive parent; and
 - (b) No later than ten (10) days prior to the closing of a resource home.
- (5) The written notice for closure of a resource or adoptive home shall include:
 - (a) Notice that the cabinet shall not place a child in the home;
 - (b) The reason why the resource is being closed; and
 - (c) Notice of the parent's right to request an appeal of the decision.

Section 16. Reapplication. (1) A former resource home parent whose home was closed without a deficiency may reapply.

- (2) If a deficiency led to closure, a former resource home parent may be considered for reapproval if the deficiency has been resolved.
- (3) To reapply, the former resource home parent shall:
 - (a) Attend an information meeting;
 - (b) Submit the:
 - 1. Application;
 - 2. Names of references specified in Section 3(12) of this administrative regulation; and
 - 3. Authorization for criminal records release specified in Section 3(16) of this administrative regulation.
 - (4) Unless the former resource parent has previously attended family preparation as specified in Section 8(1) of this administrative regulation and is considered a good placement resource for children, the former resource parent shall complete family preparation.
- (5) An adoptive family may be reconsidered for adoptive placement pursuant to 922 KAR 1:100, Section 9.

Section 17. Foster Parent Adoption. (1) A foster parent may adopt a child for whom parental rights have been terminated if:

- (a) Foster parent adoption is determined by cabinet staff to be in the best interest of the child; and
- (b) The child resides in the foster home.
- (2) If a foster parent expresses an interest in adopting a foster child currently placed in the home and an alternative permanent placement is in the child's best interest, cabinet staff shall meet with the foster parent prior to selection of an adoptive home to explain:
 - (a) Why an alternative permanent placement is in the child's best interest; and
 - (b) The foster parent's right to submit a request to the cabinet to reconsider the recommended denial.
- (3) If a foster parent is not approved for adoptive placement of a child currently placed in the home, cabinet staff shall meet with the

foster parent to explain the:

- (a) Reason foster parent adoption is not in the best interest of the foster child; and
- (b) Foster parent's right to request an administrative review.

Section 18. Resource Home Payments. (1) The OOHC-111 and OOHC-111A shall be signed by the resource home parent prior to the placement of a child under the custodial control of the cabinet.

(2) The cabinet shall, to the extent funds are available, pay an approved resource home parent a daily rate for care of a child placed in the home by the cabinet.

(3) The basic rate received by an approved resource home parent shall be:

- (a) Specified in the OOHC-111; and
- (b) Received by a parent who has not completed advanced training.
- (4) The advanced rate received by an approved resource home parent shall be:
 - (a) Specified in the OOHC-111;
 - (b) 100 percent of the current USDA estimate of the cost of raising a child in the urban south; and
 - (c) Received by a parent who:

1. Has completed twenty-four (24) hours of advanced training beyond the required preservice training; and

2. Completes twelve (12) hours of ongoing cabinet-sponsored or cabinet-approved training each year.

(5) A resource home parent who has been approved as an emergency shelter home parent shall receive an emergency shelter rate specified in the OOHC-111 for the care of a child described in Section 5(1)(b) of this administrative regulation.

(6) A resource home parent who has been approved as a medically fragile home parent and meets the requirements of Section 6 of this administrative regulation shall receive the:

(a) Basic medically fragile rate specified in the OOHC-111 for care of a medically fragile child;

(b) Advanced medically fragile rate specified in the OOHC-111 for care of a medically fragile child if the parent maintains a current license as a licensed practical nurse; and

(c) Degreed medically fragile rate specified in the OOHC-111 for care of a medically fragile child if the parent maintains a current license as a registered nurse or physician.

(7) A resource home parent who has been approved as a family treatment home parent for the care of a child as described in Section 7(1)(b) of this administrative regulation shall receive the:

(a) Basic family treatment home rate specified in the OOHC-111 during the first year of approval as a family treatment home; and

(b) Advanced family treatment home rate of reimbursement upon:

1. Completion of ongoing cabinet-sponsored or approved training; and

2. One (1) year of experience as a family treatment home.

(8) An approved resource home parent who refers an applicant that becomes an approved resource or adoptive parent may be paid a bonus.

Section 19. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Family Profile", edition 10/16/91;
- (b) OOHC-107, "Health Information Required on Foster and Adoptive Applicant", edition 3/2000;
- (c) OOHC-111, "Foster Home Contract", edition 3/2000;
- (d) OOHC-111A, "Foster Home Contract Supplement", edition 3/2000;
- (e) OOHC-1289, "Annual Strength/Needs Assessment for Foster Families", edition 3/2000.

(2) This material may be inspected, copied, or obtained at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. ["Family annual reevaluation" means a periodic joint evaluation process used by the department and foster or adoptive parents to:

- (a) Assess the changes in a family;
- (b) Review the ability of the family to meet the needs of children;

(c) Determine continuing compliance with standards and expectations:

(2) "Family preparation" means a joint assessment process used by the department and the applicant for the purpose of determining whether the family may serve children the department has available for placement and how they may best meet these children's needs.

(3) "Foster or adoptive family review" means an assessment process used by the department when factors are identified which may put the family under stress and may affect the placement of a child.

(4) "Foster home contract" means a written contract, the DSS-111 incorporated by reference in 905-KAR-1:340, Out-of-home care, that details mutual expectations of the department and the family home for the twenty-four (24) hour care of the children:

Section 2. General Requirements for Foster and Adoptive Parents: (1) Foster and adoptive applicants and approved families shall meet the following requirements with exceptions approved by the family services district manager:

(a) Personal qualities and relationships that enable them to perform the responsibilities entailed in caring for children:

(b) Applicants shall be between the ages of twenty-one (21) and sixty-five (65) years and may be of an age to have naturally parented the age child they seek to have placed with them; and

(c) The number of children in a home shall be determined by the stamina, capacities and skills of the parents, physical accommodations of the home, and the effect of a child's placement on the equilibrium of the family as a unit:

1. Except in placement of sibling groups or where there is more than one (1) responsible adult in the home who can give full-time care to the children, no more than six (6) children, shall reside in the family foster home. This number shall include the foster children and the foster parents' own children living at home. The family services district manager shall approve exceptions for up to ten (10) children. Placement of more than ten (10) children including the foster parent's own children, shall be granted by the Director of Family Services:

2. More than three (3) infants including the foster children and foster parent's own children shall not be in the same home at the same time. Limitations on the number of special needs, medically fragile, or family treatment children who can be placed in a family foster home are specified in Section 11 of this administrative regulation:

(d) Employees of the department shall not be foster parents but may apply to adopt a child. An adoptive application shall not be processed in the office in which the applicant is employed or in an office served in an official capacity by the employee applicant. The employee may be referred to other licensed agencies:

(e) Applicants, including their children and other household members shall possess good mental and physical health and be free from communicable diseases, and specific illnesses or disabilities which interfere with the family's capability to care for children. An examination for the household members shall be completed by a physician, nurse clinician under the supervision of a physician, or a nurse practitioner within a year preceding the date of application is required. After approval, the worker may require a foster parent to supply documentation of their current health status; if a question arises about the foster parent's health:

1. A physical disability in a household member which does not interfere with the parents' ability to give adequate care to a child shall not prevent approval:

2. If a household member has received mental health services, he shall be asked to sign a medical release to obtain a report or evaluation regarding the emotional or mental health of that individual:

3. Adoption applicants shall inform the agency of their medical insurance carrier and the provisions of the carrier for including an adopted child on the policy. If the family does not have medical insurance coverage, they shall be advised of the risks involved and encouraged to provide coverage for their family. The family shall be informed of the agency's medical coverage for children in foster and adoptive placement:

(f) Applicants shall be expected to have an income sufficient to meet their present family's needs and to insure the stability of the family unit. Applicants who have children not in their custody shall provide copies of the child support decree:

(g) Applicants who are employed shall be required to have a plan for child care by the time of placement:

(h) Except in those cases where foster parents accept children from the fiscal courts, foster parents shall only accept children for foster care from the Department for Community-Based Services unless otherwise specified in a contract between DGBS and another child care provider:

(i) Foster parents shall not care for unrelated adults on a commercial basis or be licensed and accept children for day care at the same time they are approved as foster parents to provide twenty-four (24) hour care for children without the approval of the Director of Family Services:

(j) Home environment. The family shall have access to schools, recreation, churches, medical care and community facilities. If the home adjoins a place of business open to the public, consideration shall be given to the impact of the business upon the family and child. Factors including hours of operation, type of business and clientele shall be examined in terms of their potential impact. Physical standards of the home shall be of a degree of comfort sufficient to insure the well-being of the family:

1. The home shall have bedroom space to allow occupants sufficient living space:

2. More than four (4) children, including the foster parent's own children, shall not share a bedroom:

3. Each child shall have a bed and each infant a crib but more than two (2) children shall not share a bed:

4. If children sleep together, consideration shall be given to age, sex, and background:

5. It is desirable that adults not share a bedroom with a child. Exceptions may be approved for infants and toddlers by the district manager:

6. Children's bedrooms may generally be on the main floors of the house. Attic or basement bedrooms shall have adequate ventilation and be comparable to other living areas of the house:

7. Physical standards of the home shall not present hazards to the safety and health of a child and shall be well heated and ventilated:

8. Medications, alcoholic beverages, poisonous and cleaning materials shall be stored in cabinets inaccessible to small children:

9. Children's access to potentially dangerous animals shall be restricted:

10. Ammunition and firearms shall be stored in separate places:

11. First aid supplies shall be available and stored in a place easily accessible to adults:

12. A telephone or other means for immediate access to communication with the outside community shall be available:

13. The home shall be equipped with working smoke alarms within ten (10) feet of each bedroom. It is suggested that decals, indicating children in the home, be obtained from local fire departments:

(k) Marriage and family relationships:

1. Married applicants shall have been married for at least two (2) years prior to approval. An exception may be granted by the Family Services Office Supervisor for married applicants who have been married for more than a year but less than two (2) and whose relationship has been continuous and stable for at least a two (2) year period. The decision to foster or adopt shall be agreed to by members in the household, including children of appropriate age:

2. Previous divorces, deaths of spouses, and the present marriage shall be verified by a copy of marriage certificate, divorce judgments, or verifications of deaths:

3. Applicants who have children not in their custody shall provide copies of the visitation order:

4. A single unmarried person may apply to be a foster or adoptive parent. Single persons living together as spouses may not apply. An adult living in the family who may care for the child shall meet requirements, including attendance at the group preparation meetings as specified in Section 4(4) of this administrative regulation:

5. If an approved parent marries, the new spouse shall meet the same certification requirements and shall be approved as a foster or adoptive parent for the home to remain open. This preparation process shall normally be completed within six (6) months. Foster children may be placed in a foster family home if the preparation process has been initiated and if placement is determined to be in the best interest of the child:

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(l) Applicants shall provide names of two (2) personal references one (1) of which shall be a neighbor, a present or former employer, adult children not living in the home and two (2) credit references. A telephone or personal interview shall be conducted with the neighbor, with the present or former employer if employed, and adult children not living in the home. After the receipt of the other references, which may be written, if there is a question as to the appropriateness of the applicants, a telephone or personal contact shall be made with the reference.

(m) Criminal record. Applicants and other adults, including adult children who live in their household, shall authorize the release of criminal records to the department by completing a DSS-216, Police Record Search, herein incorporated by reference.

1. The Central Office Children's Benefits Coordinator shall request record checks from the state police upon receipt of the completed DSS-216 and return completed checks to the worker to be filed in the applicant's case record. Reported criminal convictions shall result in contact with the court of jurisdiction for a complete history of the offense.

2. Central office staff shall check the child abuse and spouse abuse registry for previous allegations.

3. If the applicant has lived in another community or in another state, a request for records search of those locations shall be made prior to approval. Court records shall be checked for the disposition of an arrest record. With the exception of the state police, the worker shall contact the law enforcement agencies.

4. If there has been a conviction or fine on a charge other than minor traffic offenses, the applicant shall provide evidence of rehabilitation by submitting a statement from an appropriate justice agency attesting to the individual rehabilitation and a character reference from a person with good standing in the community, not a relative or close friend, and from the employer, who are aware of the conviction and who can attest to the person's behavior since the conviction.

5. Personal references shall be personally interviewed if the applicant or household member has been convicted of a crime.

6. If an applicant or member of the household has been convicted of a misdemeanor or felony, permission to proceed with the preparation process shall be given by the district manager.

(2) Applicants who are in the department's pool of families awaiting preparation for a nonspecial needs child may register with another agency. Applicants may remain registered with the other agency and request a special needs child from the department. Preparation for a special needs child shall begin immediately. If the applicant receives a child from another source, adopted or birth child, their request to the department shall not be considered for one (1) year from the time of placement or birth.

(3) Foster parent role expectations. Foster parents shall be informed of the following role expectations during the preparation process:

(a) To the child foster parents shall:

1. Provide structure and daily activities designed to promote the individual physical, social, intellectual, spiritual and emotional development of the children in their home. Foster parents of children ages zero to six (6) are to provide appropriate opportunities for activities which stimulate the growth and development of the child.

2. Assist the children to develop skills and to perform tasks which shall promote independence and the ability to care for themselves.

3. Cooperate with the agency to help the children maintain an awareness of their past, a record of the present, and a plan for the future.

4. Ask children to assume work responsibilities reasonable for their age and ability and commensurate with those expected of their own children.

5. Provide well-balanced daily meals and are encouraged to eat together as a family. Foster parents shall have snacks available for children.

6. Provide for special dietary needs of children placed in their home.

7. Provide each child with their own clean, well-fitting, attractive and seasonal clothing appropriate to age, sex and individual needs, and comparable to the clothing of their own children and community standards. Foster parents shall include the children in the choosing of their own clothing if possible.

8. Allow children to bring and acquire personal belongings. Foster parents shall send personal clothing and belongings with the children when they leave the family foster home.

9. Work with them to establish and enforce curfews.

10. Not leave children under age fourteen (14) without responsible supervision. The department may require constant adult supervision of the developmentally disabled child over fourteen (14) as a part of the child's treatment plan.

11. Cooperate with the agency in the medical and dental care planning for the child by scheduling appointments as needed and by being responsible for keeping immunizations current.

12. Report to the department encounters with medical providers and corrective or follow-up medical or dental care the child needs.

13. Be responsible for arranging transportation for children to necessary medical and dental appointments if possible.

14. Give children prescribed medications only with a physician's prescription or authorization, and shall dispense the exact amount of medication prescribed for a child by a physician or dentist.

15. Inform the agency within one (1) working day of a psychotropic medication prescribed for a child.

16. Treat personal information about a child and the child's family in a confidential manner.

17. Provide an allowance for the child's discretionary spending at the rate set by the department in the foster home contract. Foster parents shall not make demands that allowance money be spent on family activities initiated by the foster parents.

18. Encourage children to establish savings accounts.

19. Not accept part of a child's earned or unearned income without prior, written agreement of the department and the child.

20. Recognize, encourage and support the religious beliefs, ethnic heritage and language of a child and his family. Foster parents shall attempt to arrange transportation to religious services or ethnic events for a child whose beliefs and practices are different from their own. If this is not possible, or it is believed to be inappropriate then permission to exclude the child from these activities may be sought from the court.

21. Not coerce children to participate in religious activities or ethnic events against their will or beliefs. If other approved child care arrangements are not available, the department may reimburse babysitting expenses for children who choose not to attend church with the foster parents because it is against their will or beliefs.

22. Enroll each child of school age in school within three (3) days of the placement of the child. Exceptions may be made by the Family Services Office Supervisor.

23. Cooperate and shall take part with the department in the selection and arrangements for educational programs appropriate for the child's age, abilities and treatment plan.

24. Plan with school personnel if there are problems with the child in school, but still report to the department serious situations which may require its involvement.

25. Provide opportunities for recreational activities which are appropriate to the age and abilities of the child.

26. Encourage children to take part in community services and activities both with the family and on their own.

(b) To the child's family foster parents shall:

1. Present a positive image of the child's family to him.

2. Be a supplement, but not a replacement, for the child's own parents.

3. Demonstrate respect for the child's own family and shall agree to work with the child's family members as indicated in the case plan for out-of-home care.

4. Participate in the development of the visitation agreement and allow children and their family members to visit and communicate in accordance with the visitation agreement.

5. Intercepting or reading incoming or outgoing mail of a child shall be prohibited.

(c) To the department foster parents shall:

1. Cooperate in the ongoing monitoring of their homes and shall give the information required for the agency to verify compliance.

2. Annually participate in a minimum of six (6) hours of training.

3. Take part in planning for the children and shall cooperate in the preparation, preplacement and visitation plans for the children placed in their home.

4. Be willing to work cooperatively with the agency staff as a team in the development and implementation of the case plan and participate in the case review for each child.

5. Provide advance notice if possible to the agency regarding changes which affect the life and circumstances of the foster family.

6. Notify the agency immediately of illness, accidents, or any unusual circumstances affecting the health, safety, physical or emotional well-being of the child.

7. Maintain records in accordance with the agency procedure for the children placed with the family.

Section 3. Recruitment of Families. (1) Statewide recruitment efforts to find foster and adoptive families shall be the responsibility of recruitment and certification staff.

(2) Recruitment expenditures:

(a) Each district may spend up to \$500 per quarter for expenses related to recruitment and parent training, except Jefferson and Bluegrass which may spend up to \$1,000 per quarter. The major restriction on the use of these funds shall be printing costs which shall be provided by existing state government resources. Each district shall be responsible for monitoring expenditures related to recruitment and training.

(b) Expenditures in excess of \$500 but less than \$1,000 shall have three (3) informal bids with the lowest bidder receiving the contract after prior approval from central office.

(3) Foster parents, who refer applicants who become approved foster parents, may be paid a fifty (50) dollar bonus. Families studied for a child already in their home shall not be eligible.

Section 4. Preparation and Selection of Families. (1) Family preparation shall be completed in group settings with other applicant families. Families who attend group preparation are not obligating themselves to accept a child, nor is the agency obligating itself to grant foster or adoptive home approval or placement of a child. Rare exceptions to group participation may be given by the director upon approval of an individualized training plan. Preparation sessions are scheduled at least quarterly in each district and prospective parents may be given the options of attending preparation group conducted in another county or district, or, waiting for the next group to begin in the local county. Applicants shall complete a minimum of eighteen (18) hours of preparation and may be given applications after the first preparation sessions:

(a) The goals of the group preparation shall be:

1. To orient the applicants to the philosophy and process of the department's adoption and family foster care programs;

2. To develop greater self-awareness on the part of the applicants to determine their strengths and needs;

3. To prepare applicants by sensitizing them to the kinds of situations, feelings, and reactions that are apt to occur with children;

4. To effect behavior so that applicants may better fulfill the function of their role as parents of an adopted child or foster children.

(b) The preparation process shall emphasize:

1. Self-evaluation through discussions;

2. Participation in small group exercises;

3. Discussions with experienced adoptive and foster parents.

(2) Inquirers shall be given a brief explanation about the need for families and shall be invited to attend an information meeting to learn about the department's adoption and family foster care programs.

(a) A "snap book" of waiting children shall be available in the local DCBS offices.

(b) A listing of licensed child placing agencies may be offered to the inquirer.

(c) A worker shall not recommend independent adoption, but may explain the procedures for independent adoption pursuant to KRS 199.473.

(d) A worker shall not refer a family to an attorney or a physician or other intermediary for the purpose of arranging an independent adoption.

(e) Staff shall maintain information on those who inquire about foster or adoptive parenting, except for adoption inquiries for a non-special needs child which has a closed intake.

1. Foster parent inquiries shall be kept on a log.

2. A record of those inquiring about special needs adoption shall

be kept on the DSS-1256, Adoption Intake Form, herein incorporated by reference.

(3) Requests for adoption preparation, called "SNAP Intake", shall be available for families who desire to adopt:

(a) White children aged ten (10) or over;

(b) Black or black and white children;

(c) Sibling groups of three (3) or more children;

(d) Severely emotionally disturbed or physically disabled children; or

(e) Educable, trainable, severely or profoundly mentally disabled children. This includes children with IQs of seventy (70) and below.

(4) Information meetings shall be scheduled monthly or at least quarterly in a convenient location for applicants. If the applicants are married, both husband and wife shall attend the information meeting. Families who sign a DSS-197, SNAP Intake Statement, incorporated herein, regarding adoption and those who express an interest in foster family care are invited to begin the preparation process. Applicants shall be informed at the information meeting of:

(a) Their right to request an administrative review if differences arise which cannot be resolved through supervisory channels; and

(b) Their right to a fair hearing:

1. If the home is being closed; or

2. If placements into the home are being suspended.

(5) Family interviews shall be required and individual family member interviews may be scheduled if needed with one (1) family interview in the home:

(6) If the need for adoptive families for nonspecial needs children arises, central office staff shall identify applicants from the register of waiting families and notify local staff to begin the preparation process. Applicants moving out-of-state shall be removed from the register with the following exceptions:

(a) Kentucky inducted military families; and

(b) Families who are temporarily assigned out-of-state by their employer for a period not to exceed eighteen (18) months.

(7) Applicants requesting a transracial placement shall attend a preparation session on adopting transracially.

(8) Withdrawal of applications:

(a) Applicants may voluntarily withdraw their application on their own initiative:

1. Applicants who voluntarily withdraw are given written notice confirming their decision by the supervisor within two (2) weeks.

2. Families who begin family preparation through SNAP and then decide not to consider a special needs child shall be considered to have voluntarily withdrawn.

(b) If it is determined that the applicants do not meet minimum requirements for foster or adoptive parents, a decision to recommend withdrawal may be initiated by the department. If the department recommends that the applicants withdraw:

1. The applicants shall be given written notice of the decision to recommend withdrawal of their application by the district manager within two (2) weeks of the decision.

2. If the applicants do not accept the reasons for the recommended withdrawal and refuse to withdraw their application, the worker and the supervisor shall hold a personal interview with the applicants to inform them of the department's recommendation and inform them of their right to request an administrative review.

3. Applicants are given written notice of the decision to withdraw their application by the district manager within two (2) weeks.

4. Home preparation shall cease when the decision is made to ask the applicants to withdraw.

(9) The foster or adoptive home narrative shall be completed based on a combination of information obtained in the preparation sessions and the family interviews:

(10) Approval:

(a) Applications are not considered complete until the applicants:

1. Complete and sign the application;

2. Complete the group preparation process; and

3. The required references and verifications are received.

(b) Upon completion of the application process, the worker submits for approval:

1. DSS-83, acceptance scale (adoption only);

2. DSS-122, family application;

3. Medical information;

4. Verification of marriage or divorce;
5. DSS-170, financial statement;
6. DSS-216, police record search and response;
7. DSS-104, foster parent I.D. (foster care only);
8. VS-26, verification of death (spouse);
9. Pictures;
10. Narrative;
11. Autobiographies;
12. Reference letters;
13. Approval letter; and
14. DSS-197, SNAP intake (adoption only).

(c) The family services district manager shall be required to approve or deny applicants with a misdemeanor conviction. The Director of Family Services shall be required to approve or deny applicants with a felony conviction or substantiated reports of either child or spouse abuse.

(d) Provisional approval may be granted only to families who have accepted placement of a committed child by order of the court and are requesting approval as foster parents. Prior to provisional approval being granted the following are required:

1. Family foster home applications;
2. Medical forms;
3. Contact with a minimum of two (2) references;
4. One (1) office interview and one (1) home visit; and
5. The applicants shall begin the preparation process within ninety (90) days of the court order or placement of the child.

(11) Adoptive families who are approved and waiting for a non-special needs child may be approved for placement of a special needs child and then reinstated to their original position on the register for a non-special needs child. To be approved for a special needs child, the following are required:

- (a) Completion of the preparation process;
- (b) SNAP intake statement, DSS-197;
- (c) Update summarizing their preparation, interest in special needs children, and readiness for placement of a special needs child; and
- (d) Approval of the district manager.

Section 5. Annual Foster Parent Training Requirement. (1) Both foster parents shall be required to participate in six (6) hours of annual training within one (1) year of approval or their most recent annual reevaluation.

(2) An individualized training plan may be developed for the foster parent who is unable to participate in group training because of employment or other circumstances and is reviewed for compliance during the annual reevaluation.

(3) The homes of foster parents who do not meet the training requirements shall be closed. The only exception shall be to families who have a child in their care who has developed a significant emotional attachment to the foster parents and whose best interests shall be served by preserving the placement. The approval of the district manager is required. Additional children shall not be placed in the home until the training requirement has been satisfactorily met.

(4) To assist foster parents in complying with the ongoing training requirements, the supervisor may approve babysitting for foster children and mileage. The supervisor may also approve tuition or fees in the amount of fifty (50) dollars per family per year or \$100 per year for special needs, medically fragile or family treatment homes.

(5) Staff shall provide written notice of the foster parents' right to a fair hearing if the foster parents request to attend training provided or scheduled by the department is denied.

Section 6. Family Foster Home Annual Reevaluation. Personal interviews in the home with foster families and in the home or office with approved and waiting adoptive families are required annually during the anniversary month of the initial approval. Approved and waiting adoptive families whose updates are not current shall not be given consideration for children.

(1) Family foster home reevaluation:

- (a) The worker, if necessary, updates the pictorial description file.
- (b) Prior to completing the reevaluation, the worker reviews information in the family foster home record, including exit interviews and discusses areas of identified stress factors and concerns with the

foster family. If the family has an individualized training plan, it is reviewed for compliance and plans are made for the family's continued compliance with the training requirement.

(c) The DSS-885, Foster Family Reevaluation and DSS-885A, Foster Child Supplement herein incorporated by reference are completed.

(d) A family who has never received a child or had a placement by the fifth anniversary date shall no longer be considered as a placement resource.

(2) Adoption reevaluation:

(a) The worker updates information on approved and waiting adoptive families and also informs them of children currently waiting placement by sharing the SNAP Book.

(b) The family is given an opportunity to review and change their acceptance scale.

(c) Significant changes in the family i.e., income, health, marital status, etc. are noted in the narrative update which is approved by the supervisor.

(d) A family who has never received a child or had a placement by the fifth anniversary date shall no longer be considered as a placement resource. The worker may request an extension for families waiting for nonspecial needs children.

(3) If a family changes their address, the narrative section shall be updated in the record. For an adoptive family, a copy is submitted to the Central Office Adoption Specialist.

(4) If the family moves to a different area of the state, the worker notifies the appropriate supervisor prior to forwarding the record and if possible, the name and phone number of the new worker is provided to the family prior to the move.

Section 7. Foster or Adoptive Family Reviews. (1) The worker shall conduct a review within a month of notification if there are factors which may place unusual stress on the family or create a situation which may place a child at risk. Factors may include the following:

- (a) Death or disability of a family member;
- (b) Change in marital status;
- (c) Sudden substantial decrease in or loss of income;
- (d) Childbirth;
- (e) Both foster parents have reached the age of sixty-five (65); and
- (f) Use of a prohibited form of punishment or a substantiated abuse or neglect report.

(2) The narrative of the review shall contain:

- (a) Identifying information;
- (b) Current composition of the household;
- (c) Description of the situation which initiated the review;
- (d) An evaluation of the family functioning to determine if the child's needs are met; and
- (e) A plan for corrective action which may include a recommendation for closure of the home.

(3) If abuse or neglect or dependency is established or there is some indication, a review of the home shall be completed. The decision to close or continue using the home is made by the Family Services District Manager based on pertinent available information.

Section 8. Closing Approved Homes. (1) Families approved who have not received a placement within five (5) years shall be closed on the fifth anniversary of their approval date unless an indefinite extension is granted for adoptive families waiting for a nonspecial needs child. A home may be closed at the request of the foster or adoptive parent when:

- (a) The recruitment and certification worker determines that the family does not meet the general requirements for foster or adoptive families; or
- (b) If a situation exists that is not in the best interest of the child.
- (c) If one (1) of the following occur, the home shall be closed:
- (d) Substantiated sexual abuse or exploitation by the foster or adoptive parents;
- (e) Substantiated physical abuse of a child or spouse serious in nature or warranting removal of the victim;
- (f) Presence of a serious physical or mental illness which may impair or preclude adequate care of the child by the parent.
- (g) Conviction of a felony offense by the parent.

(2) If closure is necessary for an adoptive family who has a child placed, but the adoption is not finalized, the worker and supervisor shall consult with the Family Services District Manager and the Office of Counsel regarding removal of the child from the home.

(3) A summary is written which contains:

(a) An evaluation of placements for a period of time not previously recorded;

(b) The reasons for closure;

(c) The reactions of the family to closure; and

(d) The family's potential appropriateness for parenting if they reapply;

(4) If it is necessary to close an approved home, the reasons are shared by the worker and supervisor in a personal interview with the family;

(5) Written notice confirming the decision to close a home shall be completed within two (2) weeks if the family requests closure, within thirty (30) days of the interview for adoptive parents and no later than ten (10) days prior to the closing for foster parents. The written notice shall include:

(a) Notice that the department shall no longer place foster children in the home;

(b) Notice that the contract between the department and the family foster home is terminated;

(c) The reasons for the family foster home being closed; and

(d) Notice of the foster parents right to appeal and the procedures for initiating an appeal.

Section 9. Reapplication. Former foster and adoptive families who were closed in good standing with the department with no deficiencies may reapply. Adoptive parents who were closed following finalization of an adoption may also reapply. A family whose home was closed for specific problems or identified family issues may reapply following one (1) year. The issues or problems that led to the closure shall have been resolved.

(1) To reapply the foster and adoptive family shall:

(a) Attend an information meeting to become familiar with changes in policy and procedure;

(b) Attend group preparation, and exception may be made only for parents who have previously attended group and are considered excellent resources for children;

(c) Complete application forms, medical records, references and criminal records and registry checks;

(2) The worker shall complete an updated narrative.

Section 10. Foster Parent Adoption. (1) Foster parents may ask to adopt a child in their care, and may be considered when the child is legally available for adoption and if it is in the child's best interest. Approval of a foster parent's request to adopt a child in their care is the decision of the district manager.

(a) Foster parents shall attend a group or individual preparation session on adoption;

(b) The documentation for foster parent adoption is forwarded to the manager within three (3) months after foster parent adoption has been identified as the plan for the child and parental rights have been terminated;

(c) The application for adoption is initiated no later than one (1) month after the foster parent has indicated a desire to adopt a child who is available for adoption, unless the family has already been approved for adoption. If the application form has not been completed within the designated time period:

1. A conference is held with the foster parents, family worker, Family Services Office Supervisor, R & G Supervisor, R & G worker, and child, if appropriate, to discuss:

a. The reasons for delay; and

b. To develop plans to meet the permanency needs of the child; and

2. If the foster parents intend to proceed with the adoption, time frames are established and monitored. Failure to adhere to the agreed upon time frame may result in a review by the Family Services District Manager and a decision made regarding the foster parent adoption.

(2) If the foster parents desire to adopt a foster child in their home, but the adoption cannot be recommended by the family services worker, R & G worker and supervisory staff shall:

(a) Submit a memorandum through channels to the manager summarizing the situation and stating the reasons for not recommending the adoption;

(b) The manager reviews the material, meets with appropriate staff and if necessary, consults with Office of Counsel regarding the facts of the case;

(c) If the manager agrees that the foster parent adoption cannot be approved, the worker informs the foster parent of the decision and of his right to request a conference to discuss his desire to adopt a foster child;

(d) If a formal family home application has been filed, the foster family shall be advised in writing of the decision by the manager; and

(e) The decision regarding the child's continued placement in the home shall be determined on an individual basis.

Section 11. Certification Requirements. (1) Relative foster homes:

(a) A relative may be approved as a family foster home for the placement of a specific child if it is in the best interest of the child and if the relative has met the same requirements as Section 2(1)(a)-(m) of this administrative regulation except:

1. An applicant who is between eighteen (18) to twenty-one (21) or over sixty-five (65) years of age may be approved if it has been determined the relative can meet the needs of the child. The home narrative shall document that the relative's age may not have a negative impact on the care of the child;

2. A relative applicant who has been married for less than one (1) year may be approved if it has been determined the relative can meet the needs of the child. The home narrative shall document that the length of the relative's marriage may not have a negative impact on the child;

3. A relative who has not completed group preparation requirements may be approved if they have an individualized training program;

(b) The Family Services District Manager shall be responsible for the approval of relative foster homes. Upon completion of the application process and family interviews, the worker submits the following for review prior to approval of the relative foster home by the district manager:

1. DSS-122, family application;

2. Medical information or other medical report documentation;

3. Verification of marriage or divorce or other documentation;

4. Financial statement;

5. DSS-216, police record search and response;

6. Verification of death if applicable;

7. Narrative;

8. Autobiographies;

9. Reference letter; and

10. Approval letter.

(c) Relative foster homes are reevaluated annually or if a significant change occurs:

(2) Emergency shelter foster homes:

(a) Foster parents who care for children age twelve (12) and above, who are in need of immediate, unplanned placement for less than thirty (30) days and for whom no other appropriate resources are available, shall meet the requirements in Section 2(1)(a)-(m) of this administrative regulation and, to be eligible for the emergency shelter rate shall meet the following requirements:

1. Both foster parents shall not be employed outside the home and one (1) shall be in the home as the responsible caretaker;

2. Personal qualifications:

a. Commitment to and understanding of adolescents and reasons for applying as emergency shelter foster parents shall be carefully explored; and

b. Because of the increased demands, the foster parents health and stamina, in relation to their age, shall be considered;

3. Home environment:

a. A telephone is required for general safety; and

b. Alcohol and medications shall be kept in a locked cabinet; and

4. Both foster parents, or the foster parent primarily responsible for the care of the children, shall complete ten (10) hours of training beyond the eighteen (18) hours required in preservice. Completion of the ten (10) hour training requirement does not automatically grant approval for emergency shelter care.

(b) The Family Services District Manager shall be responsible for the initial approval of emergency shelter foster homes and notification to the family. The request for approval to the Family Services District Manager shall include:

1. An evaluation of the foster parent's participation in and knowledge gained from the training;
2. A statement that additional requirements for emergency shelter foster care have been met;
3. Social worker's assessment of the past history of care for children, experience and qualifications in relation to the type of child requested; and

4. An evaluation of strengths and weaknesses.

(c) To receive ongoing approval, the foster family shall:

1. Continue to meet the emergency shelter foster home certification requirements in paragraph (a) 1-4 of this subsection.

2. Both foster parents, or the foster parent with primary responsibility for the child's care shall have participated in ten (10) hours of ongoing training over the past year.

(d) Failure to meet the ongoing training requirement ends the family's approval for the emergency shelter rate. The rate then reverts to the base rate and whatever incentives the family is eligible to receive, or if the foster parents have not met the six (6) hour requirement, the home is closed.

(3) Special needs foster homes:

(a) Foster parents who care for children with special needs shall meet the requirements in Section 2(1)(a) through (m) of this administrative regulation and shall meet the following requirements to be eligible to receive the special needs training incentive:

1. Consideration shall be given to the child care plan if both foster parents are employed outside the home or if a single foster parent is employed outside the home. Flexibility of employment and resources to meet the increased responsibilities shall be documented.

2. The internal and external environment shall be adaptable to the specific needs of the child, i.e., ramps, doorways, etc.

3. Requirements of regular foster care apply and in addition:

a. A one (1) parent family foster home shall not care for more than two (2) children with special needs, including the foster parent's own children;

b. A two (2) parent home shall not care for more than three (3) children with special needs, including the foster parent's own children; and

c. An exception may be granted by the district manager.

4. Personal qualification:

a. The commitment to children with special needs and reasons for applying as special needs foster parents shall be explored; and

b. Because of increased demands, health and stamina in relation to age is a consideration.

5. Home environment:

a. There shall be an emergency exit on each floor or the potential to provide exit, if needed in case of fire;

b. Transportation and the ability to adapt transportation to accommodate special equipment safely shall be available;

c. The dispensing of life-sustaining daily medications shall be documented on a log. If a child takes a prescribed medication, an over the counter drug shall not be administered without the advice of a physician; and

d. A telephone is required for general safety.

6. Both foster parents or the foster parent primarily responsible for the child's care shall successfully complete twenty-four (24) hours of training beyond the eighteen (18) hours required in preservice but completion of the twenty-four (24) hours of training requirement does not automatically grant approval as a special needs foster home.

(b) The district manager shall be responsible for the approval of special needs foster homes. The request for approval to the district manager shall include an evaluation of the foster parents participation in and knowledge gained from training.

(c) Special needs foster families shall receive annual ongoing approval by the district manager during their annual reevaluation which shall indicate that the family foster home:

1. Continues to meet the special needs foster home certification requirements; and

2. Both foster parents, or the foster parent with primary responsibility for the child's care, shall meet one (1) of the following criteria:

a. Have participated in twelve (12) hours of training over the past year provided by the department or approved in advance by the R & G supervisor. The following may be used, hour-for-hour, to meet the ongoing training requirement:

(i) Planned meetings among special needs foster parents conducted by a social worker;

(ii) Participation in a retarded citizens or other association with an interest in special needs children;

(iii) Attendance at workshops or course work receiving prior approval of the supervisor; and

(iv) Individualized professional training in the field from which the child needs specialized care with prior approval of the supervisor;

b. Qualification by ongoing practice in the field from which the child needs specialized care.

(d) Failure to meet the ongoing training requirement ends the family's approval for the special needs training incentive. The rate then reverts to the base rate and whatever incentives the family is eligible to receive or if the foster parents have not met the six (6) hour requirement the home is closed.

(4) Medically fragile foster homes:

(a) Foster parents who care for medically fragile children shall meet the requirements in Section 2(1)(a) through (m) of this administrative regulation and paragraphs (a) through (d) of this subsection to receive the medically fragile rate with the following exceptions:

1. Both foster parents shall not be employed outside the home and one (1) shall be in the home as the responsible caretaker. An exception for employment shall be made by the Director of Family Services.

2. Number of children in the family:

a. A one (1) parent family foster home shall not care for more than one (1) medically fragile child, including the foster parent's own children, and shall demonstrate that support services are available and may be provided.

b. A two (2) parent home shall not care for more than two (2) medically fragile children, including the foster parent's own children.

c. An exception for number of children in the family may be approved by the Director of Family Services for a home that has a live-in or daily staff support and if it is determined that the particular needs of the children and the subsequent demands on the foster parent shall be met.

3. Training:

a. Foster parents who provide care for medically fragile children shall meet the same requirement for initial approval as in special needs and shall have had training in the areas of:

(i) Growth and development;

(ii) Nutrition;

(iii) Medical disabilities;

(iv) Current certification in CPR; and

(v) Current certification in first aid.

b. Prior to the placement of a medically fragile child and the payment of the fragile rate, the foster parent shall be trained in the techniques of caring for the specific fragile child to be placed.

4. The home shall be within one (1) hour of a medical hospital with an emergency room and within thirty (30) minutes of a local medical facility.

(b) The district manager shall be responsible for the approval of medically fragile foster homes. The request for approval to the district manager shall include:

1. An evaluation of the foster parents training related to medically fragile;

2. Documentation that additional requirements for medically fragile have been met;

3. The worker's assessment of the past history of care for children; experience and qualifications in relation to the type child requested; and

4. Recommendations for approval, including an evaluation of strengths and weaknesses.

(c) Medically fragile foster families shall receive annual ongoing approval by the district manager during their annual reevaluation. To receive ongoing approval the family foster home shall continue to meet the medically fragile foster home certification requirements. Both foster parents shall maintain current certification in CPR and First Aid and meet one (1) of the following criteria:

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1. Participation in twenty-four (24) hours of ongoing training over the past year provided by the department, the content of which is approved in advance by the Director of Family Services. The following may be used, hour-for-hour, to meet the ongoing training requirement of twenty-four (24) hours:

- a. Planned meetings among medically fragile foster parents conducted by a social worker;
- b. Participation in an organization associated with or having an interest in medically fragile children;
- c. Attendance at workshops or course work receiving prior approval of the Director of Family Services; and
- d. Individualized professional training from the medical profession related to the individualized needs of the child.

2. Qualification by ongoing practice in the field from which the child needs specialized care:

(d) Failure to meet the ongoing training requirement ends the family's approval for the medically fragile rate. The rate then reverts to the special needs or base rate and incentives the family is eligible to receive or if the foster parents have not met the six (6) hour requirement, the home is closed. The Director of Family Services shall approve the continuing placement of a medically fragile child in a home if the training requirement has not been met.

(5) Family treatment homes:

(a) Foster parents who care for children who are determined to be appropriate for family treatment homes shall meet the requirements in Section 2(1)(a) through (m) of this administrative regulation and shall meet the following requirements to receive the family treatment home rate:

1. Number of children placed:

a. A one (1) parent family foster home shall not care for more than one (1) family treatment child, including the foster parent's own child, and shall demonstrate that support services are available and may be provided:

b. A two (2) parent home shall not care for more than two (2) family treatment children, including the foster parent's own children:

c. Regardless of the status of the family, more than four (4) children shall not be placed in the home:

d. An exception for number of children in the family may be approved by the Director of Family Services for a home that has live-in or daily staff support and if it is determined that the particular needs of the children and the subsequent demands on the foster parent shall be met.

2. Both foster parents shall not be employed outside the home and one (1) shall be in the home as the responsible caretaker. An exception for employment may be made by the Director of Family Services:

3. Families shall have a respite care provider available who shall also complete family treatment training:

4. Prior to approval as a family treatment home, both foster parents shall complete the twenty-four (24) hour family treatment training:

5. Family treatment home parents shall maintain daily logs of the child's activities, behaviors and intervention techniques used:

6. One (1) family treatment home parent shall attend all treatment planning conferences. Family treatment home families may serve, at the discretion of the family services worker, as a role model for the child's family in order to help the family learn how to implement the remedial components of care and supervision developed for the child.

(b) The district manager shall be responsible for the approval of family treatment homes. The request for approval is submitted to the district manager and shall include:

1. Documentation that the family treatment home training has been completed;

2. Documentation that all additional requirements for family treatment home have been met;

3. The names, qualifications and training of the respite care providers;

4. The worker's assessment of the past history of care for children, experience and qualifications in relation to the type child requested; and

5. Recommendations for approval, including an evaluation of strengths and weaknesses:

(c) To receive ongoing approval, the annual reevaluation shall indicate that the family foster home:

1. Continues to meet the family treatment home certification requirements which shall include:

a. A review of the foster parent's intervention skills and techniques;

b. Recordkeeping; and

c. Training and ability in meeting the established goals and objectives for the children:

2. Foster parents shall meet one (1) of the following criteria:

a. Participation in twenty-four (24) hours of ongoing training over the past year provided by the department, the content of which is approved in advance by the R & G supervisor. The following may be used, hour-for-hour, to meet the ongoing training requirement of twenty-four (24) hours:

(i) Monthly planned meetings among family treatment home foster parents conducted by a social worker;

(ii) Attendance at workshops or course work receiving prior approval of the supervisor;

(iii) Individualized professional training in the field from which the child needs specialized care with prior approval of the supervisor; and

(iv) Except attendance at the child's treatment planning conference and other child specific activity does not meet the annual training requirement.

b. Qualification by ongoing practice in the field from which the child needs specialized care:

(d) Failure to meet the ongoing training requirement ends the family's approval for family treatment home. The rate then reverts to the base rate and whatever incentives the family is eligible to receive; or if the foster parents have not met the six (6) hours requirement the home is closed.

Section 12. Material Incorporated by Reference. (1) The forms necessary for the implementation of the family preparation section are being incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Community-Based Services, CHS Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.]

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 13, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2000, of their intent to attend. If no notification 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 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: Judy Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: The number of families approved for foster and adoptive placement totals 2906. (There are 1,461 approved foster homes; 706 homes approved for foster or adoptive placement; and 739 homes approved for adoptive placement.)

(2) Direct and indirect cost or savings to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the ex-

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tent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments 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 hearing was requested as a result of the Notice of Intent being published and no written comments 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: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: \$8,831,300 increased costs to the cabinet to increase rates for foster care; \$235,000 increased costs to the cabinet to increase reimbursement for mileage, babysitting, or tuition or fees for approved resource home parents to participate in ongoing training.

2. Continuing cost or savings: \$9,537,800 increased costs to the cabinet to increase rates for foster care; \$282,250 increased costs to the cabinet to increase reimbursement for mileage, babysitting, or tuition or fees for approved resource home parents to participate in ongoing training.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(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: None

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: The same as 6(a).

(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: None

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals.

b. Provides for the periodic review of standards for resource homes;

c. Establishes the method of payment for resource home parents who:

1. Provide foster care services; or

2. Receive adoption assistance pursuant to 922 KAR 1:050; and

d. Provides procedures for criminal records checks for prospective resource home parents who apply to provide foster or adoptive services.

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 671 et seq.

2. State compliance standards. In order to comply with the requirements of the above referenced mandate, as well as KRS 194B.050, 199.472, 605.090 through 130, and 605.150, this administrative regulation:

a. Establishes criteria for the adoption of children committed to the cabinet, specifically the process for preparing an adoptive applicant for approval as a resource home parent who may provide adoptive services; and

b. Establishes the process of determining an applicant's capacity for foster or adoptive parenthood.

3. Minimum or uniform standards contained in the federal mandate. Pursuant to 42 USC 671 et seq., this administrative regulation:

a. Establishes standards and general requirements for resource homes;

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, APRIL 14, 2000

KENTUCKY ATHLETIC COMMISSION
(New Administrative Regulation)

201 KAR 27:014. Female boxing guidelines.

RELATES TO: KRS 229.101, 229.131, 229.171

STATUTORY AUTHORITY: KRS 229.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171 states that the commission is given the sole control, authority and jurisdiction over professional boxing, kick boxing, and elimination events and all persons who participate therein. This administrative regulation sets forth the rules relative to the conduct of all forms of boxing matches involving female participants.

Section 1. Except as provided herein, all bouts between female participants shall be governed by those set forth in 201 KAR 27:013.

Section 2. The following guidelines apply specifically to bouts involving female participants.

(1) All bouts shall be scheduled for no more than ten (10) rounds with each round lasting two (2) minutes, and with one (1) minute between rounds.

(2) Female boxers shall use no facial cosmetics and have their hair secured with soft and nonabrasive material.

(3) The weight classes shall be the same as used by male boxers.

(4) Female boxers shall wear breast protectors and groin protectors that are both properly fitted and a mouthpiece is also required.

(5) Glove sizes: Female boxers up to 154 pounds shall use eight (8) ounce gloves and female boxers over 154 pounds shall use ten (10) ounce gloves properly fitted.

(6) All female boxers must provide a negative pregnancy test prior to each bout. The test may be taken prior to the bout, but taken no longer than one (1) week before the bout.

JACK KEARNS, Chairman

DOUGLAS SCOTT PORTER, Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 13, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 22nd day of May, 2000, at 3 p.m., at 700 Louisville Road, Berry Hill Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 15th day of May, 2000, five workdays 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: Nancy Black, Executive Director, Kentucky Athletic Commission, Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3296, Telefax No.: (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact person: Nancy Black, Executive Director

(1) Type and number of entities affected: Approximately 6 licensed boxing promoters, 45 licensed managers, and 5 licensed boxers.

(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: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

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: N/A

(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: Agency funds and annual budget.

(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 received.

(b) Kentucky: None received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Current regulations do not allow alternative methods of complying with continuing education; this regulation will allow compliance through some alternative methods.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation helps ensure the safety of female participants by setting different standards due to biological and physiological differences between men and women.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Without this regulation it is possible for women who are pregnant to box.

(c) If detrimental effect would result, explain detrimental effect: Health of participants is the issue.

(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. No separate classifications are created. All licensees who are impacted are treated the same.

KENTUCKY ATHLETIC COMMISSION
(New Administrative Regulation)

201 KAR 27:085. Promoters.

RELATES TO: KRS 229.081

STATUTORY AUTHORITY: KRS 229.081, 229.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.081 establishes which participants in the sport of boxing and wrestling entertainment business must be licensed by the Athletic Commission. KRS 229.180 authorizes the commission to promulgate administrative regulations governing the conduct of the licensees. This administrative regulation is necessary to ensure that those promoting events are licensed and limits the ability of a promoter to hire only one (1) matchmaker thus preventing monopolization of talent.

Section 1. Promoters. No person shall act as a promoter unless he or she possesses a valid promoter's license issued by the commission. Promoters may act as matchmakers without a separate license therefor.

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Section 2. Employment by One (1) Promoter Only. No match-maker shall be employed by more than one (1) promoter at the same time except as otherwise directed or authorized by the commission.

JACK KEARNS, Chairman

DOUGLAS SCOTT PORTER, Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 13, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 22nd day of May, 2000, at 3 p.m., at 700 Louisville Road, Berry Hill Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 15th day of May, 2000, five workdays 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: Nancy Black, Executive Director, Kentucky Athletic Commission, Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3296, Telefax No.: (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact person: Nancy Black, Executive Director

(1) Type and number of entities affected: Approximately 6 licensed boxing promoters and 38 licensed wrestling promoters.

(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: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

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: N/A

(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: Agency funds and annual budget.

(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 received.

(b) Kentucky: None received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: None, prior to 2000 General Assembly, promoters were not required to be licensed.

(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: 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. No separate classifications are created. All licensees who are impacted are treated the same.

FINANCE AND ADMINISTRATION CABINET Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky (New Administrative Regulation)

202 KAR 6:010. Definitions for 202 KAR Chapter 6.

RELATES TO: KRS 65.7621 to 65.7643, 9 USC Sections 1 to 16, 47 USC Sections 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(1) requires the CMRS Board to implement the provisions of KRS 65.7621 to 65.7643 through the promulgation of administrative regulations. This administrative regulation provides definitions for terms used in 202 KAR Chapter 6.

Section 1. Definitions. (1) "Alternate routing" means sending 9-1-1 calls to a designated alternate location if all 9-1-1 trunks to the normal PSAP are busy or out of service. Alternate routing may be activated automatically, if an equipment failure is detected, or upon request.

(2) "Call transfer function" means the ability to redirect a call to another party.

(3) "Contracted wireline E9-1-1 service provider" means the company providing by signed agreement the E9-1-1 features, functions, and network connections to the PSAP.

(4) "Cost recovery plan" means a detailed description of how a CMRS carrier intends to comply with the wireless E9-1-1 requirements established in the FCC order.

(5) "Default routing" means the ability of the E9-1-1 network to automatically send 9-1-1 calls to a predetermined alternate PSAP if a call cannot be selectively routed due to an ANI failure or other cause.

(6) "E9-1-1" means the features and functions available in an enhanced 9-1-1 capable PSAP as defined by the FCC order.

(7) "FCC" means the Federal Communications Commission.

(8) "Nondisclosure agreement" means a signed statement whereby a person swears to maintain the confidentiality of designated information provided to them.

(9) "NRC" means nonrecurring cost.

(10) "P-ANI" means pseudo automatic number identification as defined by KRS 65.7621(16).

(11) "Phase I" means the interim step in implementing the wireless E9-1-1 network to include the provision of a caller's mobile phone number and P-ANI, and as further defined by the FCC.

(12) "Phase II" means the second step in implementing the wireless E9-1-1 network to include the functions of Phase I, and as further defined by the FCC.

(13) "RC" means recurring cost.

(14) "Sworn paid invoice" means a notarized statement submitted with invoices for reimbursement that:

(a) Lists the included invoices or other approved documentation;

(b) Attests that the invoices are accurate and reflect true costs for the carrier's implementation of wireless E9-1-1; and

(c) Is signed and dated by a person designated by a carrier.

(15) "Sworn statement" means a notarized letter signed and dated by a person designated by a PSAP, which may be given in lieu of documentation.

DAVID LUCAS, Chairman

ANGELA C. ROBINSON, Assistant Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 14, 2000 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000 at 10 a.m. in the GOT SE

Director's Conference Room, First Floor at 100 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the CMRS Board in writing by May 15, 2000, five work-days prior to the hearing, of their intent to attend. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Attn: John Patterson, c/o CMRS Board, 100 Fair Oaks Lane, Suite 102A, Frankfort, Kentucky 40601, (502) 564-2638, Fax: (502) 564-3204.

REGULATORY IMPACT ANALYSIS

Contact Person: John J. Patterson

(1) Type and number of entities affected: 30 CMRS carriers, 80 public safety answering points, and 20 local exchange carriers.

(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 have been received. However, no effect is anticipated.

(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 have been received. However, no effect is anticipated.

(c) Compliance, reporting and paperwork requirements of those affected, 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: 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 required.

(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 have been received. However, no effect is anticipated.

(b) Kentucky: No comments have been received. However, no effect is anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were assessed. KRS Chapter 13A requires that technical terms used in an administrative regulation be defined.

(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 definitions in this regulation provide an understanding of terminology used in related regulations and more clearly identify the intent of the statute.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: Without clear definitions, it would be impossible to administer the regulations as required by statute.

(9) Identify any statute, rule, 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:

(11) Tiering: Is tiering applied? No. These are definitions of technical terms. They cannot be tiered.

FINANCE AND ADMINISTRATION CABINET Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky (New Administrative Regulation)

202 KAR 6:020. CMRS carrier cost recovery.

RELATES TO: KRS 65.7621 to 65.7643, 9 USC Sections 1 to 16, 47 USC Sections 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7631(3) requires the CMRS Board to distribute a portion of the revenues deposited into the CMRS fund to CMRS providers (carriers) licensed to do business in the Commonwealth, solely for the purpose of reimbursing the actual expenses incurred by the CMRS providers in complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order. This administrative regulation establishes the process by which CMRS carriers may obtain cost recovery for those expenses.

Section 1. A carrier shall file a cost recovery plan with the CMRS Board in order to receive reimbursement for their NRCs and RCs.

Section 2. Cost Recovery Plan Submission. (1) Upon receipt of a written request for wireless E9-1-1 service from a PSAP that has been certified by the board in accordance with KRS 65.7631(4)(a), the CMRS carrier shall:

(a) Acknowledge receipt of the request back to the PSAP within thirty (30) days; and

(b) Develop a comprehensive detailed plan for implementation of E9-1-1 service for:

1. The requesting PSAP; or

2. The appropriate service area if the CMRS carrier's switch serves more than one (1) PSAP.

(2) A CMRS carrier shall provide the technical aspects of the plan to the requesting certified PSAP. The CMRS carrier shall submit the plan and the associated cost structure to the board including a completed "Kentucky CMRS Carrier Data Sheet". The board shall request from the carrier, if necessary to reach a decision:

(a) Additional information; or

(b) A presentation.

(3) Only carrier costs directly attributable to wireless E9-1-1 call completion shall be considered for recovery, in accordance with Section 8 of this administrative regulation.

Section 3. Cost Recovery Plan Requirements. A plan submitted to the board shall contain the following information:

(1) The carrier's good faith estimate of its total cost recovery reimbursement claim for providing Phase I wireless E9-1-1 service in the area served by the requesting PSAP or the appropriate service area for the carrier's switch;

(2) Specific detail for each NRC and RC the carrier expects to recover;

(a) An RC shall be described as subscriber-based or nonsubscriber-based;

(b) An RC shall be based on a calendar month. If a carrier chooses a different period on which to base its RCs, the period used and the logic employed shall be identified;

(3) A description of the Phase I technology solution the CMRS carrier has elected to implement and the projected implementation dates;

(4) A map or other detailed description of the coverage area affected by the plan;

(5) A list of the PSAPs affected by the carrier; and

(6) The method by which the carrier will identify the persons

authorized to submit sworn paid invoices to the board for reimbursement.

Section 4. Cost Recovery Plan Approval. (1) A cost recovery plan submitted to the CMRS Board shall be stamped "Confidential" and proprietary information received shall be filed and maintained so as to preserve its confidentiality in accordance with KRS 65.7639.

(2) A cost recovery plan submitted to the board shall be approved or disapproved within ninety (90) days of its receipt by a simple majority vote of the board.

(3) Within ten (10) business days of its approval or disapproval, notice of the decision shall be sent to the carrier and affected PSAPs, in writing, by certified mail, return receipt requested.

Section 5. Rejection of a Cost Recovery Plan. (1) If a plan is rejected, the board shall include with the decision specific reasons for its rejection

(2) The carrier may submit a revised plan to the board.

(3) The carrier may appeal the board's rejection in accordance with 202 KAR 6:040.

Section 6. Implementation of Additional Service Using an Approved Plan. (1) After initial approval of a CMRS carrier's plan by the board, if the carrier wishes to implement service to an additional area in the state using the existing approved plan, the carrier:

(a) Shall send a letter to the board, by certified mail, return receipt requested, proposing the carrier's intention to use an approved plan for the implementation of additional service;

(b) Shall include with the letter to the board a map of the area to be served by the planned additional implementation.

(c) Need not make an additional presentation to the committee if the board agrees that the carrier's intention fits within the existing approved plan.

(2) The board shall:

(a) Decide within ninety (90) days of its receipt of the carrier's letter if it agrees that the carrier's intention to use an approved plan is appropriate for the additional service implementation; and

(b) Within ten (10) business days of its decision notify the carrier, in writing, by certified mail, return receipt requested; and

(c) Accept the cost recovery outlined in the approved plan as sufficient to submit a claim for reimbursement.

(3) If the board concludes that the inclusion of the additional service implementation is not appropriate under the approved plan, the board shall:

(a) Within ten (10) business days of its decision notify the carrier, in writing, by certified mail, return receipt requested, identifying its specific concerns; and

(b) Schedule the earliest possible date to meet with the carrier and discuss the identified concerns.

(4) If the board concludes that the inclusion of the additional service implementation is not appropriate under the approved plan, the carrier may appeal the board's decision in accordance with 202 KAR 6:040.

Section 7. Revision of an Approved Plan. (1) In addition to the process established in Section 6 of this administrative regulation, after a cost recovery plan is approved, a subsequent change may be requested by either the CMRS carrier or the board.

(2) The board may review an existing plan requesting re-substantiation, new documentation and reapproval of an existing cost recovery plan or may revoke approval of a plan as necessary to maintain the integrity of:

(a) The wireless E9-1-1 system as new technologies are deployed;

(b) The CMRS fund.

(3) A carrier may submit a revised plan or a change in reimbursement rate as business needs and new technologies dictate.

(4) The party requesting revision of a plan shall send written notice of the requested changes to the other party by certified mail, return receipt requested.

(5) An existing approved plan shall remain in effect until a review and decision regarding a requested change is made.

(6) Except as stated in subsection (7) of this section, if the board

revokes approval of a plan, reimbursements from the CMRS fund shall cease immediately, except for RCs and NRCs for which the carrier is obligated by a previously signed contract.

(7) Failure of a carrier to respond in writing to a board request within the time frame indicated in the request, may be considered cause for the board to revoke approval of a previously approved plan and to cease reimbursement payments to the carrier.

Section 8. Appropriate Costs for Recovery. (1) For the purpose of differentiating between CMRS carrier costs and PSAP costs, the point of demarcation shall be the selective router of the contracted wireline E9-1-1 service provider, or similarly placed functional equipment within the E9-1-1 call completion hierarchy. The board shall determine, based upon industry standards, what equipment is to be considered "similarly placed functional equipment".

(2) Recoverable RCs and NRCs shall include:

(a) Trunking;

(b) Connection fees between carrier switches or other interface equipment to a selective router;

(c) Facilities: T-1's, selective router ports;

(d) Routing charges;

(e) Operations;

(f) Engineering;

(g) Switch upgrades;

(h) Network design;

(i) Test plan development;

(j) P-ANI administration;

(k) Database management;

(l) Reporting requirements;

(m) Software required for the operation of wireless E-911;

(n) Call counting;

(o) Amortization and carrying costs; and

(p) Other costs. The CMRS carrier shall provide full rationale for other costs submitted.

Section 9. Use of Reimbursed Funds. A CMRS carrier shall use money received from the CMRS fund only for those expenditures and purposes authorized in KRS 65.7631(3), listed in invoices accepted by the board and as previously authorized in an approved cost recovery plan.

Section 10. Claims for Reimbursement. (1) After a cost recovery plan is approved, a CMRS carrier may file a claim for reimbursement of NRCs and RCs defined in the plan by submitting an invoice or other documentation, as defined in the plan.

(2) An invoice submitted by a CMRS carrier which is consistent with the then-current approved plan shall be paid by the board.

(3) A carrier may appeal a rejected invoice to arbitration in accordance with 202 KAR 6:040.

(4) The board shall suspend payment of a claim, including a claim previously approved but unpaid by the board, from a carrier who fails to comply with the requirements for remittance as specified by KRS 65.7635, until the carrier complies.

Section 11. Amount of Reimbursement. (1) The amount of monthly payments by the board to a carrier shall be determined by one (1) of the following methods, as set out in the approved cost recovery plan:

(a) By submission of NRCs necessary for the realization of the carrier's approved plan and actually incurred by the carrier;

(b) By submission of the predefined calendar period's nonsubscriber-based RCs;

(c) By submission of the predefined calendar period's subscriber-based RCs; or

(d) By a combination of methods in, paragraphs (a), (b), and (c) of this subsection as previously approved by the board.

(2) To document costs requested to be reimbursed, a carrier shall submit:

(a) A sworn paid invoice for actual costs or purchases from other vendors or suppliers; and approved documentation for internal costs (e.g., time slips for actual work performed by the carrier's employees) sufficient to establish the internal costs as reasonable and necessary; or

(b) other appropriate documentation approved by the board as part of the cost recovery plan.

(3) The subscriber count reported monthly by a carrier with the CMRS fund remittance and reporting process shall be used to determine the total for subscriber-based RCs. The subscriber count shall be subject to audit by the board, in accordance with KRS 65.7629(13).

Section 12. Prorated Payments. If the board determines that the total amount of invoices submitted by CMRS carriers and approved by the board exceeds the amount of revenue in the fund in a month or other payment period, the board shall pay a prorated share of the available funds to carriers who have submitted board-approved invoices for the relevant period. The priority of payment shall be as follows:

(1) The balance of approved unpaid invoices, including additional carrying charges at a rate established in the approved plan, shall be paid first; and

(2) Current invoices approved by the board shall then be paid.

Section 13. Amortization of Costs. (1) Nonrecurring costs may be amortized over a period not longer than twenty-four (24) months, until the amounts claimed for NRCs are fully recouped by the CMRS carrier.

(2) The board may reject a cost recovery plan or revised cost recovery plan if the amortization period of NRCs selected by the carrier is not long enough to ensure adequate monthly surcharge revenues with which to meet the carrier's monthly reimbursement demands.

(3) The interest rate for carrying unreimbursed NRCs shall be established and fully documented in the carrier's cost recovery plan.

(4) The actual cost of borrowing to fund NRCs shall be a legitimate recoverable RC.

(5) Only NRCs shall be amortized.

Section 14. Incorporation by Reference. (1) "Kentucky CMRS Carrier Data Sheet" (04/04/2000) is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the CMRS Board, 100 Fair Oaks Lane, Suite 102A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DAVID LUCAS, Chairman

ANGELA C. ROBINSON, Assistant Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 14, 2000 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000 at 10 a.m. in the GOT SE Director's Conference Room, First Floor at 100 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the CMRS Board in writing by May 15, 2000, five work-days prior to the hearing, of their intent to attend. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Attn: John Patterson, c/o CMRS Board, 100 Fair Oaks Lane, Suite 102A, Frankfort, Kentucky 40601, (502) 564-2638, Fax: (502) 564-3204.

REGULATORY IMPACT ANALYSIS

Contact Person: John J. Patterson

(1) Type and number of entities affected: 30 wireless telephone carriers providing service in Kentucky.

(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 have been received. However, no effect is anticipated.

(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 have been received. However, no effect is anticipated.

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

1. First year following implementation: Carriers must submit a Cost Recovery Plan to the CMRS Board, submit claims for reimbursement, and provide tallies of calls sent to PSAPs. There are no factors increasing or decreasing costs as the carriers are reimbursed for their costs.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None. Costs are to be paid from the user fees collected.

2. Continuing costs or savings: Same as above

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The CMRS Board must approve or disapprove cost recovery plans and claims for reimbursement submitted.

(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: CMRS user fees assessed by statute on all CMRS connections.

(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: See (b) below as the regulation will be implemented statewide.

(b) Kentucky: Approximately \$2.6 million will be made available to wireless carriers providing service in Kentucky to reimburse them for their costs in providing wireless E9-1-1 service.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were assessed. This method is stipulated in the KRS and the FCC Order on Docket #94-102.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation is expected to improve public health by providing better wireless E9-1-1 service.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: The public's safety and health would be reduced in that the rapid growth in wireless telephone use by consumers would disenfranchise state and local investment in the wired 9-1-1 system if cost recovery is not implemented. If not implemented, wireless carriers are likely to not implement #9-1-1 service or to do so in an uneven or non-integrated manner. The net effect is that wireless users will not be consistently connected to the local Public Safety Answering Point (9-1-1 center) and the PSAP may not have the required location information.

(9) Identify any statute, rule, 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 carriers are treated equally. They are reimbursed for their costs expended in providing wireless E9-1-1 service.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Federal Communications Commission's Report and Order relating to CCDOcket #94-102, as revised by Second Memorandum and Order, III, subparts A, B, D, November 18, 1999.

2. State compliance standards. The Commonwealth of Kentucky through this administrative regulation stipulates that upon receipt of a request for service from a 9-1-1 center certified by the Commercial Mobile Radio Service Board, wireless carriers:

a. Are entitled to recovery of their actual expenditures that are directly related to provision of a call back number and location of the calling party coupled with the caller's voice when a wireless user places a call to 9-1-1 for emergency assistance;

b. Must review the technical portions of their plan with operators of the 9-1-1 centers requesting such service; and

c. Must submit a copy of their plan to the board for approval before they will receive any recovery of their expenditures.

3. Minimum or uniform standards contained in the federal mandate. The FCC's mandate:

a. No longer requires that providers receive cost recovery before complying with a request for service from a 9-1-1 center;

b. Requires that 9-1-1 centers be able to utilize the data associated with a call before the carrier must comply with a request to deliver calls to a center;

c. Requires that carriers must begin delivering service within 6 months of receiving a request from an eligible 9-1-1 center.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation is less stringent in that it:

a. Allows carriers to delay compliance with a 9-1-1 center's request until after the board has certified the 9-1-1 center's ability to handle the data;

b. Only details what a provider must do to recover their costs of compliance since Kentucky's statute KRS 65.7631(3) continues to allow it even though the federal mandate no longer requires the state to provide cost recovery to carriers; and

c. Requires that carriers review with 9-1-1 centers the technical aspects of their implementation for delivery of wireless calls to 9-1-1, but does not require the agreement to the carrier's plan.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative imposes no requirements that are stricter than the federal requirements. This regulation does, however, add the requirement that carrier's who want to recover their expenditures must have them approved in advance if they expect to recover their costs.

**FINANCE AND ADMINISTRATION CABINET
Commercial Mobile Radio Service Emergency
Telecommunications Board of Kentucky
(New Administrative Regulation)**

202 KAR 6:030. Confidential and proprietary information.

RELATES TO: KRS 65.7621 to 65.7643, 9 USC Sections 1 to 16, 47 USC Sections 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633(1), 65.7639

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(1) requires the CMRS Board to implement the provisions of KRS 65.7621 to 65.7643 through the promulgation of administrative regulations. In order to comply with KRS 65.7629, 65.7639, and administrative regulations promulgated by the CMRS Board, it is necessary that the board and PSAPs certified by the board obtain information deemed proprietary by the CMRS carriers or LECs. KRS 65.7639 protects such information and governs the form and manner of its release to others. This administrative regulation establishes the procedures by which the board will insure the security of information deemed confidential or proprietary.

Section 1. Identification of Confidential or Proprietary Information. (1) Information identifying subscribers shall be held confidential, as proprietary information belonging to the disclosing CMRS provider, by the board and each of its employees. Identifying information shall include a subscriber's:

- (a) Name;
- (b) Telephone number;
- (c) Billing address; and

(d) Other data specified in KRS 65.7639.

(2) A CMRS carrier, PSAP, or LEC shall explicitly and clearly mark as confidential, prior to submission, any information supplied and regarded by the carrier, PSAP, or LEC as proprietary.

(3) The board shall not regard as confidential or proprietary the identification of a carrier or LEC or a subsidiary of either.

Section 2. Allowable Uses of Confidential and Proprietary Information. The use of confidential or proprietary information is strictly limited to:

(1) Disburse funds as provided in KRS 65.7631(1), (2), and (3);

(2) Discharge the duties of the board and its agents as provided in KRS 65.7629(1), (3), (8), (12), and (13)(a);

(3) Institute collection actions if necessary to enforce the collection of the CMRS service charge against a CMRS customer;

(4) Process revenues remitted to the board by CMRS carriers; and

(5) Manage calls by PSAPs in accordance with KRS 65.7639.

Section 3. Management of Confidential and Proprietary Information in the Possession of the Board. (1) The board shall instruct, in writing, all board personnel, agents of the board, and PSAPs as to the proper management and uses of confidential and proprietary information.

(2) A nondisclosure agreement shall be signed by each board member, employee, and agent of the board who may handle or possess information deemed confidential or proprietary.

(3) Material deemed confidential or proprietary shall be specifically and clearly identified by the board.

(4) Only persons specifically authorized by the board shall open board correspondence. Correspondence received by postal mail, electronic mail, or facsimile and opened by an unauthorized person shall be:

(a) Not be copied;

(b) Immediately returned to its container; and

(c) Immediately forwarded to the board.

(5) Proprietary and confidential information in the possession of the board, a member, agent, or any other person or entity shall be stored in a secure room, vault, or container. The room, vault, or container shall be kept locked when unattended or outside of normal business hours. Electronic files containing confidential or proprietary information shall be secured utilizing established mainframe protocols, stand alone servers, secured sockets, or password protected desktop applications, as appropriate.

(6) Access to confidential and proprietary information shall be limited to persons specifically authorized by KRS 65.7639, the board or as may be necessary to discharge the requirements of KRS 65.7621 to 65.7643.

(7) Each copy of confidential or proprietary information may be distributed as necessary for the efficient discharge of board duties and responsibilities.

(a) Copies shall be explicitly and clearly marked as confidential.

(b) A person possessing copies of documents containing confidential or proprietary information shall be responsible for document security.

(c) A copy no longer required shall be;

1. Returned to the board immediately; or

2. Destroyed immediately in such a manner as to prevent its reconstruction.

(8) An original record or file no longer needed for processing shall be:

(a) Sealed securely, retaining the notice of confidentiality, and transferred:

1. To a facility accessible only to the board administrator; or

2. With board approval, to the state archival and record storage center;

(b) With board approval, destroyed; or

(c) Returned to the proprietor.

Section 4. Breaches of Security. (1) The board shall take immediate action to determine the cause, impact, and persons involved in a security violation of the confidential information entrusted to the board.

(2) Unauthorized access to confidential or proprietary information shall be promptly reported to the board in writing.

(3) A report of a security breach shall include a description of the incident, specific identification of the information disclosed, identification of each person who accessed the records, and the purposes for which access was obtained.

(4) The board shall notify an affected party immediately, providing a copy of the written report detailing the incident.

(5) Willful or negligent disregard of the provisions of this administrative regulation by:

(a) A board member, agent, or employee shall be deemed cause for dismissal or request for resignation, as appropriate to the violator's position.

(b) A PSAP or its employee shall be deemed cause for the board to decertify the involved PSAP.

DAVID LUCAS, Chairman

ANGELA C. ROBINSON, Assistant Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 14, 2000 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000 at 10 a.m. in the GOT SE Director's Conference Room, First Floor at 100 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the CMRS Board in writing by May 15, 2000, five work-days prior to the hearing, of their intent to attend. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Attn: John Patterson, c/o CMRS Board, 100 Fair Oaks Lane, Suite 102A, Frankfort, Kentucky 40601, (502) 564-2638, Fax: (502) 564-3204.

REGULATORY IMPACT ANALYSIS

Contact Person: John J. Patterson

(1) Type and number of entities affected: The CMRS Board, 30 CMRS carriers, approximately 80 public safety answering points (PSAPs) and 20 local exchange carriers, their agents and employees

(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 have been received. However, no effect is anticipated.

(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 have been received. However, no effect is anticipated.

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

1. First year following implementation: Entities must mark relevant documents "confidential" upon submission to the board. The board must require all its staff and agents to sign nondisclosure agreements and they must mark all documents generated by them which contain confidential or proprietary information. PSAPs must maintain documents held or utilized by them in a confidential manner and certify that all PSAP staff have signed nondisclosure statements.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The CMRS Board must invest in secure vaults, etc. for maintaining confidential documents.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The CMRS Board must mark documents "confidential" and destroy or return unneces-

sary copies or original documents.

(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: CMRS user fees assessed by statute on all CMRS connections.

(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 have been received. However, no effect is anticipated.

(b) Kentucky: No comments have been received. However, no effect is anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were assessed. This method is stipulated in the KRS and the FCC Order on Docket #94.102.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Improved 9-1-1 service by CMRS carriers eligible to be reimbursed for their costs.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: Without adequate confidentiality guarantees, CMRS carriers will be reluctant to participate in providing wireless E9-1-1 service. Thus, some segments of the public may be without adequate 9-1-1 service.

(9) Identify any statute, rule, 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

TIERING: Is tiering applied? No. All entities are treated equally.

FINANCE AND ADMINISTRATION CABINET Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky (New Administrative Regulation)

202 KAR 6:050. PSAP certification.

RELATES TO: KRS 65.7621 to 65.7643, 9 USC Sections 1 to 16, 42 USC Section 12101, 47 USC Sections 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7631(4)(a), 65.7633(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7631(4)(a) states that no PSAP shall be eligible to request or receive a disbursement from the CMRS fund unless and until the PSAP is expressly certified as a PSAP by the CMRS Board, upon written application to the CMRS Board. KRS 65.7633 requires the CMRS Board to implement the provisions of KRS 65.7621 to 65.7643 through the promulgation of administrative regulations. This administrative regulation establishes the process by which a PSAP shall establish and maintain eligibility for disbursement from the CMRS fund.

Section 1. Phase I Certification. (1) Certification of a PSAP by the board implies that the board has examined the operation and infrastructure of the requesting PSAP and determined that it is or will be capable of complying with the requirements for handling wireless E9-1-1 calls.

(2) The board shall certify as many PSAPs as possible, recognizing the less stringent technological and operational requirements of Phase I wireless E9-1-1 and the uneven nature of existing E9-1-1 infrastructure in the Commonwealth.

(3) The board shall:

(a) Allow for as much diversity as possible in facilities and operation of E9-1-1 systems across the Commonwealth;

(b) Provide for increasing integrity in E9-1-1 systems statewide;
(c) Coordinate and assist in the implementation of new technology in the operation of emergency telecommunications in the state.

(4) A PSAP seeking certification shall send to the board, by certified mail, return receipt requested, the following:

(a) A completed CMRS PSAP Certification Application;

(b) A copy of:

1. Documentation which establishes the PSAP's authority to establish 9-1-1 service in accordance with KRS 65.760;

2. Any existing or proposed agreement between a CMRS carrier and the PSAP;

3. A list of the public safety agencies served by the requesting PSAP and a copy of any agreement between the PSAP and the designated agencies;

4. Any agreement between the requesting PSAP and the contracted wireline E9-1-1 service provider; and

5. A map detailing the area served by the requesting PSAP.

(c) A description of:

1. The mapping and addressing applications including:

a. The location of each database;

b. How each database is maintained; and

c. Who maintains each database.

2. The network and its characteristics currently or proposed to be in use by the PSAP;

3. The customer premises equipment employed by the PSAP in receiving E9-1-1 calls; and

4. Call transfer functions in the PSAP.

(d) Documentation of:

1. Sworn statements that telecommunications and PSAP management have signed nondisclosure agreements regarding confidential information accessible by them;

2. The disaster recovery application used by the PSAP including:

a. Default routing and alternate routing of call applications or other contingency applications for rerouting calls in the event of system failure;

b. Type of backup power equipment installed; and

c. Evacuation and relocation applications.

3. Seven (7) digit service for administrative nonemergency service;

4. Telecommunications devices for the deaf in the PSAP;

5. A certificate or sworn statement that telecommunications employed by the PSAP who handle wireless E9-1-1 calls meet the training requirements as required by law; and

6. The PSAP's standard operating procedures for the handling of wireless E9-1-1.

(e) A description of:

1. The PSAP's ability or anticipated ability to handle the data elements associated with wireless E9-1-1 calls; and

2. The anticipated use of the CMRS funds, in accordance with KRS 65.7631.

(6) Nothing in subsection (4)(b)1 of this section shall prohibit the Kentucky State Police from establishing a public safety answering point as otherwise permitted by law.

(7) After its initial review, the board shall:

(a) Require submission of other necessary documentation; and

(b) Schedule an on-site inspection by a member or members of the board.

Section 2. Application for Certification. (1) An application for certification shall be stamped "Confidential". Proprietary information received by the board shall be filed and maintained so as to maintain its confidentiality in accordance with KRS 65.7639 and 202 KAR 6:030.

(2) An application for certification shall be approved by the board by a simple majority vote.

(3) Within ten (10) business days of its decision, written notice of the board's approval or disapproval of an application shall be sent to the PSAP, certified mail, return receipt requested.

(4) The board shall review a plan within ninety (90) days of its receipt by the board.

(5) If an application for PSAP certification is disapproved:

(a) The board shall:

1. State in its written notice of decision the specific reason for rejection; and

2. Schedule a meeting with the PSAP applicant to resolve identified problems.

(b) The PSAP may:

1. Submit a revised application to the board for its review and approval or disapproval, following the procedure set out in Sections 1 and 2 of this administrative regulation; or

2. Appeal the board's rejection to an arbitrator as described in 202 KAR 6:040.

Section 3. Revision of an Approved Application. (1) After an application is approved, subsequent changes may be requested by either the PSAP or the board.

(2) The board may review an existing certification and request resubstantiation and reapproval of an application if necessary:

(a) To maintain the integrity of the wireless E9-1-1 system;

(b) To implement Phase II as specified by the FCC;

(c) In the event the board becomes aware of changes or deficiencies that have occurred at a PSAP.

(3) New or revised requirements specified by the board shall be applied to all PSAPs within a reasonable period.

(4) A party requesting revision of an application shall send written notice of the requested changes to the other party by certified mail, return receipt requested.

(5) An existing and approved application shall remain in effect until the board has notified the PSAP of its decision on the proposed changes.

(6) The board shall review a request for revision under the procedure designated in Sections 1 and 2 of this administrative regulation.

(7) The board shall decertify a previously approved application and shall discontinue payments to a PSAP, if the PSAP fails, without good cause, to respond in writing to a board request within the time period specified in the request.

Section 4. Phase II Certification. (1) The board shall establish and publish a timetable within which it expects PSAPs to migrate to Phase II in accordance with KRS 65.17625(3)(c).

(2) If the evolving technology necessary to implement Phase II requires additional enhancements to a PSAP's operation, the board shall:

(a) Seek additional documentation and substantiation of a PSAP's continuing ability to handle E9-1-1 calls; or

(b) Impose more stringent requirements to receive or maintain certification.

Section 5. Decertification of a PSAP. The board shall decertify a PSAP if the PSAP:

(1) Has used funds for purposes other than as prescribed by KRS 65.7631 and administrative regulations promulgated pursuant thereto; or

(2) Has not maintained or purchased the necessary technology or infrastructure to comply with evolving requirements.

Section 5. Incorporation by Reference. (1) "CMRS PSAP Certification Application" (12/02/1999) is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the CMRS Board, 100 Fair Oaks Lane, Suite 102A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DAVID LUCAS, Chairman

ANGELA C. ROBINSON, Assistant Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 14, 2000 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000 at 10 a.m. in the GOT SE Director's Conference Room, First Floor at 100 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the CMRS Board in writing by May 15, 2000, five work-days prior to the hearing, of their intent to attend. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A tran-

script 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: Attn: John Patterson, c/o CMRS Board, 100 Fair Oaks Lane, Suite 102A, Frankfort, Kentucky 40601, (502) 564-2638, Fax: (502) 564-3204.

REGULATORY IMPACT ANALYSIS

Contact Person: John J. Patterson

(1) Type and number of entities affected: Approximately 80 local 9-1-1 centers or public safety answering points (PSAPs).

(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 have been received. However, no effect is anticipated.

(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 have been received. However, no effect is anticipated.

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

1. First year following implementation: PSAPs must submit an application for Phase certification and reapply for Phase II certification.

2. Second and subsequent years: Same as above

(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: The CMRS Board must maintain applications and paperwork for applying PSAPs.

(4) Assessment of anticipated effect on state and local revenues: Approximately \$2.6 million will be distributed among certified PSAPs on a quarterly basis per statute.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: CMRS user fees assessed by statute on all CMRS connections.

(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: See (b) below as the regulation will be implemented statewide.

(b) Kentucky: Approximately \$2.6 million will be distributed among certified PSAPs on a quarterly basis per statute.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were assessed. This method is stipulated in the KRS.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation is expected to improve public health by providing better wireless E9-1-1 service.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: The public's safety and health would be reduced in that the rapid growth in wireless telephone use by consumers would disenfranchise state and local investment in the wired 9-1-1 system if cost recovery is not implemented. If not implemented, wireless carriers are likely to not implement #9-1-1 service or to do so in an uneven or nonintegrated manner. The net effect is that wireless users will not be consistently connected to the local Public Safety Answering Point (9-1-1 center) and the PSAP may not have the required location information.

(9) Identify any statute, rule, administrative regulation or gov-

ernment 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. The statute sets out the methods for disbursing funds to PSAPs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Federal Communications Commission's Report and Order relating to CCDocket #94-102, Memorandum Opinion and Order, III, B, 1, a, December 1, 1997, and as revised by Second Memorandum and Order, III, subparts A, B, D, November 18, 1999, and 42 USC, 12101.

2. State compliance standards. In order for 911 centers to receive cost recovery, the Commonwealth of Kentucky requires: 911 centers to demonstrate their ability to manage the data elements associated with wireless 911 calls, (ability to display call back numbers and location data); to provide a telecommunications device for the deaf at every answering position; and compliance with other nationally accepted minimum standards expected in a 911 center (i.e. standard operating procedures, disaster recovery plans, call transfer functions; addressing, 7-digit nonemergency telephone service); and to document their adherence to Kentucky Revised Statutes governing: training of telecommunicators (KRS 15.530-590); 911 funding and operations (KRS 65.760); and document its provision of 9-1-1 services to local government (KRS 65.7631(4)(b)).

3. Minimum or uniform standards contained in the federal mandate. The federal mandate from the FCC only requires that a 911 center demonstrate the ability to utilize the required data elements for call back numbers and location information. The American Disabilities Act (42 USC 12101) requires nondiscriminatory access to 911 for the hearing impaired.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation imposes no requirements that are stricter than the federal requirements it does, however, impose additional requirements on local governments operating 911 centers who wish to receive disbursements from the Commercial Mobile Radio Service funds.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation adds, in addition to the federal mandate, requirements that 9-1-1 centers comply with existing Kentucky statutes regarding training of telecommunicators, and document their compliance with Kentucky statutes regarding the establishment and funding of 9-1-1 operations. It also requires 9-1-1 centers provide documentation of their standard operating procedures, disaster recovery plans, call transfer functions; addressing, and 7 digit non-emergency telephone service to ensure that the 9-1-1 center requesting funds is operated in a manner consistent with minimum standards for enhanced 911 service recognized at both state and national levels. This is consistent with the mandate contained in KRS 65.7631(4)(a) instructing that a 9-1-1 center shall be "expressly certified as a PSAP by the CMRS Board, upon written application to the CMRS Board".

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: Specify the unit, part, or division. Public safety communications operations which utilize enhanced 9-1-1 facilities to receive calls for emergency services from the public will be affected by this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the reception and management of voice and data elements

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associated with calls to 9-1-1 centers for emergency service from wireless telephone users.

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 this regulation. The purpose of this regulation is to determine if a local government's enhanced 9-1-1 center has the necessary equipment, procedures, and capacity to properly utilize the data elements provided by a wireless 9-1-1 call. This administrative regulation will impact city, county, or urban county governments that operate or contract with others to operate enhanced 911 services. Government revenues will increase via payments from the Commercial Mobile Radio Services Board based on the total number of governments participating in the Commonwealth and the total number of wireless 911 calls received across the state by individual government entities. Participating government entities, depending on the current sophistication of the equipment deployed in a 911 center, may be required to increase their expenditures to upgrade equipment and increase capacity in telecommunications network facilities in order to qualify for funds from the board. It is anticipated that the increased revenues available will exceed any increased costs incurred by an individual local government and some may receive substantial surpluses above their increased costs. Neither state revenues nor expenditures are increased or decreased by this administrative regulation because the funds utilized by the board are collected from wireless consumers as a user surcharge. No additional fees are collected by local governments nor are any paid by local governments to the board. Any local government certified by the board as a result of the administrative regulation is entitled to an equal share of 25% of the funds collected by the board and to a stipend for each wireless 911 call received based on a formula in accordance with KRS 65.7631(2)(b).

FINANCE AND ADMINISTRATION CABINET Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky (New Administrative Regulation)

202 KAR 6:060. PSAP pro rata fund disbursement.

RELATES TO: KRS 65.7621 to 65.7643, 9 USC Sections 1 to 16, 47 USC Sections 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(2)(c) requires the CMRS Board to establish procedures and guidelines for reviewing, evaluating, and approving or disapproving disbursements from the CMRS fund and requests for disbursements. This administrative regulation establishes the pro rata fund disbursement process.

Section 1. Initial Revenues Collected by the CMRS Board. (1) Monthly revenues remitted to the CMRS Board for pro rata distribution prior to April 1, 2000 shall be frozen in order to provide sufficient opportunity for PSAPs to certify for disbursement of CMRS funds.

(2) On or before June 30, 2000, the CMRS Board shall establish a date before which a PSAP wishing to receive a pro rata portion of the funds shall have been certified by the board. Not less than ninety (90) days prior to the established date, notice of the date shall be:

- (a) Posted on the CMRS Board's web site; and
- (b) Distributed in writing to:

- 1. All PSAPs known to the board;
- 2. County judge executives;
- 3. Mayors of class six (6) cities or above; and
- 4. Mayors of urban county governments.

(3) Each PSAP certified by the board by the established date shall receive, within forty-five (45) days of the established date, a pro rata disbursement from the frozen funds in accordance with the "PSAP pro rata formula" in KRS 65.7631(2)(a).

Section 2. Ongoing Revenues Collected by the CMRS Board.

(1) Monthly revenues remitted to the CMRS Board after March 31,

2000 shall be disbursed to PSAPs in quarterly payments.

(2) Each PSAP certified by July 31, 2000 shall be eligible for the initial disbursement of funds.

(3) Following the initial disbursement, funds disbursed under the "PSAP pro rata formula" shall be disbursed to each PSAP that is certified at the end of the calendar quarter prior to the disbursement date, in accordance with the formula specified in KRS 65.7631(2)(a).

(4) Quarterly payments for "PSAP pro rata formula" disbursements shall be made on or before the midpoint of the calendar quarter following the quarter on which they are based.

DAVID LUCAS, Chairman

ANGELA C. ROBINSON, Assistant Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 14, 2000 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000 at 10 a.m. in the GOT SE Director's Conference Room, First Floor at 100 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the CMRS Board in writing by May 15, 2000, five work-days prior to the hearing, of their intent to attend. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Attn: John Patterson, c/o CMRS Board, 100 Fair Oaks Lane, Suite 102A, Frankfort, Kentucky 40601, (502) 564-2638, Fax: (502) 564-3204.

REGULATORY IMPACT ANALYSIS

Contact Person: John J. Patterson

(1) Type and number of entities affected: Approximately 80 public safety answering points (PSAPs).

(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 have been received. However, no effect is anticipated.

(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 have been received. However, no effect is anticipated.

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

1. First year following implementation: PSAPs must submit an application for Phase I certification and reapply for Phase II certification.

2. Second and subsequent years: Same as above

(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: The CMRS Board must maintain applications, documentation of call counts, and other supporting paperwork for applying PSAPs.

(4) Assessment of anticipated effect on state and local revenues: Approximately \$2.6 million will be distributed among certified PSAPs on a quarterly basis per statute.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: CMRS user fees assessed by statute on all CMRS connections.

(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: See (b) below as the regulation will be implemented statewide.

(b) Kentucky: Approximately \$2.6 million will be distributed among certified PSAPs on a quarterly basis per statute.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternative coupled the immediate disbursement of funds to certifying PSAPs with the even and equal disbursement of accumulated funds to all PSAPs across the Commonwealth able to certify.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation will evenly spread the available funds across the Commonwealth and thereby induce more rapid resolution of impediments to improved wireless E9-1-1 service, thus saving lives and property.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: Disbursement of accumulated funds would likely be concentrated in a few areas of the Commonwealth resulting in uneven deployment of the ability to handle wireless 9-1-1 calls.

(9) Identify any statute, rule, 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. This regulation applies equally to all regulated entities.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect: Specify the unit, part, or division. Public safety communications operations which utilize enhanced 9-1-1 facilities to receive calls for emergency services from the public will be affected by this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the reception and management of voice and data elements associated with calls to 9-1-1 centers for emergency service from wireless telephone users.

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 this regulation. The purpose of this administrative regulation is to stipulate deadlines for eligibility to receive fund distributed by the Commercial Mobile Radio Service Board in accordance with the pro rata formula specified by KRS 65.7631(2)(b). This administrative regulation also stipulates both when the revenue collected during the start up phase of board operations and the ongoing revenues remitted to the board will be paid to 911 centers. This administrative regulation will impact city, county, or urban county governments that operate or contract with others to operate enhanced 911 services. Government revenues will increase via payments from the Commercial Mobile Radio Services Board based on the total number of governments participating in the Commonwealth and the total number of wireless 911 calls received across the state by individual government entities. Participating government entities, depending on the current sophistication of the equipment deployed in a 911 center, may be required to increase their expenditures to upgrade equipment and increase capacity in telecommunications network facilities in order to qualify for funds from the board. It is anticipated that the increase revenues available will exceed any increased costs incurred by an individual local government and some may receive substantial surpluses above their increased costs. Neither state revenues nor expenditures are increased or decreased by this administrative regulation because the funds utilized by the board are collected from wireless consumers as a user surcharge. No addi-

tional fees are collected by local governments nor are any paid by local governments to the board. Any local government certified by the board as a result of the administrative regulation is entitled to an equal share of 25% of the funds collected by the board and to a stipend for each wireless 911 call received based on a formula in accordance with KRS 65.7631(2)(b).

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (New Administrative Regulation)

301 KAR 1:018. Use of boating access areas.

RELATES TO: KRS 150.025, 150.620, 235.315, 433.757

STATUTORY AUTHORITY: KRS 150.025, 150.620, 235.280, 235.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.620 grants the department authority to establish public shooting and fishing grounds and similar or related recreational facilities and to promulgate administrative regulations governing their use. KRS 235.280 gives the department authority to promulgate administrative regulations to govern the fair, reasonable, equitable and safe use of the waters of this state. This administrative regulation is necessary to proscribe certain activities at boating access areas.

Section 1. Definitions. (1) "Boating access area" means property owned or managed by the department and identified by signs as a public facility for launching and retrieving boats, including:

(a) Ramps, parking lots, courtesy docks, and access roads; and

(b) A zone extending fifty (50) feet into the water adjacent to the department property described in paragraph (a) of this subsection.

(2) "Camp" means to pitch a tent or to remain overnight in a vehicle or trailer.

Section 2. At a boating access area, a person shall not:

(1) Engage in an activity that would interfere with:

(a) Launching or retrieving a boat; or

(b) Parking a vehicle used to transport a boat to the area;

(2) Except as necessary to launch or retrieve a boat:

(a) Swim or wade;

(b) Moor or anchor watercraft; or

(c) Operate watercraft at greater than idle speed;

(3) Discharge firearms;

(4) Build or maintain a fire;

(5) Camp;

(6) Without permission from the department:

(a) Solicit;

(b) Advertise; or

(7) Engage in a commercial activity;

(8) Park in a way that obstructs the normal flow of traffic; or

(9) Consume alcoholic beverages or possess open alcoholic beverages containers.

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

TOM BAKER, Chairman

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 14, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 2000 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business 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 administra-

tive regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Jennifer F. Fields, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: Jennifer Fields

(1) Type and number of entities affected: Approximately 150,000 boats are registered in Kentucky. It is unknown how many people recreate on Kentucky's waterways.

(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. This administrative regulation will have no impacts on cost of living or 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 received. This administrative regulation will have no impact 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 administrative regulation imposes no new paperwork or reporting requirements.

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: This administrative regulation imposes no new direct or indirect costs.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation imposes no new reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not impact state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund.

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

Geographical area in which administrative regulation will be implemented: This administrative regulation should have no negative economic impact and may be beneficial to Kentucky's economy by reducing waste and vandalism.

(b) Kentucky: Same as for local areas.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative was not to regulate this area, which was not chosen due to the increased problems, crime and user conflict.

(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 known.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

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

(9) Identify and 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:

(11) TIERING: Is tiering applied? Tiering was not used.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental protection
Division for Air Quality
(New Administrative Regulation)

401 KAR 50:039. Repeal of 401 KAR 50:037.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

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 repeals 401 KAR 50:037 because the provisions of that administrative regulation have expired.

Section 1. 401 KAR 50:037, Emissions fee, is hereby repealed.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: March 21, 2000

FILED WITH LRC: March 21, 2000 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for May 25, 2000, at 10 a.m. (eastern time) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing, by May 18, 2000, five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, Telephone: (502) 573-3382, fax: (502) 573-3787.

REGULATORY IMPACT ANALYSIS

Contact person: Millie Ellis

(1) Type and number of entities affected: This administrative regulation repeals 401 KAR 50:037, Emissions fee, because the provisions of that administrative regulation have expired. Current provisions for the collection of air emissions fees are contained in 401 KAR 50:038, Air emissions fee, made effective April 12, 1995. Therefore, 401 KAR 50:037 is being repealed and will not be replaced by a new administrative regulation.

(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 are no costs or savings related to the costs of living and employment in the geographical area in which this administrative regulation will be implemented.

(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 are no costs of doing business associated with this administrative regulation.

(c) To the extent available from the public comments received, 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 compliance, reporting, paperwork requirements, or other factors affecting costs or savings contained in this administrative regulation.

2. Second and subsequent years: There are no compliance, reporting, paperwork requirements, or other factors affecting costs or savings contained in this administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings for the cabinet associated with the promulgation of this administrative regulation.

2. Continuing costs or savings: There are no continuing costs or savings for the cabinet associated with the promulgation of this administrative regulation.

3. Additional factors increasing or decreasing costs: There are no additional factors that will increase or decrease costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements contained in this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional funding is required to implement this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical area in which it will be implemented.

(b) Kentucky: This administrative regulation will have no economic impact in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because KRS Chapter 13A mandates the repeal of an administrative regulation when its provisions have expired.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Promulgating this administrative regulation will have no effect on public health and environmental welfare in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result if this administrative regulation is not promulgated.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because the provisions of 401 KAR 50:037 have expired and have been replaced by 401 KAR 50:038.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, administrative regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: There are no additional information or comments. The cabinet is promulgating this administrative regulation to repeal 401 KAR 50:037 because the provisions contained therein have expired.

(11) TIERING: Is tiering applied? No, Tiering is not applicable to this administrative regulation because it repeals an existing administrative regulation, which contains expired provisions for the collection of air emissions fees.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this administrative regulation.

2. State compliance standards. The state compliance standards are found at KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-

120.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation. This administrative regulation will repeal 401 KAR 50:037, which will not be replaced by a new administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation contains no standards or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative 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 (+/-): There is no effect on current revenues.

Expenditures (+/-): There is no effect on current expenditures.

Other Explanation: There is no further explanation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental protection Division for Air Quality (New Administrative Regulation)

401 KAR 51:056. Repeal of 401 KAR 51:055.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

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 repeals 401 KAR 51:055 because the generic trading provisions contained in that administrative regulation are not used by the cabinet. Under Kentucky's State Implementation Plan (SIP), source specific SIP amendments are required for emissions trading.

Section 1. 401 KAR 51:055, Emissions trading, is hereby repealed.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: March 21, 2000

FILED WITH LRC: March 21, 2000 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for May 25, 2000, at 10 a.m. (eastern time) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing, by May 18, 2000, five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative

regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five workdays prior to the hearing.

CONTACT: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, Telephone: (502) 573-3382, fax: (502) 573-3787.

REGULATORY IMPACT ANALYSIS

Contact person: Millie Ellis

(1) Type and number of entities affected: This administrative regulation repeals 401 KAR 51:055, Emissions trading. 401 KAR 51:055 contains outdated generic emissions trading provisions that have never been used by the cabinet nor approved by the U.S. EPA. Under the current State Implementation Plan (SIP) Kentucky sources are allowed to trade emissions if a source-specific SIP amendment is submitted by the cabinet and approved by the U.S. EPA. The U.S. EPA is currently developing an approvable generic emissions trading policy. After that guidance is final, the cabinet will propose a new administrative regulation to address the generic trading of emissions in Kentucky. Therefore, 401 KAR 51:055 is being repealed and will not be replaced by a new administrative regulation at this 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. There are no costs or savings related to the costs of living and employment in the geographical area in which this administrative regulation will be implemented.

(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 are no costs of doing business associated with this administrative regulation.

(c) To the extent available from the public comments received, 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 compliance, reporting, paperwork requirements, or other factors affecting costs or savings contained in this administrative regulation.

2. Second and subsequent years: There are no compliance, reporting, paperwork requirements, or other factors affecting costs or savings contained in this administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings for the cabinet associated with the promulgation of this administrative regulation.

2. Continuing costs or savings: There are no continuing costs or savings for the cabinet associated with the promulgation of this administrative regulation.

3. Additional factors increasing or decreasing costs: There are no additional factors that will increase or decrease costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements contained in this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional funding is required to implement this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical area in which it will be implemented.

(b) Kentucky: This administrative regulation will have no economic impact in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because KRS Chapter 13A mandates the repeal of this administrative regulation, since its provisions are not necessary.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Promulgating this administrative regulation will have no effect on public health and environmental welfare in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result if this administrative regulation is not promulgated.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because the provisions of 401 KAR 51:055 are not used by the cabinet to approve emissions trading of sources located in Kentucky.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, administrative regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: There are no additional information or comments. The cabinet is promulgating this administrative regulation to repeal 401 KAR 51:055 because the provisions contained therein are not used by the cabinet.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this administrative regulation because it repeals an existing administrative regulation, which contains outdated and unapprovable provisions for generic emissions trading.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this administrative regulation.

2. State compliance standards. The state compliance standards are found at KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation. This administrative regulation will repeal 401 KAR 51:055, which will not be replaced by a new administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation contains no standards or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative 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 (+/-): There is no effect on current revenues.

Expenditures (+/-): There is no effect on current expenditures.
Other Explanation: There is no further explanation.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Environmental protection
Division for Air Quality
(New Administrative Regulation)

401 KAR 59:311. Repeal of 401 KAR 59:310.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110,
224.20-120

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100,
224.20-110, 224.20-120

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 repeals 401 KAR 59:310, New nonmetallic mineral processing plants. The revised federal New Source Performance Standards (NSPS) codified at 40 CFR 60, Subpart OOO, will be incorporated by reference in a new administrative regulation, 401 KAR 60:670.

Section 1. 401 KAR 59:310, New nonmetallic mineral processing plants, is hereby repealed.

JAMES E. BICKFORD, Secretary
BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: March 21, 2000

FILED WITH LRC: March 21, 2000 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for May 25, 2000, at 10 a.m. (eastern time) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing, by May 18, 2000, five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five workdays prior to the hearing.

CONTACT: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, Telephone: (502) 573-3382, fax: (502) 573-3787.

REGULATORY IMPACT ANALYSIS

Contact person: Millie Ellis

(1) Type and number of entities affected: This administrative regulation repeals 401 KAR 59:310, New nonmetallic mineral processing plants. The federal New Source Performance Standard (NSPS) codified at 40 CFR 60, Subpart OOO, that is being repealed, will be promulgated in a new regulation, 401 KAR 60:670.

(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 are no costs or savings related to the costs of living and employment in the geographical area in which this administrative regulation will be implemented in 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 comments received. There are no costs of doing

business associated with this administrative regulation.

(c) To the extent available from the public comments received, 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 compliance, reporting, paperwork requirements, or other factors affecting costs or savings contained in this administrative regulation.

2. Second and subsequent years: There are no compliance, reporting, paperwork requirements, or other factors affecting costs or savings contained in this administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings for the cabinet associated with the promulgation of this administrative regulation.

2. Continuing costs or savings: There are no continuing costs or savings for the cabinet associated with the promulgation of this administrative regulation.

3. Additional factors increasing or decreasing costs: There are no additional factors that will increase or decrease costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements contained in this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional funding is required to implement this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical area in which it will be implemented.

(b) Kentucky: This administrative regulation will have no economic impact in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because KRS Chapter 13A mandates the repeal of an administrative regulation when it will be replaced by a new administrative 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: Promulgating this administrative regulation will have no effect on public health and environmental welfare in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result if this administrative regulation is not promulgated.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because sources subject to 401 KAR 59:310 would become subject to 40 CFR 60, Subpart OOO, if this administrative regulation is not repealed and replaced with the updated federal NSPS to be incorporated by reference in 401 KAR 60:670.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, administrative regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to repeal 401 KAR 59:310 because it is being replaced by 401 KAR 60:670. The cabinet intends to adopt the federal NSPS for this source category as well as establish alternate compliance standards for the control of particulate emissions from nonmetallic mineral processing plants. Promulgating these administrative regulations is necessary for Kentucky to be granted delegation of authority from the U.S. EPA for

this source category.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this administrative regulation because it repeals an existing administrative regulation, which is being replaced by 401 KAR 60:670.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this administrative regulation.

2. State compliance standards. The state compliance standards are found at KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation. This administrative regulation will repeal 401 KAR 59:310, which is being replaced by 401 KAR 60:670.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation contains no standards or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative 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 (+/-): There is no effect on current revenues.

Expenditures (+/-): There is no effect on current expenditures.

Other Explanation: There is no further explanation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental protection Division for Air Quality (New Administrative Regulation)

401 KAR 60:670. Standards of performance for nonmetallic mineral processing plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.670 to 60.676, Appendices A to F in 40 CFR 60, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.670 to 60.676, 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. This administrative regulation incorporates by reference the New Source Performance Standards (NSPS) for Nonmetallic Mineral Processing Plants, codified at 40 CFR 60.670 to 60.676 (Subpart OOO), and establishes alternate compliance standards for the control of particulate emissions from nonmetallic mineral processing plants. Delegation of implementation and enforcement authority for the federal NSPS program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. For the purposes of 40 CFR 60.670 to 60.676 (Sub-

part OOO):

(1) "Administrator" shall be the Secretary of the Natural Resources and Environmental Protection Cabinet;

(2) "Agency" shall be the United States Environmental Protection Agency;

(3) "Affected facility" shall be a facility specified in 40 CFR 60.670; and

(4) "State" shall be the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet.

Section 2. Applicability. (1) This administrative regulation shall apply to sources specified in 40 CFR 60.670.

(2) Except as provided in Section 3 of this administrative regulation, sources identified in subsection (1) of this section shall comply with:

(a) 40 CFR 60.670 to 60.676 (Subpart OOO); and

(b) The applicable methods, procedures, and reporting requirements of 401 KAR 60:005.

Section 3. Alternate Compliance Standards for Particulate Matter. (1) Subsection (2) of this section shall apply in lieu of 40 CFR 60.672, Standard for particulate matter, if:

(a) An affected facility is enclosed in a building that cannot be safely entered; or

(b) Reference Method 9 cannot be applied using guidance specified by the U.S. EPA for an affected facility enclosed inside a building.

(2) The owner or operator of an affected facility specified in subsection (1) of this section shall comply with the following alternate compliance standards for particulate matter:

(a) For a building vent, the discharge of emissions into the atmosphere shall not exceed the stack emissions limits in 40 CFR 60.672(a);

(b) For a building that does not enclose a crusher, the discharge of fugitive emissions into the atmosphere shall not exceed ten (10) percent opacity; and

(c) For a building that encloses a crusher, the discharge of fugitive emissions shall not exceed fifteen (15) percent opacity.

Section 4. Incorporation by Reference. (1) 40 CFR 60.670 to 60.676 (Subpart OOO), "Standards of Performance for Nonmetallic Mineral Processing Plants," as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1999, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Ewing Boulevard, Suite 110, 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, 875 S. Main Street, London, Kentucky 40741, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (270) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: March 21, 2000

FILED WITH LRC: March 21, 2000 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for May 25, 2000, at 10 a.m. (eastern time)

in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing, by May 18, 2000, five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five workdays prior to the hearing.

CONTACT: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, Telephone: (502) 573-3382, fax: (502) 573-3787.

REGULATORY IMPACT ANALYSIS

Contact person: Millie Ellis

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal New Source Performance Standards (NSPS), 40 CFR 60.670 to 60.676 (Subpart OOO), as published in the *Code of Federal Regulations*, 40 CFR Part 60, July 1, 1999. The provisions of the federal NSPS regulation apply to nonmetallic mineral processing plants as specified at 40 CFR 60.670. In a related action, the cabinet is promulgating 401 KAR 59:311 to repeal 401 KAR 59:310, which is the existing regulation for this source category. The promulgation of these administrative regulations is necessary in order for Kentucky to be granted delegation of authority from the U.S. EPA to implement and enforce the NSPS for this source category.

(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 are no costs or savings beyond those described in the federal rulemaking.

(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. This administrative regulation does not affect the cost of doing business in the geographical area where it will be implemented beyond the costs described in the federal rulemaking.

(c) To the extent available from the public comments received, 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 compliance, reporting, or paperwork requirements beyond those required in the federal NSPS.

2. Second and subsequent years: There are no compliance, reporting, or paperwork requirements beyond those described in the federal rulemaking.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal NSPS.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on local and state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative

regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: With the exception of alternate compliance standards, which are being proposed to address safety concerns, no alternative methods were considered because this administrative regulation is being promulgated in order for the cabinet to obtain delegation of authority from the U.S. EPA for this federal NSPS.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal NSPS, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal NSPS.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, administrative regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: In addition to incorporating the federal NSPS by reference, the cabinet is also proposing alternate compliance standards for opacity limits for sources that are enclosed in buildings, which cannot be safely entered. The alternate standards are approvable by the U.S. EPA, which is necessary since the cabinet is seeking delegation of authority for this source category.

(11) TIERING: Is tiering applied? No, The cabinet is incorporating by reference the federal NSPS, 40 CFR 60.670 to 60.676 (Subpart OOO), as published in the *Code of Federal Regulations*, July 1, 1999, and is establishing alternate compliance standards for safety purposes. There is no tiering by the state beyond that contained in the federal NSPS.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 60.670 to 60.676 (Subpart OOO), July 1, 1999. The United States Environmental Protection Agency (U.S. EPA) may grant states implementation and enforcement authority for the federal Part 60 NSPS program pursuant to 42 USC 7411(c)(1).

2. State compliance standards. The state compliance standards are found at KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120. The existing administrative regulation, 401 KAR 59:310 is being repealed in a separate action, 401 KAR 59:311.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 60.670 to 60.676 (Subpart OOO) contains the New Source Performance Standards (NSPS) for nonmetallic mineral processing plants, which the U.S. EPA is required to promulgate pursuant to 42 USC 7411.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative will

not impose stricter requirements or additional responsibilities or requirements than those required by the federal mandate. However, this administrative regulation does contain alternate compliance standards for particulate matter emissions for sources that are enclosed in buildings, which cannot be safely entered. This alternative compliance standard is approvable by the U.S. EPA, which is necessary since the cabinet is seeking delegation of authority for this source category.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed. The federally-approved alternate compliance standards have been proposed to address safety concerns.

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 what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Bureau of Learning Support Services (New Administrative Regulation)

703 KAR 5:120. Assistance for schools; guidelines for scholastic audit.

RELATES TO: KRS 158.6451, 158.6453, 158.6455, 158.782, 158.805

STATUTORY AUTHORITY: KRS 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to adopt administrative regulations relating to assistance to improve teaching and learning for a school that has an index score that places it below the assistance line and relating to the guidelines for conducting scholastic audits. This administrative regulation establishes standards for assistance to schools and for conducting scholastic audits.

Section 1. Definitions. (1) "Assistance line" means the unique line for a school that starts in the biennium ending with the school year 2001-2002 at one (1) standard error of measurement below the school's baseline accountability index to a point that is one (1) standard error of measurement below eighty (80) on the accountability index scale in the biennium ending with the school year 2013-2014. The calculated points defining this line shall be rounded to the nearest tenth. If a school's baseline is above eighty (80), the assistance line is a horizontal line at eighty (80) minus one (1) standard error of measurement.

(2) "In need of assistance" means the school's growth accountability index falls below its assistance point.

(3) "Level 1" means a classification assigned to a school that has an index score that places it in the highest one-third (1/3) of all schools below the assistance line.

(4) "Level 2" means a classification assigned to a school that has an index score that places it in the middle one-third (1/3) of all

schools below the assistance line.

(5) "Level 3" means a classification assigned to a school that has an index score that places it in the lowest one-third (1/3) of all schools below the assistance line.

(6) "Progressing" means the school's growth accountability index falls below its goal point and meets or exceeds its assistance point.

(7) "Sample of schools" means a representation of schools, not to exceed five (5) percent, of those with an accountability index above the assistance line.

(8) "Scholastic audit" means a comprehensive review of a school's learning environment, efficiency, and academic performance of students to determine the level of support necessary to continuously improve student academic performance.

(9) "School classification" means the status of a school or school district, including "meets goal", "progressing", or "in the need of assistance" based on measures of growth.

(10) "School improvement plan" means a data driven and research-based framework developed by the school which contains specific recommendations from the scholastic audit team for improving teaching and student learning and identifies priority needs for strengthening the school's instructional and organizational effectiveness.

(11) "School portfolio" means a collection of documents pertinent to a school that is used to create a profile of the strengths and limitations of the school's instructional and organizational effectiveness, including:

- (a) The school's consolidated plan;
- (b) State assessment results;
- (c) Student achievement data;
- (d) Portfolio writing analysis data;
- (e) School survey data;
- (f) The school report card;
- (g) District technology inventory;
- (h) School handbook and master schedule;
- (i) School-based decision-making policies and meeting minutes;
- (j) Teacher lesson plans;
- (k) District evaluation plan;
- (l) Curriculum alignment documents;
- (m) Examples of student work; and
- (n) A listing of professional development activities.

(12) "Standard error of measurement" means, for purposes of the assistance line or the goal line, the statistic derived from the baseline calculations taking into account appropriate sources of measurement error and number of students assessed.

(13) "Standards and indicators for school improvement" means the evaluation tool used in the scholastic audit process to determine the appropriateness of the school's classification and to make recommendations to improve teaching and learning for inclusion in the existing consolidated school improvement plan.

Section 2. (1) A Level 1 school shall conduct a scholastic review and self-study facilitated by the district's professional development coordinator with assistance provided by Kentucky Department of Education (KDE) staff. The chairperson shall be appointed by the Commissioner of Education in consultation with the superintendent. The chairperson shall be responsible for:

- (a) The notification of the school community that the audit will take place and a process for written comments;
- (b) The coordination of the site visitation;
- (c) The facilitation of the process;
- (d) The facilitation of a meeting with district staff prior to the audit visit;
- (e) The drafting of the report;
- (f) The delivery of the final report to the local school board members, superintendent, principal and the school council members within three (3) weeks of completing the scholastic review.

(2) Beginning with the results of the 2000-2002 accountability cycle, a Level 1 school may be eligible to receive Commonwealth school improvement funds. The school council shall decide whether to accept or decline Commonwealth school improvement funds. If the council chooses to decline, the principal shall notify the local board of education of the council's decision.

(3) To involve stakeholders in identifying priorities for school improvement planning, the school principal, in collaboration with the other school council members, shall notify parents and interested community members of the findings and recommendations of the review team. The findings shall be presented and discussed on the agenda of the next scheduled school council meeting and at a local board of education meeting.

(4) A Level 1 scholastic review and self study team:

(a) Shall use the "Standards and Indicators for School Improvement" to evaluate the school's learning environment, efficiency, and academic performance;

(b) Shall make recommendations to improve teaching and learning for inclusion in the existing consolidated school improvement plan; and

(c) May review the district's certified employee evaluation plan and make recommendations regarding the implementation of the professional growth and evaluation plan and process used by the school.

Section 3. (1) A Level 2 school shall receive a scholastic review facilitated and chaired by a designee of the Commissioner of Education with assistance from the district's central office staff. The chairperson shall be responsible for:

(a) The notification of the school community and a process for written comments;

(b) The coordination of the site visitation;

(c) The facilitation of the process;

(d) The facilitation of a meeting with district staff prior to the audit visit.

(e) The drafting of the report;

(f) The delivery of the final report to the local school board members, superintendent, principal and the school council members within three (3) weeks of completing the scholastic review; and

(2) Beginning with the results of the 2000-2002 accountability cycle, a Level 2 school may be eligible to receive Commonwealth school improvement funds. The school council shall decide whether to accept or decline Commonwealth school improvement funds. If the council chooses to decline, the principal shall notify the local board of education of the council's decision.

(3) To involve stakeholders in identifying priorities for school improvement planning, the school principal, in collaboration with the other school council members, shall notify parents and interested community members of the findings and recommendations of the review team. The findings shall be presented and discussed on the agenda of the next scheduled school council meeting and at a local board of education meeting.

(4) A Level 2 scholastic review shall:

(a) Use the "Standards and Indicators for School Improvement" to evaluate the school's learning environment, efficiency, and academic performance;

(b) Make recommendations to improve teaching and learning for inclusion in the existing consolidated school improvement plan; and

(c) Review the district's certified employee evaluation plan and make recommendations regarding the implementation of the professional growth and evaluation plan and process used by the school.

Section 4. A Level 3 school shall receive education assistance from a highly skilled educator under KRS 158.782 and a scholastic audit. A Level 3 school shall be eligible to receive Commonwealth school improvement funds under KRS 158.805. In order for a Level 3 school to decline to accept Commonwealth school improvement funds, the approval of the school council shall be required and the local board of education shall be notified of the decision.

Section 5. Evaluation of school personnel in a Level 3 school shall address the following:

(1) The district's evaluation plan and process for certified staff shall be reviewed and recommendations made on the implementation of the evaluation plan and process used by the school;

(2) A person responsible for evaluating certified personnel, including the certified members of the audit team, shall have fulfilled the training requirements as described in KRS 156.101 and 704 KAR 3:345;

(3) Beginning with the school year 2002-2003, the qualified members of the audit team shall submit written recommendations for additional staff evaluations to be conducted by the certified administrator charged with evaluation. If additional evaluations are required, the certified administrator charged with evaluation, in collaboration with the assigned highly skilled educator, shall submit a progress report to the district and the KDE within six (6) months of the initial report. Based on the findings, under KRS 156.132, the Commissioner of Education may recommend to the local superintendent that:

(a) The principal, who is identified by the audit as in need of additional evaluation but who does not respond to the professional growth plan as identified in 704 KAR 3:345, be dismissed, demoted, or transferred; and

(b) A teacher, who is identified by the audit as in need of additional evaluation but who does not respond to the professional growth plan, be dismissed or transferred.

Section 6. (1) If a school is classified as a Level 3 school for two (2) consecutive biennia, a student attending the Level 3 school may transfer to a school with an accountability index above its assistance line within the district or if none is available, a school with an accountability index above its assistance line outside the district. No later than thirty (30) days before the start of the next school year the student shall submit the transfer request to the superintendent.

(2) The superintendent shall select the receiving successful school in the home district or make arrangements with a neighboring district with the student transfer to be effective beginning with the next school year after the school is classified as a Level 3 school for two (2) consecutive biennia. If two (2) districts cannot agree, the superintendent of the student's resident district shall request the Commissioner of Education to resolve the issue and make a decision on the placement of the student.

(3) The school district in which the student is enrolled shall retain the SEEK funding, and the student's resident district shall be responsible for all transportation costs incurred as a result of a student transferring.

Section 7. If a school is classified as Level 3, a scholastic audit team may request the Commissioner of Education to recommend to a local board of education the removal of a school council member under KRS 160.347.

Section 8. (1) Members of the scholastic audit team shall be selected and trained from a pool of candidates who have submitted an application to the Department of Education (KDE). The training shall include:

(a) Developing, implementing, and evaluating a comprehensive consolidated school improvement plan that communicates a clear purpose, direction and action plan focused on improved teaching and learning;

(b) Building capacity for school leadership at all levels that promotes instructional decisions resulting in active support for teaching and learning and sustained continuous improvement;

(c) Organizing the school to maximize use of all available resources to support high student and staff performance within a safe environment;

(d) Using time efficiently and effectively to maximize teaching and learning;

(e) Providing and supporting research-based, results driven professional development opportunities for all staff to improve staff and student learning;

(f) Building relationships and collaborative networks, open communication, and active engagement of all stakeholders;

(g) Attending to the evidence as to whether the individual needs of students are being met and assessing equitable access to the entire curriculum;

(h) Using resources effectively to eliminate barriers to learning and providing the appropriate support structures to meet the needs of all students;

(i) Using technology and other resources as an integral part of an effective, educational program to improve teaching and learning;

(j) Developing and learning how to assess an effective learning

community;

(k) Developing and implementing an effective, responsive curriculum that is rigorous, intentional, articulated, integrated and aligned to state standards established under KRS 158.645, 158.6451, and 703 KAR 4:060;

(l) Developing and learning how to assess an instructional program that actively engages all students by employing varied research-based practices to improve academic performance;

(m) Developing and learning to utilize multiple evaluation and assessment strategies to monitor and modify instruction;

(n) Conducting professional growth and evaluation of certified personnel;

(o) Assessing and advising compliance with Kentucky's statutory and regulatory requirements for schools and school districts; and

(p) Understanding and assessing the fiscal relationship between schools and districts with respect to resource allocation and integration.

(2) The scholastic audit team shall consist of the following members:

(a) A highly skilled educator selected under KRS 158.782;

(b) An active or retired teacher who has not been under full-time contract in the district in which the school is being audited;

(c) An active or retired principal or other school-level administrator who has not been under full-time contract in the district in which the school is being audited;

(d) An active or retired district level administrator who has not been under full-time contract in the district in which the school is being audited;

(e) A parent or legal guardian who has or has had a school-aged child and resides outside the district which includes the school being audited; and

(f) An active or retired university faculty member.

(3) The Commissioner of Education or his designee shall name a highly skilled educator with administrative certification and experience, an experienced certified administrator member of the audit team, or a similarly qualified state-designated agent to serve as chairperson of the scholastic audit team. The chairperson shall be responsible for:

(a) The notification of the school community and a process for written comments;

(b) The coordination of the site visitation;

(c) The facilitation of the process;

(d) The facilitation of a meeting with district staff prior to the audit visit;

(e) The drafting of the report; and

(f) The delivery of the final report to the KDE, local school board members, superintendent, principal and the school council members.

(4) Prior to the scholastic audit, the school principal, in collaboration with the other members of the school council, shall prepare a school portfolio for use in creating a profile of the strengths and limitations of the school's instructional and organizational effectiveness. Evidence as to the current levels of instructional and organizational effectiveness shall be indicated in the identification of priorities for school improvement in the school consolidated plan.

(5) A school's learning environment, efficiency, and student academic performance shall be evaluated by using the scholastic audit team using "Standards and Indicators For School Improvement."

(6) The scholastic audit team shall:

(a) Make recommendations for assistance;

(b) Share a draft report with the school faculty and school council members prior to the scholastic audit team's departure; and

(c) Submit a final exit report, within three (3) weeks following the site visit, to the KDE, local school board members, superintendent, principal, and the school council members, regarding:

1. The appropriateness of the classification based upon audit findings;

2. Specific recommendations to improve teaching and learning for inclusion into the existing consolidated school improvement plan;

3. The evaluation of school-based decision-making council decisions in the critical instructional areas under KRS 160.345(2)(d)(i) and (3)(c);

4. The evaluation of the effectiveness of the principal as the instructional leader, in the areas of efficiency, learning environment, and academic performance;

5. The identification of certified staff, including administrators, needing further performance evaluations to the primary evaluator as defined in KRS 156.101(6)(c)2;

6. The assistance and resources required to revise the consolidated school improvement plan; and

7. The identification of priorities and strategies, which the school or district may adopt to support the improvement effort.

(7) To involve stakeholders in identifying priorities for school improvement planning, the school principal, in collaboration with the other school council members, shall notify parents and interested community members of the findings and recommendations of the audit team. The audit findings shall be presented and discussed on the agenda of the next scheduled school council meeting and at a local board of education meeting.

(8) School improvement plans shall be based upon:

(a) Recommendations from the audit team's exit report for improving teaching and learning that shall be incorporated into the existing consolidated plan submitted to the district and the KDE; and

(b) Specific, research-based standards and indicators of quality as found in "Standards and Indicators for School Improvement" so all school and district consolidated plans are linked to the critical elements of the scholastic audit process and focused on improving student academic performance.

(9) The process for amending a school plan shall be a local decision, beginning with the approval by the school council.

(10) An amendment to a school plan shall be shared at the district level so district personnel can determine if the amendment results in a need for reallocation of discretionary resources and an adjustment or formal amendment to the district plan.

Section 9. (1) A principal of a school classified as a Level 3 shall participate in at least twelve (12) hours of professional development activities which may include opportunities for coaching and mentoring. The focus shall be on building leadership skills in student academic performance, learning environment, and organizational efficiency as measured by the "Standards and Indicators for School Improvement". The participation shall occur within twelve (12) months of being classified as a Level 3 school. The professional development activities shall be designed and delivered by the KDE and the local district in accordance with KRS 156.101.

(2) A principal of a school classified as a Level 1 or Level 2 shall participate in at least twelve (12) hours of professional development activities which may include opportunities for coaching and mentoring. The focus shall be on building leadership skills in student academic performance, learning environment, and organizational efficiency as measured by the "Standards and Indicators for School Improvement". The participation shall occur within twelve (12) months of being classified as a Level 1 or Level 2 school. The professional development activities shall be designed and delivered by the KDE or the local district in accordance with KRS 156.101.

Section 10. The KDE shall conduct scholastic audits in a random sample of schools.

Section 11. Incorporation by Reference. (1) The "Standards and Indicators for School Improvement", dated March 30, 2000, is hereby incorporated by reference.

(2) This document may be inspected, obtained, and copied at Office of Leadership and School Improvement, Department of Education, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m.

KEVIN M. NOLAND, Interim Commissioner
HELEN MOUNTJOY, Chairperson
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 12, 2000

FILED WITH LRC: April 12, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed amended administrative regulation shall be held on May 26, 2000, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero

Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by May 19, 2000, five 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to commend 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 amended administrative regulation to the Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin Noland

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or saving to those affected: None
- (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: 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 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 occur, explain detrimental effect: None
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
 - (a) Necessity of proposed regulation, if in conflict: None
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
- (10) Any additional information or comments: None
- (11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Bureau of Learning Support Services
(New Administrative Regulation)

703 KAR 5:130. School district accountability.

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

authorizes the Kentucky Board of Education to promulgate an administrative regulation establishing a local school district accountability program. This administrative regulation establishes eligibility for district rewards, and it establishes procedures for determining assistance and other consequences for local school districts having schools in need of assistance as defined in 703 KAR 5:020.

Section 1. Definitions. (1) "District evaluation team" means one (1) or more scholastic audit teams as established in 703 KAR 5:120.

(2) "Level 3" means a classification assigned to a school that has an index score that places it in the lowest one-third (1/3) of all schools below the assistance line.

Section 2. (1) Dropout data generated at an A2-A6 school shall be attributed to the school district in which the A2-A6 school is located, unless the district exercises the option in subsection (2) of this section.

(2) If a district where an A2-A6 school is located can identify the A1 school which would have served the student if the student had not required services offered by the A2-A6 school, then the dropout data regarding that student shall be assigned to the A1 school. If a school district exercises this option, the district shall accurately report specific student dropout data to the district containing the accountable A1 school to be included in the nonacademic data reported the Department of Education. If, after reasonable effort, the district cannot determine the proper A1 school of accountability, the district may request that the Kentucky Department of Education assign the data to the proper district or regional data.

Section 3. A local school district in which all schools are classified as progressing or meets goal under 703 KAR 5:020 and meets the dropout criteria established for schools in order to earn rewards in 703 KAR 5:020 shall be declared an exemplary growth district and shall receive rewards as determined by the Kentucky Board of Education.

Section 4. (1) A local school district shall be held accountable for providing its schools appropriate instructional leadership and instructional support.

(2) A local school district containing a school that is classified as Level 3 that was not classified as Level 3 the previous accountability cycle shall modify its district consolidated plan by including a specific support plan designed to assist each Level 3 school in improving its academic achievement. The plan shall address each of the areas listed in Section 5 of this administrative regulation and shall be sent to the local board of education members and to the Level 3 school council members or, if none exists, the principal, for approval.

(3) If a school is classified as Level 3 for two (2) or more consecutive accountability cycles, the school district shall be subject to a district audit conducted by a district evaluation team. The team shall review each of the areas outlined in Section 5 of this administrative regulation and the district's implementation of the previous accountability cycle's school support plan. The district audit team shall also evaluate the district as to district responsibilities using "Standards and Indicators for School Improvement", which is incorporated by reference in 703 KAR 5:120.

Section 5. A local school district shall address the following areas in its school support plan:

(1) Instructional leadership shall include evidence that the local school district provides:

- (a) Instructional staff access to curriculum-related materials and

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training necessary to use curricular and data resources relating to the goals for Kentucky public schools established in KRS 158.645 and 158.6451 and the academic expectations established in 703 KAR 4:060 and the school's performance trends, which include state assessment data and other student achievement performance measures identified by the district;

(b) A professional development planning process that results in training activities provided for the certified staff within the goals established in KRS 158.6451 and the local needs assessment required in 704 KAR 3:035, annual professional development plan. The district shall include evidence that it equitably and effectively distributes professional development resources and has designed a district professional development program based on student achievement data; and

(c) A structure for instructional improvement including evidence that the local school district is actively supporting a systematic, school improvement planning process involving appropriate stakeholder groups, including parents, business representatives, and the general public, and the district is using all available and appropriate data;

(2) Financial services and support shall include evidence that district resources have been distributed to each school equitably and consistently in accordance with the requirements of 702 KAR 3:246, School council allocation formula. The district shall also demonstrate that decisions about discretionary funds and other available resources not included in the school allocation formula are directed by an assessment of need or a required plan, all of which are data driven;

(3) Safe and secure instructional facilities shall include evidence of adequate and equitable maintenance of facilities. In addition, safe and secure instructional facilities shall include evidence that the school district has reviewed and assisted in the implementation of the school-based safety plans dealing directly with issues related to discipline and a safe school environment; and

(4) An effective certified employee evaluation program shall include evidence that the evaluation of the principal and certified staff has been implemented in a regular and timely manner consistent with the district's approved evaluation plan submitted under KRS 156.101 and that the evaluation process focuses on improving instruction.

Section 6. The district evaluation team shall submit a report, including its recommendations, to the Commissioner of Education, the district superintendent, and the local board of education within two (2) weeks of its review. The report shall be presented by a member of the district evaluation team at a local board of education meeting with opportunity for public comment. The district evaluation team recommendations may include the following:

(1) No additional action is needed because the district is effectively implementing its school support plan which reflects strategies to meet the needs of the Level 3 school;

(2) Revisions to the school support plan are needed even though the district has effectively implemented its plan;

(3) Revisions in implementation procedures are needed as implementation of the school support plan is not effective; or

(4) A management audit as provided in KRS 158.785 and 703 KAR 3:205 is needed because the district has not effectively developed or implemented its school support plan.

KEVIN M. NOLAND, Interim Commissioner
HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 12, 2000

FILED WITH LRC: April 12, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed amended administrative regulation shall be held on May 26, 2000, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by May 19, 2000, five 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to com-

ment 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 amended administrative regulation to the Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin Noland

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: None

(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: 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 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 occur, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy, which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: There will be a financial impact beginning in the fiscal year 2004-2005 in that there is a possibility that district audits will need to be staffed and funded.

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (New Administrative Regulation)

704 KAR 20:740. Certification requirements for teachers of exceptional children.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290,

157.360, 158.030, 158.100, 160.290, 161.020, 161.028(1)(a)(c), 161.030, 161.100, 34 CFR 300.1-300.662, 20 USC 1221(e), 1400-1419

STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a)(c), 161.030

NECESSITY, CONFORMITY, AND FUNCTION: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. 34 CFR Part 300 recognizes the state education agency as the authority in determining certification or licensure requirements for individuals providing special education or related services. KRS 161.030 identifies the Education Professional Standards Board as the state education agency with certification authority for Kentucky. KRS 161.020 and 161.028 require the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate for all public school positions, including those for teaching exceptional children. This administrative regulation establishes the certification requirements for teachers of exceptional children.

Section 1. Certification Requirements for Assignment of Special Education Personnel. (1) Mild mental disability (MMD). Teachers holding the following certification shall be assigned to serve pupils with mild mental disabilities within the grade range limitations of the teacher's certificate:

(a) Certification for learning and behavior disorders, grades K-12, P-12 or 7-12; or

(b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades 1-12, 1-8, or 7-12.

(2) Orthopedic impairment (OI). Teachers holding the following certification shall be assigned to serve pupils with orthopedic impairments within the grade range limitations of the teacher's certificate:

(a) Certification for orthopedically handicapped or physically handicapped, grades 1-12, 1-8, or 7-12; or

(b) Certification for teaching exceptional children. Teachers possessing one (1) of these certificates shall be assigned based on the learning characteristics and services needs of the child.

(3) Other health impairment (OHI).

(a) Teachers shall be assigned to serve pupils identified as other health impaired within the grade range limitations of the teacher's certificate based upon the learning characteristics and services needs of the child; and

(b) All teachers assigned to pupils identified as other health impaired shall possess a certificate for teaching exceptional children.

(4) Specific learning disability (LD). Teachers holding the following certification shall be assigned to serve pupils with learning disabilities within the grade range limitations of the teacher's certificate:

(a) Certification for learning and behavior disorders, grades K-12, P-12 or 7-12; or

(b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades 1-12, 1-8, or 7-12.

(5) Developmental delay (DD). Teachers holding the following certification shall be assigned to serve pupils with developmental delay within the grade range limitations of the teacher's certificate:

(a) Certification for learning and behavior disorders, grades K-12, P-12 or 7-12; or

(b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades 1-12, 1-8, or 7-12.

(6) Emotional-behavioral disability (EBD). Teachers holding the following certification shall be assigned to serve pupils identified as emotional-behavioral disabled within the grade range limitations of the teacher's certificate:

(a) Certification for learning and behavior disorders, grades K-12, P-12 or 7-12;

(b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades 1-12, 1-8, or 7-12; or

(c) Certification for teaching exceptional children. Teachers

possessing one (1) of these certificates shall be assigned based on the learning characteristics and services needs of the child.

(7) Functional mental disability (FMD). Teachers holding the following certification shall be assigned to serve pupils with functional mental disabilities within the grade range limitations of the teacher's certificate:

(a) Certification for trainable mentally handicapped, grades K-12;

(b) Certification for teaching the trainable mentally retarded, grades 1-12, 1-8, or 7-12;

(c) Certification for teaching the severely and profoundly handicapped; or

(d) Certification for teaching the moderately and severely disabled, grades P-12.

(8) Multiple disabilities (MD).

(a) Teachers shall be assigned within the grade range limitations of the teacher's certificate to pupils who have multiple disabilities consistent with the nature of each of the student's different disabilities and based on the learning characteristics and services needs of the child; and

(b) All teachers assigned to pupils with multiple disabilities shall possess a certificate for teaching exceptional children.

(9) Deaf-blindness.

(a) Teachers shall be assigned to serve pupils identified with deaf-blindness within the grade range limitations of the teacher's certificate based on the learning characteristics and services needs of the child; and

(b) All teachers assigned to pupils identified with deaf-blindness shall possess a certificate for teaching exceptional children.

(10) Autism.

(a) Teachers shall be assigned to serve pupils identified with autism within the grade range limitations of the teacher's certificate based on the learning characteristics and services needs of the child; and

(b) All teachers assigned to pupils identified with autism shall possess a certificate for teaching exceptional children.

(11) Traumatic brain injury (TBI).

(a) Teachers shall be assigned to serve pupils identified as having a traumatic brain injury within the grade range limitations of the teacher's certificate based on the learning characteristics and services needs of the child; and

(b) All teachers assigned to pupils identified as having a traumatic brain injury shall possess a certificate for teaching exceptional children.

(12) Hearing impaired (HI). Teachers holding the following certification shall be assigned to serve pupils with hearing impairments within the grade range limitations of the teacher's certificate:

(a) Certification for teaching the hard of hearing, deaf, or hearing impaired, grades K-12, 1-12, 1-8, or 7-12; or

(b) Certification for teaching the hearing impaired, grades P-12.

(13) Visually impaired (VI). Teachers holding the following certification shall be assigned to serve pupils with visual impairments within the grade range limitations of the teacher's certificate:

(a) Certification for teaching the partially seeing, blind, or visually impaired, grades, 1-12, 1-8, or 7-12; or

(b) Certification for teaching the visually impaired, grades P-12.

(14) Communication disorders. Teachers holding the following certification shall be assigned to serve pupils who have been identified as needing instruction for speech or language disorders, within the grade range limitations of the teacher's certificate:

(a) Certification for speech and hearing, grades 1-12;

(b) Certification for speech and communication disorders, grades K-12; or

(c) Certification for communication disorders, grades P-12.

Section 2. Certification Requirements for Assignment of Interdisciplinary Early Childhood Education Teachers for the Provision of Special Education Services. (1) Teachers holding the following qualifications shall be assigned to serve birth to primary pupils who have been identified as needing special education services:

(a) Certification for interdisciplinary early childhood education offered under 704 KAR 20:082 and 704 KAR 20:084;

(b) Exemption identified in 704 KAR 20:084; or

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(c) Qualifications set forth in 704 KAR 3:410, Section 7(1)(a).

(2) Nothing in this section shall preclude a special education teacher identified in Section 1 of this administrative regulation from providing services in her certification area to birth to primary pupils with disabilities if that certification is valid for the primary ages.

Section 3. Probationary and Emergency Provisions. (1) If no regularly certified teacher as delineated in Sections 1 and 2 of this administrative regulation is available to provide the special education services, the local district may employ a teacher certified on a probationary status under 704 KAR 20:510.

(2) If no probationary certified special education teacher is available, the district may employ a teacher certified on an emergency status under the requirements of KRS 161.100 and 704 KAR 20:120.

Section 4. Waiver Requests for Teacher Assignment. Local school districts which need to assign teachers to teach classes or pupils, with the exception of pupils receiving services for communication disorders, not consistent with the above criteria shall request a waiver for the teacher assignment through the Kentucky Department of Education, Office of Special Instructional Services, Division of Exceptional Children and be approved by the Education Professional Standards Board.

(1) The Education Professional Standards Board and Department of Education shall give consideration for such approval based on information provided by the local school district as follows:

(a) Request shall be made prior to September 15 or within fifteen (15) school days of the need for assignment if it occurs after September 15 and shall include the teacher's name, school assignment, certificate number and class plan assignment; and

(b) The teacher's current certification(s), a listing of pupils currently served by age and category of exceptionality, a listing of pupils the district is requesting to be served by age and exceptionality, and any other relevant information which the district wishes to have considered in the decision-making process.

(2) Following consideration by the Department of Education and approval by the Education Professional Standards Board, the local district shall be promptly notified of the decision on the waiver request.

(3) The assignment shall not exceed the length of the school year for which it was initiated.

JOE EARLY, Chair

ALLISON C. WEBER, Division of Legal Services

APPROVED BY AGENCY: April 7, 2000

FILED WITH LRC: April 11, 2000 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held May 22, 2000, at 1 p.m. in the State Board Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 2000, five work days prior to hearing, of their intent to attend. If no notification 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. 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: Dr. Susan Leib, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, FAX: (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact person: Mary Ellen Wiederwohl

(1) Type and number of entities affected: School administrators who assign teachers; teachers who are certified to teach exceptional children; and teacher preparation programs who train teachers of exceptional children.

(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: New waiver request policy for school administrators requesting assignment of special education teachers outside of their certification area.

2. Second and subsequent years: Same as (1).

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs and savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Evaluation of new waiver requests and written notification to districts on waiver decision.

(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

(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 alternative were rejected: Numerous alternatives were discussed with stakeholder groups/agencies regarding the promulgation of this regulation and drafts were distributed throughout the development stage of this regulation. The policies and language adopted within this regulation represent the consensus agreement of these groups regarding the assignment of special education teachers.

(8) Assessment of expected benefits: This new regulation will provide clear and concise direction to school administrators assigning special education teachers.

(a) Identify effects on public health and environmental welfare of the geographical areas 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:

(11) TIERING: Is tiering applied? No, this is the only regulation governing the assignment of special education teachers and all its participants must adhere to the same guidelines.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Division of Exceptional Children Services

(New Administrative Regulation)

707 KAR 1:011. Repeal of 707 KAR 1:015, 707 KAR 1:040, 707 KAR 1:045, 707 KAR 1:090, 707 KAR 1:100, 707 KAR 1:110, 707 KAR 1:120, 707 KAR 1:130, 707 KAR 1:140, 707 KAR 1:150, 707 KAR 1:160, 707 KAR 1:170, 707 KAR 1:180, 707 KAR 1:190, 707 KAR 1:200, 707 KAR 1:210, 707 KAR 1:220, 707 KAR 1:230, 707 KAR 1:240, 707 KAR 1:250, 707 KAR 1:260.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290,

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157.360, 158.030, 158.100, 158.150, 160.290, 34 CFR 300.1-300.662, 20 USC 1221(e), 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 mandates that the Kentucky Board of Education adopt rules and administrative regulations to generally carry out these programs. KRS 156.035 sets forth the authority of the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for proper apportionment and disbursement of such funds in accordance with state and federal laws. 20 USC 1400 et seq. and 34 CFR Part 300 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. These policies and procedures in the form of administrative regulations state the purpose of the law which is to ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs. The administrative regulations currently in effect do not meet all the requirements of the new federal law. The Kentucky Board of Education is concurrently filing new administrative regulations to meet these new federal mandates. As a result, these administrative regulations need to be repealed as they are outdated and conflict with the new administrative regulations.

Section 1. The following administrative regulations are hereby repealed:

- (1) 707 KAR 1:015;
- (2) 707 KAR 1:040;
- (3) 707 KAR 1:045;
- (4) 707 KAR 1:090;
- (5) 707 KAR 1:100;
- (6) 707 KAR 1:110;
- (7) 707 KAR 1:120;
- (8) 707 KAR 1:130;
- (9) 707 KAR 1:140;
- (10) 707 KAR 1:150;
- (11) 707 KAR 1:160;
- (12) 707 KAR 1:170;
- (13) 707 KAR 1:180;
- (14) 707 KAR 1:190;
- (15) 707 KAR 1:200;
- (16) 707 KAR 1:210;
- (17) 707 KAR 1:220;
- (18) 707 KAR 1:230;
- (19) 707 KAR 1:240;
- (20) 707 KAR 1:250;
- (21) 707 KAR 1:260.

KEVIN M. NOLAND, Interim Commissioner

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 12, 2000

FILED WITH LRC: April 12, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 26, 2000 at 10 a.m. in the State Board Room, First Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by May 19, 2000, five 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 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 Mr. Kevin M. Noland, Interim Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza

Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Johnnie Grissom

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: None

(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: Reduces paperwork

2. Second and subsequent years: Reduces paperwork

(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: Reduces paperwork

(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 and federal funds

(6) To the extent available from 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: Federal law requires state policy on this subject, and KBE can require policy only through regulation.

(8) Assessment of 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 occur, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Division of Exceptional Children Services

(New Administrative Regulation)

707 KAR 1:280. Definitions.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 CFR 300.1-300.662, 20 USC 1221(e), 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 mandates that the

Kentucky Board of Education adopt rules and administrative regulations to generally carry out these programs. KRS 156.035 sets forth the authority of the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of such funds in accordance with state and federal laws. 20 USC 1400 et seq. and 34 CFR Part 300 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes definitions for this chapter of administrative regulations regarding special education.

Section 1. Definitions. (1) "Admissions and release committee (ARC)" means a group of individuals described in 707 KAR 1:320, Section 3, that is responsible for developing, reviewing, or revising an individual education program (IEP) for a child with a disability.

(2) "Adverse effect" means that the progress of the child is impeded by the disability to the extent that the educational performance is significantly and consistently below the level of similar age peers.

(3) "Application" means a written request for funds which addresses requirements or terms to be met on a continuing basis in order for funds to be released or paid to or on behalf of the applicant.

(4) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.

(5) "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. This term shall include:

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the child.

(6) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term shall not apply if a child's educational performance is adversely affected primarily because the child has an emotional-behavior disability.

(7) "Business day" means Monday through Friday except for federal and state holidays, unless a holiday is specifically included in the designation of business day as in 707 KAR 1:370, Section 1.

(8) "Caseload for special classes" means the number of children with disabilities assigned to a teacher of exceptional children for the purpose of providing individualized specially designed instruction and related services in a special class setting.

(9) "Child with a disability" means a child evaluated in accordance with 707 KAR 1:300, as meeting the criteria listed in this section for autism, deaf-blindness, developmental delay, emotional-behavior disability, hearing impairment, mental disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, or visual impairment which has an adverse effect on the child's educational performance and who, as a result, needs special

education and related services.

(10) "Class size for resource classes" means the number of children with disabilities assigned to a teacher of exceptional children per period, block, or the specified length of the time set by the individual school.

(11) "Collaboration" means, for purposes of determining class size in 707 KAR 1:350, Section 2, a teacher of exceptional children works with children with disabilities in the regular classroom to provide specially-designed instruction and related services.

(12) "Complaint" means a written allegation that a local education agency (LEA) has violated a requirement of the Individuals with Disabilities Education Act (IDEA) or an implementing administrative regulation, and the facts on which the statement is based.

(13) "Compliance" means the obligations of state or federal requirements are met.

(14) "Compliance monitoring report" means a written description of the findings of an investigation, such as on-site monitoring, citing each requirement found in noncompliance.

(15) "Consent" means:

(a) A parent has been fully informed of all information relevant to the activity for which consent is sought, in his native language, or other mode of communication;

(b) A parent understands and agrees in writing to the carrying out of the activity for which his consent is sought, and the consent describes the activity and lists the records, if any, that will be released and to whom; and

(c) A parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and

(d) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(16) "Controlled substance" means a drug or other substance identified under 21 USC Section 812(c).

(17) "Corrective action plan (CAP)" means a written improvement plan describing activities and timelines developed to correct identified areas of noncompliance, including directives from the Kentucky Department of Education, specifying actions to be taken to fulfill a legal obligation.

(18) "Day" means calendar day unless otherwise indicated as business day or school day.

(19) "Deaf-blindness" means concomitant hearing and visual impairments that have an adverse effect on the child's education performance, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness, unless supplementary assistance is provided to address educational needs resulting from the two (2) disabilities.

(20) "Deficiency" means noncompliance.

(21) "Developmental delay (DD)" means that a child within the ages of three (3) through eight (8) has not acquired skills, or achieved commensurate with recognized performance expectations for his age in one (1) or more of the following developmental areas: cognition, communication, motor development, social-emotional development, or self-help/adaptive behavior. Developmental delay includes a child who demonstrates a measurable, verifiable discrepancy between expected performance for the child's chronological age and current level of performance. The discrepancy shall be documented by:

(a) Scores of two (2) standard deviations or more below the mean in one (1) of the areas listed above as obtained using norm-referenced instruments and procedures; or

(b) Scores of one and one-half (1 1/2) standard deviations below the mean in two (2) or more of the areas listed above using norm-referenced instruments and procedures; or

(c) The professional judgment of the ARC that there is a significant atypical quality or pattern of development. Professional judgment shall be used only where normed scores are inconclusive and the ARC documents in a written report the reasons for concluding that a child has a developmental delay.

(22) "Education records" means records as defined in the Family Educational Rights and Privacy Act of 1974, 20 USC Section 1232(g).

(23) "Emotional-behavioral disability (EBD)" means that a child, when provided with interventions to meet instructional and social-emotional needs, continues to exhibit one (1) or more of the following, when compared to the child's peer and cultural reference groups, across settings, over a long period of time and to a marked degree:

(a) Severe deficits in social competence or appropriate behavior which cause an inability to build or maintain satisfactory interpersonal relationships with adults or peers;

(b) Severe deficits in academic performance which are not commensurate with the student's ability level and are not solely a result of intellectual, sensory, or other health factors but are related to the child's social-emotional problem;

(c) A general pervasive mood of unhappiness or depression; or

(d) A tendency to develop physical symptoms or fears associated with personal or school problems.

This term does not apply to children who display isolated (not necessarily one(1)) inappropriate behaviors that are the result of willful, intentional, or wanton actions unless it is determined through the evaluations process that the child does have an emotional-behavioral disability.

(24) "Enforcement" means the Kentucky Department of Education takes steps to ensure federal and state special education requirements are implemented.

(25) "Extended school year services" means specially designed instruction and related services that are provided to a child with a disability beyond the normal school year in accordance with the child's IEP at no cost to the parents.

(26) "Free appropriate public education (FAPE)" means special education and related services that:

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the Kentucky Department of Education included in 707 KAR Chapter 1 and the Program of Studies, 704 KAR 3:303, as appropriate;

(c) Include preschool, elementary school, or secondary school education in the state; and

(d) Are provided in conformity with an individual education program (IEP) that meets the requirements of 707 KAR 1:320.

(27) "Hearing impairment (HI)" means that a child has a hearing loss that has an adverse effect on the child's educational performance, whether permanent or fluctuating, ranging from mild to profound (a loss of twenty-five (25) decibels (dB) or greater exists through speech frequencies of 500, 1000, and 2000 Hertz (Hz) in the better ear), and of such a degree that the child is impaired in the processing of linguistic information through hearing, with or without amplification.

(28) "Home school" means for purposes of 707 KAR Chapter 1 only, a private school primarily conducted in one's residence.

(29) "IDEA" means the Individuals with Disabilities Education Act, 20 USC Section 1400 et seq., as amended.

(30) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child in question.

(31) "Individual education program (IEP)" means a written statement for a child with a disability that is developed, reviewed and revised in accordance with 707 KAR 1:320.

(32) "Local educational agency (LEA)" means a public local board of education or other legally constituted public authority that has either administrative control or direction of public elementary or secondary schools in a school district or other political subdivision of the Commonwealth. LEA also means any other public institution or agency, including the Kentucky School for the Blind (KSB) and the Kentucky School for the Deaf (KSD), that is charged by state statute with the responsibility of providing educational services to children with disabilities.

(33) "Mental disability" means that a child has one (1) of the following:

(a) A mild mental disability (MMD) in which:

1. Cognitive functioning is at least two (2) but no more than three (3) standard deviations below the mean;

2. Adaptive behavior deficit is at least two (2) standard deviations below the mean;

3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and

4. Is manifested during the developmental period; or

(b) A functional mental disability (FMD) in which:

1. Cognitive functioning is at least three (3) or more standard deviations below the mean;

2. Adaptive behavior deficits are at least three (3) or more standard deviations below the mean;

3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and

4. Is manifested during the developmental period.

(34) "Monitoring" means gathering and reviewing information to determine if a project or program meets state and federal special education requirements including the implementation of corrective action plans.

(35) "Multiple disabilities (MD)" means concomitant impairments that have an adverse effect on the child's educational performance (such as mental disability-blindness, mental disability-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one (1) of the impairments. Multiple disabilities does not mean deaf-blindness.

(36) "Native language" means, if used in reference to an individual of limited English proficiency, the following:

(a) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child;

(b) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment; or

(c) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication that is normally used by the individual (such as sign language, Braille, or oral communication).

(37) "Orthopedic impairment (OI)" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes an impairment caused by a congenital anomaly (e.g., clubfoot, absence of some member, etc.), an impairment caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and an impairment from other causes (e.g., cerebral palsy, amputations, and fractures or burns that causes contractures).

(38) "Other health impairment (OHI)" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

(a) Is due to a chronic or acute health problem such as acquired immune deficiency syndrome, asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, or tuberculosis; and

(b) Adversely affects a child's educational performance.

(39) "Parent" means:

(a) A natural or adoptive parent of a child;

(b) A guardian but not the state if the child is a ward of the state;

(c) A person acting in the place of a parent (such as, a grandparent or stepparent with whom the child lives) or a person who is legally responsible for the child's welfare;

(d) A surrogate parent who has been appointed in accordance with 707 KAR 1:340, Section 7; or

(e) A foster parent if the natural parents' authority to make educational decisions on the child's behalf has been extinguished and the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of parents under 707 KAR Chapter 1, and has no interest that would conflict with the interests of the child.

(40) "Participating agency" means a state or local agency other than the LEA that is financially and legally responsible for providing transition services to a child with a disability.

(41) "Personally identifiable information" means information that includes the name of the child, the child's parents, or other family member, the address of the child, a personal identifier, such as the child's Social Security number or student number, or a list of personal characteristics or other information that would make it possible

to identify the child with reasonable certainty.

(42) "Private school children with disabilities" means children with disabilities enrolled by their parents in private schools and not children with disabilities enrolled in private schools upon referral by a LEA.

(43) "Public expense" means that the LEA either pays for the full cost of the services to meet the requirements of 707 KAR Chapter 1 or ensures that the services are otherwise provided at no cost to the parent. Nothing in these administrative regulations relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

(44) "Qualified personnel" means personnel who meet the statutory or regulatory qualifications for each respective profession currently applicable in this state.

(45) "Reasonable efforts to obtain voluntary compliance" means active and ongoing efforts by the Kentucky Department of Education through technical assistance and negotiation to arrive at an acceptable corrective action plan and follow through on an agreed-upon corrective action plan.

(46) "Related services" means transportation and such developmental, corrective, or supportive services as are required to assist a child with a disability to benefit from special education. It includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also means school health services, social work services in school, and parent counseling and training.

(47) "Sanctions" means actions (e.g., technical assistance, consultation, or training, among others) taken by the Kentucky Department of Education in response to a LEA's failure to comply with the required standards in state and federal laws and administrative regulations.

(48) "School day" means any day, including a partial day, that children are in attendance at school for instructional purposes. School day means the same thing for all children in school, including children with or without disabilities.

(49) "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of the child with a disability including instruction in the classroom, in the home, in hospitals and institutions, and in other settings. Special education means speech-language pathology services, (if the service is considered special education rather than a related service), travel training, and vocational education.

(50) "Special education mentor" means individuals with exceptional expertise, experience, and certification in special education administration or teaching granted the authority described in KRS 157.197.

(51) "Specific learning disability (LD)" means a disorder in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in diminished ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(52) "Specially-designed instruction" means adapting as appropriate the content, methodology, or delivery of instruction to address the unique needs of the child with a disability and to ensure access of the child to the general curriculum included in the Program of Studies, 704 KAR 3:303.

(53) "Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, a language impairment, a voice impairment, delayed acquisition of language, or an absence of language, that adversely affects a child's educational performance.

(54) "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable a child with disabilities to

be educated with nondisabled children to the maximum extent appropriate in accordance with 707 KAR 1:350.

(55) "Transition services" means a coordinated set of activities for a child with a disability that:

(a) Is designed within an outcome-oriented process (i.e., a process that outlines how a student will achieve goals consistent with the general curriculum, as appropriate), that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(b) Is based on the individual student's needs, taking into account the child's preferences and interests; and

(c) Includes:

1. Instruction;

2. Related services; and

3. Community experiences;

4. The development of employment and other post-school adult living objectives; and

5. If appropriate, acquisition of daily living skills and functional vocational evaluation.

(56) "Traumatic brain injury (TBI)" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury does not mean brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. Traumatic brain injury means open or closed head injuries resulting in impairments in one (1) or more areas, including:

(a) Cognition;

(b) Language;

(c) Memory;

(d) Attention;

(e) Reasoning;

(f) Abstract thinking;

(g) Judgment;

(h) Problem-solving;

(i) Sensory, perceptual, and motor abilities;

(j) Psychosocial behavior;

(k) Physical functions;

(l) Information processing; and

(m) Speech.

(57) "Travel training" means instruction to children with significant cognitive disabilities and any other children with disabilities, as appropriate, to enable them to develop an awareness of the environment in which they live and to learn the skills necessary to move effectively and safely from place to place within that environment (e.g., school, home, work and community).

(58) "Visual impairment (VI)" means a child has a vision loss, even with correction, as follows:

(a) Visual acuity even with prescribed lenses that is 20/70 or worse in the better eye; or

(b) Visual acuity that is better than 20/70 and the child has one

(1) of the following conditions:

1. A medically diagnosed progressive loss of vision;

2. A visual field of twenty (20) degrees or worse;

3. A medically diagnosed condition of cortical blindness; or

4. A functional vision loss;

(c) Requires specialized materials, instruction in orientation and mobility, Braille, visual efficiency, or tactile exploration; and

(d) Has an adverse effect on the child's educational performance.

(59) "Ward of the state" means a child who has been committed to the Cabinet for Families and Children or the Department of Juvenile Justice through a legal process, whether the commitment is voluntary or nonvoluntary

(60) "Weapon" means dangerous weapon as defined in 18 USC Section 930(g)(2).

(61) "Withholding" means no further payment of specified funds are made to an approved recipient.

KEVIN M. NOLAND, Interim Commissioner
HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 12, 2000

FILED WITH LRC: April 12, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 26, 2000 at 10 a.m. in the State Board Room, First Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by May 19, 2000, five 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 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 Mr. Kevin M. Noland, Interim Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Johnnie Grissom

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or saving to those affected: None
 - (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: Reduces paperwork.
 2. Second and subsequent years: Reduces paperwork.
 - (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: Reduces paperwork
 - (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 and federal funds.
 - (6) To the extent available from 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: Federal law requires state policy on this subject, and KBE can require policy only through regulation.
 - (8) Assessment of 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 occur, explain detrimental effect: None
 - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
 - (a) Necessity of proposed regulation, if in conflict: None
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
 - (10) Any additional information or comments: None
 - (11) Tiering: Was tiering applied? No Tiering was not appropriate in this administrative regulation because the administrative

regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Division of Exceptional Children Services
(New Administrative Regulation)

707 KAR 1:290. Free appropriate public education.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 CFR 300.1-300.662, 20 USC 1221(e), 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 mandates that the Kentucky Board of Education adopt rules and administrative regulations to generally carry out these programs. KRS 156.035 sets forth the authority of the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of such funds in accordance with state and federal laws. 20 USC 1400 et seq. and 34 CFR Part 300 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements for providing a free, appropriate, public education for children identified as eligible for special education services.

Section 1. Free Appropriate Public Education. (1) AN LEA shall make a free appropriate public education (FAPE) available to all children with disabilities aged three (3) to twenty-one (21) residing within its district's boundaries, including children with disabilities who have been suspended or expelled for more than ten (10) school days in a school year. FAPE shall be provided to each child with a disability based on the child's unique needs and not on the child's disability.

(2) AN LEA shall be responsible for ensuring the rights and protections under 707 KAR Chapter 1 are given to children with disabilities referred to or placed in private schools and facilities by that LEA.

(3) State agencies charged with the responsibility of providing educational services to children with disabilities within their care shall provide those services in accordance with 707 KAR Chapter 1.

(4) If payment for services under 707 KAR Chapter 1 is to be provided by an agency other than the LEA, the LEA shall ensure the services are provided without delay even if there is a delay in the payment for those services.

Section 2. Residential Placement. If it is determined necessary by an ARC to place a child with a disability for educational purposes in a private residential educational program, the program, including nonmedical care and room and board, shall be provided by the LEA which convened the ARC. AN LEA may fulfill its responsibility under this section by providing the services directly or by contracting for those services.

Section 3. Proper Functioning of Hearing Aids. AN LEA shall ensure that a hearing aid worn in school by a child with a hearing impairment is functioning properly.

Section 4. Program Options. AN LEA shall ensure that all children with disabilities have available to them the variety of educational programs, services and curriculum as described in the Kentucky Program of Studies, 704 KAR 3:303, that is available to children without disabilities. These educational services may include art, music, industrial arts, consumer and family science education, and career and technical education.

Section 5. Nonacademic Services. AN LEA shall take steps to provide all children with disabilities the nonacademic and extracurricular services and activities which give children with disabilities an equal opportunity for participation in those services and activities. These services and activities may include:

- (1) Counseling services;
- (2) Athletics;
- (3) Transportation;
- (4) Health services;
- (5) Recreational activities;
- (6) Special interest groups or clubs sponsored by the LEA;
- (7) Referrals to agencies that provide assistance to individuals with disabilities; and
- (8) Employment of students, including both employment by the LEA and assistance in making outside employment available.

Section 6. Physical Education. AN LEA shall make available to every child with a disability:

- (1) Physical education services, specially designed if necessary; or
- (2) The opportunity to participate in the regular physical education program available to children without disabilities unless:
 - (a) The child is enrolled full time in a separate facility in which case the agency responsible for the education of the child in that facility shall ensure the child receives appropriate physical education; or
 - (b) The child needs specially designed physical education as prescribed in the child's IEP.

Section 7. Assistive Technology. (1) AN LEA shall ensure that assistive technology devices or assistive technology services, or both, as defined in 707 KAR 1:280(4) or (5) are made available to a child with a disability if required as part of the child's special education, related services, or supplemental aids and services.

(2) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the ARC determines that the child needs access to those devices in order to receive FAPE.

Section 8. Extended School Year Services. AN LEA shall ensure that extended school year services are available to each child with a disability, as necessary, to provide FAPE. The determination of the need for extended year services shall be made on an individual basis. In making this determination, the LEA shall not:

- (1) Limit the provision of extended year services to a particular category(s) of disability; or
- (2) Unilaterally limit the type, amount, or duration of those services.

KEVIN M. NOLAND, Interim Commissioner

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 12, 2000

FILED WITH LRC: April 12, 2000 at 1 p.m.

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 - (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: Reduces paperwork.
 2. Second and subsequent years: Reduces paperwork.
 - (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: Reduces paperwork.
 - (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 and federal funds.
 - (6) To the extent available from 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: Federal law requires state policy on this subject, and KBE can require policy only through regulation.
 - (8) Assessment of 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 occur, explain detrimental effect: None
 - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
 - (a) Necessity of proposed regulation, if in conflict: None
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
 - (10) Any additional information or comments: None
 - (11) Tiering: Was tiering applied? No Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Division of Exceptional Children Services
(New Administrative Regulation)

707 KAR 1:300. Child find, evaluation, and reevaluation.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 CFR 300.1-300.662, 20 USC 1221(e), 1400-1419, 34 CFR 300.1-300.662
STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 mandates that the Kentucky Board of Education adopt rules and administrative regulations to generally carry out these programs. KRS 156.035 sets forth the authority of the Kentucky Board of Education to implement any

act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of such funds in accordance with state and federal laws. 20 USC 1400 et seq. and 34 CFR Part 300 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements for conducting child find activities and procedures for evaluation and reevaluation of children with disabilities.

Section 1. Child Find Requirements. An LEA shall have in effect policies and procedures that plan and implement a child find system to locate, identify, and evaluate each child:

- (1) Whose age is three (3) to twenty-one (21);
- (2) Who resides in a home, facility, or residence within the LEA's geographical boundaries, including children with disabilities attending private schools, children who are highly mobile such as migrant and homeless children as described in 704 KAR 7:090, and students who are advancing grade to grade resulting from passing a grade but who still may have a disability;
- (3) Who is either in or out of school;
- (4) Who may need special education and related services; and
- (5) For preschool age children with disabilities, an LEA must ensure a smooth and effective transition from the early intervention program to preschool; and
- (6) Each LEA shall participate in transition planning conferences for children with disabilities served by early intervention programs.

Section 2. Referral System. An LEA shall have a referral system that explains how referrals from district or nondistrict sources will be accepted and acted upon in a timely manner.

Section 3. Evaluation and Reevaluation Procedures. (1) An LEA shall ensure that a full and individual evaluation is conducted for each child considered for specially designed instruction and related services prior to the provision of the services. The results of the evaluation shall be used by the ARC in meeting the requirements on developing an IEP as provided in 707 KAR 1:320.

(2) Tests and other evaluation materials used to assess a child shall be:

- (a) Selected and administered so as not to be discriminatory on a racial or cultural basis; and
- (b) Provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so.

(3) Materials and procedures used to assess a child with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the child has a disability and needs specially designed instruction and related services, rather than measuring the child's English language skills.

(4) A variety of assessment tools and strategies shall be used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum described in the Kentucky Program of Studies, 704 KAR 3:303.

(5) A standardized test given to a child shall:

- (a) Have been validated for the specific purpose for which they are used;
- (b) Be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests; and
- (c) Be conducted under standard conditions unless a description of the extent to which it varied from standard conditions is documented in the evaluation report.

(6) Tests and other evaluation materials shall include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(7) Tests shall be selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the

test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(8) A single procedure shall not be used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.

(9) The child shall be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(10) The evaluation shall be sufficiently comprehensive to identify all the child's special education and related services needs, whether commonly linked to the disability category in which the child has been classified.

(11) Assessments tools used shall be technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(12) Assessment tools and strategies shall be used that provide relevant information that directly assist and are used in the determination of the educational needs of the child. As part of an initial evaluation, if appropriate, or as part of any reevaluation, the ARC and other qualified professionals, if necessary, shall review existing evaluation data on the child including:

- (a) Evaluations and information provided by the parents;
- (b) Current classroom-based assessments and observations; and

(c) Observations by teachers and related services providers.

(13) On the basis of the review, and input from the parents, the ARC shall identify what additional data, if any, are needed to determine:

(a) Whether the child has a particular category of disability, or in the case of a reevaluation of the child, whether the child continues to have a disability;

(b) The present levels of performance and educational needs of the child;

(c) Whether the child needs special education and related services, or in the case of a reevaluation, whether the child continues to need specially-designed instruction and related services; and

(d) Whether any additions or modification to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general curriculum.

(14) The LEA shall administer tests and other evaluation materials as needed to produce the data identified by the ARC. If, for purposes of a reevaluation, the ARC determines that no additional data are needed to determine whether the child continues to be a child with a disability, the LEA shall notify the child's parents:

- (a) Of that determination and reasons for it; and
- (b) Of the right of the parents to request an assessment to determine whether, for purposes of services, the child continues to be a child with a disability.

(15) The LEA shall not be required to conduct a reevaluation, if after review of the existing data, the ARC determines no reevaluation is necessary to determine whether the child continues to be a child with a disability, unless the parent requests the reevaluation.

(16) An LEA shall ensure a reevaluation, which may consist of the review described in subsection (12) of this section, is conducted at least every three (3) years to determine:

- (a) The present levels of performance and educational needs of the child;
- (b) Whether the child continues to need special education and related services; and
- (c) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general curriculum.

KEVIN M. NOLAND, Interim Commissioner

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 12, 2000

FILED WITH LRC: April 12, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed adminis-

trative regulation shall be held on May 26, 2000 at 10 a.m. in the State Board Room, First Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by May 19, 2000, five 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 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 Mr. Kevin M. Noland, Interim Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Johnnie Grissom

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or saving to those affected: None
 - (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: Reduces paperwork.
 2. Second and subsequent years: Reduces paperwork.
 - (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: Reduces paperwork.
 - (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 and federal funds.
 - (6) To the extent available from 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: Federal law requires state policy on this subject, and KBE can require policy only through regulation.
 - (8) Assessment of 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 occur, explain detrimental effect: None
 - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
 - (a) Necessity of proposed regulation, if in conflict: None
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
 - (10) Any additional information or comments: None
 - (11) Tiering: Was tiering applied? No Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Division of Exceptional Children Services (New Administrative Regulation)

707 KAR 1:310. Determination of eligibility.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 CFR 300.1-300.662, 20 USC 1221(e), 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 mandates that the Kentucky Board of Education adopt rules and administrative regulations to generally carry out these programs. KRS 156.035 sets forth the authority of the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of such funds in accordance with state and federal laws. 20 USC 1400 et seq. and 34 CFR Part 300 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements for the determination of eligibility for special education of children who have disabilities.

Section 1. Determination of Eligibility. (1) Upon completion of the tests and other evaluation materials, the ARC shall determine whether the child is a child with a disability who meets one (1) or more of the eligibility categories as defined in 707 KAR 1:280 to the extent that specially designed instruction is required in order for the child to benefit from education. An LEA shall provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

(2) A child shall not be determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.

(3) An evaluation shall not be required before the termination of a child's eligibility due to graduation with a regular high school diploma or exceeding the age eligibility for FAPE.

(4) In making eligibility determinations, an LEA shall draw upon information from a variety of sources, which may include:

- (a) Aptitude and achievement tests;
- (b) Parental input;
- (c) Teacher recommendations;
- (d) Physical condition;
- (e) Social or cultural background; and
- (f) Adaptive behavior.

(5) An LEA shall ensure that information obtained from all of these sources is documented and carefully considered.

(6) In making a determination under the category of mental disability, the ARC may apply a standard error of measure, if appropriate.

(7) If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed for the child.

Section 2. Additional Procedures for Evaluating Children with Specific Learning Disabilities. (1) The determination of whether a child suspected of having a specific learning disability is a child with a disability and whether the specific learning disability adversely affects educational performance shall be made by the child's ARC and at least one person qualified to conduct individual diagnostic examinations of children, which may include a school psychologist, speech-language pathologist, or remedial reading teacher.

(2) The ARC may determine a child has a specific learning disability if:

- (a) The child does not achieve commensurate with his age and ability levels in one (1) or more of the areas listed in this subsection,

if provided with learning experiences appropriate for the child's age and ability levels; and

(b) The child has a severe discrepancy as identified by a validated regression method between achievement and intellectual ability in one (1) of the following areas:

1. Oral expression;
2. Listening comprehension;
3. Written expression;
4. Basic reading skills;
5. Reading comprehension;
6. Mathematics calculation; or
7. Mathematics reasoning.

(3) The ARC shall not identify a child as having a specific learning disability if the severe discrepancy between ability and achievements is primarily the result of:

- (a) A visual, hearing, or motor impairment;
- (b) Mental disability;
- (c) Emotional-behavioral disability; or
- (d) Environmental, cultural, or economic disadvantage.

(4) One (1) team member other than the child's regular education teacher shall observe the child's academic performance in the regular classroom setting. If the child is less than school age or is out of school, the observation shall take place in an environment appropriate for the child.

(5) An ARC shall develop a learning disability (LD) written report. This report shall contain a statement of:

- (a) Whether the child has a specific learning disability;
- (b) The basis for making that determination;
- (c) The relevant behavior noted during the observation;
- (d) The relationship of that behavior to the child's academic functioning;

(e) The educationally relevant medical findings, if any;

(f) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and

(g) The determination of the ARC concerning the effects of environmental, cultural, or economic disadvantage.

(6) Each ARC member shall certify in writing whether the report reflects his conclusion. If it does not reflect his conclusion, the team member shall submit a separate statement presenting his conclusions.

KEVIN M. NOLAND, Interim Commissioner

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 12, 2000

FILED WITH LRC: April 12, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 26, 2000 at 10 a.m. in the State Board Room, First Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by May 19, 2000, five 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 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 Mr. Kevin M. Noland, Interim Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Johnnie Grissom

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or saving to those affected: None
- (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: Reduces paperwork.
2. Second and subsequent years: Reduces paperwork.

(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: Reduces paperwork.

(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 and federal funds.

(6) To the extent available from 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: Federal law requires state policy on this subject, and KBE can require policy only through regulation.

(8) Assessment of 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 occur, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Division of Exceptional Children Services

(New Administrative Regulation)

707 KAR 1:320. Individual education program.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 CFR 300.1-300.662, 20 USC 1221(e), 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 mandates that the Kentucky Board of Education adopt rules and administrative regulations to generally carry out these programs. KRS 156.035 sets forth the authority of the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of such funds in accordance with state and federal laws. 20 USC 1400 et seq. and 34 CFR Part 300 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This admin-

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istrative regulation establishes requirements for the development, implementation, and revision of individual education programs for each child with a disability.

Section 1. Individual Education Programs. (1) An LEA shall ensure the an IEP is developed and implemented for each child with a disability served by that LEA, and for each child with a disability placed in or referred to a private school or facility by the LEA.

(2) Kentucky School for the Deaf and Kentucky School for the Blind, in conjunction with the child's resident LEA, shall ensure that an IEP is developed and implemented for each child with a disability placed in its school by an ARC.

(3) An LEA shall have an IEP in effect for each child with a disability within in its jurisdiction at the beginning of each school year.

(4) An LEA shall ensure the IEP:

(a) Is in effect before specially designed instruction and related services are provided to a child with a disability; and

(b) Is implemented as soon as possible following an ARC meeting.

(5) An LEA (or state agency responsible for developing the child's IEP) shall ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying the special education and related services to the child is being determined.

(6) An LEA shall ensure that:

(a) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service providers who are responsible for its implementation;

(b) Prior to the implementation of the IEP, each implementer is informed of his specific responsibilities related to implementing the child's IEP; and

(c) The specific accommodations, modifications, and supports are provided for the child in accordance with the IEP.

(7) An IEP shall be in place for all eligible children aged three (3) through five (5).

Section 2. ARC Meetings. (1) An LEA shall ensure that each child has an ARC which includes the membership in Section 3 of this administrative regulation and is initiated and conducted for the purpose of developing, reviewing, and revising the IEP.

(2) An LEA shall ensure that within sixty (60) school days following the receipt of the parental consent for an initial evaluation of a child:

(a) The child will be evaluated; and

(b) If the child is eligible, specially designed instruction and related services will be provided in accordance with the IEP.

(3) Within this sixty (60) day period, an LEA shall ensure that the ARC meeting to develop an IEP for the child is conducted within thirty (30) days of the determination that the child is eligible.

(4) An LEA shall ensure that the ARC:

(a) Reviews each child's IEP periodically, but no less than annually, to determine whether the annual goals for the child are being achieved; and

(b) Revises the IEP as appropriate to address:

1. Any lack of expected progress toward the annual goals;

2. Any lack of expected progress in the general curriculum, if appropriate;

3. The results of any reevaluation;

4. Information about the child provided by or to the parents;

5. The child's anticipated needs; and

6. Other matters.

Section 3. ARC Membership. (1) An LEA shall ensure that the ARC for each child with a disability includes:

(a) The parents of the child;

(b) A regular education teacher of the child (if the child is or may be participating in the regular education environment) to provide information about the general curriculum for same aged peers;

(c) A special education teacher of the child or a special education teacher who is knowledgeable about the child's suspected disability or, if appropriate, at least one (1) special education provider of the child;

(d) A representative of the LEA who is qualified to provide, or

supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general curriculum and the availability of the resources of the LEA;

(e) An individual who can interpret the instructional implications of evaluation results who may be a member of the team described in paragraphs (b) through (d) of this subsection;

(f) An individual who has knowledge or special expertise regarding the child at the discretion of the parent or the LEA;

(g) Related services personnel, as appropriate; and

(h) The child, if appropriate.

(2) If the purpose of the ARC is to discuss transition services for a child with a disability as described in Section 4(3) and (4) of this administrative regulation, the child shall be invited to the ARC. A public agency that is likely to be responsible for providing or paying for transition services shall also be invited. If the representative of the other public agency does not attend, the LEA shall take other steps to obtain participation of the other agency in the planning of any transition services.

Section 4. Parent Participation. (1) An LEA shall ensure that one (1) or both of the parents of a child with a disability are present at each ARC meeting or are afforded the opportunity to participate. Parents shall be notified of the meeting early enough to ensure that they will have an opportunity to attend, and the meeting shall be scheduled at a mutually-agreed-on time and place.

(2) An LEA shall send an ARC meeting invitation to the parents which includes:

(a) The purpose;

(b) Time;

(c) Location of the meeting;

(d) Who will be in attendance; and

(e) Information that the parents may invite people with knowledge or special expertise of the child to the meeting.

(3) If the child is at least fourteen (14) years of age, the invitation shall indicate that a purpose of the meeting will be the development of a statement for the need for transition services of the child and indicate that the child is invited. This subsection shall apply to a child younger than fourteen (14) years of age if determined to be appropriate by the ARC.

(4) If the child is at least sixteen (16) years of age, the invitation shall indicate that a purpose of the meeting is the consideration of needed transition services for the child and shall include the identity of any other agency that is invited to send a representative. This subsection shall apply to a child younger than sixteen (16) years of age if determined to be appropriate by the ARC.

(5) An LEA shall ensure parent participation in the ARC meeting if the parent is unable to attend by using other methods, which may include individual or conference telephone calls or video conferencing.

(6) An ARC meeting may be conducted without a parent in attendance if the LEA is unable to convince the parent that he should attend. The LEA shall have a record of its attempts to arrange a mutually-agreed-on time and place, which may include:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits to the parent's home or place of employment and the results of those visits.

(7) When using an interpreter or other action, as appropriate, an LEA shall take whatever action is necessary to ensure that the parents understand the proceedings at the ARC meeting, including arranging for an interpreter for the parents with deafness or whose native language is other than English.

Section 5. Contents of IEP. (1) An ARC shall consider in the development of an IEP:

(a) The strengths of the child and the concerns of the parents for enhancing the education of their child;

(b) The results of the initial or most recent evaluation of the child; and

(c) As appropriate, the results of the child's performance on any

general state or districtwide assessments programs.

(2) An ARC shall:

(a) In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(b) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(c) In the case of the child who is blind or visually impaired, provide for instruction in Braille and the use of Braille, unless the ARC determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(d) Consider the communication needs of the child;

(e) In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(f) Consider whether the child requires assistive technology.

(3) All the factors listed in subsection (2) of this section shall be considered, as appropriate, in the review, and if necessary, revision of a child's IEP.

(4) Once the ARC has considered all the factors listed in subsection (2) of this section the ARC shall include a statement on the IEP indicating the needs for a particular device or service (including an intervention, accommodation, or other program modification), if any are needed, in order for the child to receive a free appropriate public education (FAPE).

(5) A regular education teacher(s) of the child, as a member of the ARC, shall, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of appropriate:

(a) Positive behavioral interventions and strategies for the child;

(b) Supplementary aids and services; and

(c) Program modifications or supports for school personnel that will be provided for the child.

(6) An ARC shall not be required to include information under one (1) component of a child's IEP that is already contained under another component of the child's IEP.

(7) The IEP for each child shall include:

(a) A statement of the child's present levels of educational performance, including how the child's disability affects the child's involvement and progress in the general curriculum as provided in the Kentucky Program of Studies, 704 KAR 3:303, or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and

(b) A statement of measurable annual goals, including benchmarks or short-term objectives related to:

1. Meeting the child's needs that result from the disability to enable the child to be involved in and progress in the general curriculum as provided in the Kentucky Program of Studies, 704 KAR 3:303, or for preschool children, as appropriate, to participate in appropriate activities; and

2. Meeting the child's other educational needs that result from the disability.

(8) An IEP shall include a statement of the specially designed instruction and related services and supplementary aids and services to be provided to the child, or on behalf of the child. There shall also be a statement of the program modifications and supports for school personnel that will be provided for the child to:

(a) Advance appropriately toward attaining the annual goals;

(b) Be involved and progress in the general curriculum;

(c) Participate in extracurricular and other nonacademic activities; and

(d) Be educated and participate with other children with or without disabilities.

(9) An IEP shall contain an explanation of the extent, if any, to which the child will not participate with nondisabled children in

regular classes.

(10) An IEP shall contain a statement of any individual modifications to be provided the child in order to participate in the state or districtwide assessment. These modifications shall be based on the requirements contained in 703 KAR 5:070, Inclusion of special populations in the state-required assessment and the accountability programs.

(11) If the ARC determines that the child meets the criteria for participation in the alternate portfolio, as provided in 703 KAR 5:070, it shall provide a statement of its decision and the reasons for the decision.

(12) An IEP shall include the projected date of the beginning of the services and modifications listed on the IEP and the anticipated frequency, location (i.e. regular or special education), and duration of the services and modifications.

(13) An IEP shall include a statement of:

(a) How the child's progress toward the annual goals will be measured; and

(b) How the parents will be regularly informed, at least as often as the school or LEA informs parents of the progress of all children.

(14) A parent shall be informed of:

(a) Their child's progress toward the annual goals; and

(b) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

Section 6. Transition Services. (1) Beginning at age fourteen (14), or younger if determined appropriate by the ARC, the IEP for a child with a disability shall include a statement of the transition service needs of the child under the applicable components of the child's IEP that focus on the child's course of study. This statement shall be updated annually.

(2) For a child beginning at age sixteen (16), or younger if determined appropriate by the ARC, the IEP for a child with a disability shall include a statement of needed transition services for the child, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

(3) Transition services for children with disabilities may be special education, if provided as specially designed instruction or related services, and if required to assist a child with a disability to benefit from special education.

(4) At least one (1) year prior to the child reaching the age of majority, the IEP shall include a statement that the child has been informed of his rights under 707 KAR Chapter 1 and that the rights will transfer to the child upon reaching the age of majority.

(5) If an agency, other than the LEA, (or state agency responsible for developing the child's IEP) fails to provide the transition services described in the IEP, the LEA (or the state agency responsible for developing the child's IEP) shall reconvene the ARC to identify alternative strategies to meet the child's transition objectives set out in the IEP.

(6) A participating agency shall not be relieved of the responsibility under IDEA to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of the agency.

Section 7. Private School Placements by the LEA. (1) Prior to an LEA placing a child with a disability in, or referring a child to, a private school or facility, the LEA shall initiate and conduct an ARC meeting to develop an IEP for the child.

(2) The LEA shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(3) After a child with a disability is placed in a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the LEA.

(4) If a private school or facility initiates the meetings, the LEA shall ensure that the parents and LEA staff are involved in any decision about the child's IEP. If a child with a disability is placed by the LEA in a private school or facility, the LEA shall remain responsible for compliance with 707 KAR Chapter 1.

(5) An LEA that places or refers a child with a disability in a private school shall ensure that the child:

(a) Is provided specially designed instruction and related services in conformance with an IEP that meets the standards of 707 KAR Chapter 1, and at no cost to the parents;

(b) Is provided an education that meets the standards of the LEA including general curriculum standards; and

(c) Has all the rights of any child with a disability served by the LEA.

Section 8. IEP Accountability. (1) An LEA shall provide specially designed instruction and related services to each child with a disability in accordance with his IEP and shall make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.

(2) An LEA shall be responsible for including children with disabilities in the statewide assessment as provided in 703 KAR Chapter 5.

(3) The provisions of this administrative regulation shall not limit the parents' right to ask for revision of the child's IEP or to invoke due process procedures if the parents feel that good faith efforts are not being made.

KEVIN M. NOLAND, Interim Commissioner

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 12, 2000

FILED WITH LRC: April 12, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 26, 2000 at 10 a.m. in the State Board Room, First Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by May 19, 2000, five 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 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 Mr. Kevin M. Noland, Interim Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Johnnie Grissom

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: None

(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: Reduces paperwork.

2. Second and subsequent years: Reduces paperwork.

(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: Reduces paperwork.

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

(5) Source of revenue to be used for implementation and en-

forcement of administrative regulation: State and federal funds.

(6) To the extent available from 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: Federal law requires state policy on this subject, and KBE can require policy only through regulation.

(8) Assessment of 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 occur, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Division of Exceptional Children Services

(New Administrative Regulation)

707 KAR 1:330. Comprehensive system of personnel development.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 CFR 300.1-300.662, 20 USC 1221(e), 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 mandates that the Kentucky Board of Education adopt rules and administrative regulations to generally carry out these programs. KRS 156.035 sets forth the authority of the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of such funds in accordance with state and federal laws. 20 USC 1400 et seq. and 34 CFR Part 300 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements for a comprehensive system of personnel development for district staff who provide services to children with disabilities.

Section 1. Comprehensive System of Personnel Development. A LEA shall have information filed with the Kentucky Department of Education to demonstrate that all personnel necessary to carry out the requirements in 707 KAR Chapter 1 are appropriately and adequately prepared. As part of this information, the LEA shall take steps to provide that all personnel who work with children with disabilities have the skills and knowledge necessary based on certification ADMINISTRATIVE regulations contained in 704 KAR Chapter 20, to meet the needs of the children. This information shall include a description of how the LEA will:

(1) Provide general and special education personnel with the content knowledge and collaborative skills to continue to meet the needs of children with disabilities;

(2) Enhance the ability of teachers and others to use strategies,

such as behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;

(3) Acquire and disseminate to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, and how the LEA will, if appropriate, adopt promising practices, materials, and technology;

(4) Recruit and retain qualified personnel, including personnel with disabilities and personnel from groups that are underrepresented in the fields of regular education, special education and related services;

(5) Ensure that the information is integrated, to the maximum extent possible, with other professional development plans and activities developed and carried out by the LEA; and

(6) Provide for the joint training of parents and special education, related services, and general education personnel.

KEVIN M. NOLAND, Interim Commissioner

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 12, 2000

FILED WITH LRC: April 12, 2000 at 1 p.m.

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Agency Contact: Johnnie Grissom

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

1. First year following implementation: Reduces paperwork.

2. Second and subsequent years: Reduces paperwork.

(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: Reduces paperwork

(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 and federal funds.

(6) To the extent available from 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

(a) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Federal law requires state policy on this subject, and KBE can require policy only through regulation.

(8) Assessment of 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 occur, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Division of Exceptional Children Services

(New Administrative Regulation)

707 KAR 1:340. Procedural safeguards and state complaint procedures.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 CFR 300.1-300.662, 20 USC 1221(e), 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 mandates that the Kentucky Board of Education adopt rules and administrative regulations to generally carry out these programs. KRS 156.035 sets forth the authority of the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of such funds in accordance with state and federal laws. 20 USC 1400 et seq. and 34 CFR Part 300 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements for children with disabilities and their parents are afforded procedural safeguards.

Section 1. Parent Participation in Meetings. (1) A parent of a child with a disability shall be afforded an opportunity to:

(a) Inspect and review all education records with respect to identification, evaluation, and educational placement of the child and the provision of FAPE to the child; and

(b) Participate in all ARC meetings concerning his child.

(2) An LEA shall provide to parents a written notice to ARC meetings in accordance with this administrative regulation.

(3) LEA staff shall not be limited by 707 KAR Chapter 1, from having informal, scheduled, or unscheduled conversations on issues which may include:

(a) Teaching methodology if those issues are not addressed in the child's IEP;

(b) Lesson plans if those issues are not addressed in the child's IEP;

(c) Coordination of service provision if those issues are not addressed in the child's IEP; or

(d) Preparatory activities to develop a proposal or response to a parent proposal that will be discussed at a later ARC meeting.

Section 2. Independent Educational Evaluation. (1) A parent of a child with a disability shall have a right to obtain an independent educational evaluation of the child.

(2) Upon receiving the request, the LEA shall provide information to the parent about where an independent educational evaluation may be obtained and the LEA's applicable criteria for independent educational evaluations.

(3) The parent's request for an independent educational evaluation shall be subject to the following:

(a) The LEA shall be given the opportunity to conduct a complete evaluation on the child prior to the request;

(b) Upon receiving the request the LEA shall, without unnecessary delay:

1. Initiate a due process hearing to show that its evaluation is appropriate; or

2. Ensure that an independent educational evaluation is provided at public expense unless the LEA demonstrates in a due process hearing that the evaluation obtained by the parent did not meet LEA criteria;

(c) The LEA may ask for the parent's reasons why he objects to the LEA's evaluation; however, the parent shall not be required to respond and the LEA shall not delay its action under paragraph (b) of this subsection while waiting for a response from a parent; and

(d) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the LEA uses when it initiates an evaluation. Aside from these criteria, the LEA shall not impose any other conditions or timelines relating to obtaining an independent educational evaluation at public expense.

(4) If the LEA initiates a due process hearing after receiving a request for an independent educational evaluation, and the final decision is that the LEA's evaluation is appropriate, the parent still shall have the right to an independent educational evaluation, but not at public expense.

(5) If the parent obtains an independent educational evaluation at private expense and it meets the agency criteria, results of the evaluation shall be considered by the LEA in any decision made with respect to the provision of a free appropriate public education (FAPE) to the child.

(6) If a due process hearing officer, as part of a hearing, requests an independent educational evaluation, the cost of the evaluation shall be at public expense.

Section 3. Procedural Safeguards. (1) An LEA shall provide written notice to the parents of a child with a disability a reasonable time before the LEA:

(a) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(b) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) This notice shall include:

(a) A description of the action proposed or refused by the LEA;

(b) An explanation of why the LEA proposes or refuses to take the action;

(c) A description of any other options that the LEA considered and the reasons why those options were rejected;

(d) A description of each evaluation procedure, test, record, or report the LEA used as a basis for the proposed or refused action;

(e) A description of any other factors that are relevant to the LEA's proposal or refusal;

(f) A statement that the parents of a child with a disability have protection under the procedural safeguards in 707 KAR Chapter 1 and, if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and

(g) Sources for the parents to contact to obtain assistance in understanding the provisions of this section.

(3) The notice shall be written in language understandable to the general public and provided in the native language or other mode of communication of the parent unless it is clearly not feasible to do so. If the native language of the parent is not a written language, the

LEA shall take steps to ensure that the notice is translated orally or by other means so that the parent understands the content of the notice and that there is written evidence of this translation.

(4) A copy of the procedural safeguards (parent's rights) shall be available to the parents of a child with a disability:

(a) Upon initial referral for evaluation;

(b) Upon invitation of each ARC meeting;

(c) Upon reevaluation of the child; and

(d) Upon receipt of a request for a due process hearing.

(5) After receiving a copy and explanation of the procedural safeguards, a parent may make an informed decision to waive future copies and explanation of the procedural safeguards. This written waiver shall be recorded and kept by the LEA.

(6) The procedural safeguards notice shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1.

Section 4. Parental Consent. (1) An LEA shall obtain parental consent before conducting an initial evaluation or reevaluation and before the initial provision of specially designed instruction and related services.

(2) If a parent of a child with a disability refuses consent for an initial evaluation or a reevaluation, the LEA may continue to pursue those evaluations by requesting a due process hearing or using the mediation procedures.

(3) Parental consent shall not be required for reevaluation if the LEA can demonstrate that it has taken reasonable measures to obtain the consent, and the child's parent has failed to respond. To show the reasonable measures taken, the LEA shall keep documentation which may include:

(a) The records of the telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Records of the visits made to the parent's home or place of employment and the results of those visits.

(4) An LEA and parent of a child with a disability shall have the right to request mediation from the Kentucky Department of Education to resolve any disputes that may arise under 707 KAR Chapter 1.

(5) A parent or an LEA may initiate a due process hearing on any of the matters described in the written notice relating to identification, evaluation or educational placement of a child with a disability or the provision of FAPE to the child or the refusal to initiate or change the identification, evaluation, or educational placement of the child.

(6) When a hearing is initiated, the LEA shall inform the parent of the availability of mediation to resolve the dispute.

(7) The LEA shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or if a parent or LEA initiates a hearing.

Section 5. Hearing Rights. (1) The parent of a child with a disability or the attorney representing the child shall provide notice to the Kentucky Department of Education, to request a hearing. The notice shall contain:

(a) The name of the child;

(b) The address of the residence of the child;

(c) The name of the school the child is attending;

(d) A description of the nature of the problem; and

(e) Facts relating to the problem and a proposed resolution to the extent known and available to the parents at the time.

(2) The Kentucky Department of Education shall provide a model form containing these requirements to parents who request a due process hearing.

(3) The Kentucky Department of Education shall not deny or delay a parent's right to a due process hearing for failure to provide the notice in 707 KAR 1:340, Section 5(1).

(4) The procedures included in KRS Chapter 13B and IDEA Subpart E shall apply to a due process hearing.

Section 6. Appeal of Decision. (1) A party to a due process hearing that is aggrieved by the hearing decision may appeal the

decision to members of the Exceptional Children Appeals Board as assigned by the Kentucky Department of Education. The appeal shall be perfected by sending, by certified mail, to the Kentucky Department of Education a request for appeal, within thirty (30) calendar days of date of the hearing officer's decision.

(2) A decision made by the Exceptional Children Appeals Board shall be final unless a party appeals the decision to state circuit court or federal district court.

(3) Except as provided in 707 KAR 1:340, Sections 8 and 10, during the pendency of any administrative or judicial proceeding, the child involved in the hearing or appeal shall remain in his current educational placement, unless the LEA and the parent agree to another placement.

(4) If the hearing involves an application for initial admission to public school, and if there is consent of the parents, the child shall be placed in the public school until the proceedings are final.

Section 7. Representation of Children. (1) An LEA shall ensure the rights of a child are protected by determining an educational representative for the child. An LEA shall appoint a surrogate parent to make educational decisions for the child if:

- (a) No parents as defined in 707 KAR 1:280 can be identified;
- (b) An LEA, after reasonable efforts, cannot discover the whereabouts of the parents; or
- (c) The child is a ward of the state.

(2) An LEA shall have a procedure for determining whether a child needs a surrogate parent for assigning a surrogate parent to the child. The educational representative of the child shall have all the rights afforded parents under Part B of IDEA and 707 KAR Chapter 1 to make decisions about educational issues for a child and to give written informed consent when necessary under administrative regulation.

(3) An LEA shall have a procedure for selecting surrogates. A surrogate:

- (a) Shall not be an employee of the Kentucky Department of Education, the LEA, or any other public agency that is involved in the education or care of the child;
- (b) Shall not have an interest that conflicts with the interests of the child; and
- (c) Shall have knowledge and skills that ensure adequate representation of the child.

(4) A surrogate parent may be an employee of a private agency that provides noneducational care for the child if that person meets the standards in this section. A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the LEA solely because he or she is paid by the LEA to serve as a surrogate parent.

(5) The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

(6) When a child with a disability reaches the age of majority, all rights under 707 KAR Chapter 1 shall transfer from the parents to the child, unless the child has been declared incompetent under KRS Chapter 387 in a court of law.

Section 8. Discipline Procedures. (1) If the child with a disability is removed for more than ten (10) school days during a school year, a change of placement shall be considered to have occurred for purposes of disciplinary actions.

(2) To the extent removal would be applied to children without disabilities, school personnel may remove a child with a disability from the child's current placement for not more than a total of ten (10) school days for a violation of school rules.

(3) A child's ARC may order a change in placement of a child with a disability to an appropriate interim educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than forty-five (45) days, if:

- (a) The child carries or possesses a weapon to or at school; a school function; or school premises; or
- (b) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.

(4) No later than ten (10) business days after commencing an

action that results in a change of placement, the LEA shall convene an ARC to:

(a) Develop a plan for conducting a functional behavior assessment, if an assessment has not been conducted;

(b) Develop and implement a behavioral intervention plan if a functional behavioral assessment has already been conducted; or

(c) Review and modify the assessment and the plan, as necessary, to address the behavior if a functional behavioral assessment has been conducted and a behavioral intervention plan has been developed.

(5) As soon as practicable after developing the functional behavioral assessment described in subsection (4)(a) of this section, and completing the assessments required by the plan, the LEA shall convene an ARC to develop appropriate behavioral interventions to address the behavior and shall implement those interventions.

(6) A due process hearing officer may order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) days if the hearing officer, in an expedited due process hearing:

(a) Determines that the LEA has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;

(b) Considers the appropriateness of the child's current placement;

(c) Considers whether the LEA has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

(d) Determines the interim alternative educational setting that is proposed by the school personnel who have consulted with the child's special education teacher, meets the requirements contained in 707 KAR 1:340, Section 8(7).

(7) An interim alternative educational setting in which a child is placed shall:

(a) Enable the child to continue to progress in the general curriculum;

(b) Enable the child to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP; and

(c) Include services and modifications to address the behavior to prevent the behavior from recurring.

Section 9. Manifestation Determination Review. (1) If an action is contemplated that will result in a change of placement for a child with a disability who has engaged in behavior that violated any rule or code of conduct of the LEA that applies to all children:

(a) Not later than the date on which the decision to take action is made, the parents shall be notified of the decision and provided with a copy of procedural safeguards; and

(b) Immediately, if possible, but in no case later than ten (10) school days after the date on which the decision to take that action is made, a review by the ARC and other qualified personnel shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

(2) In conducting the review, the ARC may determine that the behavior of the child was not a manifestation of the child's disability if:

(a) The ARC first considers, in terms of the behavior subject to the disciplinary action, all relevant information including evaluation and diagnostic results, relevant information supplied by the parents, observation of the child and the child's IEP and placement;

(b) After the review of this information, the child's IEP and placement are reviewed in relationship to the behavior subject to the disciplinary action to determine if the IEP and placement were appropriate and the specially designed instruction and related services, supplementary aids and services and the behavior intervention strategies were provided consistent with the child's IEP and placement; and

(c) The ARC determines if the child's disability impaired the ability of the child to understand the impact and consequences of the behavior and if the child's disability impaired the ability of the child to control the behavior.

(3) If the ARC determines that any of the standards in subsec-

tion (2) of this section were not met, the behavior shall be considered a manifestation of the child's disability.

(4) If the ARC identifies any deficiencies in the child's IEP or placement or in its implementation, the LEA shall take immediate steps to remedy those deficiencies.

(5) If after the manifestation determination review, the ARC determines the behavior was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to all children may be applied to the child in the same manner in which they would be applied to children without disabilities.

(6) If the LEA initiates disciplinary procedures applicable to all children, it shall ensure that all special education and disciplinary records are transmitted to the school personnel making the final determination regarding the disciplinary actions as to the child with disabilities.

(7) A parent may request a due process hearing to contest the decision reached in a manifestation determination review or with any decision regarding placement under this section. The hearing shall be arranged in an expedited manner.

Section 10. Challenges to Placement in an Interim Alternative Educational Setting. (1) If a parent requests a hearing to challenge the placement of his child in an interim alternative educational setting, the child shall remain in the interim alternative educational setting until the decision is final or until the expiration of the time period for the placement, whichever occurs first, unless the parent and the LEA agree otherwise.

(2) If a child is placed in an interim alternative educational setting and school personnel propose to change the child's placement after expiration of the time period, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (i.e., the child's placement prior to the interim alternative educational setting) unless the school personnel maintain that it is dangerous for the child to be in the current placement, in which case the LEA may request an expedited due process hearing.

(3) A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a rule or code of conduct of the LEA, may assert any of the protections provided for in this administrative regulation if the LEA had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

Section 11. Basis of Knowledge. (1) An LEA shall be deemed to have knowledge that a child may be a child with a disability if:

(a) The parent of the child has expressed concern in writing (or orally if the parent cannot express it in writing) to personnel of the appropriate LEA that the child is in need of special education and related services;

(b) The behavior or performance of the child demonstrates the need for these services, in accordance with 707 KAR 1:280;

(c) The parent of the child has requested an evaluation pursuant to the requirements in 707 KAR 1:300; or

(d) The teacher of the child, or other personnel of the LEA, has expressed concern about the behavior or performance of the child to the director of special education or to other personnel in accordance with the LEA's child find or special education referral system.

(2) An LEA shall not be deemed to have knowledge that a child may be a child with a disability if, as a result of receiving information, the LEA conducted an evaluation and determined the child was not a child with a disability or determined an evaluation was not necessary and provided notice to the parents of these determinations.

(3) If an LEA does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities.

(4) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the child shall remain in the educational placement determined by school authorities, which may include suspension or expulsion without educational services.

Section 12. Reporting to Law Enforcement Agencies. (1) Notwithstanding any provisions of 707 KAR Chapter 1, an agency may report a crime committed by a child with a disability to appropriate authorities.

(2) If an LEA reports a crime committed by a child with a disability, it shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to the extent the transmission is permitted by the Family Educational Rights and Privacy Act, 20 USC Section 1232g.

Section 13. State Complaint Procedures. (1) The following procedures shall apply to the Kentucky Department of Education as to written complaints submitted pursuant to 34 CFR 300.660 through 300.662:

(a) A time limit of sixty (60) days after a complaint is filed to carry out an independent investigation, if necessary;

(b) An opportunity by the complainant and the LEA to submit additional information about any allegation in the complaint;

(c) A review of all relevant information; and

(d) A written decision addressing each allegation in the complaint.

(2) The complainant, parent or the LEA shall have a right to appeal the written decision from a complaint to the Commissioner of the Kentucky Department of Education. This appeal shall be filed within fifteen (15) business days of the receipt of the decision.

KEVIN M. NOLAND, Interim Commissioner

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 12, 2000

FILED WITH LRC: April 12, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 26, 2000 at 10 a.m. in the State Board Room, First Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by May 19, 2000, five 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 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 Mr. Kevin M. Noland, Interim Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Johnnie Grissom

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: None

(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: Reduces paperwork.

2. Second and subsequent years: Reduces paperwork.

(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: Reduces paperwork.
- (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 and federal funds.
- (6) To the extent available from 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: Federal law requires state policy on this subject, and KBE can require policy on through regulation.
- (8) Assessment of 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 occur, explain detrimental effect: None
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
 - (a) Necessity of proposed regulation, if in conflict: None
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
- (10) Any additional information or comments: None
- (11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Division of Exceptional Children Services
(New Administrative Regulation)

707 KAR 1:350. Placement decisions.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 CFR 300.1-300.662, 20 USC 1221(e), 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 mandates that the Kentucky Board of Education adopt rules and administrative regulations to generally carry out these programs. KRS 156.035 sets forth the authority of the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of such funds in accordance with state and federal laws. 20 USC 1400 et seq. and 34 CFR Part 300 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements for making placement decisions about children with disabilities.

Section 1. Placement Decisions. (1) An LEA shall ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled. The LEA shall ensure that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) An LEA shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(3) The continuum shall include the alternative placements of:

- (a) Instruction in regular classes;
 - (b) Special classes;
 - (c) Special schools;
 - (d) Home instruction; and
 - (e) Instruction in hospitals and institutions.
- (4) The LEA shall make provision for supplementary services to be provided in conjunction with regular class placement.
- (5) In determining the educational placement of a child with a disability, the LEA shall ensure that the placement decision is made by the ARC in conformity with the least restrictive environment provisions.
- (6) A child's placement shall be:
 - (a) Determined at least annually;
 - (b) Based on the child's IEP; and
 - (c) As close as possible to the child's home.
- (7) Unless the IEP of a child with a disability requires some other arrangement, the child shall be educated in the school that he would attend if nondisabled.
- (8) In selecting the least restrictive environment, consideration shall be given to any potential harmful effects on the child or on the quality of services that he needs.
- (9) A child with a disability shall not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.
- (10) In providing or arranging for the provision of nonacademic and extracurricular services and activities, an LEA shall ensure that a child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of the child.

Section 2. Class Size. (1) An LEA shall provide special education according to caseload for special classes for each child with a disability as follows:

- (a) Emotional-behavior disability is eight (8);
- (b) Functional mental disability is ten (10);
- (c) Hearing impairment is six (6);
- (d) Mild mental disability for primary is fifteen (15) and for secondary is fifteen (15);
- (e) Multiple disabilities is ten (10);
- (f) Orthopedic impairment is sixteen (16);
- (g) Other health impairment is sixteen (16);
- (h) Specific learning disability for primary is ten (10) and for secondary is fifteen (15); and
- (i) Visual impairment is ten (10).

(2) An LEA shall provide special education according to class size for resource classes for each child with a disability as follows:

- (a) Emotional-behavior disability is eight (8);
- (b) Functional mental disability is eight (8);
- (c) Hearing impairment is eight (8);
- (d) Mild mental disability is ten (10);
- (e) Multiple disabilities is eight (8);
- (f) Orthopedic impairment is ten (10);
- (g) Other health impairment is ten (10);
- (h) Specific learning disability is ten (10); and
- (i) Visual impairment is eight (8).

(3) Children with disabilities that meet the definition of autism; deaf-blindness; developmental delay for ages six (6), seven (7), and eight (8); and traumatic brain injury shall be served in regular classes, special classes, or resource classes as determined by the ARC.

(4) The number of children with disabilities receiving services through collaboration in a regular education class shall not exceed more than one-half (1/2) the total membership of the class.

(5) Pursuant to KRS 157.360, if caseload for special classes or class size for resource classes exceeds the maximum specified in this section for thirty (30) days, an LEA shall submit a waiver request to the Kentucky Department of Education.

Section 3. Case Load for Resource Teachers. Case load for resource teachers refers to maximum number of student records for whom a teacher can be assigned. An LEA shall make those assignments based on the following:

- (1) Emotional-behavioral disability is fifteen (15);

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- (2) Functional mental disability is ten (10);
- (3) Hearing impairment is eight (8);
- (4) Mild mental disability for primary is fifteen (15) and for secondary is twenty (20);
- (5) Multiple disabilities is ten (10);
- (6) Orthopedic impairment is twenty (20);
- (7) Other health impairment is twenty (20);
- (8) Specific learning disability for primary is fifteen (15) and for secondary is twenty (20); and
- (9) Visual impairment is ten (10).

KEVIN M. NOLAND, Interim Commissioner
HELEN MOUNTJOY, Chairperson
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 12, 2000

FILED WITH LRC: April 12, 2000 at 1 p.m.

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REGULATORY IMPACT ANALYSIS

Agency Contact: Johnnie Grissom

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or saving to those affected: None
- (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: Reduces paperwork.
 - 2. Second and subsequent years: Reduces paperwork.
 - (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: Reduces paperwork
 - (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 and federal funds.
 - (6) To the extent available from 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: Federal law requires state policy on this subject, and KBE can require policy only through regulation.
 - (8) Assessment of 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 occur, explain detrimental effect: None
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
- (a) Necessity of proposed regulation, if in conflict: None
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
- (10) Any additional information or comments: None
- (11) Tiering: Was tiering applied? No Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Division of Exceptional Children Services
(New Administrative Regulation)

707 KAR 1:360. Confidentiality of information.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 CFR 300.1-300.662, 20 USC 1221(e), 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

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Section 1. Access Rights. (1) An LEA shall permit a parent to inspect and review any education records relating to his child that are collected, maintained, or used by the LEA. The LEA shall comply with a request without unnecessary delay and before any ARC meeting or due process hearing and in no case more than forty-five (45) days after the request has been made.

(2) The right to inspect and review education records under this administrative regulation shall include:

(a) The right to a response from the LEA to reasonable requests for explanations and interpretations of the records;

(b) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(c) The right to have a representative of the parent inspect and review the records.

(3) An LEA may presume that a parent has authority to inspect and review records relating to his child unless the LEA has been advised under a court order that the parent does not have the authority.

Section 2. Record of Access. An LEA shall keep a record of parties obtaining access to education records collected, maintained, or used under 707 KAR Chapter 1 (except access by parents and authorized employees of the LEA), including:

- (1) The name of the party;
- (2) The date access was given; and

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(3) The purpose for which the party is authorized to use the records.

Section 3. Records on More than One (1) Child. If any education record includes information on more than one (1) child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of only that specific information.

Section 4. Types and Location of Information. An LEA shall provide parents on request a list of the types and location of education records regarding their child with disabilities that is collected, maintained, or used by the LEA.

Section 5. Fees. (1) An LEA may charge a fee for copies of records that are made for a parent under 707 KAR Chapter 1 if the fee does not effectively prevent the parent from exercising his right to inspect and review the records.

(2) The LEA shall not charge a fee to search for or to retrieve information under 707 KAR Chapter 1.

Section 6. Amendment of Records and Opportunity for Hearing.

(1) A parent who believes that information in the education records collected, maintained, or used under 707 KAR Chapter 1 is inaccurate, misleading, or violates the privacy or other rights of the child may request the LEA to amend the information.

(2) If a request to amend the information is made by a parent or legal guardian, the hearing procedures contained in 702 KAR 1:140 shall apply.

Section 7. Consent. (1) Except as to disclosures to appropriate law enforcement agencies as referenced in 707 KAR 1:340, Section 12, parental consent shall be obtained before personally identifiable student information is:

(a) Disclosed to anyone other than officials of the participating agencies collecting or using the information under 707 KAR Chapter 1; or

(b) Used for any purpose other than meeting a requirement under 707 KAR Chapter 1.

(2) An LEA shall not release information from education records to participating agencies without parental consent unless authorized to do so under the Family Educational Rights and Privacy Act, 20 USC Section 1232g.

Section 8. Safeguards. (1) An LEA shall protect the confidentiality of personally identifiable student information at collection, storage, disclosure, and destruction stages.

(2) An LEA shall assign a staff member to assume responsibility for ensuring the confidentiality of any personally identifiable student information.

(3) An LEA employee collecting or using personally identifiable information shall receive training or instruction regarding 707 KAR 1:360.

(4) An LEA shall maintain, for public inspection, a current listing of the names and positions of employees within the LEA who may have access to personally identifiable student information.

Section 9. Destruction of Information. An LEA shall inform the parent when personally identifiable student information collected, maintained, or used under 707 KAR Chapter 1 is no longer needed to provide education services to a child. The information shall be destroyed at the request of a parent. However, a permanent record of a child's name, address, and phone number, his grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitations.

Section 10. Children's Rights. The rights of parents regarding education records under FERPA and 707 KAR Chapter 1 shall be transferred to the child at the age of eighteen (18), unless the child has been declared incompetent under KRS Chapter 387 in a court of law.

KEVIN M. NOLAND, Interim Commissioner

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 12, 2000

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Agency Contact: Johnnie Grissom

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

1. First year following implementation: Reduces paperwork.

2. Second and subsequent years: Reduces paperwork.

(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: Reduces paperwork

(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 and federal funds.

(6) To the extent available from 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: Federal law requires state policy on this subject, and KBE can require policy only through regulation.

(8) Assessment of 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 occur, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not appropriate.

ate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Division of Exceptional Children Services
(New Administrative Regulation)

707 KAR 1:370. Children with disabilities enrolled in private schools.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 CFR 300.1-300.662, 20 USC 1221(e), 1400-1419

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Section 1. Children with Disabilities Enrolled in Private Schools by Their Parents when FAPE is at Issue. (1) An LEA shall make FAPE available to each child with a disability. If a parent decides to place his child with a disability in a private school after the offer of FAPE, the LEA shall not be required to pay for the cost of the private education. Disagreements between a parent and the LEA regarding the availability of a program appropriate for the student and financial responsibility shall be subject to the due process procedures in 707 KAR Chapter 1.

(2) If a parent of a child with a disability, who previously received special education and related services under the authority of the LEA, enrolls the child in a private school without the consent of or referral by the LEA, a hearing officer or a court may award financial reimbursement to the parent if it is determined that the LEA did not offer FAPE to the child in a timely manner and the private placement is appropriate. This may be awarded even if the parents did not receive consent from the LEA for the private placement and the LEA did not make a referral to the private school. A hearing officer or a court may determine a private school placement to be appropriate even though it does not meet state standards that apply to an LEA.

(3) The cost of the financial reimbursement described in subsection (2) of this section may be reduced or denied in one (1) of the following situations:

(a) If at the most recent ARC meeting prior to the removal by the parents of their child with a disability to the private school, the parents did not inform the LEA that they were rejecting the proposed LEA placement, including stating their concerns and their intent to enroll the child in a private school at public expense;

(b) If at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child, the parents did not give written notice to the LEA of the information described in paragraph (a) of this subsection;

(c) If, prior to the parent's removal of the child, the LEA informed the parents of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(d) Upon a judicial finding of unreasonableness with respect to

the actions taken by the parents.

(4) The cost of financial reimbursement shall not be reduced or denied for the failure to provide the notice described above if:

(a) The parent is illiterate;

(b) Compliance with this notice requirement would likely result in physical or serious emotional harm to the child;

(c) The school prevented the parent from providing the notice; or

(d) The parent had not received notice from the LEA of his obligation to provide this notice.

Section 2. Children with Disabilities Enrolled by Their Parents in Private School. An LEA shall locate, identify, and evaluate all private school children with disabilities, including religious school children residing within the boundaries of the LEA. These activities shall be comparable to the activities to locate, identify, and evaluate children with disabilities in the public schools. An LEA shall consult with appropriate representatives of the private schools on how to carry out these activities.

Section 3. Service Plans. (1) An LEA shall consult with representatives of private schools in deciding how to conduct the annual count of the number of private school children with disabilities. This child count shall be used to determine the amount that the LEA shall spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year.

(2) The amount to be spent shall be an amount that is the same proportion of the LEA's total subgrant as the number of private school children with disabilities aged three (3) to twenty-one (21) residing within the boundaries of the LEA to the total number of children with disabilities aged three (3) to twenty-one (21) residing within the boundaries of the LEA. This same formula shall be applied to children aged three (3) through five (5).

(3) Expenditures for child find activities shall not be considered in determining the amount the LEA is required to spend under this section.

(4) A private school child with a disability shall not have an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(5) An LEA shall consult, in a timely and meaningful way, with appropriate representatives of private school children with disabilities regarding the following:

(a) The funding available under this administrative regulation;

(b) The number of private school children with disabilities; and

(c) The needs of those children and their location.

(6) The consultation shall result in decisions as to:

(a) Which children will receive services under a services plan;

(b) What services will be provided;

(c) How and where the services will be provided; and

(d) How the services provided will be evaluated.

(7) The consultation with the appropriate representatives of the private school children with disabilities shall give the representatives a genuine opportunity to express their views regarding each matter listed in subsections (5) and (6) of this section. The consultation shall take place prior to any decision made by the LEA about the services plans. The final decision shall be the responsibility of the LEA.

(8) If a private school child with a disability is to receive special education and related services through a services plan, the LEA shall:

(a) Initiate and conduct ARC meetings to develop, review, and revise a services plan; and

(b) Ensure that a representative of the private school attends each ARC meeting. If the representative cannot attend the LEA shall use other methods to ensure participation by the private school including individual or conference telephone calls.

Section 4. Services Provided. (1) An LEA shall ensure that services provided under a services plan will be provided by personnel meeting the same standards as personnel providing services in the public school.

(2) Private school children with disabilities may receive a different amount of services than children with disabilities in public

schools.

(3) A private school child with a disability who has been designated to receive services shall have a services plan that describes the specific special education or related services that the LEA will provide in light of the services the LEA has determined to provide private school children with disabilities through the process in 707 KAR 1:370, Section 3.

(4) The services plan shall, to the extent appropriate:

(a) Meet the requirements of an IEP under 707 KAR Chapter 1 with respect to the services provided; and

(b) Be developed, reviewed, and revised consistent with the requirements to develop, review, and revise IEPs.

Section 5. Location of Services. (1) A service to a private school child with a disability may be provided at a site determined by the LEA. If necessary for the child to benefit from or participate in the services provided under a services plan, the private school child with a disability shall be provided transportation:

(a) From the child's school or the child's home to a site other than the private school; and

(b) From the service site to the private school, or to the child's home, depending on the timing of the services.

(2) An LEA shall not be required to provide transportation from the child's home to the private school.

(3) The cost of transportation may be included in calculating the amount to be expended on private school children with disabilities.

Section 6. Due Process Procedures. The due process procedures afforded to parents and children with disabilities described in 707 KAR 1:340, Section (4), (5), and (6) shall not apply to complaints that an LEA failed to meet the requirements of this administrative regulation, including the provision of services indicated on a services plan. However, these requirements may be the basis for a written formal complaint under 707 KAR 1:340, Section 13. The due process procedures described in 707 KAR 1:340 shall apply to complaints that an LEA failed to complete its responsibilities under child find for private school children with disabilities and its responsibilities to evaluate and determine eligibility for private school children with disabilities.

Section 7. Restrictions on Serving Nonpublic Students. (1) An LEA shall not use funds under Part B of IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school. The LEA shall use the funds provided under IDEA to meet the special education and related services needs of private school children with disabilities but not for:

(a) The needs of a private school; or

(b) The general needs of the students enrolled in the private school.

(2) An LEA may use funds under Part B of IDEA to make public school personnel available in private schools to the extent necessary to provide services under a services plan and if those services are not normally provided by the private school.

(3) An LEA may use funds under Part B of IDEA to pay for the services of private school personnel to provide services under a services plan if the employee performs the services outside his regular hours of duty and the employee performs the services under the supervision and control of the LEA.

(4) The LEA shall keep title to and exercise continuing administrative control of all property, equipment, and supplies that the LEA acquires with funds under Part B of IDEA and uses for the benefit of private school children with disabilities. An LEA may place equipment and supplies in a private school for the period of time needed to provide the services.

(5) The LEA shall ensure that the equipment, and supplies placed in a private school are used only for Part B purposes and can be removed from the private school without remodeling the private school facility.

(6) The LEA shall remove equipment and supplies from the private school if the equipment and supplies are no longer needed for Part B purposes, or if removal is necessary to avoid unauthorized use of the equipment and supplies.

(7) The LEA shall not use any funds under Part B of IDEA for

repairs, minor remodeling, or construction of private school facilities.

KEVIN M. NOLAND, Interim Commissioner

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 12, 2000

FILED WITH LRC: April 12, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 26, 2000 at 10 a.m. in the State Board Room, First Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by May 19, 2000, five 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 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 Mr. Kevin M. Noland, Interim Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Johnnie Grissom

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: None

(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: Reduces paperwork.

2. Second and subsequent years: Reduces paperwork.

(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: Reduces paperwork

(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 and federal funds.

(6) To the extent available from 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: Federal law requires state policy on this subject, and KBE can require policy only through regulation.

(8) Assessment of 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 occur, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Division of Exceptional Children Services
(New Administrative Regulation)

707 KAR 1:380. Monitoring and recovery of funds.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 CFR 300.1-300.662, 20 USC 1221(e), 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 mandates that the Kentucky Board of Education adopt rules and administrative regulations to generally carry out these programs. KRS 156.035 sets forth the authority of the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of such funds in accordance with state and federal laws. 20 USC 1400 et seq. and 34 CFR Part 300 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes the procedures that will be followed by the Department of Education in the event it is necessary to take corrective action on behalf of children with disabilities.

Section 1. Monitoring. (1) The Kentucky Department of Education shall conduct monitoring of LEAs and other agencies that provide educational services to children with disabilities on a regular basis to determine compliance with federal and state requirements. Off-site monitoring shall include review of the following:

(a) Reports, including count and data tables, and performance reports;

(b) Complaints and due process hearings;

(c) Finance reports; and

(d) Documentation indicating inclusion of children with disabilities in the assessment and accountability system.

(2) Off-site monitoring shall identify any areas of noncompliance that indicate the need for further investigation, including an on-site review.

(3) On-site monitoring shall include:

(a) Review of individual children's records, including records of children served by private or state-operated schools;

(b) Interviews with staff;

(c) A survey of parents;

(d) Visits in schools and classrooms; and

(e) Other activities, including review of financial records.

(4) Following an off-site or on-site review, the Kentucky Department of Education shall issue a written report. Deficiencies specified in the report shall be the basis for the LEA to develop a corrective action plan (CAP) for review and approval by the Kentucky Department of Education. Prior to the development of the CAP, the LEA shall have the opportunity to submit additional information to verify or clarify issues related to the report. Each CAP shall be monitored and enforced by the Kentucky Department of Education.

(5) A CAP shall be submitted to the Kentucky Department of Education no later than thirty (30) business days after the LEA receives the report of noncompliance. The CAP shall include:

(a) A statement of the matter to be corrected; and

(b) The steps the LEA shall take to correct the problem and document compliance.

(6) Within thirty (30) business days of receiving the CAP, the

Kentucky Department of Education shall notify the LEA of the status of the CAP. If the Kentucky Department of Education rejects the CAP, the LEA shall have thirty (30) business days to submit a new CAP.

(7) A CAP approved by the Kentucky Department of Education shall be monitored and shall be an official document requiring the LEA to meet the specified activities. The Kentucky Department of Education shall not initiate further sanctions during the time period specified in the CAP unless requested by the LEA.

Section 2. Special Education Program Found Noncompliant. (1) The Kentucky Department of Education shall ensure that each LEA or other state agency responsible for providing the child's education complies with the LEA eligibility requirements contained in IDEA, 34 CFR Part 300. To fulfill this obligation, the Kentucky Department of Education may implement the procedures established in this administrative regulation.

(2) A special education program may be found noncompliant through deficiencies identified in:

(a) Off-site or on-site monitoring that were not corrected by a corrective action plan;

(b) Review of applications;

(c) Final decision issued in complaint investigations after appeals have been exhausted;

(d) Decisions issued in due process hearings or by the Exceptional Children Appeals Board that have become final after the appeal rights have been exhausted; or

(e) Review of other data routinely collected by the Kentucky Department of Education.

Section 3. Causes for Imposing Sanctions. (1) The Kentucky Department of Education shall employ progressive sanctions until compliance is achieved, if an LEA:

(a) Fails to comply with a CAP, including not implementing the activities in an approved CAP;

(b) Fails to comply with the final decision in a complaint investigation after appeals have been exhausted, or the decision of a due process hearing officer or the Exceptional Children Appeals Board that has become final after appeal rights have been exhausted;

(c) Fails to manage the special education program in compliance with state and federal law;

(d) Fails to manage funds in compliance with state and federal law;

(e) Obtains funds through deception including falsifying application information for the purpose of obtaining funds; or

(f) Has been brought before a court of competent jurisdiction and found in noncompliance with state and federal special education requirements after appeal rights have been exhausted.

(2) Sanctions may be imposed when an LEA fails or refuses to correct an identified deficiency. The Kentucky Department of Education shall give notice at least ten (10) school days prior to initiating actions related to sanctions. The Kentucky Department of Education shall remain in contact with the appropriate LEA staff during the imposition of sanctions until the deficiencies are remedied.

Section 4. Sanctions. (1) The Kentucky Department of Education shall employ intensive assistance for at least a two (2) year period, including providing consultation, training, and technical assistance, or assigning a special education mentor, to remedy deficiencies and obtain voluntary compliance before imposing sanctions beyond a corrective action plan (CAP).

(2) The Kentucky Department of Education shall employ less severe sanctions before more severe sanctions until the LEA is in compliance. Progressive sanctions may include the following:

(a) Conditional approval of IDEA funds. If verifiable progress is not made in implementing a CAP, conditional funding shall be imposed. Conditions and timelines for continuing to receive IDEA funds shall be stated in the application approval letter or an attachment. Conditional funding may be employed for more than one year before imposing the next sanction, unless the LEA fails or refuses to meet the conditions or timelines. This sanction shall be lifted when the Kentucky Department of Education verifies compliance;

(b) Withholding of payments of IDEA funds. If an LEA fails or

refuses to meet the conditions or timelines in the conditional approval letter, IDEA funds may be withheld by the Kentucky Department of Education. The Kentucky Department of Education shall make no further payments to the LEA until the Kentucky Department of Education verifies that compliance has been achieved. If the LEA makes no effort to correct the deficiency within sixty (60) calendar days of withholding of IDEA funds, further sanctions may be imposed pursuant to appropriate provisions in KRS 156.132. Withholding shall remain in effect during the pendency of any additional sanctions; or

(c) Withholding of Support Education Excellence in Kentucky (SEEK) add-on funds. SEEK add-on funds for exceptional children shall be withheld in trust as required in KRS 157.224. This sanction shall be lifted when the Kentucky Department of Education verifies compliance with substantive special education requirements; and

(d) Other actions available under state and federal law shall be employed as circumstances warrant.

(3) The Kentucky Department of Education may conduct an off-site or on-site review to validate compliance.

Section 5. Opportunity for a Hearing. Prior to the withholding of IDEA or SEEK add-on funds, the LEA shall be provided notice and an opportunity for an administrative hearing in accordance with KRS Chapter 13B.

Section 6. Child Count Audit. (1) Child count figures submitted to the Kentucky Department of Education for the purpose of receiving funds under IDEA shall be subject to an audit validating the count. The Kentucky Department of Education shall conduct the child count audits prior to withholding funds pursuant to Section 4(3)(b) of this administrative regulation.

(2) If an LEA counts more children on its December 1 child count than are actually being served, or counts children who are ineligible to be counted for funding, the LEA shall reduce its child count or return the funds received for each misclassified child:

(a) The reduction may be initiated by the LEA upon recognizing an error exists; or

(b) The Kentucky Department of Education shall reduce the number through an on-site validation of the child count figures. However, notice and opportunity for hearing under KRS Chapter 13B shall be provided before recovery of funds.

(3) Annually, the Kentucky Department of Education shall review and, as needed, select LEAs for a child count audit. A LEA may be selected for audit based on the following:

(a) Recurring noncompliances identified through off-site or on-site monitoring;

(b) Recurring substantiated complaints or final decisions from due process hearings or the Exceptional Children Appeals Board on similar issues;

(c) Failure to comply with a CAP within the specified timelines or with the final decision in a complaint investigation after appeals have been exhausted, or with a hearing or appeal decision after appeals rights have been exhausted within specified timelines;

(d) Increases or decreases of total child counts, changes in categorical areas, or amendments to the original IDEA-B child count report that cannot be justified by district-supplied data such as annual child count data and districtwide enrollment data or other sources of data;

(e) Unusual child count data, such as more than fifteen (15) percent of the total school population reported as having disabilities, no change in numbers from year to year, high numbers of low incidence populations or unusually low percentages of children with disabilities when compared to similar LEAs; or

(f) Previous audits resulting in reductions in addition to the presence of any of the items listed in paragraphs (a) through (e) of this subsection.

(4) Prior to initiating a child count audit, the Kentucky Department of Education shall:

(a) Notify the LEA in writing of the pending audit and request a roster of children by school, teacher, age, and individual disability category as reported on the specific count being audited;

(b) Verify the number of children on the roster with the number reported on the LEA's child count; and

(c) Randomly select from the roster the educational records to be audited.

(5) The Kentucky Department of Education shall conduct an on-site record review based on the standards in 707 KAR Chapter 1 and analyze the data collected to determine the number of records out of compliance.

(6) The Kentucky Department of Education shall prepare a draft audit report which includes:

(a) The reason for the child count audit;

(b) Date the audit was conducted;

(c) Total number of records reviewed;

(d) An analysis of the data obtained during the audit;

(e) The specific reductions by disability; and

(f) Notice that the LEA has thirty (30) business days from the date of the report to submit additional information for each child to demonstrate compliance.

(7) The LEA may request copies of the data collected and used to produce the findings in the audit report and submit additional information for each child to demonstrate compliance. If the LEA submits additional information to demonstrate compliance, the Kentucky Department of Education shall have thirty (30) business days from receipt of the information to review the documentation and issue a final report.

(8) Within thirty (30) business days of the date of the final audit report, if applicable the LEA shall submit to the Kentucky Department of Education an amended child count report and a CAP to address deficiencies identified during the audit.

(9) The Kentucky Department of Education shall certify the reduced count and submit a correction to the U.S. Department of Education and the Kentucky Department of Education's Division of Finance.

(10) The IDEA grant award for the fiscal year affected shall be recalculated and:

(a) If the child count reduction affects the current year's project then the amount of the recovery shall be subtracted from the original allocation and shall not be sent to the LEA the following year;

(b) If the reduction in grant award is for a year in which funds have already been expended, the LEA's grant shall be reduced the following year by the reduced amount in a manner that shall not disrupt current delivery of instructional services; or

(c) If the reduction affects an application for the fiscal year, the LEA shall be notified of the reduction of the recalculated grant award for the following year.

(11) Follow-up audit. The Kentucky Department of Education shall conduct a follow-up audit at the time the CAP is scheduled for completion. The Kentucky Department of Education shall verify that deficiencies have been corrected. If the follow-up visit verifies that the LEA has completed all CAP activities and no areas of noncompliance are identified, the Kentucky Department of Education shall issue a final report.

KEVIN M. NOLAND, Interim Commissioner

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 12, 2000

FILED WITH LRC: April 12, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 26, 2000 at 10 a.m. in the State Board Room, First Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by May 19, 2000, five 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 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 Mr. Kevin M. Noland, Interim Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza

Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502) 564-9321.

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REGULATORY IMPACT ANALYSIS

Agency Contact: Johnnie Grissom

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or saving to those affected: None
 - (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: Reduces paperwork.
 2. Second and subsequent years: Reduces paperwork.
 - (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: Reduces paperwork
 - (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 and federal funds.
 - (6) To the extent available from 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: Federal law requires state policy on this subject, and KBE can require policy only through regulation.
 - (8) Assessment of 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 occur, explain detrimental effect: None
 - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
 - (a) Necessity of proposed regulation, if in conflict: None
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
 - (10) Any additional information or comments: None
 - (11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

CABINET FOR WORKFORCE DEVELOPMENT (New Administrative Regulation)

780 KAR 3:065. Certified and equivalent service administrative regulations.

RELATES TO: KRS 151B.035

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specifies that the State Board promulgate comprehensive administrative regulations for the certified and equivalent staff governing programs to improve the work effectiveness of employees and to provide for the safety, health and welfare of KRS Chapter 151B employees. This administrative regulation is necessary to comply with this statutory require-

Section 1. Workplace Violence Policy. (1) Workplace violence shall be prohibited and include:

- (a) The attempted, threatened or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or
 - (b) A threatening statement, harassment or behavior that gives a state employee or member of the general public reasonable cause to believe that his health or safety is at risk.
- (2) Examples of prohibited workplace violence shall include:
- (a) Threats of harm;
 - (b) Brandishing or displaying a weapon or an object that resembles a weapon in a manner which would present a safety risk to a state employee or a member of the general public or threatens or intimidates them;
 - (c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;
 - (d) Stalking as defined by KRS 508.130;
 - (e) Striking, slapping or otherwise physically attacking another person; and
 - (f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions which create a risk to the health or safety of a state employee or a member of the general public, or threatens or intimidates a state employee or a member of the general public.
- (3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 2. Kentucky Employee Assistance Program (KEAP). (1) Establishment of Kentucky Employee Assistance Program. Pursuant to 101 KAR 2:160 the Personnel Cabinet has established and administers through the Division of Employee Benefits the Kentucky Employee Assistance Program (KEAP) to coordinate employee assistance programs that exist in state agencies and to supplement them with additional services.

(2) Eligibility for services.

(a) An employee whose job performance is or may be adversely affected by personal problems may initiate a request for confidential personal or family services from the Kentucky Employee Assistance Program.

(b) An employee shall obtain a Kentucky Employee Assistance Program service without discrimination or reprisal.

(c) Participation of the employee in the Kentucky Employee Assistance Program shall not preclude an agency from taking disciplinary or a corrective action as needed in dealing with job behavior or job performance problem.

(3) Referrals.

(a) A supervisor may extend to an employee an offer of assistance through the Kentucky Employee Assistance Program if the employee's job behavior or job performance is unacceptable or deteriorating.

(b) An employee's participation in services offered by the Kentucky Employee Assistance Program shall be voluntary and confidential.

(c) An employee shall be allowed to contact KEAP for assessment or referral on state time with the prior approval of the supervisor.

(d) A supervisor may direct the employee to provide written confirmation of participation from KEAP, which shall provide confirmation upon the employee's written consent.

(e) An employee's participation in counseling or treatment upon referral by the Kentucky Employee Assistance Program shall take place on the employee's own time or while on leave.

(f) Employee involvement in the Kentucky Employee Assistance Program shall remain confidential as permitted by state and federal law, unless the employee authorizes release of specific information to a specifically identified person.

(g) Kentucky Employee Assistance Program services shall be free of charge to an employee and his family for information, assessment or referral. The Commonwealth shall not be liable for a counseling or treatment cost incurred except as provided through health benefits.

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Section 3. Issuance of Paychecks to State Employees. (1) A paycheck shall be issued to a state employee on the 15th and 30th day of each month.

(2) If the regularly scheduled pay date falls on a weekend, a paycheck shall be issued on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state designated holiday, a paycheck shall be issued on the workday preceding the holiday.

Section 4. Workers' Compensation Fund and Program. (1) Workers' Compensation Fund. The self-insured workers' compensation fund and program established by KRS 18A.375(1) shall cover all eligible employees.

(2) Eligibles.

(a) A state employee, as defined by KRS 18A.370, shall be eligible to participate in the program.

(b) Other state-related groups shall be included upon written agreement with the Personnel Cabinet.

(3) Assessments. The assessment for an individual agency shall be based on the claims history for the past three (3) years and on the number of employees in the agency. Premiums shall be assessed at the beginning of each fiscal year.

(a) A biennial actuarial study shall be carried out to insure the fund's fiscal soundness.

(b) A fund deficit shall be recouped through an interim billing or additional assessment if deemed necessary by an actuarial study.

(4) Benefits.

(a) The required medical expense for a service rendered by a hospital or doctor, or for a prescribed medication shall be paid subject to approval of the claim.

(b) A percentage of the employee's average weekly wage shall be paid if the employee is unable to work for an extended period due to a job-related injury or illness.

(c)1. Except as provided in this subsection, compensation shall not be payable for the first seven (7) days of disability.

2. If the disability continues over two (2) weeks, compensation shall be allowed from the first day of disability.

(d) For an absence due to illness or injury for which workers' compensation benefits are received, if the employee elects to accept the workers' compensation benefits, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, workers' compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. An employee shall not receive paid sick leave and workers' compensation pay for the same period of time.

(5) Notification procedures.

(a) Employee requirements. An employee shall inform the supervisor of an injury as soon as physically able to do so.

(b) Supervisor requirements.

1. The supervisor shall:

a. Complete the employer's first report of injury, IA-1, giving specific information about the injury; and

b. Submit the form to the designated office in the agency within three (3) working days after the supervisor is notified of an injury to insure timely payments to the injured employee.

2. A Lost Time and Return to Work Form, WCF-1, shall be submitted by the employee or the employee's representative to the supervisor if an employee is losing time from work due to a work-related injury. The supervisor shall notify his personnel unit when an employee returns so that the WCF-1 form shall be submitted to the Personnel Cabinet.

3. Each medical bill, or medical information regarding treatment of a job-related injury or illness of the employee, shall be submitted in the same manner as an injury report. An injury report shall be forwarded as soon as possible.

4. A safety representative in each agency shall be notified of each accident so that the representative may review accident causes and provide safety training. A supervisor shall promote safety with employees.

(6) Recordkeeping. All records maintained by the Personnel Cabinet and by an agency with respect to an employee claim under this administrative regulation shall be confidentially maintained.

(7) Incorporation by reference.

(a) The following material is incorporated by reference:

1. First Report of Injury Form 14-1, February 1995; and
2. Lost Time and Return to Work Form WCF-1, 1995.

(b) This material may be inspected, copied, or obtained at the Office of Personnel Services, Cabinet for Workforce Development, 500 Mero Street, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALLEN D. ROSE, Secretary

SHERRY R. DEATRICK, General Counsel

APPROVED BY AGENCY: March 28, 2000

FILED WITH LRC: March 29, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 31, 2000 at 1 p.m., prevailing local time in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by May 23, 2000, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Sherry R. Deatrick, General Counsel, Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, telephone: (502) 564-6606, fax number: (502) 564-9990.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatrick, General Counsel

(1) Type and number of entities affected: The proposed 780 KAR 3:065 will affect approximately 800 employees in the Department of Technical Education and 26 employees in the Department for Adult Education and Literacy within the Cabinet for Workforce Development.

(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 impact.

(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 impact. None anticipated.

(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 significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change is anticipated.

(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: Recurring agency base budgets.

(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 alterna-

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tives were rejected: No alternative methods exist.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The regulation does not affect environment or public health. It relates to employees within the Department for Adult Education and Literacy, and the Department for Technical Education.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies in conflict, to our knowledge.

(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 emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent is filed simultaneously with this emergency regulation.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the certified and classified service under KRS Chapter 151B, it does not apply to the unclassified service.

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 what unit, part or division of local government this administrative regulation will affect:

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR WORKFORCE DEVELOPMENT (New Administrative Regulation)

780 KAR 3:071. Repeal of 780 KAR 3:070.

RELATES TO: KRS 151B.035, Chapter 337, 29 USC 201-219

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specifies that the State Board promulgate comprehensive administrative regulations for the certified and equivalent staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leave of absence. The Family and Medical Leave Act of 1993, (PL 103-3) as implemented by 29 CFR Part 825, requires the granting of family and medical leave. 780 KAR 3:070, which governs leave for certified and equivalent staff, is being repealed because of substantial revisions that are being simultaneously promulgated with this administrative regulation. 780 KAR 3:070 shall be replaced by 780 KAR 3:072.

Section 1. 780 KAR 3:070, Attendance, compensatory time, and leave, is hereby repealed.

ALLEN D. ROSE, Secretary

SHERRY R. DEATRICK, General Counsel

APPROVED BY AGENCY: March 28, 2000

FILED WITH LRC: March 29, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 31, 2000 at 1 p.m., prevailing local time in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by May 23, 2000, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Sherry R. Deatrack, General Counsel, Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, telephone: (502) 564-6606, fax number: (502) 564-9990.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatrack, General Counsel

(1) Type and number of entities affected: The proposed repeal of 780 KAR 3070 will affect approximately 800 employees in the Department of Technical Education and 26 employees in the Department for Adult Education and Literacy within the Cabinet for Workforce Development.

(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 impact.

(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 impact. None anticipated.

(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 significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change is anticipated.

(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: Recurring agency base budgets.

(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: No alternative methods exist.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The regulation does not affect environment or public health. It relates to employees within the Department for Adult Education and Literacy, and the Department for Technical Education.

(9) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies in conflict, to our knowledge.

(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 emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent is filed simultaneously with this emergency regulation.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the certified and classified service under KRS Chapter 151B, it does not apply to the unclassified service.

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 what unit, part or division of local government this administrative regulation will affect:

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR WORKFORCE DEVELOPMENT (New Administrative Regulation)

780 KAR 3:072. Attendance, compensatory time, and leave for certified and equivalent service.

RELATES TO: KRS 151B.035, Chapter 337, 29 USC 201-219, 29 CFR Part 825

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specifies that the State Board promulgate comprehensive administrative regulations for the certified and equivalent staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leave of absence. The Family and Medical Leave Act of 1993, 29 USC §§2601 et seq., as implemented by 29 CFR Part 825, requires the granting of family and medical leave. This administrative regulation is necessary to comply with these statutory requirements.

Section 1. Attendance. (1) Full-time employees shall be required to work thirty-seven and one-half (37 1/2) hours per week for all positions unless otherwise specified by the appointing authority.

(2) The normal work day for school-based employees shall coincide with the appropriate school schedule as recommended by the principal and approved by the commissioner.

(3) The appointing authority may require employees to work hours and work days other than normal including, but not limited to, inclement weather schedules if it is in the best interest of the agency.

(4) Employees who work within schools or divisions which require more than one (1) shift or seven (7) days a week operation may be assigned from one (1) shift to another and from one (1) post to another or alternate days to meet staffing requirements, or to maintain or provide essential services of the agency, or to meet scheduling needs of students. Employees shall be given as much advance notice as possible when schedules are changed. The em-

ployee is required to give reasonable notice in advance of absence from a work station.

(5) Employees shall be allowed up to two (2) professional days for the purpose of continuing staff development or participation in professional organization workshops and meetings without loss of pay.

Section 2. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 USC Chapter 8.

(b) An employee who is directed to, or who requests and is authorized to, work in excess of the prescribed hours of duty shall be granted compensatory leave and/or paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours actually worked in excess of the regular work schedule.

(d) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be paid for all hours worked in excess of forty (40) hours per week.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 200 hours.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has a balance of at least 100 hours compensatory leave to use compensatory leave before annual leave, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation, and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and
2. Do not exceed the maximum amount of 200 compensatory hours.

(c) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of the:

1. Regular hourly rate of pay; or
2. Average regular rate of pay for the final three (3) years of employment.

(d) Any school-based employee who has accumulated compensatory leave shall be permitted to take time off during the following times:

1. Spring break.
2. Christmas break except on the four (4) official holidays normally given to state employees.

(e) All certified and equivalent employees shall be permitted to use accumulated compensatory time when practicable and requested in advance and if approved by the respective supervisor.

Section 3. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

| Months of Service | Annual Leave Days |
|-------------------|----------------------|
| 0-59 months | 1 day per month |
| 60-119 months | 1 1/4 days per month |
| 120-179 months | 1 1/2 days per month |
| 180-239 months | 1 3/4 days per month |
| 240 months & over | 2 days per month |

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more hours per month to accrue annual leave.

(c) Annual leave shall be accumulated only in the months in which the employee is hired to work. A teacher employed to teach ten and one-half (10 1/2) months shall only accrue leave during the actual school term, unless he is approved to work and actually works extended employment.

(d) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(e) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(f) An employee, who retired from a position covered by a state-administered retirement system, who is receiving retirement benefits and who returns to state service, shall not receive credit for annual months of service prior to retirement.

(g) A former employee who is appointed, reinstated, or re-employed, other than a former employee receiving benefits under a state-administered retirement system, shall receive credit for prior annual months of service.

(h) An employee dismissed for cause who has been reinstated to state service shall receive credit for annual months of service prior to dismissal, except where the dismissal resulted from the violation of KRS 151B.090.

(i) Part-time, temporary, and seasonal employees shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or of one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) School based-employees shall take time off during the following times:

1. Spring break.

2. Christmas break except on the four (4) official holidays normally given to state employees.

(e) In cases of special or emergency circumstances, the supervisor may request an employee to work during the above times without loss of annual leave.

(f) Absence due to sickness, injury, or disability in excess of the amount available for those purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.

(h) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

| Months of Service | Maximum Amount |
|---------------------|----------------------------|
| 0-59 months | Thirty (30) workdays |
| 60-119 months | Thirty-seven (37) workdays |
| 120-179 months | Forty-five (45) workdays |
| 180-239 months | Fifty-two (52) workdays |
| 240 months and over | Sixty (60) workdays |

(i) Leave in excess of the maximum amounts specified in paragraph (h) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(j) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(e) of this section.

(3) Annual leave on separation.

(a) An employee who is separated by proper resignation or retirement, shall be paid in a lump sum for accumulated annual leave not to exceed the amounts established by subsection (2)(h) of this section. Following payment of annual leave at resignation, leave

remaining after the payment of the maximum provided shall be removed from the balance.

(b) An employee who is laid off shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who resigns or terminates one (1) workday and returns to certified and equivalent service the next workday, shall retain accumulated annual leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, the estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. The employee resigns, or is laid off because of an approved plan of privatization of the services he performed; and

2. The successor employer has agreed to credit the employee with an equal amount of annual leave.

(g) Eligibility for state-paid health and life insurance benefits.

1. A twelve (12) month employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month.

2. A ten and one-half (10 1/2) month employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or family medical leave, other than educational leave, during any part of the previous month, except between the dates of June 16 and July 31.

3. A ten and one-half (10 1/2) month employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall be entitled to state-paid health and life insurance benefits between June 16 and July 31.

4. If an employee is unable to work and uses paid leave to qualify for the state-paid health and life insurance benefits, the employee shall use paid leave days consecutively.

Section 4. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service. An employee with 240 or more months of service at the time of implementation of this section shall have the additional ten (10) days credited to the sick leave balance.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) An employee, who retired from a position covered by a state-administered retirement system, who is receiving retirement benefits and who returns to state service, shall not receive credit for sick months of service prior to retirement.

(i) A former employee who is appointed, reinstated, or re-employed, other than a former employee receiving benefits under a

state-administered retirement system, shall receive credit for the unused sick leave balance credited upon the separation and shall receive credit for prior sick months of service.

(j) An employee dismissed for cause who has been rehired to state service shall receive credit for sick months of service prior to the dismissal, except where the dismissal resulted from a violation of KRS 151B.090.

(k) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of accrued sick leave with pay if an employee:

1. Is unable to work due to medical, dental or optical examination or treatment;

2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested;

3. Is required to care for or transport a member of the immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member;

4. Would jeopardize the health of himself or others at the work station because of a contagious disease or demonstration of behavior that might endanger the employee or others;

5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this subparagraph shall be limited to three (3) days; or

6. Requires leave for the birth, placement or adoption of a child.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.

(d) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(e) An employee shall be credited for accumulated sick leave if separated by proper resignation, layoff or retirement.

(3) Eligibility for state-paid health and life insurance benefits.

(a) A twelve (12) month employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month.

(b) A ten and one-half (10 1/2) month employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month, except between the dates of June 16 and July 31.

(c) A ten and one-half (10 1/2) month employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall be entitled to state-paid health and life insurance benefits between June 16 and July 31.

(d) If an employee is unable to work and uses paid leave to qualify for the state-paid health and life insurance benefits, the employee shall use paid leave days consecutively.

(4) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and

2. The employee has used or been paid for all accumulated annual, compensatory and sick leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.

(c) The appointing authority may require a periodic doctor's statement during the year attesting to the employee's continued inability to perform essential functions of his duties with or without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to

an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay;

2. 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;

3. Is unable to return to his former position;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under paragraph (g) of this subsection shall retain reinstatement privileges.

(5) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(6) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, an employee shall notify the immediate supervisor or the designee. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 5. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 20 USC 2601, et seq., and the federal regulations implementing the Act, 29 CFR Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family and medical leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar-year basis.

(4) If both parents are employed by the state, each parent shall be entitled to twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of a child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:

(a) The employee's leave balance has been exhausted; or

(b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 6. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, or administrative agency or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at the proceeding that is part of his assigned duties.

Section 7. Military Leave. (1) Upon request, 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 the civil duties, to serve under order on training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of the duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 8. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. An employee who is permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis for the hours worked on election day or on the day the employee voted by absentee ballot.

Section 9. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relate

to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) The appointing authority may place an employee on special leave with pay for investigative purposes for a period of time not to exceed sixty (60) working days pending an investigation into allegations of employee misconduct.

(a) 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.

(b) If the investigation reveals no misconduct on behalf of the employee, all records relating to the investigation shall be purged from the Department for Technical Education and the Department for Adult Education and Literacy files.

(c) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken, including those cases where the employee voluntarily resigns in the interim.

(4) Eligibility for state-paid health and life insurance benefits.

(a) A twelve (12) month employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month.

(b) A ten and one-half (10 1/2) month employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month, except between the dates of June 16 and July 31.

(c) A ten and one half (10 1/2) month employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall be entitled to state-paid health and life insurance benefits between June 16 and July 31.

(d) If an employee is unable to work and uses paid leave to qualify for the state-paid health and life insurance benefits, the employee shall use paid leave days consecutively.

Section 10. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provision of the Fair Labor Standards Act; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned the employment.

Section 11. Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations, and chooses not to report to work or to leave early in the event of adverse weather conditions, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory or sick leave shall charge leave as originally requested.

(3) Where operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Makeup work shall occur in the workweek in which the time is lost or in a week when the employee has not worked a full work schedule due to holiday, annual leave or sick leave.

(b) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual leave is available.

(c) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a hurricane, tornado, flood or blizzard, and it becomes necessary for authorities to order evacuation or shut down the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 2 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 12. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor require the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

ALLEN D. ROSE, Secretary

SHERRY R. DEATRICK, General Counsel

APPROVED BY AGENCY: March 28, 2000

FILED WITH LRC: March 29, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 31, 2000 at 1 p.m., prevailing local time in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by May 23, 2000, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Sherry R. Deatrick, General Counsel, Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, Phone: (502) 564-6606, FAX: (502) 564-9990.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatrick, General Counsel

(1) Type and number of entities affected: The proposed 780 KAR 3:072 will affect approximately 800 employees in the Department of Technical Education and 26 employees in the Department for Adult Education and Literacy within the Cabinet for Workforce Development.

(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 impact.

(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 impact. None anticipated.

(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 significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct costs are anticipated. The addition of 10 sick days at 20 years of service and increase in the annual leave awarded based on seniority will have an indirect fiscal impact. Some indirect savings may be realized from requiring an employee with 100 hours of compensatory leave to use that time before using annual leave because payment for excess compensatory leave would be reduced.

2. Continuing costs or savings: Same as in (3)(a)1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change is anticipated.

(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: Recurring agency base budgets.

(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: Most of the amendments to this administrative regulation are technical in nature and are offered to comply with changes in statutory language. The substantive amendments permit the appointing authority to require an employee with 100 hours of compensatory leave to use that time before using annual leave. They also provide for additional sick and annual leave based on longevity.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The regulation does not affect environment or public health. It relates to employees within the Department for Adult Education and Literacy, and the Department for Technical Education.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies in conflict, to our knowledge.

(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 emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent is filed simultaneously with this emergency regulation.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the certified and classified service under KRS Chapter 151B, it does not apply to the unclassified service.

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 what unit, part or division of local government this administrative regulation will affect:

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR WORKFORCE DEVELOPMENT
(New Administrative Regulation)**

780 KAR 3:075. Sick leave sharing procedures for certified and equivalent service.

RELATES TO: KRS 151B.035, Chapter 337, 29 USC 201-219

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specifies that the State Board promulgate comprehensive administrative regulations for the certified and equivalent staff governing sick leave. This administrative regulation is necessary to comply with this statutory requirement.

Section 1. Definitions. (1) "Employee" is defined by KRS 151B.010(10).

(2) "Immediate family" means:

(a) The employee's spouse, mother, father, grandparent, son or daughter; or

(b) A person of similarly close relationship:

1. Who has resided with the employee for at least thirty (30) days prior to application; or

2. For whom the employee is legally responsible.

(3) "Medically certified illness, injury, impairment or physical or mental condition" means a disabling medical condition which has rendered or will render the employee completely incapable of performing the essential duties of his job due to:

(a) The employee's personal illness; or

(b) The medically certified necessity that the employee care for an eligible family member.

Section 2. Eligibility to Donate or Receive Sick Leave. (1) An employee shall not qualify to donate or receive sick leave under the sick leave sharing program if the employee:

(a) Is not full-time;

(b) Is not in active payroll status; or

(c) Has:

1. Resigned;

2. Retired; or

3. Been placed in unpaid leave status by a personnel action.

(2) To request donated sick leave, an employee shall complete an Application for Sick Leave Sharing.

(3) To donate sick leave, an employee shall complete a Sick Leave Donation Form.

Section 3. Procedures and Restrictions. (1) The ten (10) consecutive days of leave required for eligibility shall be leave with or without pay.

(2) Sick leave sharing shall not be authorized for mere convenience or employee preference.

(3) Sick leave shall not be donated in an amount less than seven and one-half (7.5) hours.

(4) If multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(5) The applicant for sick leave sharing shall be responsible for filing:

(a) The appropriate medical certificates certifying the medical necessity; and

(b) The Application for Sick Leave Sharing.

(6) Donated sick leave shall not be utilized retroactively except to cover the period between the date the request was submitted to the employee's supervisor or agency representative and the date of approval by the appointing authority.

(7) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(8) Except as provided by subsection (9) of this section, donated sick leave shall be used:

(a) In the order in which it is donated; and

(b) On consecutive days.

(9) Leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(10) When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors in reverse order of donation, unless the recipient provides medical evidence that continued, periodic medical treatment relating to the original condition for which leave was donated is required.

(11) If a sick leave donor resigns, retires or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, the leave shall not be available for use by the recipient.

(12) An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

(13) An employee receiving workers' compensation benefits shall be eligible to receive shared sick leave to maintain a regular level of pay.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Application for Sick Leave Sharing, September 1999; and

(b) Sick Leave Donation, September 1999.

(2) This material may be inspected, copied, or obtained at the Office of Personnel Services, Cabinet for Workforce Development, 500 Mero Street, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALLEN D. ROSE, Secretary

SHERRY R. DEATRICK, General Counsel

APPROVED BY AGENCY: March 28, 2000

FILED WITH LRC: March 29, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 31, 2000 at 1 p.m., prevailing local time in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by May 23, 2000, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Sherry R. Deatricks, General Counsel, Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, telephone: (502) 564-6606, fax number: (502) 564-9990.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatricks, General Counsel

(1) Type and number of entities affected: The proposed 780 KAR 3:075 will affect approximately 490 employees in the Department of Technical Education and 26 employees in the Department for Adult Education and Literacy within the Cabinet for Workforce Development.

(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 impact.

(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 impact. None anticipated.

(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 significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change is anticipated.

(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: Recurring agency base budgets.

(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: No alternative methods were 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: No impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The regulation does not affect environment or public health. It relates to employees within the Department for Adult Education and Literacy, and the Department for Technical Education.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies in conflict, to our knowledge.

(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 emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent is filed simultaneously with this emergency regulation.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the certified and classified service under KRS Chapter 151B, it does not apply to the unclassified service.

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 what unit, part or division of local government this administrative regulation will affect:

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR WORKFORCE DEVELOPMENT (New Administrative Regulation)

780 KAR 6:005. Unclassified service administrative regulation.

RELATES TO: KRS 151B.035

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specifies that the State Board promulgate comprehensive administrative regulations for the unclassified staff governing programs to improve the work effectiveness of employees and to provide for the safety, health and welfare of KRS Chapter 151B employees. This administrative regulation is necessary to comply with this statutory requirement.

Section 1. Workplace Violence Policy. (1) Workplace violence shall be prohibited and include:

(a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) A threatening statement, harassment or behavior that gives a state employee or member of the general public reasonable cause to believe that his health or safety is at risk.

(2) Examples of prohibited workplace violence shall include:

(a) Threats of harm;

(b) Brandishing or displaying a weapon or an object that resembles a weapon in a manner which would present a safety risk to a state employee or a member of the general public or threatens or intimidates them;

(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;

(d) Stalking as defined by KRS 508.130;

(e) Striking, slapping or otherwise physically attacking another person; and

(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions which create a risk to the health or safety of a state employee or a member of the general public, or threatens or intimidates a state employee or a member of the general public.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 2. Kentucky Employee Assistance Program (KEAP). (1) Establishment of Kentucky Employee Assistance Program. Pursuant to 101 KAR 2:160 the Personnel Cabinet has established and administers through the Division of Employee Benefits the Kentucky Employee Assistance Program (KEAP) to coordinate employee assistance programs that exist in state agencies and to supplement them with additional services.

(2) Eligibility for services.

(a) An employee whose job performance is or may be adversely affected by personal problems may initiate a request for confidential personal or family services from the Kentucky Employee Assistance Program.

(b) An employee shall obtain a Kentucky Employee Assistance Program service without discrimination or reprisal.

(c) Participation of the employee in the Kentucky Employee Assistance Program shall not preclude an agency from taking disciplinary or a corrective action as needed in dealing with job behavior or job performance problem.

(3) Referrals.

(a) A supervisor may extend to an employee an offer of assistance through the Kentucky Employee Assistance Program if the employee's job behavior or job performance is unacceptable or deteriorating.

(b) An employee's participation in services offered by the Ken-

tucky Employee Assistance Program shall be voluntary and confidential.

(c) An employee shall be allowed to contact KEAP for assessment or referral on state time with the prior approval of the supervisor.

(d) A supervisor may direct the employee to provide written confirmation of participation from KEAP, which shall provide confirmation upon the employee's written consent.

(e) An employee's participation in counseling or treatment upon referral by the Kentucky Employee Assistance Program shall take place on the employee's own time or while on leave.

(f) Employee involvement in the Kentucky Employee Assistance Program shall remain confidential as permitted by state and federal law, unless the employee authorizes release of specific information to a specifically identified person.

(g) Kentucky Employee Assistance Program services shall be free of charge to an employee and his family for information, assessment or referral. The Commonwealth shall not be liable for a counseling or treatment cost incurred except as provided through health benefits.

Section 3. Issuance of Paychecks to State Employees. (1) A paycheck shall be issued to a state employee on the 15th and 30th day of each month.

(2) If the regularly scheduled pay date falls on a weekend, a paycheck shall be issued on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state designated holiday, a paycheck shall be issued on the workday preceding the holiday.

Section 4. Workers' Compensation Fund and Program. (1) Workers' Compensation Fund. The self-insured workers' compensation fund and program established by KRS 18A.375(1) shall cover all eligible employees.

(2) Eligibles.

(a) A state employee, as defined by KRS 18A.370, shall be eligible to participate in the program.

(b) Other state-related groups shall be included upon written agreement with the Personnel Cabinet.

(3) Assessments. The assessment for an individual agency shall be based on the claims history for the past three (3) years and on the number of employees in the agency. Premiums shall be assessed at the beginning of each fiscal year.

(a) A biennial actuarial study shall be carried out to insure the fund's fiscal soundness.

(b) A fund deficit shall be recouped through an interim billing or additional assessment if deemed necessary by an actuarial study.

(4) Benefits.

(a) The required medical expense for a service rendered by a hospital or doctor, or for a prescribed medication shall be paid subject to approval of the claim.

(b) A percentage of the employee's average weekly wage shall be paid if he is unable to work for an extended period due to a job-related injury or illness.

(c) 1. Except as provided in this subsection, compensation shall not be payable for the first seven (7) days of disability.

2. If the disability continues over two (2) weeks, compensation shall be allowed from the first day of disability.

(d) For an absence due to illness or injury for which workers' compensation benefits are received, if the employee elects to accept the workers' compensation benefits, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, workers' compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. An employee shall not receive paid sick leave and workers' compensation pay for the same period of time.

(5) Notification procedures.

(a) Employee requirements. An employee shall inform the supervisor of an injury as soon as physically able to do so.

(b) Supervisor requirements.

1. The supervisor shall:

a. Complete the employer's first report of injury, IA-1, giving specific information about the injury; and

b. Submit the form to the designated office in the agency within three (3) working days after the supervisor is notified of an injury to insure timely payments to the injured employee.

2. A Lost Time and Return to Work Form, WCF-1, shall be submitted by the employee or the employee's representative to the supervisor if an employee is losing time from work due to a work-related injury. The supervisor shall notify his personnel unit when an employee returns so that the WCF-1 form shall be submitted to the Personnel Cabinet.

3. Each medical bill, or medical information regarding treatment of a job-related injury or illness of the employee, shall be submitted in the same manner as an injury report. An injury report shall be forwarded as soon as possible.

4. A safety representative in each agency shall be notified of each accident so that the representative may review accident causes and provide safety training. A supervisor shall promote safety with employees.

(6) Recordkeeping. All records maintained by the Personnel Cabinet and by an agency with respect to an employee claim under this administrative regulation shall be confidentially maintained.

(7) Incorporation by reference.

(a) The following material is incorporated by reference:

1. First Report of Injury Form 14-1, February 1995; and

2. Lost Time and Return to Work Form WCF-1, 1995.

(b) This material may be inspected, copied, or obtained at the Office of Personnel Services, Cabinet for Workforce Development, 500 Mero Street, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALLEN D. ROSE, Secretary

SHERRY R. DEATRICK, General Counsel

APPROVED BY AGENCY: March 28, 2000

FILED WITH LRC: March 29, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 31, 2000 at 1 p.m., prevailing local time in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by May 23, 2000, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Sherry R. Deatrick, General Counsel, Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, telephone: (502) 564-6606, fax number: (502) 564-9990.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatrick, General Counsel

(1) Type and number of entities affected: The proposed 780 KAR 6:005 will affect approximately 20 employees in the Department for Technical Education and the Department for Adult Education and Literacy within the Cabinet for Workforce Development.

(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 impact.

(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 impact. None anticipated.

(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 significant change is anticipated.

2. Second and subsequent years: No significant change is an-

anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change is anticipated.

(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: Recurring agency base budgets.

(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: No alternative methods are available.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The regulation does not affect environment or public health. It relates to employees within the Department for Adult Education and Literacy, and the Department for Technical Education.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies in conflict, to our knowledge.

(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 emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent is filed simultaneously with this emergency regulation.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the unclassified service under KRS Chapter 151B, it does not apply to the certified and classified service.

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 what unit, part or division of local government this administrative regulation will affect:

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR WORKFORCE DEVELOPMENT (New Administrative Regulation)

780 KAR 6:061. Repeal of 780 KAR 6:060.

RELATES TO: KRS 151B.035, 151B.040, 151B.085, 29 USC 2601 to 2654, Part 825

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY, FUNCTION, AND CONFORMITY KRS 151B.035(3) requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations for the unclassified service staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leave of absence. The Family and Medical Leave Act of 1993, 29 USC 2601 to 2654, as implemented by 29 CFR Part 825, requires the granting of family and medical leave. 780 KAR 6:060, which governs leave for unclassified service staff, is being repealed because of substantial revisions that are being simultaneously promulgated with this administrative regulation. 780 KAR 6:060 shall be replaced by 780 KAR 6:062.

Section 1. 780 KAR 6:060, Attendance, compensatory time, and leave, is hereby repealed.

ALLEN D. ROSE, Secretary

SHERRY R. DEATRICK, General Counsel

APPROVED BY AGENCY: March 28, 2000

FILED WITH LRC: March 29, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 31, 2000 at 1 p.m., prevailing local time in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by May 23, 2000, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Sherry R. Deatruck, General Counsel, Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, telephone: (502) 564-6606, fax number: (502) 564-9990.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatruck, General Counsel

(1) Type and Number of Entities Affected: The proposed 780 KAR 6:061 will affect approximately 20 employees in the Department for Technical Education and the Department for Adult Education and Literacy within the Cabinet for Workforce Development.

(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 impact.

(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 impact. None anticipated.

(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 significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change is anticipated.

(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: Recurring agency base budgets.

(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: No alternative methods exist.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The regulation does not affect environment or public health. It relates to employees within the Department for Adult Education and Literacy, and the Department for Technical Education.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies in conflict, to our knowledge.

(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 emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent is filed simultaneously with this emergency regulation.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the unclassified service under KRS Chapter 151B, it does not apply to the certified and classified service.

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 what unit, part or division of local government this administrative regulation will affect:

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR WORKFORCE DEVELOPMENT (New Administrative Regulation)

780 KAR 6:062. Attendance, compensatory time and leave for unclassified service.

RELATES TO: KRS 151B.035, 151B.040, 151B.085, 29 CFR Part 825, 29 USC 201 et seq., 2601 to 2654

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035(3) requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations for the unclassified service staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leave of absence. The Family and Medical Leave Act of 1993, 29 USC 2601 to 2654, as implemented by 29 CFR Part 825, requires the granting of Family and Medical Leave. This administrative regulation establishes the attendance, compensatory time and leave requirements for unclassified service staff.

Section 1. Attendance. (1) Full-time employees shall be required

to work thirty-seven and one-half (37 1/2) hours per week unless otherwise specified by the appointing authority.

(2) The appointing authority may require employees to work hours and work days other than normal if it is in the best interest of the agency. An employee shall be given as much advance notice as possible if a schedule is changed. The employee shall be required to give reasonable notice in advance of absence from a work station.

(3) Employees shall be allowed up to two (2) professional days for the purpose of continuing staff development or participation in professional organization workshops and meetings without loss of pay.

Section 2. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 USC Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and/or paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours actually worked in excess of his regular work schedule.

(d) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be paid for all hours worked in excess of forty (40) hours per week.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 200 hours.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An unclassified employee may use accumulated compensatory time if:

1. Practicable;

2. Requested in advance; and

3. Approved by the respective supervisor.

(b) An appointing authority may require an employee who has a balance of at least 100 hours compensatory leave to use compensatory leave before annual leave, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation, and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(c) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, he shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of 200 compensatory hours.

(d) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of the:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 3. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

| Months of Service | Annual Leave Days |
|-------------------|---|
| 0-59 months | 1 leave day per month; 12 per year |
| 60-119 months | 1 1/4 leave days per month; 15 per year |
| 120-179 months | 1 1/2 leave days per month; 18 per year |
| 180-239 months | 1 3/4 leave days per month; 21 per year |
| 240 months & over | 2 leave days per month; 24 per year |

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 hours or more

per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired, except as provided in paragraph (f) of this subsection, and who was dismissed for cause from state service shall receive credit for service prior to the dismissal, except if the dismissal resulted from a violation of KRS 151B.090.

(f) An employee, who has retired from a position covered by a state retirement system, who is receiving retirement benefits, and who returns to state service, shall not receive credit for annual months of service prior to retirement.

(g) Part-time, temporary and seasonal employees shall not be entitled to accrue annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or of one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(e) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated annual leave in the receiving agency.

(f) Annual leave may be carried forward from one (1) calendar year to the next as provided in this paragraph:

| Months of Service | Maximum Amount |
|-------------------|----------------------------|
| 0-59 months | Thirty (30) workdays |
| 60-119 months | Thirty-seven (37) workdays |
| 120-179 months | Forty-five (45) workdays |
| 180-239 months | Fifty-two (52) workdays |
| 240 months & over | Sixty (60) workdays |

(g) Leave in excess of the maximum amounts specified in paragraph (f) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(h) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a) An employee who is separated by proper resignation or retirement shall be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts established by subsection (2)(f) of this section. Following payment of annual leave at resignation, leave remaining after the payment of the maximum provided shall be removed from the balance.

(b) An employee who is laid off shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who resigns or terminates one (1) workday and returns to certified and equivalent service the next workday, shall retain accumulated annual leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, the estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of the accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. The employee resigns, or is laid off because of an approved plan of privatization of the services performed; and

2. The successor employer has agreed to credit the employee with an equal amount of annual leave.

(g) Eligibility for state-paid health and life insurance benefits.

1. An employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month.

2. If an employee is unable to work and uses paid leave to qualify for the state-paid health and life insurance benefits, the employee shall use paid leave days consecutively.

Section 4. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service. An employee with 240 months of service at the time of implementation of this section shall have the additional ten (10) days credited to the sick leave balance.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) An employee, who retired from a position covered by a state-administered retirement system, who is receiving retirement benefits and who returns to state service, shall not receive credit for sick months of service prior to retirement.

(i) A former employee who is appointed or reemployed, other than a former employee receiving benefits under a state-administered retirement system, shall receive credit for the unused sick leave balance credited upon the separation and shall receive credit for prior sick months of service.

(j) An employee dismissed for cause who has been rehired to state service shall receive credit for sick months of service prior to the dismissal, except where the dismissal resulted from a violation of KRS 151B.090.

(k) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of accrued sick leave with pay if an employee:

1. Is unable to work due to medical, dental or optical examination or treatment;

2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested.

3. Is required to care for or transport a member of the immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member;

4. Would jeopardize the health of the employee or others at the work station because of a contagious disease or behavior that might endanger the employee or others;

5. Has lost by death a spouse, parent, grandparent, child,

brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this paragraph shall be limited to three (3) days; or

6. Requires leave for the birth, placement or adoption of a child.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.

(d) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(e) An employee shall be credited for accumulated sick leave if separated by proper resignation, layoff or retirement.

(3) Eligibility for state-paid health and life insurance benefits.

(a) An employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month.

(b) If an employee is unable to work and uses paid leave to qualify for the state-paid health and life insurance benefits, the employee shall use paid leave days consecutively.

(4) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay to an employee for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and

2. The employee has used or been paid for all accumulated annual, compensatory and sick leave, unless the employee has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.

(c) The appointing authority may require a periodic doctor's statement during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to an employee, who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay;

2. 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;

3. Is unable to return to his former position;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he is qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who has resigned under paragraph (g) of this subsection shall retain reinstatement privileges.

(5) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary,

workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(6) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, an employee shall notify the immediate supervisor or the designee. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 5. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 20 USC 2601, et seq., and the federal regulation implementing the Act, 29 CFR Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family and medical leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) If both parents are employed by the state, each parent shall be entitled to twelve (12) weeks of unpaid family and medical leave for the birth, placement or adoption of a child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:

(a) The employee's leave balance has been exhausted; or

(b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 6. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, or administrative agency or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 7. Military Leave. (1) Upon request, 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 the civil duties, to serve under order on training duty without loss of regular compensation for a period not to exceed the number of working days

specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 8. Voting and Election Leave. (1) An employee who is eligible and who is registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. An employee who is permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis for the hours worked on election day or on the day the employee voted by absentee ballot.

Section 9. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months or the conclusion of the administration in which the employee is serving, whichever comes first.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relate to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) The appointing authority may place an employee on special leave with pay for investigative purposes for a period of time not to exceed sixty (60) working days pending an investigation of an allegation of employee misconduct.

(a) The employee shall be notified in writing by the appointing authority that the employee is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(b) If this investigation reveals no misconduct on behalf of the employee, all records relating to the investigation shall be purged from the Department for Adult Education and Literacy and the Department for Technical Education files.

(c) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken, including those cases where the employee voluntarily resigns in the interim.

(4) Eligibility for state-paid health and life insurance benefits.

(a) An employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month.

(b) If an employee is unable to work and uses paid leave to qualify for the state-paid health and life insurance benefits, the employee shall use paid leave days consecutively.

Section 10. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provision of the Fair Labor Standards Act; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned his employment.

Section 11. Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations, and chooses not to report to work or to leave early in the event of adverse weather conditions, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave have been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory or sick leave shall charge leave as originally requested.

(3) Where operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Makeup work shall occur in the workweek in which the time is lost or in a week when the employee has not worked a full work schedule due to holiday, annual leave or sick leave.

(b) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual leave is available.

(c) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a hurricane, tornado, flood or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 2 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 12. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor requires the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

ALLEN D. ROSE, Secretary

SHERRY R. DEATRICK, General Counsel

APPROVED BY AGENCY: March 28, 2000

FILED WITH LRC: March 29, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 31, 2000 at 1 p.m., prevailing local time in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in

writing by May 23, 2000, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Sherry R. Deatrick, General Counsel, Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, telephone: (502) 564-6606, fax number: (502) 564-9990.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatrick, General Counsel

- (1) Type and Number of Entities Affected: The proposed 780 KAR 6:062 will affect approximately 20 employees in the Department for Technical Education and the Department for Adult Education and Literacy within the Cabinet for Workforce Development.
- (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 impact.
 - (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 impact. None anticipated.
 - (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 significant change is anticipated.
 2. Second and subsequent years: No significant change is anticipated.
- (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: The addition of 10 sick days at 20 years of service and increase in the annual leave awarded based on seniority will have an indirect fiscal impact. Some indirect savings may be realized from requiring an employee with 100 hours of compensatory leave to use that time before using annual leave because payment for excess compensatory leave would be reduced.
 2. Continuing costs or savings: Same as in (3)(a)1.
 3. Additional factors increasing or decreasing costs: None
 - (b) Reporting and paperwork requirements: No change is anticipated.
- (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: Recurring agency base budgets.
- (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: Most of the amendments to this administrative regulation are technical in nature and are offered to comply with changes in statutory language. The substantive amendments permit the appointing authority to require an employee with 100 hours of compensatory leave to use that time before using annual leave. They also provide for additional sick and annual leave based on longevity.
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact.
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: The regulation does not af-

fect environment or public health. It relates to employees within the Department for Adult Education and Literacy, and the Department for Technical Education.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies in conflict, to our knowledge.

(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 emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent is filed simultaneously with this emergency regulation.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the unclassified service under KRS Chapter 151B, it does not apply to the certified and classified service.

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 what unit, part or division of local government this administrative regulation will affect:
3. State the aspect or service of local government to which this administrative regulation relates.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR WORKFORCE DEVELOPMENT (New Administrative Regulation)

780 KAR 6:065. Sick leave sharing procedures for unclassified service.

RELATES TO: KRS 151B.035, Chapter 337, 29 USC 201-219
STATUTORY AUTHORITY: KRS 151B.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specifies that the State Board promulgate comprehensive administrative regulations for the unclassified service staff governing sick leave. This administrative regulation is necessary to comply with this statutory requirement.

Section 1. Definitions. (1) "Employee" is defined by KRS 151B.010(10).

(2) "Immediate family" means:

- (a) The employee's spouse, mother, father, grandparent, son or daughter; or
- (b) A person of similarly close relationship:
 1. Who has resided with the employee for at least thirty (30) days prior to application; or
 2. For whom the employee is legally responsible.
- (3) "Medically certified illness, injury, impairment or physical or mental condition" means a disabling medical condition which has rendered or will render the employee completely incapable of performing the essential duties of his job due to:
 - (a) The employee's personal illness; or
 - (b) The medically certified necessity that the employee care for an eligible family member.

Section 2. Eligibility to Donate or Receive Sick Leave. (1) An employee shall not qualify to donate or receive sick leave under the

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sick leave sharing program if the employee:

- (a) Is not full-time;
- (b) Is not in active payroll status; or
- (c) Has:

- 1. Resigned;
- 2. Retired; or
- 3. Been placed in unpaid leave status by a personnel action.

(2) To request donated sick leave, an employee shall complete an Application for Sick Leave Sharing.

(3) To donate sick leave, an employee shall complete a Sick Leave Donation Form.

Section 3. Procedures and Restrictions. (1) The ten (10) consecutive days of leave required for eligibility shall be leave with or without pay.

(2) Sick leave sharing shall not be authorized for mere convenience or employee preference.

(3) Sick leave shall not be donated in an amount less than seven and one-half (7.5) hours.

(4) If multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(5) The applicant for sick leave sharing shall be responsible for filing:

(a) The appropriate medical certificates certifying the medical necessity; and

(b) The Application for Sick Leave Sharing.

(6) Donated sick leave shall not be utilized retroactively except to cover the period between the date the request was submitted to the employee's supervisor or agency representative and the date of approval by the appointing authority.

(7) The sick leave sharing shall be responsible for monitoring the amount of sick leave donated and used.

(8) Except as provided by subsection (9) of this section, donated sick leave shall be used:

(a) In the order in which it is donated; and

(b) On consecutive days.

(9) Leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(10) When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors in reverse order of donation, unless the recipient provides medical evidence that continued, periodic medical treatment relating to the original condition for which leave was donated is required.

(11) If a sick leave donor resigns, retires or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, the leave shall not be available for use by the recipient.

(12) An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

(13) An employee receiving workers' compensation benefits shall be eligible to receive shared sick leave to maintain a regular level of pay.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Application for Sick Leave Sharing, September 1999; and

(b) Sick Leave Donation, September 1999.

(2) This material may be inspected, copied, or obtained at the Office of Personnel Services, Cabinet for Workforce Development, Capital Plaza Tower, Second Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALLEN D. ROSE, Secretary

SHERRY R. DEATRICK, General Counsel

APPROVED BY AGENCY: March 28, 2000

FILED WITH LRC: March 29, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 31, 2000 at 1 p.m., prevailing local time in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601. Individuals

interested in being heard at this hearing shall notify the agency in writing by May 23, 2000, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Sherry R. Deatrack, General Counsel, Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, telephone: (502) 564-6606, fax number: (502) 564-9990.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatrack, General Counsel

(1) Type and number of entities affected: The proposed 780 KAR 6:065 will affect approximately 20 employees in the Department for Technical Education and the Department for Adult Education and Literacy within the Cabinet for Workforce Development.

(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 impact.

(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 impact. None anticipated.

(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 significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change is anticipated.

(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: Recurring agency base budgets.

(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: No alternative methods were 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: No impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The regulation does not affect environment or public health. It relates to employees within the Department for Adult Education and Literacy, and the Department for Technical Education.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies in conflict, to our knowledge.

(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 emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent is filed simultaneously with this emergency regulation.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the unclassified service under KRS Chapter 151B, it does not apply to the certified and classified service.

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 what unit, part or division of local government this administrative regulation will affect:

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance (New Administrative Regulation)

806 KAR 6:075. Valuation of life insurance policies.

RELATES TO: KRS 304.2-290, 304.6-130 through 304.6-180, 304.15-410

STATUTORY AUTHORITY: KRS 304.2-110, 304.6-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.6-130 requires the commissioner to annually value the reserve liabilities for all outstanding life insurance policies and annuity and pure endowment contracts, as shown in the National Association of Insurance Commissioners Life and Accident and Health Annual Statement Form whether or not itemized in Exhibit 8 of that statement. This administrative regulation introduces the use of new select mortality factors, mortality tables, and minimum reserving requirements for life insurance policies with nonlevel premiums and benefits or secondary guarantees. The new select mortality factors, mortality tables, and minimum reserving requirements are necessary to ensure that insurers maintain adequate reserves for nonlevel premium and benefit policies and policies with secondary guarantees.

Section 1. Definitions. (1) "Basic reserves" means reserves calculated in accordance with KRS 304.6-150.

(2) "Contract segmentation method" means the method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment to the end of the latest policy year as determined below. All calculations shall be made using the 1980 CSO valuation tables, or any other valuation mortality table adopted by the National Association of Insurance Commissioners after the effective date of this administrative regulation and promulgated by administrative regulation by the commissioner for this purpose, and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in Section 4(2) of this administrative regulation. The length of a particular contract segment shall be set equal to the minimum of the value "t" for which G_t is greater than R_t . If G_t never exceeds R_t , the segment length is deemed to be the number of years from the beginning of the segment to the mandatory expiration date of the policy. G_t and R_t are defined as follows:

$$G_t = \frac{GP_{x+k+t}}{GP_{x+k+t-1}}$$

where:

x = original issue age;

k = the number of years from the date of issue to the beginning of the segment;

t = 1, 2, ...; t is reset to 1 at the beginning of each segment;

$GP_{x+k+t-1}$ = Guaranteed gross premium per thousand of face amount for year "t" of the segment, ignoring policy fees only if level for the premium paying period of the policy.

$$R_t = \frac{q_{x+k+t}}{q_{x+k+t-1}}$$

However, R_t may be increased or decreased by one (1) percent in any policy year, at the company's option, but R_t shall not be less than one (1);

where:

x, k and t are as defined above; and

q_{x+k+t} = valuation mortality rate for deficiency reserves in policy year k+t but using the mortality of Section 4(2)(b) of this administrative regulation if Section 4(2)(c) of this administrative regulation is elected for deficiency reserves.

However, if GP_{x+k+t} is greater than 0 and $GP_{x+k+t-1}$ is equal to 0, G_t shall be deemed to be 1000. If GP_{x+k+t} and $GP_{x+k+t-1}$ are both equal to 0, G_t shall be deemed to be 0.

(3) "Deficiency reserves" means the excess, if greater than zero, of:

(a) Minimum reserves calculated in accordance with KRS 304.6-180 over;

(b) Basic reserves.

(4) "Guaranteed gross premiums" means the premiums under a policy of life insurance that are guaranteed and determined at issue.

(5) "Maximum valuation interest rates" means the interest rates defined in KRS 304.6-145 that are to be used in determining the minimum standard for the valuation of life insurance policies.

(6) "1980 CSO valuation tables" means the Commissioners' 1980 Standard Ordinary Mortality Table (1980 CSO Table) without ten (10) year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983.

(7) "Scheduled gross premium" means, for each policy year, the smallest illustrated gross premium set forth at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium for each policy year described in Section 6(1)(e) of this administrative regulation, if any, or else the minimum premium described in Section 6(1)(f) of this administrative regulation set forth at issue.

(8)(a) "Segmented reserves" means reserves, calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are a uniform percentage of the respective guaranteed gross premiums within the segment. The uniform percentage for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals the present value of the death benefits within the segment, plus the present value of any unusual guaranteed cash value as described in Section 5(4) of this administrative regulation occurring at the end of the segment, less any unusual guaranteed cash value occurring at the start of the segment, plus for the first segment only, the excess of the net level annual premium over a net one (1) year term premium for the benefits provided for in the first policy year. The net level annual premium is equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one (1) per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen (19) year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one (1) year higher than the age at issue of the policy.

(b) The length of each segment is determined by the "contract

segmentation method", as defined in subsection (2) of this section.

(c) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy.

(d) For both basic reserves and deficiency reserves computed by the segmented method, present values shall include future benefits and net premiums in the current segment and in all subsequent segments.

(9) "Tabular cost of insurance" means the net single premium at the beginning of a policy year for one (1) year term insurance in the amount of the guaranteed death benefit in that policy year.

(10) "Ten (10) year select factors" means the select factors adopted with the 1980 amendments to the NAIC Standard Valuation Law.

(11) "Unitary reserves" means the present value of all future guaranteed benefits less the present value of all future modified net premiums where guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy. Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of the net level annual premium over a net one (1) year term premium for the benefits provided for in the first policy year. The net level annual premium is equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one (1) per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen (19) year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one (1) year higher than the age at issue of the policy. The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.

(12) "Universal life insurance policy" means any individual life insurance policy under the provisions of which separately identified interest credits, other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts, and mortality or expense charges are made to the policy.

Section 2. Applicability. (1) This administrative regulation shall apply to all life insurance policies, with or without nonforfeiture values, issued on or after the effective date of this administrative regulation, subject to the following exceptions and conditions.

(2) This administrative regulation shall not apply to any individual life insurance policy issued on or after the effective date of this administrative regulation if the policy is issued in accordance with and as a result of the exercise of a reentry provision contained in the original life insurance policy of the same or greater face amount, issued before the effective date of this administrative regulation, that guarantees the premium rates of the new policy. This administrative regulation also shall not apply to subsequent policies issued as a result of the exercise of such a provision, or a derivation of the provision, in the new policy.

(3) This administrative regulation shall not apply to any universal life policy that meets the following requirements:

(a) Secondary guarantee period, if any, of five (5) years or less;

(b) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the 1980 CSO valuation tables and the applicable valuation interest rate; and

(c) The initial surrender charge is not less than 100% of the first year annualized specified premium for the secondary guarantee period.

(4) This administrative regulation shall not apply to any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

(5) This administrative regulation shall not apply to any variable universal life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experi-

ence of any separate account or accounts.

(6) This administrative regulation shall not apply to a group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one (1) year.

Section 3. Conditions. (1) Calculation of the minimum valuation standard for policies, other than universal life policies, with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits, or both, shall be in accordance with the provisions of Section 5 of this administrative regulation.

(2) Calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies that contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period shall be in accordance with the provisions of Section 6 of this administrative regulation.

Section. 4. General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves. (1) At the election of the company for any one (1) or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors, or any other valuation mortality table adopted by the National Association of Insurance Commissioners after the effective date of this administrative regulation and promulgated by administrative regulation by the commissioner for this purpose. If select mortality factors are elected, they may be the following:

(a) The ten (10) year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;

(b) The select mortality factors incorporated by reference by this administrative regulation; or

(c) Any other table of select mortality factors adopted by the NAIC after the effective date of this administrative regulation and promulgated by administrative regulation by the commissioner for the purpose of calculating basic reserves.

(2) Deficiency reserves, if any, shall be calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve. The quantity A shall be obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one (1) or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors, or any other valuation mortality table adopted by the NAIC after the effective date of this administrative regulation and promulgated by administrative regulation by the commissioner. If select mortality factors are elected, they may be the following:

(a) The ten (10) year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;

(b) The select mortality factors incorporated by reference by this administrative regulation;

(c) For durations in the first segment, X percent of the select mortality factors incorporated by reference by this administrative regulation, subject to the following:

1. X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience;

2. X shall not be less than twenty (20) percent;

3. X shall not decrease in any successive policy years;

4. X is such that, when using the valuation interest rate used for basic reserves, the actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X, is greater than or equal to the actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date;

5. X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of the first five (5) years after the valuation date;

6. The appointed actuary shall increase X at any valuation date

where it is necessary to continue to meet all the requirements of this subsection;

7. The appointed actuary may decrease X at any valuation date as long as X does not decrease in any successive policy years and as long as it continues to meet all the requirements of this Section 4(2)(c) of this administrative regulation;

8. The appointed actuary shall specifically take into account the adverse effect on expected mortality and lapsation of any anticipated or actual increase in gross premiums; and

9. If X is less than 100 percent at any duration for any policy, then the appointed actuary shall annually prepare an actuarial opinion and memorandum for the company in conformance with the requirements of KRS 304.6-171 and 806 KAR 6:100, Section 6, and the appointed actuary shall annually opine for all policies subject to this administrative regulation as to whether the mortality rates resulting from the application of X meet the requirements of this subsection. This opinion shall be supported by an actuarial report, subject to appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience.

(d) Any other table of select mortality factors adopted by the National Association of Insurance Commissioners after the effective date of this administrative regulation and promulgated by administrative regulation by the commissioner for the purpose of calculating deficiency reserves.

(3) Any set of select mortality factors may be used only for the first segment. This applies to both basic reserves and deficiency reserves. However, if the first segment is less than ten (10) years, the appropriate ten (10) year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law may be used thereafter through the tenth policy year from the date of issue.

(4) In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums, even if not included in the actual calculation of basic reserves.

(5) Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than one (1) year after the date of the change shall be the greatest of the following:

(a) Reserves calculated ignoring the guarantee;

(b) Reserves assuming the guarantee was made at issue; and

(c) Reserves assuming that the policy was issued on the date of the guarantee.

(6) The commissioner may require that the company document the extent of the adequacy of reserves for specific blocks, including but not limited to policies issued prior to the effective date of this administrative regulation. This documentation may include a demonstration of the extent to which aggregation with other nonspecified blocks of business is relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of KRS 304.6-171 and 806 KAR 6:100, Section 6.

Section 5. Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Gross Premiums or Guaranteed Nonlevel Benefits that are Not Universal Life Policies. (1) Basic reserves shall be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy shall use the same valuation mortality table and selection factors. At the option of the insurer, in calculating segmented reserves and net premiums, either of the following adjustments may be made:

(a) Treat the unitary reserve, if greater than zero, applicable at the end of each segment as a pure endowment and subtract the unitary reserve, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

(b) Treat the guaranteed cash surrender value, if greater than zero, applicable at the end of each segment as a pure endowment; and sub-

tract the guaranteed cash surrender value, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

(2) The deficiency reserve at any duration shall be calculated as follows:

(a) On a unitary basis if the corresponding basic reserve determined by subsection (1) of this section is unitary;

(b) On a segmented basis if the corresponding basic reserve determined by subsection (1) of this section is segmented; or

(c) On the segmented basis if the corresponding basic reserve determined by subsection (1) of this section is equal to both the segmented reserve and the unitary reserve.

(d) This subsection shall apply to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality specified in Section 4(2) of this administrative regulation and rate of interest.

(e) Deficiency reserves, if any, shall be calculated for each policy as the excess if greater than zero, for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in Section 4(2) of this administrative regulation.

(f) For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves.

(3) Basic reserves shall not be less than the tabular cost of insurance for the balance of the policy year, if mean reserves are used. Basic reserves shall not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy anniversary, if midterminal reserves are used. The tabular cost of insurance shall use the same valuation mortality table and interest rates as that used for the calculation of the segmented reserves. However, if select mortality factors are used, they shall be the ten (10) year select factors incorporated into the 1980 amendments of the NAIC Standard Valuation Law. In no event shall total reserves, including basic reserves, deficiency reserves and any reserves held for supplemental benefits that would expire upon contract termination, be less than the amount that the policyowner would receive, including the cash surrender value of the supplemental benefits, if any, referred to above, exclusive of any deduction for policy loans, upon termination of the policy.

(4)(a) For any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an "m" year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where "m" is the number of years from the date of issue to the date the unusual cash surrender value is scheduled.

(b) The reserves actually held subsequent to any unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the policy as an "n" year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where:

1. "n" is the number of years from the date of the last unusual guaranteed cash surrender value prior to the valuation date to the earlier of:

a. The date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or

b. The mandatory expiration date of the policy; and

2. The net premium for a given year during the "n" year period is equal to the product of the net to gross ratio and the respective gross premium; and

3. The net to gross ratio is equal to the present value, at the beginning of the "n" year period, of death benefits payable during the "n" year period plus the present value, at the beginning of the "n" year period, of the next unusual guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the beginning of the "n" year period, divided by, the present value, at the beginning of the "n" year period, of the scheduled

gross premiums payable during the "n" year period.

(c) For purposes of this subsection, a policy is considered to have an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of the following:

1. 110 percent of the scheduled gross premium for that year;
2. 110 percent of one (1) year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and
3. Five (5) percent of the first policy year surrender charge, if any.

(5) At the option of the company, the following approach for reserves on yearly renewable term reinsurance may be used:

(a) Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.

(b) Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as calculated in subsection (3) of this section.

(c) Deficiency reserves may be determined by calculating for each policy year, the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium. Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses.

(d) For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without ten (10) year select mortality factors, or any other table adopted after the effective date of this administrative regulation by the National Association of Insurance Commissioners and promulgated by administrative regulation by the commissioner for this purpose.

(e) A reinsurance agreement shall be considered yearly renewable term reinsurance for purposes of this subsection if only the mortality risk is reinsured.

(f) If the assuming company chooses this optional exemption, the ceding company's reinsurance reserve credit shall be limited to the amount of reserve held by the assuming company for the affected policies.

(6) At the option of the company, the following approach for reserves for attained-age-based yearly renewable term life insurance policies may be used:

(a) Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.

(b) Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in subsection (3) of this section.

(c) To calculate deficiency reserves, calculate the excess for each policy year, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium. Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses.

(d) For purposes of Section 5(6) of this administrative regulation, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten (10) year select mortality factors, or any other table adopted after the effective date of this administrative regulation by the National Association of Insurance Commissioners and promulgated by administrative regulation by the commissioner for this purpose.

(e) A policy shall be considered an attained-age-based yearly renewable term life insurance policy for purposes of subsection (6) of this section if:

1. The premium rates, on both the initial current premium scale and the guaranteed maximum premium scale, are based upon the attained age of the insured such that the rate for any given policy at a given attained age of the insured is independent of the year the policy was issued; and

2. The premium rates, on both the initial current premium scale and the guaranteed maximum premium scale, are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance and attained age.

(f) For policies that become attained-age-based yearly renewable term policies after an initial period of coverage, the approach of

this subsection may be used after the initial period if:

1. The initial period is constant for all insureds of the same sex, risk class, and plan of insurance; or

2. The initial period runs to a common attained age for all insureds of the same sex, risk class and plan of insurance; and

3. After the initial period of coverage, the policy meets the conditions of paragraph (e) of this subsection.

(g) If an insurer elects this optional exemption under this subsection, the approach herein shall be applied in determining reserves for all attained-age-based yearly renewable term life insurance policies issued on or after the effective date of this administrative regulation.

(7) Unitary basic reserves and unitary deficiency reserves for a yearly renewable term life insurance policy need not be calculated if the following conditions are met:

(a) The policy consists of a series of n-year periods, including the first period and all renewal periods, where "n" is the same for each period, except that for the final renewal period, "n" may be truncated or extended to reach the expiry age, provided that this final renewal period is less than ten (10) years and less than twice the size of the earlier n-year periods, and for each period, the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level;

(b) The guaranteed gross premiums in all n-year periods are not less than the corresponding net premiums based upon the 1980 CSO Table with or without the ten (10) year select mortality factors; and

(c) There are no cash surrender values in any policy year.

(8) Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met, based upon the initial current premium scale at issue:

(a) At issue, the insured is age twenty-four (24) or younger;

(b) Until the insured reaches the end of the juvenile period, which shall occur at or before age twenty-five (25), the gross premiums and death benefits are level, and there are no cash surrender values; and

(c) After the end of the juvenile period, gross premiums are level for the remainder of the premium paying period, and death benefits are level for the remainder of the life of the policy.

Section 6. Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies that Contain Provisions Resulting in the Ability of a Policyowner to Keep a Policy in Force Over a Secondary Guarantee Period. (1) Policies with a secondary guarantee include the following:

(a) A policy with a guarantee that the policy will remain in force at the original schedule of benefits, subject only to the payment of specified premiums;

(b) A policy in which the minimum premium at any duration is less than the corresponding one (1) year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten (10) year select mortality factors, or any other table adopted after the effective date of this administrative regulation by the National Association of Insurance Commissioners and promulgated by administrative regulation by the commissioner for this purpose; and

(c) A policy with any combination of paragraphs (a) and (b) of this subsection.

(d) A secondary guarantee period is the period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. When a policy contains more than one (1) secondary guarantee, the minimum reserve shall be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees. Secondary guarantees that are unilaterally changed by the insurer after issue shall be considered to have been made at issue. Reserves described in subsections (2) and (3) of this section shall be recalculated from issue to reflect these changes.

(e) Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed.

(f) For purposes of this subsection, the minimum premium for any

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policy year is the premium that, when paid into a policy with a zero account value at the beginning of the policy year, produces a zero account value at the end of the policy year. The minimum premium calculation shall use the policy cost factors, including mortality charges, loads and expense charges, and the interest crediting rate, which are all guaranteed at issue.

(g) The one (1) year valuation premium means the net one (1) year premium based upon the original schedule of benefits for a given policy year. The one (1) year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in Section 4(2)(b), (c), and (d) of this administrative regulation may not be used to calculate the one (1) year valuation premiums.

(h) The one (1) year valuation premium should reflect the frequency of fund processing, as well as the distribution of deaths assumption employed in the calculation of the monthly mortality charges to the fund.

(2) Basic reserves for the secondary guarantees shall be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums shall be set equal to the specified premiums, if any, or otherwise to the minimum premiums, that keep the policy in force and the segments will be determined according to the contract segmentation method as defined in Section 1(2) of this administrative regulation.

(3) Deficiency reserves, if any, for the secondary guarantees shall be calculated for the secondary guarantee period in the same manner as described in Section 5(2) of this administrative regulation with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force.

(4) The minimum reserves during the secondary guarantee period shall be the greater of the following:

(a) The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or

(b) The minimum reserves required by other rules or administrative regulations governing universal life plans.

GALE PEARCE, General Counsel

GEORGE NICHOLS III, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: April 11, 2000

FILED WITH LRC: April 12, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 26, 2000, at 10 a.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 2000, 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: Russell R. Coy II, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Phone: (502) 564-6032, Fax: (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact person: Russell R. Coy II, Counsel

(1) Type and number of entities affected: This administrative regulation will affect every life insurer transacting business in this state. There are approximately 600 life insurers licensed in the state of Kentucky.

(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 received no 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 received no 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: This regulation requires all life insurers writing policies in Kentucky to maintain proper and adequate reserves based on the mortality tables, rules, and minimum reserving standards provided by this regulation that specifically apply to policies with nonlevel premiums and benefits or secondary guarantees.

2. Second and subsequent years: All requirements of this administrative regulation 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 incur only nominal costs associated with reviewing the actuarial filings submitted in accordance with KRS 304.6-130 through 304.6-180, 304.15-410 and the statements submitted in accordance with this administrative regulation. In addition, the department may incur costs associated with the enforcement of this administrative regulation.

2. Continuing costs or savings: The department will continue to enforce this administrative regulation and review actuarial filings required by this administrative regulation.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative imposes no reporting requirements on the administrative body. However, the department will be responsible for reviewing actuarial filings from insurers required pursuant to this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used for the implementation and enforcement of 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: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: In order to enforce these requirements, the department determined that an administrative regulation was necessary.

(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 department does not anticipate that this administrative regulation will have any effect on public health or environmental welfare in the geographical area in which implemented or on Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented. If this administrative regulation were not implemented, the department does not anticipate a detrimental effect on public health or environmental welfare.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy that may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all life insurers licensed to do business in Kentucky.

**PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(New Administrative Regulation)**

806 KAR 38:100. Risk-based capital for health organizations.

RELATES TO: KRS 304.38-070

STATUTORY AUTHORITY: KRS 304.38-070, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.38-150 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for the proper administration of KRS Chapter 30 Subtitle 38. This administrative regulation requires the health maintenance organizations to comply with risk-based capital reporting requirements to aid in the department's financial monitoring of health maintenance organizations.

Section 1. Definitions. As used in this administrative regulation, these terms shall have the following meanings:

(1) "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner in accordance with Section 2(5) of this administrative regulation.

(2) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.

(3) "Domestic health organization" means a health organization domiciled in this state.

(4) "Foreign health organization" means a health organization that is licensed to do business in this state under KRS Chapter 304 Subtitle 38 or 32 but is not domiciled in this state.

(5) "NAIC" means the National Association of Insurance Commissioners.

(6) "Health organization" means a health maintenance organization, single service organization, dental or vision plan, hospital, medical and dental indemnity or service corporation or other managed care organization licensed under KRS Chapter 304 Subtitle 38 or 32. This definition does not include an organization that is licensed as either a life and health insurer or a property and casualty insurer under KRS Chapter 304 Subtitle 24 or 3 and that is otherwise subject to either the life or property and casualty RBC requirements.

(7) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC, as these RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(8) "RBC level" means a health organization's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:

(a) "Company Action Level RBC" means, with respect to any health organization, the product of 2.0 and its Authorized Control Level RBC;

(b) "Regulatory Action Level RBC" means the product of 1.5 and its Authorized Control Level RBC;

(c) "Authorized Control Level RBC" means the product of .50 and the risk-based capital after covariance (RBCAC) determined under the risk-based capital formula in accordance with the RBC instructions;

(d) "Mandatory Control Level RBC" means the product of .70 and the Authorized Control Level RBC.

(9) "RBC plan" means a comprehensive financial plan containing the elements specified in Section 3(2) of this administrative regulation. If the commissioner rejects the RBC plan, and it is revised by the health organization, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

(10) "RBC report" means the report required in Section 2 of this administrative regulation.

(11) "Total adjusted capital" means the sum of:

(a) A health organization's statutory capital and surplus (i.e., net worth) as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under KRS 304.3-240 or 304.32-090; and

(b) Such other items, if any, as the RBC instructions may provide.

Section 2. RBC Reports. (1) A domestic health organization shall, on or prior to each March 1 (the "filing date"), prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions. In addition, a domestic health organization shall file its RBC report:

(a) With the NAIC in accordance with the RBC instructions; and

(b) With the insurance commissioner in any state in which the health organization is authorized to do business, if the insurance commissioner has notified the health organization of its request in writing, in which case the health organization shall file its RBC report not later than the later of:

1. Fifteen (15) days from the receipt of notice to file its RBC report with that state; or

2. The filing date.

(2) A health organization's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following into account (and may adjust for the covariance between) determined in each case by applying the factors in the manner set forth in the RBC instructions.

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

(e) An excess of capital (i.e., net worth) over the amount produced by the risk-based capital requirements contained in the administrative regulation and the formulas, schedules and instructions referenced in this administrative regulation is desirable in the business of health insurance. Accordingly, health organizations shall seek to maintain capital above the RBC levels required by this administrative regulation. Additional capital is used and useful in the insurance business and helps to secure a health organization against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this administrative regulation.

(3) If a domestic health organization files an RBC report that in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the health organization of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC report as so adjusted is referred to as an "adjusted RBC report".

(4) A domestic health organization shall file an additional interim RBC report if the commissioner deems an interim report necessary to accurately perform ongoing financial examination or financial analysis of the health organization.

(5) A domestic health organization may file an additional interim RBC report if:

(a) The domestic health organization has experienced a material change in its operations or finances so that the most recently filed RBC report materially misstates the true conditions of the domestic health organization; and

(b) The domestic health organization receives prior written approval of the commissioner for the interim RBC report filing.

(6) An interim RBC report shall be prepared in compliance with subsection (1) of this section. The commissioner shall designate the time period which the interim RBC shall cover.

Section 3. Company Action Level Event. (1) "Company action level event" means any of the following events:

(a) The filing of an RBC report by a health organization that indicates that the health organization's total adjusted capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC;

(b) Notification by the commissioner to the health organization of an adjusted RBC report that indicates an event in paragraph (a) of this subsection, provided the health organization does not challenge the adjusted RBC report under Section 7 of this administrative regulation; or

(c) If, pursuant to Section 7 of this administrative regulation, a health organization challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, the notification

by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

(2) In the event of a company action level event, the health organization shall prepare and submit to the commissioner an RBC plan that shall:

(a) Identify the conditions that contribute to the company action level event;

(b) Contain proposals of corrective actions that the health organization intends to take and that would be expected to result in the elimination of the company action level event;

(c) Provide projections of the health organization's financial results in the current year and at least the two (2) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and RBC levels. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense and benefit component;

(d) Identify the key assumptions impacting the health organization's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the health organization's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(3) The RBC plan shall be submitted

(a) Within forty-five (45) days of the company action level event; or

(b) If the health organization challenges an adjusted RBC report pursuant to Section 7 of this administrative regulation, within forty-five (45) days after notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

(4) Within sixty (60) days after the submission by a health organization of an RBC plan to the commissioner, the commissioner shall notify the health organization whether the RBC plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the health organization shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the health organization shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) Within forty-five (45) days after the notification from the commissioner; or

(b) If the health organization challenges the notification from the commissioner under Section 7 of this administrative regulation, within forty-five (45) days after a notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

(5) In the event of a notification by the commissioner to a health organization that the health organization's RBC plan or revised RBC plan is unsatisfactory, the commissioner may at the commissioner's discretion, subject to the health organization's right to a hearing under Section 7 of this administrative regulation, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic health organization that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the health organization is authorized to do business if:

(a) The state has an RBC provision substantially similar to Section 8(1) of this administrative regulation; and

(b) The insurance commissioner of that state has notified the health organization of its request for the filing in writing, in which case the health organization shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

1. Fifteen (15) days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

2. The date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4) of this section.

Section 4. Regulatory Action Level Event. (1) "Regulatory action level event" means, with respect to a health organization, any of the following events:

(a) The filing of an RBC report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC;

(b) Notification by the commissioner to a health organization of an adjusted RBC report that indicates the event in paragraph (a) of this subsection, provided the health organization does not challenge the adjusted RBC report under Section 7 of this administrative regulation;

(c) If, pursuant to Section 7 of this administrative regulation, the health organization challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge;

(d) The failure of the health organization to file an RBC report by the filing date, unless the health organization has provided an explanation for the failure that is satisfactory to the commissioner and has cured the failure within ten (10) days after the filing date;

(e) The failure of the health organization to submit an RBC plan to the commissioner within the time period set forth in Section 3(3) of this administrative regulation;

(f) Notification by the commissioner to the health organization that:

1. The RBC plan or revised RBC plan submitted by the health organization is, in the judgment of the commissioner, unsatisfactory; and

2. Notification constitutes a regulatory action level event with respect to the health organization, provided the health organization has not challenged the determination under Section 7 of this administrative regulation;

3. If, pursuant to Section 7 of this administrative regulation, the health organization challenges a determination by the commissioner under paragraph (f) of this subsection, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the challenge;

(g) Notification by the commissioner to the health organization that the health organization has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the health organization to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the commissioner has so stated in the notification, provided the health organization has not challenged the determination under Section 7 of this administrative regulation; or

(h) If, pursuant to Section 7 of this administrative regulation, the health organization challenges a determination by the commissioner under paragraph (h) of this subsection, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the challenge.

(2) In the event of a regulatory action level event the commissioner shall:

(a) Require the health organization to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) Perform such examination or analysis as the commissioner deems necessary of the assets, liabilities and operations of the health organization including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue an order specifying such corrective actions as the commissioner shall determine are required ("corrective order").

(3) In determining corrective actions, the commissioner may take into account factors the commissioner deems relevant with respect to the health organization based upon the commissioner's examination or analysis of the assets, liabilities and operations of the health organization, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(a) Within forty-five (45) days after the occurrence of the regulatory action level event;

(b) If the health organization challenges an adjusted RBC report pursuant to Section 7 of this administrative regulation and the challenge is not frivolous in the judgment of the commissioner within forty-five (45) days after the notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge; or

(c) If the health organization challenges a revised RBC plan pursuant to Section 7 of this administrative regulation and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

(4) The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the health organization's RBC plan or revised RBC plan, examine or analyze the assets, liabilities and operations (including contractual relationships) of the health organization and formulate the corrective order with respect to the health organization. The fees, costs and expenses relating to consultants shall be borne by the affected health organization or such other party as directed by the commissioner.

Section 5. Authorized Control Level Event. (1) "Authorized control level event" means any of the following events:

(a) The filing of an RBC report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC;

(b) The notification by the commissioner to the health organization of an adjusted RBC report that indicates the event in paragraph (a) of this subsection, provided the health organization does not challenge the adjusted RBC report under Section 7 of this administrative regulation;

(c) If, pursuant to Section 7 of this administrative regulation, the health organization challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge;

(d) The failure of the health organization to respond, in a manner satisfactory to the commissioner, to a corrective order (provided the health organization has not challenged the corrective order under Section 7 of this administrative regulation); or

(e) If the health organization has challenged a corrective order under Section 7 of this administrative regulation and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the health organization to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

(2) In the event of an authorized control level event with respect to a health organization, the commissioner shall:

(a) Take such actions as are required under Section 4 of this administrative regulation regarding a health organization with respect to which an regulatory action level event has occurred; or

(b) If the commissioner deems it to be in the best interests of the policyholders and creditors of the health organization and of the public, take such actions as are necessary to cause the health organization to be placed under regulatory control under KRS Chapter 304 Subtitle 33. In the event the commissioner takes such actions, the authorized control level event shall be deemed sufficient grounds for the commissioner to take action under KRS Chapter 304 Subtitle 33, and the commissioner shall have the rights, powers and duties with respect to the health organization as are set forth in KRS Chapter 304 Subtitle 33. In the event the commissioner takes actions under this paragraph pursuant to an adjusted RBC report, the health organization shall be entitled to such protections as are afforded to health organizations under the provisions of Section KRS 304.33-130 pertaining to summary proceedings.

Section 6. Mandatory Control Level Event. (1) "Mandatory control level event" means any of the following events:

(a) The filing of an RBC report which indicates that the health

organization's total adjusted capital is less than its Mandatory Control Level RBC;

(b) Notification by the commissioner to the health organization of an adjusted RBC report that indicates the event in paragraph (a) of this subsection, provided the health organization does not challenge the adjusted RBC report under Section 7 of this administrative regulation; or

(c) If, pursuant to Section 7 of this administrative regulation, the health organization challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

(2) In the event of a mandatory control level event, the commissioner shall take such actions as are necessary to place the health organization under regulatory control under KRS Chapter 304 Subtitle 33. In that event, the Mandatory Control Level Event shall be deemed sufficient grounds for the commissioner to take action under KRS Chapter 304 Subtitle 33, and the commissioner shall have the rights, powers and duties with respect to the health organization as are set forth in KRS Chapter 304 Subtitle 33. If the commissioner takes actions pursuant to an adjusted RBC report, the health organization shall be entitled to the protections of Section KRS 304.33-130 pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety (90) days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety (90) day period.

Section 7. Hearings. Upon the occurrence of any of the following events the health organization shall have the right to a confidential departmental hearing, on a record, at which the health organization may challenge any determination or action by the commissioner. The health organization shall notify the commissioner of its request for a hearing within five (5) days after the notification by the commissioner of any of the following events:

(1) Notification to a health organization by the commissioner of an adjusted RBC report;

(2) Notification to a health organization by the commissioner that:

(a) The health organization's RBC plan or revised RBC plan is unsatisfactory; and

(b) Notification constitutes a Regulatory Action Level Event with respect to the health organization;

(3) Notification to a health organization by the commissioner that the health organization has failed to adhere to its RBC plan or revised RBC plan and that the failure has a substantial adverse effect on the ability of the health organization to eliminate the company action level event with respect to the health organization in accordance with its RBC plan or revised RBC plan; or

(4) Notification to a health organization by the commissioner of a corrective order with respect to the health organization.

Section 8. Confidentiality; Prohibition on Announcements, Prohibition on Use in Ratemaking. (1) All RBC reports (to the extent the information is not required to be set forth in a publicly available annual statement schedule) and RBC plans (including the results or report of any examination or analysis of a health organization performed pursuant to this statute and any corrective order issued by the commissioner pursuant to examination or analysis) with respect to a domestic health organization or foreign health organization that are filed with the commissioner constitute information that may be damaging to the health organization if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this administrative regulation or any other provision of the insurance laws of this state.

(2) Except as otherwise required under the provisions of this administrative regulation, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or

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in the form of a notice, circular, pamphlet, letter or poster, or over a radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to the RBC levels of any health organization, or of any component derived in the calculation, by any health organization, agent, broker or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the comparison regarding a health organization's total adjusted capital to its RBC levels (or any of them) or an inappropriate comparison of any other amount to the health organizations' RBC levels is published in any written publication and the health organization is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the health organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) The RBC instructions, RBC reports, adjusted RBC reports, RBC plans and revised RBC plans are intended solely for use by the commissioner in monitoring the solvency of health organizations and the need for possible corrective action with respect to health organizations and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a health organization or any affiliate is authorized to write.

Section 9. Supplemental Provisions; Rules; Exemption. (1) The provisions of this administrative regulation are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the commissioner under such laws, including, but not limited to, KRS Chapter 304 Subtitles 32, 33, 37 or 38, 304.2-065 or 806 KAR 3:150.

(2) The commissioner may exempt from the application of this administrative regulation a domestic health organization that:

- (a) Writes direct business only in this state;
- (b) Assumes no reinsurance in excess of five (5) percent of direct premium written; and
- (c) Writes direct annual premiums for comprehensive medical business of \$2,000,000 or less or is a single service organization that covers less than 2000 lives.

Section 10. Foreign Health Organizations. (1)(a) A foreign health organization shall, upon the written request of the commissioner, submit to the commissioner an RBC report as of the end of the calendar year just ended the later of:

- 1. The date an RBC report would be required to be filed by a domestic health organization under this administrative regulation; or
- 2. Fifteen (15) days after the request is received by the foreign health organization.

(b) A foreign health organization shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(2) In the event of a company action level event, regulatory action level event or authorized control level event with respect to a foreign health organization as determined under the RBC statute applicable in the state of domicile of the health organization (or, if no RBC statute is in force in that state, under the provisions of this administrative regulation), if the insurance commissioner of the state of domicile of the foreign health organization fails to require the foreign health organization to file an RBC plan in the manner specified under that state's RBC statute (or, if no RBC statute is in force in that state, under Section 3 of this administrative regulation), the commissioner may require the foreign health organization to file an RBC plan with the commissioner. In such event, the failure of the foreign health organization to file an RBC plan with the commissioner shall be grounds to order the health organization to cease and desist from writing new insurance business in this state.

(3) In the event of a mandatory control level event with respect to a foreign health organization, if no domiciliary receiver has been appointed with respect to the foreign health organization under the rehabilitation and liquidation statute applicable in the state of domi-

cile of the foreign health organization, the commissioner may make application to the Franklin Circuit Court permitted under the KRS Chapter 304 Subtitle 33 with respect to the liquidation of property of foreign health organizations found in this state, and the occurrence of the mandatory control level event shall be considered adequate grounds for the application.

Section 11. Immunity. There shall be no liability on the part of, and no cause of action shall arise against, the commissioner or the insurance department or its employees or agents for any action taken by them in the performance of their powers and duties under this administrative regulation.

Section 12. Phase-In Provision. (1) For RBC reports required to be filed by health organizations with respect to 2000, the following requirements shall apply in lieu of the provisions of Sections 3, 4, 5 and 6 of this administrative regulation:

(a) In the event of a company action level event with respect to a domestic health organization, the commissioner shall take no regulatory action under this administrative regulation.

(b) In the event of an regulatory action level event under Section 4(1)(a), (b) or (c) of this administrative regulation, the commissioner shall take the actions required under Section 3 of this administrative regulation.

(c) In the event of an regulatory action level event under Section 4(1)(d), (e), (f), (g), (h) or (i) of this administrative regulation or an authorized control level event, the commissioner shall take the actions required under Section 4 of this administrative regulation with respect to the health organization.

(d) In the event of a Mandatory Control Level Event with respect to a health organization, the commissioner shall take the actions required under Section 5 of this administrative regulation with respect to the health organization.

(2) Notwithstanding Section 1(8)(d) of this administrative regulation, for RBC reports required to be filed by health organizations with respect to 2000, "Authorized Control Level RBC" shall equal forty (40) percent of the Risk Based Capital After Covariance (RBCAC) determined under the risk-based capital formula in accordance with the RBC instructions; and for the RBC reports required to be filed by health organizations with respect to 2001, "Authorized Control Level RBC" shall equal forty-five (45) percent of the Risk Based Capital After Covariance (RBCAC) determined under the risk-based capital formula in accordance with the RBC instructions. Thereafter, the definition in Section 1(8)(d) of this administrative regulation shall apply.

GALE PEARCE, General Counsel
GEORGE NICHOLS III, Commissioner
RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: April 11, 2000

FILED WITH LRC: April 14, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000, at 10 a.m. at 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 May 15, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Frank L. Dempsey, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, PH: (502) 564-6032, FAX: (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact Person: Frank L. Dempsey

(1) Type and number of entities affected: This administrative regulation will affect all health maintenance organizations licensed to provide health coverage in Kentucky. Currently there are 13 health maintenance organizations authorized by the department to provide coverage in the Commonwealth.

(2) Direct and indirect costs or savings:

(a) Cost of living and employment in the geographical area in which the administrative regulations will be implemented, to the extent available from the public comments received: The department has received no 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 received no 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: This administrative regulation requires health maintenance organizations to calculate and report their risk-based capital levels to the department in conjunction with the annual financial statement required by KRS 304.38-200 and 304.3-240. The calculation uses financial numbers and records already maintained and reported to the department. The first year's calculation and reporting may require the health maintenance organizations to complete minimal additional training or financial research.

2. Second and subsequent years: Since the risk-based capital report uses financial records which are already required to be maintained by the health maintenance organization and reported to the department, additional compliance, reporting and paperwork requirements should be minimal.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This regulation provides an additional tool for the analysis and monitoring of the financial health and safety of health maintenance organizations. It will provide data in a more useful form to the department which department personnel would otherwise be required to extract from health maintenance organizations' financial statements. This may result in time or labor savings to the department.

2. Continuing costs or savings: The time or labor savings realized in the first year of implementation as a result of the use of the risk-based capital report will continue perpetually.

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: The budget for the Department of Insurance will be used to implement and enforce 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: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Risk-based capital is a financial analysis program developed by the National Association of Insurance Commissioners which is being implemented nationally by many other jurisdictions' insurance regulators. Currently, risk-based capital requirements are in force in many states, including Kentucky, which apply to life, health, property and casualty insurers. No comparable program has been developed to analyze health maintenance organizations' financial health and safety. Therefore, no viable alternative is available.

(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 administrative regulation would benefit public health because it allows the department or more closely and accurately monitor the financial status of a major source of health insurance coverage in Kentucky. The administrative regulation will reduce the possibility that the health maintenance organizations become insolvent, leaving Kentucky consumers without health insurance coverage and therefore deprived of health care services.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on environment or public health would result if this administrative regulation were 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: 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:

(11) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all health maintenance organizations authorized to provide health coverage in the Commonwealth of Kentucky.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Long Term Care
(New Administrative Regulation)**

907 KAR 1:065. Payments for price-based nursing facility services.

RELATES TO: 42 CFR Parts 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 483.10(i) 42 USC 1396, a, b, c, d, g, n, o, p, r, r-2, r-5

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520, 1998 Ky. Acts ch. 615 Part I.G. 41

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for services provided by a price-based nursing facility.

Section 1. Definitions. (1) "Allowable cost" means that portion of a price-based nursing facility's cost which may be allowed by the department in determining the ancillary cost.

(2) "Ancillary cost-to-charge ratio" means the total cost of ancillary services provided by an NF to its residents divided by the total customary and usual ancillary charges.

(3) "Ancillary service" means a direct service for which a charge is customarily billed separately from the per diem rate and shall include:

(a) Ancillary services pursuant to 907 KAR 1:023; and

(b) If ordered by a physician:

1. Laboratory procedures; and

2. X-rays.

(4) "Appraisal" means an evaluation conducted by the department using the E.H. Boeckh Commercial Valuation System for the purpose of calculating the depreciated replacement cost of a price-based nursing facility (NF).

(5) "Capital cost component" means the appraised depreciated replacement cost plus a value for land and equipment adjusted for rate of return and a per diem amount.

(6) "Case-mix" means the average price-based NF acuity for Medicaid eligible and dual eligible Medicare and Medicaid residents under a Medicare Part A reimbursed stay in a price-based nursing facility.

(7) "Cost settlement" means an NF's billed charges for ancillary services that are retrospectively settled to the cost of ancillary services provided to Medicaid residents.

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

(9) "DRI" means an indication of changes in health care cost from year to year developed by Data Resources Incorporated.

(10) "Hospital-based NF" means an NF that:

- (a) Is separately identifiable as a distinct part of the hospital; and
- (b) If separated into multiple, but distinct parts of a single hospital, are combined under one (1) provider number.

(11) "Means Construction Index" means an indicator of changes in construction costs from year to year developed by the R.S. Means Company, Inc.

(12) "Metropolitan Statistical Area" or "MSA" means the designation of urban population centers based on the national census and updated on a yearly basis, as published by the Federal Office of Management and Budget.

(13) "Nursing facility" or "NF" means that:

- (a) The state survey agency has:
 1. Granted an NF license to a facility;
 2. Recommended the NF to the department for certification as a Medicaid provider; and
- (b) The department has granted certification for Medicaid participation to the NF.

(14) "Nursing facility with Medicaid waiver" or "NF-W" means that:

- (a) The state survey agency has:
 1. Granted an NF license to a facility;
 2. Recommended the NF to the department for certification as a Medicaid provider; and
 3. Granted the NF a waiver of the nursing staff requirement; and
- (b) The department has granted certification for Medicaid participation to the NF.

(15) "Nursing facility with a mental retardation specialty" or "NF-MRS" means an NF in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation as determined by the department.

(16) "Routine services" means the services covered by the Medicaid Program pursuant to 42 CFR 483.10 (c)(8)(i).

(17) "State survey agency" means the Cabinet for Health Services, Office of Inspector General, Division of Licensing and Regulation.

(18) "Standard price" means the daily base reimbursement rate for routine services for an eligible Medicaid recipient, excluding the following price-based NF specific adjustments:

- (a) Case-mix; and
- (b) Appraised depreciated replacement cost.

Section 2. Reimbursement for a Price-Based NF. (1) The following facilities shall be reimbursed as a price-based NF pursuant to Sections 3 and 4 of this administrative regulation:

- (a) An NF;
- (b) An NF-W;
- (c) A hospital-based NF; and
- (d) An NF-MRS.

(2) The following shall not be reimbursed as a price-based NF and shall be reimbursed pursuant to 907 KAR 1:025:

- (a) An NF with a certified brain injury unit;
- (b) An NF with a distinct part ventilator unit;
- (c) An NF designated as an institution for mental disease;
- (d) A dually-licensed pediatric facility;
- (e) An intermediate care facility for an individual with mental retardation or developmental disability; or
- (f) A federally-defined swing bed.

(3) An NF identified in subsection (1) of this section shall be reimbursed by the Medicaid Program as a price-based NF if the patient:

- (a) Is eligible to participate in the Medicaid Program;
 - (b) Is determined by the department to meet the level of care for NF services; and
 - (c) Occupies a Medicaid certified bed.
- (4) Medicaid shall be the payor of last resort.

(5) Except as provided in subsection (7) of this section, to participate in the Medicaid Program, an NF identified in subsection (1) of this section shall be required to have the greater of:

(a) Ten (10) of its Medicaid certified beds participating in the Medicare Program; or

(b) Twenty (20) percent of its Medicaid certified beds participating in the Medicare Program.

(6) If the NF has less than ten (10) beds all of its beds shall participate in the Medicare Program.

(7) An NF-W shall be exempt from the requirement established in subsections (5) and (6) of this section.

(8) The Medicaid Program shall reimburse a Medicaid bed in an NF at the same rate established for the entire NF.

Section 3. Priced-Based NF Reimbursement Methodology. (1) Rates shall reflect the differential in wages, property values and cost of doing business in rural and urban designated areas.

(2) The department shall utilize an analysis of fair-market pricing and historical cost for the following data:

- (a) Staffing ratios;
- (b) Wage rates;
- (c) Cost of administration, food, professional support, consultation, and nonpersonnel operating expenses as a percentage of total cost;
- (d) Fringe benefit levels;
- (e) Capital cost component, as determined by an appraisal by the department's designee of each individual NF; and
- (f) Noncapital facility related costs.

(3) Using the Metropolitan Statistical Area (MSA) designation as defined by the Federal Office of Management and Budget, a price-based NF shall be reimbursed according to the following designations:

- (a) Urban; or
- (b) Rural.

(4) Pursuant to the methodology described in subsection (2) of this section and in accordance with the designation described in subsection (3) of this section, an NF shall be assigned a standard price as follows:

| MSA Designation | Case-Mix Adjustable Portion of Standard Price | Noncase-Mix Adjustable Portion of Standard Price without Capital Cost Component | Total Standard Price |
|-----------------|---|---|----------------------|
| Urban | \$61.83 | \$41.92 | \$103.75 |
| Rural | \$51.03 | \$36.53 | \$87.56 |

(5) For the urban and rural designation, the case-mix adjustable portion of the standard price is computed pursuant to subsection (6) of this section and reflects an average case-mix acuity of one (1).

(6) The components of the case-mix adjustable portion of the standard price shall be:

- (a) The personnel cost of:
 1. A DON - director of nursing;
 2. An RN - registered nurse;
 3. An LPN - licensed practical nurse;
 4. A nurse aide;
 5. Activities staff persons; and
 6. Medical records staff persons;
- (b) The nonpersonnel operating cost including:
 1. Medical supplies; and
 2. Activity supplies.

(7) The components of the noncase mix adjustable portion of the standard price shall include:

- (a) Administration;
- (b) Nondirect care personnel;
- (c) Food;
- (d) Noncapital facility related costs;
- (e) Professional support;
- (f) Consultation; and
- (g) Capital cost component.

(8) The capital cost component identified in subsection (7)(g) of this section shall be an add-on to the "Noncase-Mix Adjustable Portion of the standard price without Capital Cost Component", as shown in the table in subsection (4) of this section.

(9) The standard price shall be:

(a) Established effective on January 1, 2000 representing the state fiscal year July 1, 1999 through June 30, 2000;

(b) Recomputed every July 1 based on the DRI and the R.S. Means Construction Index;

(c) Rebased every four (4) years thereafter in accordance with criteria contained in subsection (2) of this section.

(10) An NF receiving less than the standard price shall have its rate adjusted for inflation on July 1 of each year pursuant to the DRI.

(11) The department shall adjust the standard price if:

(a) A government entity imposes a mandatory minimum wage or staffing ratio increase and the increase was not included in the DRI;

(b) A new licensure requirement or new interpretation of an existing requirement by the state survey agency results in changes that affect all facilities within the class. The provider shall document that a cost increase occurred as a result of a licensure requirement or policy interpretation.

Section 4. Priced-Based NF Reimbursement Calculation. (1) Based on the classification of urban or rural, the department shall calculate an individual NF's price-based rate to be the sum of:

(a) The case-mix adjustable portion of an NF standard price, adjusted by the current average case-mix index pursuant to Section 5 of this administrative regulation, except that until July 1, 2000 the average case-mix index shall be the greater of:

1. The current average case-mix index; or

2. The case-mix average calculated as a ratio of the facility's case-mix index to the statewide average case-mix index that would have been used for the January 1, 2000 rate setting;

(b) The noncase mix adjustable portion of the assigned total standard price; and

(c) Pursuant to subsection (3) of this section, the capital cost component.

(2) In accordance with Section 1(12) of this administrative regulation, the designation of urban and rural counties shall be updated in accordance with the MSA designation on July 1, 2000 and every July 1 thereafter.

(3) The capital cost component shall be calculated on an individual facility basis as follows:

(a) The department shall:

1. Add the total of:

a. The average licensed bed value pursuant to paragraph (b) of this subsection;

b. Ten (10) percent of the licensed bed value pursuant to clause a of this subparagraph for land on which the NF is built; and

c. \$2000 for equipment; and

2. Multiply the sum of subparagraph 1 of this paragraph by the yield on a thirty (30) year Treasury Bond pursuant to paragraph (d) of this subsection plus a risk factor of two (2) percent that shall not be:

a. Less than nine (9) percent; or

b. Greater than twelve (12) percent; and

3. Divide the product of subparagraph 2 of this paragraph by the number of calendar days in the facility's cost report year multiplied by the facility's bed occupancy percentage as determined pursuant to paragraph (c) of this subsection.

(b) To determine the average licensed bed value, the depreciated replacement cost of the NF pursuant to subsection (4) of this section shall be divided by the total number of licensed beds in the NF with the following limitations:

1. The average bed value shall not exceed \$40,000; and

2. Shall exclude:

a. Equipment; and

b. Land.

(c) NF bed days used in the capital cost rate calculation pursuant to paragraph (a)3 of this subsection shall be based on actual bed occupancy, except that the occupancy rate shall not be less than ninety (90) percent of certified bed days.

(d) The department shall utilize a rate of return for capital costs

that shall be equal to the yield on a thirty (30) year Treasury Bond as of the first business day on or after:

1. May 31, 1999; and

2. The first business day on or after May 31 thereafter.

(e) Effective with the rate setting period beginning July 1, 2000, the department shall utilize the R.S. Means Construction Index to adjust the following for inflation:

1. The capital cost component pursuant to subsection (4) of this section; and

2. The allowable per bed value pursuant to paragraph (b)1 of this subsection.

(4) The department shall:

(a) Conduct and utilize an appraisal of an NF identified in Section 2(1) of this administrative regulation to calculate the capital cost component identified in subsection (3) of this section;

(b) Reappraise an NF identified in Section 2(1) of this administrative regulation if:

1. Renovations or additions have a minimum total cost of \$150,000 for facilities with more than sixty (60) licensed beds;

2. Renovations or additions have a minimum total cost of \$75,000 for facilities with sixty (60) or fewer licensed beds; and

3. Written proof of construction costs is submitted to the department.

(c) Conduct and utilize a reappraisal of all NF's identified in Section 2(1) of this administrative regulation for the calculation of the capital cost component effective for July 1, 2004.

(5) An NF requesting a reappraisal of the facility pursuant to section 4(4)(b) of this administrative regulation shall be responsible for the cost of the reappraisal by the state appraisal contractor.

(6) If a change of ownership occurs pursuant to 42 CFR 447.253 (2)(d), the new owner shall continue to receive the capital cost rate of the previous owner unless the NF is eligible for a reappraisal pursuant to subsection (4)(b) of this section.

(7) A new facility shall be defined as a facility that does not have a July 1, 1999 Medicaid rate and it shall be:

(a) Determined to be urban or rural; and

(b) Reimbursed at the standard price which shall be:

1. Based on a case mix of 1.0;

2. Adjusted prospectively based upon no less than one (1) complete calendar quarter of available MDS 2.0 data following the facility's Medicaid certification; and

3. Adjusted by the facility appraisal when the appraisal is available.

Section 5. Minimum Data Set (MDS) 2.0, Resource Utilization Group (RUG) III, and Validation. (1) To determine a price-based NF's average Medicaid case mix index that shall be used on a quarterly basis to calculate the per diem rate pursuant to Section 4(1)(a) of this administrative regulation, the department shall:

(a) Extract data from the most recent MDS assessment form, incorporated by reference in 907 KAR 1:755, as transmitted to the Cabinet for Health Services Division of Licensing and Regulation by a price-based NF for each Medicaid or dual eligible Medicaid and Medicare resident;

(b) Extract the required MDS data on the last date of each calendar quarter and use it to set the per diem rate for the second subsequent quarter per Section 4 of this administrative regulation; and

(c) Classify the data through the RUG III, (M3 p1), version five point twelve (5.12B) thirty-four (34) group model resident classification system.

(2) On a quarterly basis, beginning January 1, 2000, the department shall:

(a) Perform an on-site review of a price-based NF and a rate adjustment based on the review shall not occur until the July 1, 2001 rate setting period;

(b) Review a minimum of ten (10) percent of the MDS assessments completed by a price-based NF; and

(c) Validate MDS assessments by using the Long Term Care Facility Resident Assessment Instrument User's Manual, as contained in 907 KAR 1:755.

(3) If the department invalidates a price-based NF's MDS assessments, the price-based NF may appeal the findings of the department as follows:

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(a) Within seven (7) business days, the department shall receive a written request by the NF that the department reconsider the invalidation;

(b) The department shall conduct the second validation within seven (7) business days of receipt of the request and notify the provider in writing of the decision; and

(c) A provider may appeal the second validation per 907 KAR 1:671, Sections 8 and 9.

Section 6. Limitation on Charges to Residents. (1) Except for applicable deductible and coinsurance amounts, an NF that receives reimbursement for a resident pursuant to Section 4 of this administrative regulation shall not charge a resident or his representative for the cost of routine or ancillary services.

(2) An NF may charge a resident or his representative for an item pursuant to 42 CFR 483.10 (c)(8)(ii) if:

(a) The item is requested by the resident;

(b) The NF informs the resident in writing that there will be a charge; and

(c) Medicare or Medicaid does not pay for the item.

(3) An NF shall:

(a) Not require a resident or an interested party to request any item or services as a condition of admission or continued stay; and

(b) Inform the resident or an interested party requesting an item or service for which a charge will be made in writing that there will be a charge and the amount of the charge.

(c) An NF may charge a resident for the cost of reserving a bed if requested by the resident or interested party after the 14th day of a temporary absence from the facility pursuant to 907 KAR 1:022.

(4) Durable medical equipment (DME) and supplies shall:

(5) Be furnished by an NF; and

(a) Not be billed to the department under a separate DMS claim pursuant to 907 KAR 1:474.

Section 7. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR). (1) Prior to an admission of an individual, a price-based NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse an NF for services delivered to an individual if the NF complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of the NF's participation in the Medicaid Program.

Section 8. Price-Based NF Protection Period and Budget Constraints. (1) Except as provided in subsection (2) of this section, for the period of January 1, 2000 through June 30, 2002, a price-based NF shall not receive a rate that is less than the rate that was set for the facility pursuant to 907 KAR 1:025E on July 1, 1999, including any capital cost and extenuating circumstance add-ons.

(2) The department shall monitor payments on a monthly basis to ensure that aggregate payments made in accordance with this administrative regulation and 907 KAR 1:025 do not exceed the appropriated funds in fiscal years 2000 through 2002.

(3) On a monthly basis, the department shall:

(a) Notify the nursing facility industry's representatives in writing; and

(b) Place on the Medicaid Internet site at: <http://cfcchs.chs.state.ky.us/chs/dms/>:

1. The amount of payment in aggregate to the price-based NF's for the preceding month; and

2. The cumulative amount paid for the current state fiscal year.

(4) For each year of the biennium, a price-based NF shall:

(a) Receive an increase pursuant to Section 3(9) and (10) of this administrative regulation; or

(b) Receive no increase if a price-based NF's rate is greater than the standard price including the capital rate component.

(5) Appropriated price-based nursing facility expansion funds in state fiscal years 2001 and 2002 shall be used to increase rates for facilities whose rates are less than the standard price.

(a) A facility receiving an increase shall receive an increase equal to a percentage of the difference between its existing rate and the standard price.

(b) The percentage shall be the same for each applicable facility.

Section 9. Cost Report. (1) A price-based NF shall submit:

(a) A Medicare cost report and Medicaid supplemental schedules pursuant to time frames established in HCFA Provider Reimbursement Manual - Part 2 (Pub. 15-11) Section 102, 102.1, 102.3, and 104, incorporated by reference into this administrative regulation;

(b) A copy of a price-based NF's Medicare cost report for the most recent fiscal year end; and

(c) The supplemental schedules incorporated by reference into this administrative regulation.

(2) A cost report submitted to the department pursuant to this administrative regulation shall be used as follows:

(a) Financial data related to routine services shall be used for statistical purposes; and

(b) Financial data related to ancillary services shall be subject to cost settlement.

Section 10. Ancillary services. (1) The reasonable, allowable and direct cost of an ancillary service, provided as a part of total care, shall be reimbursed by the department on a cost-basis and as an addition to the standard price.

(2) For an NF requesting that the department set an interim ancillary rate, the provider shall:

(a) Submit a request for a percentage factor that reflects the NF's cost-to-charge ratio; and

(b) Limit the percentage request to no more than 100 percent of allowable cost.

(3) Ratio of ancillary cost-to-charge adjustments:

(a) In the event that an NF is underpaid for the total ancillary services provided to Medicaid eligible residents as defined in Schedules NF-4 and NF-6, the department shall increase the NF's cost-to-charge ratio to the nearest five (5) percent; or

(b) In the event that an NF is overpaid for the total ancillary services provided to Medicaid eligible residents as defined in Schedules NF-4 and NF-6, the department shall proportionately decrease to the nearest five (5) percent the NF's cost-to-charge ratio up to a reduction of twenty-five (25) percent.

(4) Ancillary services shall be subject to:

(a) A year-end audit by the department;

(b) A retrospective adjustment; and

(c) A final settlement.

(5) For the fiscal year-end ancillary cost settlement an NF shall:

(a) Include in its cost report the required schedules containing:

1. The actual ancillary service cost;

2. The total ancillary charges;

3. The total Medicaid charges; and

4. Payments made by the department to the NF.

(b) Submit documentation requested by the department in order to settle interim payments made by the department for the cost of ancillary services provided during an NF's reporting period.

Section 11. Reimbursement Review and Appeal. A price-based NF may appeal department decisions as to the application of this administrative regulation as it impacts the facility's price-based reimbursement rate in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Medicare Provider Reimbursement Manual - Part 2 (Pub. 15-11) Chapter 1. Cost Reporting - General (15-2-102) 102 and 104. Cost Reporting Period; April 2000 Edition;

(b) The "Instructions for Completing the Medicaid Supplemental Schedules" April 2000 Edition;

(c) The "Supplemental Medicaid Schedules" April 2000 Edition.

(2) This material 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.

DENNIS BOYD, Commissioner

JOHN H. WALKER, Attorney
JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: March 29, 2000

FILED WITH LRC: April 11, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2000, five workdays 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Selina Riley, 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).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen Doyle or Sharon Rodriguez

(1) Type and number of entities affected: 274 providers of nursing facilities 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:

(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:

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

1. First year following implementation: Changes in cost report requirements.

2. Second and subsequent years: Consistence with year one-should slightly reduce paper-work.

(3) Effects on the promulgating administrative body: There will be no impact on the total Medicaid budget. Funding for services identified in this regulation were previously expended through 907 KAR 1:025.

(a) Direct and indirect costs or savings:

1. First year: \$ 0 budget neutral.

2. Continuing costs or savings: \$ 0 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. *Federal matching funds of 70.55% equaling \$237,488,148 and state matching funds of 29.45% equaling \$99,119,035 will be expended. These same funds were previously expended through 907 KAR 1:025. State revenues will come from Medicaid general fund benefit dollars.

(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:

(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 access to services for individuals as a result of a more equitable reimbursement to providers.

(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 impose an imminent threat to the public health, safety, and welfare of Medicaid recipients due to the lack of availability of services and reductions in the number of available providers.

(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.

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (New Administrative Regulation)

922 KAR 1:305. Licensure of child-caring facilities and child-placing agencies.

RELATES TO: KRS 199.011(2), (3), (4), (6), (7), 199.640, 199.641(1)(b), 199.670, 600.020(5), (7), 610.110(6)

STATUTORY AUTHORITY: KRS 194B.050(1), 199.640(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.640(3) authorizes the Cabinet for Families and Children to promulgate administrative regulations relating to licensure for child-caring facilities and child-placing agencies.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Families and Children.

(2) "Child" is defined at KRS 199.011(4), 600.020(5), and 610.110(6).

(3) "Child-caring facility" is defined at KRS 199.011(6) and 199.641(1)(b).

(4) "Child-placing agency" is defined pursuant to KRS 199.011(7).

(5) "Division" means the Division of Licensing and Regulation, within the Office of the Inspector General, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky.

(6) "Licensee" means an individual, partnership, corporation or other entity authorized to operate a child-caring facility or child-placing agency, including board of directors and a person authorized to make application.

Section 2. Initial Application. (1) An applicant for a license shall submit to the division a:

(a) Completed Application for Licensure to Operate a Child-Caring Facility or a Child-Placing Agency, Form L&R 136;

(b) Licensure fee of:

1. \$100 for a child-placing agency; or

2. \$100 for a child-caring facility;

(c) Copy of the Articles of Incorporation on file with the Secretary of State if the applicant is a corporation;

(d) Mission statement of purpose, objective, scope of service provided, and intake policy specifying the type of child to be accepted for care;

(e) Copy of the constitution and bylaws;

(f) List of officers, board members, and advisory board members, if any, including the address and profession;

(g) Name and title of each officer and the term of office; and

(h) List of staff including position or title and qualifications.

(2) A license issued by the division shall be:

(a) For a specific physical location within the state;

(b) For operation by a specific licensee;

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- (c) Nontransferable;
- (d) Approved and documented by the State Fire Marshal before a licensure survey is conducted; and
- (e) Awarded when an on-site inspection, pursuant to Section 6 of this administrative regulation, is completed by the division and it is determined the applicant qualifies for licensure pursuant to 922 KAR 1:300 and 922 KAR 1:310, and submitted an acceptable plan of correction of a violation pursuant to Section 4 of this administrative regulation.

Section 3. Renewal Licensure. The child-caring facility and the child-placing agency shall be relicensed annually from the date of issuance of the original license.

- (1) The applicant shall submit a:
 - (a) Completed Application for Licensure to Operate a Child-Caring Facility or a Child Placing Agency, Form L&R 136;
 - (b) A fee of fifty (50) dollars for a child-caring facility; and
 - (c) A fee of fifty (50) dollars for a child-placing agency.
- (2) As part of the annual inspection, the following shall be provided:
 - (a) A list of officers, board members, and advisory board members, if any, including address and profession;
 - (b) The name and title of each officer and term of office; and
 - (c) A list of staff that includes position or title and qualifications.
- (3) The child-caring facility and child-placing agency shall comply with its mission statement, program narrative, and applicable federal and state administrative regulations in regard to the program operation.
- (4) The child-caring facility and child-placing agency shall have an annual financial audit completed by an independent accounting firm or a certified public accountant.
- (5) Notification of a change in the following shall be made to the division in advance to allow for approval from the division and the State Fire Marshal when applicable, before implementation:
 - (a) Ownership or sponsorship;
 - (b) Location approval and documented by the State Fire Marshal;or
 - (c) Service type provision pursuant to 922 KAR 1:300 and 922 KAR 1:310;
 - (d) Increase in capacity approval and documented by the State Fire Marshal; and
 - (e) The addition of a new building or converting of administrative space to living space approval and documented by the State Fire Marshal.
- (6) A renewal license shall be issued by the division when the division determines the applicant qualified for renewal licensure pursuant to 922 KAR 1:300 or 922 KAR 1:310.
- (7) The child-caring facility or child-placing agency shall post its license in a place visible to the public.

Section 4. Corrective Plans. (1) The division shall perform an on-site inspection, pursuant to KRS 199.640(3) and (5). A regulatory violation of the standards identified in 922 KAR 1:300 and 922 KAR 1:310 during inspection shall be reported to the child-caring facility or the child-placing agency in a written statement of deficiency.

- (2) The child-caring facility or child-placing agency shall submit, within ten (10) days of receipt of the statement of deficiency, a written plan for the elimination or correction of a violation. The plan shall detail:
 - (a) Specific action undertaken to correct a violation;
 - (b) The date action was initiated; and
 - (c) Action utilized to assure ongoing compliance.
- (3) The division shall review the plan and notify the child-caring facility or the child-placing agency, in writing, of the decision to:
 - (a) Accept the plan;
 - (b) Not accept the plan; or
 - (c) Deny, suspend, or revoke the license, pursuant to Section 7 of this administrative regulation.
- (4) A notice of unacceptability shall state the specific reasons the plan is unacceptable.
- (5) A child-caring facility or a child-placing agency notified of unacceptability of its plan shall, within ten (10) days of notification:
 - (a) Submit an amended plan; or
 - (b) Have its license revoked or denied.
- (6) If an application or license has been denied, suspended, or revoked, the division shall notify the applicant or licensee, in writing, of

the right to request an informal dispute resolution meeting pursuant to KRS 199.670(2).

(7) A license shall be issued pursuant to KRS 199.640(4), if the child-caring facility or the child-placing agency has met the requirements contained in this administrative regulation and 922 KAR 1:300 or 922 KAR 1:310.

(8) A license shall not be sold or transferred.

(9) Change of ownership.

(a) A prospective new owner shall submit:

1. A Licensing and Regulation Application for Licensure to Operate a Child-Caring Facility or a Child-Placing Agency, Form L&R 136;

2. A fee as specified in Section 2(1)(b) of this administrative regulation; and

3. If the child-caring facility increases capacity, documentation of approval by the Office of the State Fire Marshal;

(b) The division shall perform an on-site inspection, pursuant to KRS 199.640(3) and (5).

(c) The effective date of a license granted on an application for change of ownership shall be:

1. For a child-caring facility or a child-placing agency that meets requirements of this administrative regulation and 922 KAR 1:300 or 922 KAR 1:310, the date the child-caring facility or the child-placing agency is acquired by the new owner;

2. For a child-caring facility or a child-placing agency that does not meet requirements, the date that compliance with this administrative regulation and 922 KAR 1:300 or 922 KAR 1:310 is achieved; or

3. For a child-caring facility that increases capacity, not before the approval date issued by the State Fire Marshal.

(10) Changes to the child-caring facility or the child-placing agency.

(a) A licensee shall notify the division, in writing, if there is a change to the child-caring facility or child-placing agency pursuant to Section 3(5) of this administrative regulation.

(b) The notification shall be signed by each owner listed on the license application.

(c) A fee shall not be charged.

(d) Notification shall be submitted to the division.

(11) The license shall be posted in a conspicuous place in the child-caring facility.

(12) A child-caring facility or a child-placing agency shall not begin operation without a license to operate from the division pursuant to 922 KAR 1:300 or 922 KAR 1:310.

(13) A child-placing agency or a child-caring facility operating without a license shall be subject to legal action.

Section 5. Fees. (1) A licensing fee shall be charged pursuant to KRS 199.640(4).

(2) A check or money order payable to the Kentucky State Treasurer shall be attached to the licensure application.

(3) A fee shall not be refunded if an inspection has been made by the division or the State Fire Marshal's Office.

Section 6. Inspection. (1) Inspection of a licensed child-caring facility or child-placing agency shall be made pursuant to KRS 199.640(3) and (5)(d) to establish that the requirements of this administrative regulation or 922 KAR 1:300 or 922 KAR 1:310 are met; and

(2) A representative of the division shall have access to the child-caring facility or child-placing agency at any time.

Section 7. Basis for Denial, Suspension or Revocation. (1) The division shall deny an application or suspend or revoke a license if the applicant or the licensee:

(a) Fails to meet the requirements of this administrative regulation or those of 922 KAR 1:300 or 922 KAR 1:310; or

(b) Has been convicted:

1. Of a sexual offense designated in KRS 510.040 to 510.140, 510.150, 529.020 to 529.050, 530.020, 530.064, or 531.310 to 531.370;

2. Of a crime of abuse, neglect or exploitation of a child, pursuant to KRS 508.100, 508.110, or 508.120; or

3. As a violent offender, pursuant to KRS 17.165(2).

(c) A licensee of a child-caring facility or a child-placing agency shall not have an allegation of abuse or neglect of a child, pursuant to KRS 600.020(1), substantiated by the cabinet pursuant to 922 KAR

1:330 and, if appealed, 922 KAR 1:320; and

(d) Be listed on the Nurse's Aid Abuse Registry by the Kentucky Board of Nursing.

(2) Effect of denial or revocation.

(a) The division shall not accept an application to operate a child-caring facility or a child-placing agency from an entity that was previously denied, suspended or revoked pursuant to subsection (1)(b) of this section; or

(b) Within the previous five (5) years, voluntarily forfeited a license after the cabinet has initiated denial or revocation action.

Section 8. Right of Appeal. (1) If an application or license has been denied, suspended, or revoked, the division shall notify the applicant or licensee, in writing, of the right to request an informal dispute resolution meeting pursuant to KRS 199.670(2) or to request a hearing pursuant to KRS Chapter 13B.

(2) If, within fifteen (15) days after receiving notice of the division's action, the applicant or licensee requests a hearing, the division shall:

(a) Appoint a hearing officer; and

(b) Proceed pursuant to KRS 13B.050.

(3) The cabinet may take emergency action pursuant to KRS 13B.125 and 199.670(3).

Section 10. (1) The following material is incorporated by reference: L&R 136, "Application for Licensure to Operate a Child-Caring Facility or a Child-Placing Agency", March, 2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Inspector General's Office, 275 East Main Street, Frankfort, Kentucky.

DIETRA PARIS, Commissioner

CHARLES P. LAWRENCE, Attorney

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: March 31, 2000

FILED WITH LRC: April 13, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2000, of their intent to attend. If no notification 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 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: Judy Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact: Cathy G. Mobley

(1) Type and number of entities affected: The affected entities are 112 child-caring facilities and 69 child-placing agencies.

(2) Direct and indirect costs or savings on those affected: A savings of \$3,500 through the reduction of licensure fees.

(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 hearing was requested as a result of the Notice of Intent being published and no written 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 comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing cost (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: None

(a) Direct and indirect costs or savings to the agency:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing cost: 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: No public hearing was requested as the result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received. To be determined after the public hearing on this ordinary administrative regulation.

(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: No detrimental effect.

(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: 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: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through regulatory and statutory requirements.

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (New Administrative Regulation)

922 KAR 1:380. Standards for emergency shelter child-caring facilities.

RELATES TO: KRS 189.125(3), 198B.050 to 198B.090, 199.011(2), (3), (4), (6), (7), (10), (11), 199.640, 199.645, 199.650, 199.660, 199.670, 211.350 to 211.380, 214.034(4), Chapter 424, 600.020, 615.010, 615.030, 615.040, 620.020

STATUTORY AUTHORITY: KRS 194.030(4), 194B.050(1), 199.640(3), (5), 199.645, 615.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.640(3) and (5) authorize the Cabinet for Families and Children to promulgate administrative regulations relating to standards of care and service for emergency shelter child-caring facilities.

Section 1. Definitions. (1) "Child" is defined at KRS 199.011(4), 600.020(5), and 610.110(6).

(2) "Emergency shelter" is defined at KRS 600.020(19).

(3) "Treatment" means individualized management and care of a child utilizing professionally credentialed and certified staff and a component of the treatment environment to assist the child in resolving his emotional conflict or behavioral disorder.

Section 2. Administration and Operation. (1) Licensing procedures. Licensing procedures for an emergency child-caring facility shall be administered pursuant to 922 KAR 1:305.

(2) Except pursuant to 922 KAR 1:300, Section 7(1)(e), (2)(a)1, 2, 3, 4, (b)3 and 4, (c), (3), (4)(a), (5), (6)(c), (d), (e) and (g), the

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emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:300.

Section 3. Emergency Shelter Child-caring Facility Services. (1) An emergency shelter child-caring facility that is part of a program offering a treatment service shall be in compliance pursuant to 922 KAR 1:390, Section 4.

(2) If an emergency shelter care program is part of a larger organization providing other child-caring or child-placing services pursuant to 922 KAR 1:310, there shall be a separate designated person to serve as coordinator of the emergency shelter child-caring facility.

(3) The following information regarding the child shall be obtained by the emergency shelter child-caring facility from the child's custodian during intake:

(a) Commitment order, temporary custody order or signed voluntary admission form;

(b) Basic identifying information on the child including:

1. Name and birthdate;
2. Address, and name and address of parent or guardian;
3. Last school attended and grade level; and
4. Medical information if known;

(c) If the child is a walk-in to the program and no custodian is available, the emergency shelter child-caring facility shall obtain a placement agreement with the custodian within seventy-two (72) hours;

(d) The emergency child-caring facility shall have written policy and procedure that describe the condition under which a child may be discharged;

(e) Discharge planning shall begin immediately upon admission of a child; and

(f) The emergency shelter child-caring facility shall prepare a written discharge summary within five (5) days following the date of discharge. A copy shall be provided to the custody holder.

DIETRA PARIS, Commissioner
CHARLES P. LAWRENCE, Attorney
VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: March 31, 2000

FILED WITH LRC: April 13, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2000, of their intent to attend. If no notification 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 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: Judy Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact: Cathy G. Mobley

(1) Type and number of entities affected: The affected entities are 112 child-caring facilities.

(2) Direct and indirect costs or savings on those affected: None

(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 hearing was requested as a result of the Notice of Intent being published and no written 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 comment received: No public hearing was requested

as a result of the Notice of Intent being published and no written comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing cost (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 to the agency:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing cost: 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: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received. To be determined after the public hearing on this ordinary administrative regulation.

(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: No detrimental effect.

(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: 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: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through regulatory and statutory requirements.

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (New Administrative Regulation)

922 KAR 1:390. Standards for residential child-caring facilities.

RELATES TO: KRS 189.125(3), 198B.050 to 198B.090, 199.011(2), (3), (4), (6), (7), (10), (11), 199.640, 199.645, 199.650, 199.660, 199.670, 211.350 to 211.380, 214.034(4), Chapter 424, 600.020, 610.110(6), 615.010, 615.030, 615.040, 620.020

STATUTORY AUTHORITY: KRS 194B.050(1), 199.640(3), (5), 199.645, 615.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.640(3) and (5) authorize the Cabinet for Families and Children to promulgate administrative regulations relating to standards of care and service for residential child-caring facilities.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Families and Children.

(2) "Child" is defined at KRS 199.011(4), 600.020(5), and 610.110(6).

(3) "Child-caring facility" is defined at KRS 199.011(6) and 199.641(1)(b).

(4) "Child-caring program" means the method of delivering a child-caring service.

(5) "Community resources" means a service or activity available in the community that supplements those provided by the child-caring facility agency in the care and treatment of a child.

(6) "Crisis intervention unit" means a unit operated as part of a residential treatment program that serves a child in need of short term intensive treatment and to avoid risk of placement to a higher level of care.

(7) "Executive director" means an executive director as defined at 922 KAR 1:300, Section 1(18).

(8) "Group home" is defined at KRS 199.011(10).

(9) "Individual treatment plan (ITP)" means a plan of action developed and implemented to address the needs of a child.

(10) "Latching device" means an instrument used to secure a seclusion room door that does not require the use of a key or combination.

(11) "Residential child-caring facility" means an institution or group home providing twenty-four (24) hour care.

(12) "Residential treatment program" means a residential facility providing an intensive professional treatment oriented service.

(13) "Seclusion room" means a room in a residential treatment facility for the temporary seclusion of a child in danger of harming himself or others that may use a latching device to secure the door.

(14) "Treatment" means individualized management and care of a child utilizing professionally credentialed and certified staff, and a component of the treatment environment to assist the child in resolving his emotional conflict or behavioral disorder.

(15) "Treatment director" means a qualified mental health professional as defined at KRS 600.020(42).

(16) "Treatment team" means a representative group of people who provide services to the child and the child's family.

Section 2. Administration and Operation. (1) Licensing procedures. Licensing procedures for a residential child-caring facility shall be in compliance pursuant to 922 KAR 1:305 for a child-caring facility.

(2) The residential child-caring facility shall meet the requirements of 922 KAR 1:300, Sections 3(2) through (7) and 4 through 7.

Section 3. Residential Child-caring Facility Services. (1) The child-caring program services for a residential child-caring facility shall be in compliance pursuant to 922 KAR 1:300, Section 7.

(2) Unless a child is a member of a family group placed in a residential child-caring facility, a child under six (6) shall not be placed in the residential child-caring facility unless that facility is also licensed to provide emergency shelter service pursuant to 922 KAR 1:380.

Section 4. Residential Treatment Program. The following additional requirements shall apply to a residential child-caring facility providing intensive treatment oriented services.

(1) Professional treatment services.

(a) If a child has an assessed need for professional psychological or psychiatric treatment service and other professional treatment service not provided by the residential child-caring facility, the residential child-caring facility shall secure these services.

(b) The admission decision shall be the responsibility of a treatment team comprised of clinical, social service, and other disciplines designated by the residential child-caring facility's treatment director.

(c) After assessment and development of the ITP pursuant to 922 KAR 1:300, Section 7(2), the treatment team shall identify services to meet the needs of the child and his family. The services shall be provided by the residential child-caring facility or arranged through contract with another qualified residential child-caring facility or child-placing agency, pursuant to 922 KAR 1:310, or treatment professional and shall include a minimum of weekly:

1. Individual counseling from a social worker or other treatment professional; and

2. Group counseling conducted by a trained social worker or other treatment professional as determined appropriate by the treatment team and under the supervision of the treatment director.

(d) Other services that are identified after the assessment and

development of the ITP by the treatment team may include:

1. Psychiatric counseling;

2. Specialized therapy recognized by mental health credentialing authority; or

3. Family counseling.

(e) A residential child-caring facility shall become accredited by a nationally recognized accreditation organization within four (4) years of the effective date of this administrative regulation or upon the initial issuance of a license for treatment in order to maintain the treatment license.

(2) Staffing requirement.

(a) The child-caring facility shall maintain a staff to child ratio of no less than one (1) child care staff member to six (6) children during the child's waking hours. Nighttime staff shall include at least one (1) staff member in each building that remains awake at all times.

(b) The treatment director shall be a qualified mental health professional as defined pursuant to KRS 600.020(42). The treatment director shall be responsible for the supervision, evaluation, and monitoring of the treatment program, social work and other treatment staff. A residential child-caring facility providing a treatment service for more than thirty (30) children shall employ a separate treatment director other than the executive director.

(c) A residential child-caring facility providing a treatment service for thirty (30) or less children may utilize the executive director in a dual role as treatment director, provided that at least fifty (50) percent of his duties are spent supervising the treatment program. In an instance where an employee serves as executive director and treatment director in a child-caring facility, the higher staff qualification shall apply.

(3) Seclusion room.

(a) A residential child-caring facility shall have clearly defined written policy and procedure for placement of a child into a seclusion room.

(b) A seclusion room shall:

1. Be utilized only if the child is in danger of harming himself or another and the effort made to deescalate the child's behavior prior to placement has been proven to be ineffective; and

2. Not be utilized as punishment or for the convenience of staff.

(c) Approval from the treatment director or treatment staff designee shall be obtained prior to or within fifteen (15) minutes of the individual placement of a child into a seclusion room.

(d) More than one (1) child shall not be placed into the seclusion room at a time.

(e) An object that may be used for self harm shall be removed from the child before he is placed into the seclusion room.

(f) Except for a belt and shoes, a child's clothing shall not be removed while he is placed into a seclusion room.

(g) A child shall not be placed into a seclusion room with a latching device for longer than one (1) hour within a twenty-four (24) hour period. Provided his behavior is stabilized, the child shall be released from seclusion in less than one (1) hour.

(h) If a child requires repeated placement into a latched seclusion room, a treatment team meeting shall be conducted by the treatment director to reassess the child's ITP, including referring the child to a higher level of care.

(i) Staff shall have a copy of the policy and procedure for placement of a child into a seclusion room.

(j) Staff employed by a residential treatment facility that utilizes a seclusion room shall have training in the proper use of the seclusion room. The training requirements may be included as part of the forty (40) hours annual training pursuant to 922 KAR 1:300, Section 3(6)(h)2.

(k) If a child is in the seclusion room, a staff member shall visually observe the child every five (5) minutes.

(l) Staff shall document the following information regarding the seclusion room in the child's record:

1. An intervention to deescalate the child's behavior prior to placement;

2. Date and time of placement;

3. Date and time of removal;

4. Reason for placement;

5. Name of each staff involved;

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6. Treatment director's or designee's approval;
7. Five (5) minute visual observation by staff of the child's placement; and
8. Intervention provided by treatment staff when the child leaves the seclusion room.

(m) A room used for a seclusion room shall be:

1. Lighted, ventilated, and maintained at a temperature consistent with the rest of the child-care facility and an area observable if the door is closed;
2. At least fifty-six (56) square feet in size; and
3. Free from an exposed object that allows the child to do self-harm.

(n) Immediately upon the child's exit from a seclusion room, treatment staff shall provide therapeutic intervention.

(o) Exclusive of weekends and holidays an incident report shall be completed by designated treatment staff on the child's placement into the seclusion room, reviewed, and signed by the treatment director or designee and the program director or designee within forty-eight (48) hours.

Section 5. Crisis Intervention Unit. (1) An emergency service provided in a crisis intervention unit shall include the following:

(a) A mental status evaluation and physical health questionnaire of the child upon admission;

- (b) A treatment planning process;
- (c) Procedure for crisis intervention; and
- (d) Discharge and aftercare planning processes.

(2) A program shall have a written policy concerning the operation of a crisis intervention unit.

(a) Staffing.

1. At least one (1) direct-care staff member shall be assigned direct-care responsibility for:

- a. Each four (4) children during normal waking hours; and
- b. Each six (6) children during normal sleeping hours;

2. Administrative oversight of the program shall be provided by a staff member who shall be a:

- a. Treatment director; or
- b. Person qualified to be executive director as defined pursuant to 922 KAR 1:300, Section 1(18).

(b) The service of a licensed psychiatrist shall be available to evaluate, provide treatment, and to participate in the treatment planning.

(c) Intake and service.

1. Upon admission, the crisis intervention program shall provide the child and his parent, guardian, or other legal representative with a clearly written and legible statement of rights and responsibilities; or

2. If unable to read the statement of rights and responsibilities, the statement shall be read to the child and his parent, guardian, or other legal representative;

3. Written policy and procedure developed in consultation with professional and direct-care staff shall provide:

a. For behavior management of a child including the use of time-out; and

b. An explanation of behavior management techniques to a child and his parent, or guardian or other legal representative;

(3) The crisis stabilization unit shall prohibit the use of a:

- (a) Seclusion room pursuant to Section 4(3) of this administrative regulation; and
- (b) A mechanical restraint.

Section 6. Group Home. The following additional requirements shall apply to a group home program.

(1) Documentation of evidence of publication of a "notice of intent" in an area newspaper pursuant to KRS Chapter 424 advertising that:

(a) A public hearing shall be held if requested by citizens in the community or appropriate local governmental entity; and

(b) Information obtained at the hearing shall be made available to the public and the cabinet;

(2) A staff to child ratio of one (1) child-caring staff member for each four (4) children or fraction thereof, with an on-duty staff member who is away from the group home with a child included for the

computation of this ratio; and

(3) Documentation of utilization of community resources and encouraging a child to participate in community activities.

DIETRA PARIS, Commissioner
CHARLES P. LAWRENCE, Attorney
VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: March 31, 2000

FILED WITH LRC: April 13, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2000, of their intent to attend. If no notification 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 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: Judy Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact: Cathy G. Mobley

(1) Type and number of entities affected: The affected entities are 112 child-caring facilities.

(2) Direct and indirect costs or savings on those affected: None

(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 hearing was requested as a result of the Notice of Intent being published and no written 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 comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing cost (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 to the agency:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing cost: 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: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received. To be determined after the public hearing on this ordinary administrative regulation.

(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: No detrimental effect.
- (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: 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: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through regulatory and statutory requirements.

**CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(New Administrative Regulation)**

922 KAR 5:100. Alternate care for adults.

RELATES TO: KRS Chapter 209, 216B.010 to 216B.131
STATUTORY AUTHORITY: KRS 194B.050(1), 209.030(1), 209.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 209.035 requires the Cabinet for Families and Children to promulgate administrative regulations to establish criteria for alternate care for adults. This administrative regulation establishes the Alternate Care for Adults Program.

Section 1. Definitions. (1) "Alternate care" means a level of care such as, skilled nursing facilities, nursing facilities, intermediate care facilities, personal care homes, family care homes, and intermediate care facility for the mentally retarded. The Division of Licensing and Regulation licenses these levels of alternate care facilities.

(2) "Cabinet" means the Cabinet for Families and Children.

(3) "Caretaker supplementation services" means cash assistance by the cabinet for a broad range of personal care and chore services provided by a live-in attendant or by one (1) or more persons hired to come into the home at regular intervals. A caretaker service shall enable an ill or infirm individual to remain safely in his own home or other family setting, thus preventing institutionalization.

(4) "Family care home (FCH)" means a home that meets the requirements and provides services pursuant to 902 KAR 20:041 and is licensed pursuant to KRS 216B.010 to 216B.131.

(5) "Intermediate care facility for the mentally retarded (ICF-MR)" is defined pursuant to 902 KAR 20:051 and 902 KAR 20:056 and 907 KAR 1:022, Section 1(3) and is licensed pursuant to KRS 216B.010 to 216B.131.

(6) "Nursing facility (NF)" is defined pursuant to 902 KAR 20:046 and 902 KAR 20:048 and 907 KAR 1:022, Section 1(7), and is licensed pursuant to KRS 216B.010 to 216B.131.

(7) "Personal care home (PCH)" means a home that meets the requirements and provides services pursuant to 902 KAR 20:036 and is licensed pursuant to KRS 216B.010 to 216B.131.

(8) "Skilled nursing facility (SNF)" is defined pursuant to 907 KAR 1:022, Section 1(2), as a "high intensity nursing care service" and is licensed pursuant to KRS 216B.010 to 216B.131.

(9) "Social service worker" means a person employed by the cabinet with a bachelor's or master's degree in social work or a related field.

Section 2. Placement and Movement. (1) Except under a condition pursuant to Adult Protection Law, KRS Chapter 209 and 922 KAR 5:070 and 922 KAR 5:090, the cabinet shall respond to a request for placement and movement, but shall not make the decision to move or place an adult.

(2) A social service worker may assist an adult in locating placement at the request of the following:

- (a) Adult;

- (b) Resident;
- (c) Guardian;
- (d) Durable power of attorney;
- (e) Facility;
- (f) Another state agency; or
- (g) Court order.

(3) The social service worker may assist a Medicaid recipient in locating placement or assistance in movement or placement. The social service worker shall consider every available community resource that may be applicable in assisting the adult to remain at home or return home during the placement process.

(4) A request for a placement and movement service may result from a:

- (a) Protective service investigation;
 - (b) Change in a level of care;
 - (c) Normal movement into or out of an FCH, ICF-MR, NF, PCH or SNF facility;
 - (d) Dissatisfaction of a resident; and
 - (e) Closure of an FCH, ICF-MR, NF, PCH or SNF.
- (5) The social service worker may assist in placement and movement in an FCH, ICF-MR, PCH, NF and SNF.

Section 3. Service to a Facility or Resident In an FCH, ICF-MR, PCH, NF and SNF. (1) Upon request, the cabinet may provide a social service to a resident residing in a licensed FCH, ICF-MR, PCH, NF and SNF.

(2) The cabinet may share pertinent information with the FCH, ICF-MR, PCH, NF and SNF.

(3) Upon notification from the Division of Licensing and Regulation of a new application for FCH licensure, the social service worker or a registered nurse shall complete an initial assessment and thereafter every six (6) months.

(4) If a PCH has been licensed, the social service worker or a registered nurse shall complete a semiannual assessment.

(5) Ongoing service delivery may be offered to a resident, administrator or operator of an FCH or PCH through the cabinet.

Section 4. A child committed to the cabinet shall not be placed in a PCH or FCH without the expressed written permission of the service region administrator or his designee.

DIETRA PARIS, Commissioner
CHARLES P. LAWRENCE, Attorney
VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: March 31, 2000

FILED WITH LRC: April 13, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2000, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2000, of their intent to attend. If no notification 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 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: Judy Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact: Cathy G. Mobley

(1) Type and number of entities affected: The affected entities are the long term care facilities and the residents of these facilities and the personal and family care homes and the residents of these homes. Some facilities have more than one level of care. As of November 1999, there were 422 long term care facilities (including

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intermediate care facilities for the mentally retarded) with 27,947 long term care beds. There were 197 personal care homes with 6,927 personal care home beds. There were 266 family care homes with 798 family care home beds.

(2) Direct and indirect costs or savings on 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 hearing was requested nor 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 comment received: No public hearing was requested nor comments received.

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

1. First year following implementation: This administrative regulation will not create any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to the agency:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing cost: 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: No public hearing was requested nor comments received.

(b) Kentucky: No public hearing was requested nor comments received.

(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: 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: Residents may linger in a level of care not appropriate to meet their needs for a longer period of time without the assistance and intervention of the cabinet.

(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: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of April 12, 2000

The April meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, April 12, 2000 at 10 a.m. in Room 131 of the Capitol Annex. Representative John Arnold, Chairman, called the meeting to order, and the roll call was taken. The minutes of the March 6, 2000 meeting were approved.

Present were:

Members: John Arnold, Chairman; Senators Marshall Long, Richard Roeding, and Joey Pendleton; Representatives Woody Allen, James Bruce and Jimmie Lee.

LRC Staff: Dave Nicholas, Stephen Lynn, Edna Lowery, Susan Wunderlich, Angela Phillips, Ellen Benzing, Donna Valencia, Peter Jakubiak, Biff Baker.

Guests: Mark Brengelman, AOG's Office, Board of Dentistry and Board of Physical Therapy; Nathan Goldman, Board of Nursing; Nancy Brinly, Board of Physical Therapy; Jim Grawe, Danna Droz, Board of Podiatry; James E. Bickford, Katie Ashcraft, Mark York, Heather Frederick, Bruce Williams, Mark D. Mangeot, Barbara Foster, Brenda G. Lowe, Bob Ware, Jack Wilson, Jim Villines, Carl Campbell, Natural Resources and Environmental Protection Cabinet; Mark Farrow, Department of Agriculture; Steve Durham, Brenda Priestley, Keith Hardison, Tamela Biggs, Robert Powell, Department of Corrections; Charlie Harman, Transportation Cabinet; Judy Walden, Department of Housing, Buildings and Construction; Teresa Goodrich, Regina Oney, Carol Stange, Dionna Burchett, Martha B. Graves, Tonya Chang, Sharon Potter West, Stuart Owen, Trish Howard, Cabinet for Health Services; Rosanne Barkley, Cabinet for Families and Children; Morris Hill, Allen Chambers, Todd Wright, Tyson Foods; Charlene Powell; Anthony Pescatore; Dennis O. Liptrop; Carole Knoblett, Ronny Pryor, Kentucky Poultry Federation; Lynde Hughes; David G. Jurgens; Nancy Butler; Mike Ovesen, Kentucky's Pork Producers; Louis B. Lawson, Hardin County Jail; John Schickel, Boone County Jail; Gary Sewell, Jail Standards Commission; Jim Carlross, Kentucky Association of Realtors; Judith Villines; Roger Recktenwald, KIA; Rebeckah Freeman, Sam Crawford, Kentucky Farm Bureau; Mike Rodman, KAHCF.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Board of Dentistry

201 KAR 8:006. Advertising of dental services. Mark Brengelman, Assistant Attorney General, represented the Board.

In response to a question by Representative Bruce, Mr. Brengelman stated that: (1) the Board had some problems with false advertising by dentists; (2) dentists were expanding their services; and (3) the Board needed to amend this administrative regulation to firmly prevent false advertising.

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 this administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1, 2, 3, and 5 were amended to comply with the: (a) formatting requirements of KRS 13A.222(4); and (b) drafting requirements of KRS 13A.222(4).

201 KAR 8:130. X-rays by dental assistants. In response to a question by Chairman Arnold, Mr. Brengelman stated that: (1) the requirement that a technician wear a radiation detection badge was not a Board requirement, but may be an OSHA requirement; and (2) this administrative regulation mandated the training and experience that a technician needed to become qualified to take x-rays.

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 this administrative regulation, as required by KRS 13A.220(3)(f); and (2) Section 1 and 3 were amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of

KRS 13A.222(4).

201 KAR 8:220. Clinical examination. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Section 2(5) was amended to cross reference appellate rights established in KRS Chapter 13B; and (3) Sections 1 and 2 were amended to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 8:277. Written and clinical application grade requirements. 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 this administrative regulation, as required by KRS 13A.220(3)(f); and (2) Section 3 was amended to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 8:390. General anesthesia, deep sedation, and conscious sedation by dentists. In response to a question by Chairman Arnold, Mr. Brengelman stated that the: (1) requested permit fee would increase from \$15.00 to \$50.00; and (2) fee had not been increased since 1987.

This administrative regulation was amended to change the edition dates of the material incorporated by reference.

Board of Nursing

201 KAR 20:370. Applications for licensure and registration. Nathan Goldman, General Counsel, represented the Board.

This administrative regulation was amended as follows: (1) Section 4 was amended to comply with the format requirements of KRS 13A.220(5); and (2) Section 5 was amended to comply with the format requirements of KRS 13A.225(2).

Board of Physical Therapy

201 KAR 22:135. Fees. Nancy Brinly, Executive Director, represented the Board.

Ms. Brinly stated that: (1) the Federation of State Board of Physical Therapy owned the licensure examination; (2) the Federation was doing a new job analysis to update the examination; and (3) the fee increase reflected the costs that went to the company administering the examination.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct a statutory citation; and (2) Sections 1 and 2 were amended to comply with the format requirements of KRS 13A.220.

Board of Podiatry

201 KAR 25:031. Continuing education. Danna Droz and Jim Grawe, Assistant Attorney General, represented the Board.

This administrative regulation was amended as follows: (1) Section 4(2)(b) was amended to require that a request for a waiver of the continuing education requirement be accompanied by a letter from the applicant's or immediate relative's personal physician; (2) Section 5 was amended to: (a) specify that an application for inactive status be made by written letter to the board; (b) correct KRS 13A.222 drafting errors; (c) specify that an applicant for relicensure complete a License Renewal Form and pay the renewal fee of \$150 and a reactivation fee of \$100; and (d) specify that a licensee who has been on inactive status for more than five (5) years complete an Application for Examination; and (3) a new section was created to incorporate by reference the required material.

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: Special Performance Standards

405 KAR 20:060. Steep slopes. Carl Campbell, Commissioner, and Jim Villines represented the Department.

In response to questions by Senator Roeding, Mr. Campbell stated that: (1) a steep slope was anything above a 20 degree angle; (2) this type of mining method was not like mountaintop re-

moval; (3) this method of mining allowed a variance in putting the land back into approximate original contour; (4) the approximate contour was to get the post-mining consideration as close as possible to the pre-mining configuration of the land before it was mined; (5) this would allow for some variances for roads; (6) this administrative regulation was also being amended to update it to the federal requirements; and (7) this administrative regulation was different from mountaintop removal.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY and RELATES TO paragraphs were amended to insert a citation to KRS 817.107; and (2) Sections 1 through 3 were amended to make minor technical changes to comply with the formatting and drafting requirements of KRS 13A.222(4).

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:018. Special overweight or overdimensional permits. Charlie Harman represented the Cabinet.

In response to questions by Senator Roeding, Mr. Harman stated that: (1) this administrative regulation applied to anyone who hauled anything over 80,000 pounds on interstate highways; (2) a business that hauled that amount on a regular basis could obtain an annual permit; (3) if that amount was rarely hauled, a business could obtain a single trip permit; (4) a devisable load was a load that could be readily and easily divided; (5) recently, a company moved a piece of equipment from Ohio to Louisville, Kentucky that required a 77 foot trailer to move; (6) the item weighed 400 tons; (7) previously the Cabinet had eleven administrative regulations for different items being hauled; (8) all of these subjects had been incorporated into one administrative regulation; and (9) the permit fee was different based upon the item being hauled.

In response to questions by Representative Bruce, Mr. Harman stated that farmers: (1) were exempt from the hauling requirements in this administrative regulation; and (2) had a permit fee, but it was not addressed in this administrative regulation.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) Sections 1, 2, 5, 8, 10, 11, 13, 14, 17, 19, and 21 were amended to comply with the drafting requirements of KRS 13A.222(4).

Cabinet for Health Services: Department for Medicaid Services: Division of Long Term Care: Medicaid Services

907 KAR 1:023. Review and approval of selected therapies as ancillary services in nursing facilities. Martha Graves, Regina Elliott, and Trish Howard represented the Cabinet.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) Sections 1 through 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) Section 6 was amended to change the edition date of the material incorporated by reference; and (4) the material incorporated by reference was amended to revise the oxygen therapy criteria for pediatrics to: (a) change the oxygen saturation level required for billing as an ancillary service from 90% to 93% while breathing room air; and (b) change the partial pressure of carbon dioxide required for billing as an ancillary service for a pediatric resident whose condition prohibits evaluation of arterial oxygen saturation without supplemental oxygen from 70 millimeters of mercury to 65 millimeters of mercury.

Payment and Services

907 KAR 3:110 & E. Community mental health center substance abuse services. Carol Stange, Tonya Chang, and Dionna Burchett represented the Cabinet.

In response to questions by Senator Roeding, Ms. Chang stated that: (1) this administrative regulation paralleled the community mental health center benefit, whereby most outpatient mental health services were provided by: (a) community health centers; and (b) their subcontractors; (2) the administrative regulation went into great detail about who could be a subcontractor; (3) an individual provider affiliated with the community mental health center could be subcontractor; (4) people at the local health departments had to meet the requirements established in the administrative regulation; and (5)

intensive outpatient and day rehabilitation service was covered under Section 4 of the administrative regulation.

In response to questions by Senator Roeding, Ms. Stange stated that: (1) intensive outpatient and day rehabilitation service were the same type of service as the intensive outpatient, only it was allowed to be provided in greater numbers of units because this is typically offered in a residential treatment setting of sixteen beds or less; (2) this provision made sure that persons received the same treatment if they were: (a) in residential treatment; and (b) getting intensive services; (3) a substance abuse prevention therapeutic risk reduction protocol general had an educational component; (4) this administrative regulation allowed a weekly summary note, rather than a progress note with every single patient contact; (5) the weekly summary note summarized: (a) the activities in which the patient had participated; (b) the clients overall reaction to the services; and (c) their progress in the treatment plan; and (6) this reduced the need to write 20-25 progress notes because of the intensity of the treatment.

In response to a question by Senator Roeding, Ms. Chang stated that the Department: (1) sent all of the providers a copy of this administrative regulation; (2) prepared a user-friendly handbook for the providers; and (3) did a statewide training program on how to meet the requirements of this administrative regulation.

This administrative regulation was amended as follows: (1) Sections 1 and 2 were amended to clarify the applicable time periods; (2) Section 3 was amended to correct a statutory citation; (3) Section 4 was amended to: (a) clarify that services shall be delivered as an individual or group service; and (b) increase the reimbursable number of hours for specified services; (4) Section 5 was amended to include psychologists in the list of providers of outpatient treatment; (5) Section 6 was amended to comply with the drafting requirements of KRS 13A.222(4); and (6) Section 7 was amended to change the list of qualified substance abuse professionals to parallel similar provisions in existing administrative regulations relating to substance abuse.

Cabinet for Families and Children: Department for Community Based Services: Division of Policy Development: K-Tap, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:006 & E. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP). Rosanne Barkley, Internal Policy Analyst, represented the Cabinet.

In response to a question by Representative Bruce, Ms. Barkley stated that she supervised other analysts who developed policy for: (1) K-TAP; (2) food stamps; (3) the family alternatives program; (4) the welfare to work program; and (5) different family support programs.

In response to questions by Senator Roeding, Ms. Barkley stated that: (1) the emergency under which this administrative regulation was filed occurred on October 1, 1999 when the federal regulations became effective; and (2) Kentucky: (a) implemented the federal requirements on October 1; and (b) would not lose any federal funds.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) minor typographical errors were corrected.

The Subcommittee determined that the following administrative regulations complied with statutory authority:

Board of Dentistry

Mark Brengelman, Assistant Attorney General, represented the Board.

201 KAR 8:286. Repeal of 201 KAR 8:285.

201 KAR 8:301. Repeal of 201 KAR 8:300.

201 KAR 8:381. Repeal of 201 KAR 8:380.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:011E. Repeal of 401 KAR 5:009. (Will Not Be Replaced By Ordinary) James Bickford, Director, Bob Logan, Commis-

sioner, Department for Environmental Protection, and Bruce Scott, represented the Cabinet. Nancy Buller, farmer, and Rebecca Freeman, Kentucky Farm Bureau, appeared before the Subcommittee to speak in opposition to this administrative regulation and 401 KAR 5:072E.

Subcommittee staff stated that: (1) this was an emergency administrative regulation that repealed the Swine Feeding administrative regulation that the Subcommittee found deficient last year; and (2) after this administrative regulation expires, it would not be replaced with an ordinary administrative regulation.

401 KAR 5:072E. Concentrated animal feeding operations. Subcommittee staff stated that: (1) this emergency administrative regulation established new standards for concentrated animal feeding operations; (2) the Cabinet was in the public hearing process; (3) an ordinary administrative regulation should be filed in a month or two; (4) the emergency administrative regulation would expire August 18; (5) a regulation that was found deficient would expire at the adjournment of the next regular session of the General Assembly; (6) this administrative regulation: (a) was substantially different from 401 KAR 5:009; and (b) addressed swine, beef, and poultry; (7) 401 KAR 5:011E repealed 401 KAR 5:009; and (8) the Subcommittee could not: (a) amend an emergency administrative regulation; or (b) find an emergency administrative regulation deficient.

In response to questions by Representative Bruce, Secretary Bickford stated that: (1) currently, there were no cattle operations that would be effected by this administrative regulation; and (2) the Cabinet had met with: (a) the cattleman's association; and (b) Representative McKee.

In response to questions by Senator Pendleton, Secretary Bickford stated that: (1) there were certain requirements by the EPA; (2) a tobacco settlement funded environmental cleanup program to which local entities could apply, would help; (3) he did not know the details of the proposed program; (4) he could not say for certain that these administrative regulations would not be needed; (5) the ordinary administrative regulation was going through the public hearing process; (6) the Cabinet: (a) was accepting comments on the administrative regulation at this time; and (b) would take those comments into consideration in effecting the ordinary administrative regulation; (7) this emergency administrative regulation was: (a) only temporary; and (b) already in effect; (8) the ordinary administrative regulation had to be in effect when the emergency administrative regulation expired on August 18; (9) the Cabinet would take under consideration all comments from both sides of the issue; and (10) the ordinary administrative regulation may be very different from the emergency administrative regulation.

Senator Pendleton stated that: (1) he thought the Cabinet's consideration of comments would send a message that Kentucky is: (a) agriculture friendly; and (b) trying to protect the environment; (2) he thought it would be good to use part of the tobacco settlement money to establish a possible cleanup fund; and (3) he was not aware of major environmental problems in the past that had gone unaddressed.

Secretary Bickford stated that he would be glad to meet with members of the Subcommittee to address the issues.

In response to questions by Senator Roeding, Secretary Bickford stated that: (1) during the Fall and early Winter of 1999, the Cabinet had received complaints regarding waste problems occurring because of confined animal feeding operations; (2) the Cabinet: (a) looked at the problems; (b) saw tons of manure piled in fields running into the water system; (c) saw the damage being done to water quality; and (d) thought that was a serious concern; (3) the past week, the Cabinet received a complaint from a Hopkins County magistrate reporting an infestation of mice and rats coming from chicken houses that were being cleaned; (4) the mice and rats were entering into homes; (5) an estimated 30,000 mice and rats were in the one area; (6) several children were reported as ill; (7) Cabinet health service personnel were investigating; (8) the Cabinet considered this a serious problem; (9) Kentucky was not the only state to impose "integrator liability"; (10) the EPA expected all NPDES states to use integrator liability authority; (11) the Cabinet met with other states in EPA Region 4; (12) all of the states in that region were told that they would be required to have integrator liability; (13) the Cabinet believed that statutes permitted it to impose integrator liability;

(14) he could provide copies of the statutes; (15) he did not think that these administrative regulations: (a) were more stringent than current federal requirements; and (b) put Kentucky farmers at an economic disadvantage; (16) the EPA would require integrator liability; (17) all states would have to comply with EPA requirements; (18) the EPA: (a) felt that they were authorized to require integrator liability based upon existing Federal regulations; and (b) quoted federal regulations that required integrator liability; (19) there were requirements for air quality in this administrative regulation; (20) they were studying the setbacks for the ordinary administrative regulation; (21) every setback, except one, came from the Agriculture and Water Quality Act; (22) the residential setback requirement was the only one that differed from the Agriculture and Water Quality recommendations; (23) the Cabinet would consider all comments in promulgating the ordinary administrative regulation; (24) the requirement of integrator liability would be applied to existing contracts; (25) Federal law required a contract renewal period of five years; and (26) none of the cattle operations currently in Kentucky were large enough to qualify under the criteria of this administrative regulation.

In response to a question by Senator Roeding, Subcommittee staff stated that: (1) the Subcommittee could not find an emergency administrative regulation deficient; and (2) the only thing that the Subcommittee could do was recommend that the Governor revoke the emergency.

In response to questions by Chairman Arnold, Secretary Bickford stated that: (1) the Cabinet did not think that this administrative regulation exceeded federal requirements; (2) the EPA guidance manual was based upon existing law; (3) the manual implemented existing federal law; and (4) the Cabinet had not exceeded the guidelines of the EPA.

Chairman Arnold stated that: (1) he thought that the Cabinet exceeded federal regulations; (2) he agreed with Senator Pendleton that Kentucky should be farm-friendly to help feed the nation and world; and (3) if administrative regulations made it difficult for a family to make a living, the Cabinet exceeded its authority.

In response to questions by Chairman Arnold, Secretary Bickford stated that: (1) the Cabinet was not interested in preventing concentrated feeding operations; (2) there was a problem with the huge amount of waste product that: (a) was produced; and (b) got into water sources; and (3) four chicken houses produced 600 tons of manure per year.

Representative Bruce stated that: (1) he thought: (a) the law required that there be no similar administrative regulation, if an administrative regulation was found deficient and expired; and (b) this was an attempt to get around the intent of the law; (2) members of leadership on the Subcommittee should consider correcting this problem during the next session; and (3) he wanted to see: (a) more proof of the requirements of the federal regulations; and (b) the problems with these administrative regulations worked out.

Secretary Bickford stated that he would be glad to provide more information on the federal requirements.

Ms. Butler stated that: (1) she was a McLean County farmer who co-owned and managed two poultry houses and a 180 acre family farm; (2) they raised corn, beans, dark tobacco, and burley tobacco; (3) she did not consider herself a "factory farmer" or "corporate farmer"; (4) she had never had anything to threaten her job, home, and future like these emergency administrative regulations; (5) they researched the poultry industry for over a year; (6) they could foresee the end of tobacco and considered poultry a good alternative; (7) in poultry, they saw an opportunity to produce something that would: (a) not be affected by weather; and (b) give a guaranteed, consistent income; (8) after four years and a sizable investment, the proposed administrative regulation changed everything; (9) the size of her operation did not require her to obtain a permit; (10) if she wanted to expand the operation, she would be affected; (11) this requirement would inhibit growth and expansion of small farms; (12) if she sold her operation, the value of the farm would be less if the proposed buyer could not expand, due to regulation; (13) she feared that these administrative regulations would affect animal agriculture much like the health-care reform affected insurance in Kentucky; (14) on March 13, the Agriculture and Small Business Committee heard testimony on House Bill 940; (15) before voting, one Representative reflected that no matter what regulations were in place,

there would be people who failed to abide by them; (16) the Representative felt that: (a) stricter administrative regulations were not the answer; and (b) stricter enforcement was needed; (17) she agreed with that statement; (18) the proposed administrative regulations were more stringent than federal regulations; (19) Kentucky's proposal reflected a 1,500 foot setback; (20) this would make it impossible for most farmers to build a litter storage shed, much less expand; (21) a litter storage shed for a two house poultry farm would cost about \$18,000-20,000; (22) if the \$1,200 permit charge every five years was added, the profit margin decreased; (23) with these and other criteria, Kentucky farmers were at an unfair disadvantage to other states; (24) there was no protection for the farmer to prevent someone else from moving to within: (a) 1,500 feet of her poultry houses; or (b) 75 feet of where she spread the litter; (25) she spoke to her agriculture-farm lender regarding the proposed administrative regulations; (26) the lender explained that the bank would have to reassess the profit potential of poultry before loaning money for expansion; (27) with the permitting requirement every five years, there could be no guaranteed long-term loans past the permit period; (28) the income potential for the operation was affected from the lender's point of view; (29) this lowered the equity of your borrowing power; (30) nobody could repay the full cost of starting up a poultry operation within five years; (31) the poultry specialties at the University of Kentucky, local agriculture extension agent, and executive director of the Kentucky Poultry Federation helped the farmers realize that the agriculture water quality plan would help: (a) them be better farm managers; and (b) help the environment; (32) most poultry farmers were already implementing best management practices, except for the mandatory litter storage shed; (33) at a cost of \$18,000-20,000 for a shed, it was tough to comply; (34) it was obvious that this plan had little input from the farmer and environmentalists; (35) they could: (a) live with and implement the plan with a little help on the litter storage building; and (b) not live with the permits and regulations; (36) they needed guidance, and not punishment with permits and regulations; (37) the Cabinet should: (a) give the requirements that are already in place a chance to work; and (b) be able to implement the 1994 regulations before more administrative regulations were imposed; (38) with the 1,500 and 75 feet setbacks, she calculated that she could use poultry litter on 40 acres of her 180 acres; (39) when they entered the business, they looked at the value of litter along with what they would make from poultry; (40) using the litter for fertilizer saved the small farmer a lot of money; (41) they did not get a price break when they bought fertilizer, like those received by the larger farmers who bought in quantity; (42) it was obvious that these administrative regulations were written without input from farmers; (43) she did not feel that she had proper representation from her legislators, due to the emergency proceedings; (44) she was just trying to make a living as a farmer; (45) it would be nice to make a profit, which usually went back into expanding and upgrading her farm; (46) she hired two women who help her part-time on the farm because her husband and brother are employed full-time off the farm; (47) if it were not for poultry farming, she would have to drive about 50 miles roundtrip per day for employment; (48) she had two sons, aging parents, and a handicapped sister who lived on the farm with her; and (49) if something was not done now about agriculture, they might never have the opportunity again.

Senator Roeding stated that: (1) the Cabinet should: (a) look at the setbacks; and (b) help the farmer; and (2) it appeared that Kentucky was the only state to have corporate integrator liability.

Ms. Butler stated that: (1) she did not want or need a company to tell her how to: (a) spread litter; and (b) run her farm operation; (2) the chicken companies assisted her in managing the raising of the chickens that she raised for them; (3) the remainder of the farm was hers; (4) she did not want: (a) the chicken companies involved in the rest of her farm; and (b) to be told when and how to spread the litter; and (5) she had been: (a) doing that for a long time; and (b) doing it well.

Representative Bruce stated that: (1) he did not think that the Cabinet had the authority to impose liability; (2) only the General Assembly had the authority to impose legal liability; and (3) the Cabinet should check into whether they had that authority.

Senator Roeding stated that: (1) the requirement to build a per-

manent poultry litter storage building was an unfunded mandate to the farmers; (2) there were viable alternative storage measures approved by the EPA; and (3) the cost of a permanent storage building for the average farm would be: (a) a hardship on Kentucky farmers; and (b) cost in excess of \$30,000.

In response to a question by Senator Roeding, Secretary Bickford stated that they had held four public hearings.

Senator Roeding requested that when the public hearings were held that the Cabinet send notice to Farm Bureau and others so that the public could make comment and have input on the administrative regulations.

Senator Pendleton stated that: (1) because of the cost of the litter sheds, they had discussed putting \$18,000,000 of the tobacco settlement money into a cost share pool to help in construction of the sheds; (2) while they had the opportunity, they needed to take advantage of the settlement to try to help agriculture; and (3) the money would be going straight to the Cabinet so that they: (a) could have access immediately; and (b) would not have to wait for someone to pass judgment on a request for assistance.

Ms. Butler stated that: (1) she would appreciate the cost sharing pool; (2) because of the setbacks, she had no place to build a litter shed; and (3) the setbacks were a problem for many farmers.

Senator Pendleton stated that: (1) he hoped that the Cabinet would use common sense in promulgating these administrative regulations; (2) a litter shed should be located next to the poultry houses; and (3) he hoped that they would: (a) study this; and (b) not just require a setback because a building was there.

Representative Lee requested that when the Cabinet provided the requested information, that they also provide information on states which currently had administrative regulations requiring integrator liability.

Ms. Freeman stated that she would be willing to meet with Senator Roeding to answer some of the questions that he had raised.

The Subcommittee approved a motion to send a letter to the Governor requesting that these emergency administrative regulations be revoked.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:017. Repeal of 601 KAR 1:015 and 601 KAR 1:016. Charlie Harman represented the Cabinet.

Department of Highways: Preconstruction

603 KAR 2:015. Prequalification for construction: certificate of eligibility and contract claims dispute. In response to a question by Representative Bruce, Mr. Harman stated that: (1) prequalification was required for engineering design firms that built roads for the state; (2) they had to follow a process to show that they were qualified by: (a) education; (b) experience; and (c) financial stability; and (3) a firm had to be prequalified to do state work.

Traffic

603 KAR 5:076. Repeal of 603 KAR 5:075 and 603 KAR 5:100, 603 KAR 5:105, 603 KAR 5:110, 603 KAR 5:112, 603 KAR 5:260, 603 KAR 5:270, 603 KAR 5:330.

Department of Housings, Buildings and Construction: Division of Building Codes Enforcement: Kentucky Building Code

815 KAR 7:105. Kentucky Building Code/1997. Judith Walden, General Counsel, represented the Department.

Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:010. Master heating, ventilation, and air conditioning (HVAC) contractor licensing requirements.

815 KAR 8:020. Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements.

Cabinet for Families and Children: Department for Community Based Services: Division of Policy Development: K-Tap, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:500. Family alternative diversion (FAD). In response to questions by Senator Roeding, Ms. Barkley stated that: (1) this administrative regulation increased the eligibility period from three months to twelve months after a person stopped receiving welfare

benefits; (2) employment retention assistance was a benefit to: (a) try to keep people working; and (b) prevent them from getting back on welfare; and (3) the assistance was for a twelve month period after they go off K-TAP.

The Subcommittee and promulgating administrative bodies agreed to defer consideration of the following administrative regulations to the May 9, 2000 meeting of the Subcommittee:

Personnel Cabinet: Classified

101 KAR 2:102E. Classified leave administrative regulations.

Unclassified

101 KAR 3:015E. Leave administrative regulations for the unclassified service.

Board of Pharmacy

201 KAR 2:045. Technicians.

201 KAR 2:230. Special limited pharmacy - central refill pharmacy.

Finance and Administration Cabinet: Commercial Mobile Radio Service Emergency Telecommunications Board

202 KAR 6:010E. Definitions for 202 KAR Chapter 6.

202 KAR 6:020E. CMRS carrier cost recovery.

202 KAR 6:030E. Confidential and proprietary information.

202 KAR 6:040E. Dispute resolution.

202 KAR 6:050E. PSAP certification.

202 KAR 6:060E. PSAP Pro Rata Fund disbursement.

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.

301 KAR 2:226E. Youth waterfowl hunting season.

Justice Cabinet: Department of Corrections: Jail Standards for Full-Service Facilities

Keith Hardison, Assistant General Counsel, Department of Corrections and Member, Jail Standards Commission, and Robert Powell, Director of Local Facilities, Department of Corrections, and Member, Jail Standards Commission, represented the Cabinet.

In response to comments by Senator Roeding and a question by Chairman Arnold, Subcommittee staff stated that: (1) amendments to the administrative regulations were largely formatting and drafting changes; (2) there were also substantive amendments which had been worked out with the Jail Standards Commission and its advisory committee; (3) the administrative regulations before the Subcommittee members were the administrative regulations as filed in June, 1999; (4) during the interim between filing and presentation at the Subcommittee meeting, proposed amendments were exchanged many times during negotiations between Subcommittee staff and the promulgating agency; (5) amendments are not incorporated into the administrative regulations until the Subcommittee passes the administrative regulations as amended; and (6) everything in the suggested amendments had been agreed upon by the Jailers' Association.

In response to a question by Senator Roeding, Subcommittee staff stated that the term "resident" was no longer in administrative regulations for Chapter 7.

In response to a question by Senator Long, Subcommittee staff stated that: (1) the administrative regulations as amended were as close to meeting the federal court requirements as could be achieved, considering all the parties involved; and (2) the amendment dealing with documentation of certain strip searches had been recently agreed upon, but a procedural problem remained.

Senator Roeding stated that jailers were in the audience who wished to address all of the administrative regulations.

Representative Lee stated that he was concerned about an administrative burden on big jails, like that in Hardin County, where a large number of prisoners were going back and forth to court all the time. He stated that the federal guidelines require that when prisoners are outside of the secure area, such as when they are going to court, some sort of search must be done when they are

brought back, and documenting those searches would be an administrative nightmare. Mr. Powell responded that he agreed with that statement. Mr. Hardison responded that: (1) the proposed amendments for documentation were taken to the full Jail Standards Commission, which is made up of 50% county officials (jailers, magistrates, county judges) and 50% state officials (Corrections, legislature); (2) the Commission decided that Subcommittee staff proposal would be too restrictive, for the reasons Representative Lee indicated, and it was rejected at that time; (3) yesterday afternoon, Jailer Harold Taylor, President of the Jailer's Association, came to an agreement with Subcommittee staff to add an amendment requiring documentation in very limited circumstances; (4) it was impossible to get the Commission's approval of the documentation requirement because of the 24-hour notice and agenda requirements of the Kentucky Open Meetings Act; and (5) he was thus unable to speak for the Commission because they had no opportunity to discuss the new language.

Boone Jailer John Schikel stated that it was his opinion that the full Commission needed to discuss the documentation requirements.

In response to a request from Senator Roeding, Mr. Hardison: (1) agreed to share the Department's internal, unofficial version of the administrative regulation, as tentatively amended, on an ongoing basis, at any time it was requested; (2) stated that he had sent the most recent version to Jailer Schikel; and (3) stated that charges are sometimes made right up to the last minute.

In response to a motion to defer from Representative Bruce, Mr. Hardison stated that it was his understanding that there was concern only about 501 KAR 3:120, 501 KAR 7:120, and 501 KAR 10:120. In response to comments from Senator Roeding and Chairman Arnold that concern was being expressed about all the administrative regulations, Mr. Hardison agreed to deferral of all the Title 501, Chapters 3, 7, and 10 administrative regulations under consideration. The Subcommittee voted unanimously to defer the administrative regulations until the meeting of May, 2000.

501 KAR 3:010. Definitions.

501 KAR 3:040. Personnel.

501 KAR 3:060. Security; control.

501 KAR 3:070. Safety; emergency procedures.

501 KAR 3:110. Classification.

501 KAR 3:120. Admission; release.

501 KAR 3:140. Inmate rights.

Restricted Custody Center

501 KAR 7:010. Definitions.

501 KAR 7:020. Administration; management.

501 KAR 7:040. Personnel.

501 KAR 7:050. Physical plant.

501 KAR 7:060. Security; control.

501 KAR 7:080. Sanitation; hygiene.

501 KAR 7:120. Admission; release.

501 KAR 7:140. Inmate rights.

Direct Supervision for Full-Service Jails

501 KAR 10:010. Definitions.

501 KAR 10:040. Personnel.

501 KAR 10:060. Security; control.

501 KAR 10:070. Safety; emergency procedures.

501 KAR 10:110. Classification.

501 KAR 10:120. Admission; release.

501 KAR 10:140. Inmate rights.

Department of Juvenile Justice: Child Welfare

505 KAR 1:090E. Supervised placement revocation.

Workforce Development Cabinet: Department for Adult and Technical Education: Personnel System for Certified and Equivalent Employees

780 KAR 3:065E. Certified and equivalent service administrative regulations.

780 KAR 3:071E. Repeal of 780 KAR 3:070.

780 KAR 3:072E. Attendance, compensatory time, and leave for certified and equivalent service.

780 KAR 3:075E. Sick leave sharing procedures for certified and equivalent service.

780 KAR 3:100E. Employee actions.

Unclassified Personnel Administrative Regulations

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780 KAR 6:005E. Unclassified service administrative regulations.

780 KAR 6:061E. Repeal of 780 KAR 6:060.

780 KAR 6:062E. Attendance, compensatory time and leave for unclassified service.

780 KAR 6:065E. Sick leave sharing procedures for unclassified service.

Department of Mines and Minerals: Miner Training, Education and Certification

805 KAR 7:030. Annual retraining.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:060. Chemical dependency.

Cabinet for Health Services: Department for Medicaid Services: Division of Long Term Care: Medicaid Services

907 KAR 1:025E. Payment for services provided by a cost-based nursing facility, a nursing facility with an all inclusive rate unit, and a hospital with federally-defined swing beds.

907 KAR 1:044E. Mental health center services.

907 KAR 1:065E. Payments for price-based nursing facility services.

907 KAR 1:070E. Homecare waiver services.

907 KAR 1:072E. Payments for homecare waiver services.

907 KAR 1:090E. Personal care assistance waiver services.

907 KAR 1:092E. Payments for personal care assistance waiver services.

Kentucky Children's Health Insurance Program

907 KAR 4:030E. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act.

Cabinet for Families and Children: Department for Community Based Services: Division of Policy Development: K-Tap, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.

Department for Social Insurance: Division of Management & Development: Food Stamp Program

921 KAR 3:020E. Financial requirements.

921 KAR 3:030E. Application process.

OTHER BUSINESS

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:190 & E. Certification procedures for mental health professionals performing sex offender risk assessments. Steve Durham and Tamela Biggs represented the Department.

Subcommittee staff stated that: (1) at its May 11, 1999 meeting, the Subcommittee found this administrative regulation and 501 KAR 6:200 deficient because they excluded marriage and family therapists from those counselors able to perform sex offender assessments; (2) Senate Bill 263, enacted during the 2000 Regular Session, amended the statute to include marriage and family therapists in the definitions of counselors able to perform these assessments; and (3) if the finding of deficiency was removed, the Department would file emergency administrative regulations to immediately permit marriage and family therapists to administer sex offender risk assessments.

In response to a question by Representative Bruce, Mr. Durham stated that: (1) the administrative regulations originally required a "mental health professional" to conduct the assessment; (2) the Board used the statutory definition of "qualified mental health professional"; and (3) the definition of "qualified mental health professional" did not include the marriage and family therapists.

The Subcommittee approved a motion to remove the finding of deficiency from this administrative regulation and 501 KAR 6:200.

501 KAR 6:200 & E. Sex offender risk assessment procedure.

Transportation Cabinet: Department of Highways: Division of Traffic: Mass Transportation

603 KAR 7:080. Human service transportation delivery. Charlie

Harman represented the Cabinet.

Representative Lee stated that: (1) this administrative regulation was found deficient at the Subcommittee's May, 1999 meeting because of numerous problems with non-emergency medical transportation delivery systems; and (2) House Bill 488, enacted during the 2000 Regular Session, would address most of the problems with delivery of the transportation system.

The Subcommittee approved a motion by Representative Lee to remove the finding of deficiency on 603 KAR 7:080.

The Subcommittee adjourned at 11:45 p.m. until May 9, 2000, at 10 a.m. in Room 149 of the Capitol Annex.

CUMULATIVE SUPPLEMENT

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The Locator Index lists all administrative regulations published in VOLUME 26 of the Administrative Register from July, 1999 through June, 2000. 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 25 are those administrative regulations that were originally published in Volume 25 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1999 bound Volumes were published.

KRS IndexK - 17

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 26 of the Administrative Register.

Subject IndexK - 29

The Subject Index is a general index of administrative regulations published in VOLUME 26 of the Administrative Register, and is mainly broken down by agency.

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The administrative regulations listed under VOLUME 25 are those administrative regulations that were originally published in Volume 25 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1999 bound Volumes were published.

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| Replaced | | 9-15-99 |
| 201 KAR 38:040E | 2320 | 3-4-99 |
| Replaced | | 9-15-99 |
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| 415 KAR 1:080E | 2529 | 4-12-99 |
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| 500 KAR 13:020E | 2534 | 4-5-99 |
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| 501 KAR 6:999E | 2821 | 5-14-99 |
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| 806 KAR 17:066E | 2323 | 3-12-99 |
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| 900 KAR 6:050E | 2536 | 3-26-99 |
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| 908 KAR 3:160E | 2353 | 3-9-99 |
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| 201 KAR 9:175 | | |
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| | | | Expired | | 1-18-2000 |
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| Withdrawn | | 2-2-2000 | 803 KAR 2:300E | 26 | 6-15-99 |
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| 501 KAR 6:190E | 1919 | 4-12-2000 | Replaced | 1007 | 11-15-99 |
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| 502 KAR 31:020E | 24 | 5-26-99 | Replaced | 1008 | 11-15-99 |
| Replaced | 1155 | 12-16-99 | 803 KAR 2:414E | 37 | 6-15-99 |
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| 201 KAR 18:080 | | | 201 KAR 32:041 | 501 | |
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| 201 KAR 18:100 | | | 201 KAR 32:050 | | |
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| 201 KAR 18:120 | | | Amended | 426 | |
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| 201 KAR 18:192 | 1460 | | 201 KAR 36:060 | 280 | |
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| Amended | 1441 | | 201 KAR 38:060 | 286 | |
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| 201 KAR 20:411 | | | 202 KAR 3:020 | | |
| Amended | 1443 | | As Amended | 1119 | 12-16-99 |
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| Amended | 2009 | | As Amended | 1119 | 12-8-99 |
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| Amended | 1192 | | Repealed by 401 KAR 57:019 | | 7-14-99 |
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