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MEETING NOTICE
The Administrative Regulation Review Subcommittee is tentatively
scheduled to meet on February 13, 2002, at 12 noon in Room 149
of the Capitol Annex. See tentative agenda on pages 1739-1741 of
this Administrative Register.
Telehealth Board
10 KAR 3:040.E. Establishing protocols and standards for telehealth network training centers and rural sites. ("E" expires 5/20/02) (Deferred from January)

Racial Profiling
40 KAR 7:010. Procedures for reporting allegations of racial profiling. (Deferred from October)

Kentucky Infrastructure Authority
200 KAR 17:080.E. Guidelines for 2020 water service account. ("E" expires 6/20/02)

Boards and Commissions
201 KAR 1:100. Continuing professional education requirements.
201 KAR 1:140. Procedures for the reinstatement and reissuance of a license.
201 KAR 1:150. To set forth practice and procedures for hearings held before the Kentucky State Board of Accountancy.
201 KAR 1:180. Safe harbor language for nonlicensees to use in connection with a compilation of financial information.
201 KAR 1:300. Rules of professional conduct.

Board of Dentistry
201 KAR 6:390. General anesthesia, deep sedation, and conscious sedation by dentists. (Public Hearing in December)

Board of Nursing
201 KAR 20:070. Licensure by examination.
201 KAR 20:110. Licensure by endorsement.

Kentucky Lottery Corporation

Board of Emergency Medical Services
202 KAR 7:010 & E. Definitions. ("E" expires 4/20/02)

Tourism Cabinet
Department of Fish and Wildlife Resources

Game
301 KAR 2:221.E. Waterfowl seasons and limits. ("E" expires 6/20/02)
301 KAR 2:223.E. Waterfowl hunting requirements. ("E" expires 6/20/02)
301 KAR 2:225 & E. Dove, wood duck, teal, and other migratory game bird hunting. ("E" expires 3/20/02)

Hunting and Fishing
301 KAR 3:026.E. Access to wildlife management areas for mobility-impaired individuals. ("E" expires 4/20/02) (Deferred from December)

Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division of Water

Public Water Supply
401 KAR 8:022. Sanitary surveys. (Amended After Hearing)

Hazardous Pollutants
401 KAR 57:002. 40 CFR Part 61 national emission standards for hazardous air pollutants. (Amended After Hearing)

New Source Performance Standards
401 KAR 60:005. 40 CFR Part 60 standards of performance for new stationary sources. (Amended After Hearing)

General Standards of Performance
401 KAR 63:002. 40 CFR Part 63 national emission standards for hazardous air pollutants. (Amended After Hearing)

Justice Cabinet
Department of Corrections

Office of the Secretary
501 KAR 6:120. Blackburn Correctional Complex.

Kentucky Law Enforcement Council
503 KAR 1:110.E. Department of Criminal Justice Training basic training; graduation requirements; records.
TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
601 KAR 1:040. Application for operating authority and registration of motor carriers.

EDUCATION, ARTS, AND HUMANITIES CABINET
Board of Education
Department of Education
Office of District Support Services
School Administration and Finance
Office of Learning Programs Development
Office of Instruction
Office of Learning Support Services
704 KAR 7:120. Home/hospital instruction.

LABOR CABINET
Occupational Safety and Health
803 KAR 2:180E. Recordkeeping: statistics. ("E" expires 5/20/02) (Deferred from January)

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
Utilities
807 KAR 5:090. System development charges for water utilities. (Public Hearing in December)

Department of Charitable Gaming
Charitable Gaming
820 KAR 1:001. Definitions for 820 KAR Chapter 1.
820 KAR 1:010. Temporary licensure.
820 KAR 1:015. Permanent licensure.
820 KAR 1:025. Quarterly reports of a licensed charitable organization.
820 KAR 1:026. Quarterly reports of a licensed charitable gaming facility.
820 KAR 1:027. Quarterly report of a licensed distributor regarding card-playing devices. (Amended After Hearing)
820 KAR 1:030. Charity game ticket standards. (Amended After Hearing)
820 KAR 1:040. Bingo standards.
820 KAR 1:070. Exempt activities.
820 KAR 1:120. Other allowable expenses.
820 KAR 1:130. Administrative actions.

Kentucky Mine Safety Review Commission
Kentucky Mine Safety Review
825 KAR 1:020E. Administrative hearing procedures. ("E" expires 3/20/02) (Deferred from November)

CABINET FOR HEALTH SERVICES
Department for Public Health
State Health Plan
902 KAR 17:041 & E. State Health Plan for facilities and services. ("E" expires 3/20/02) (Public Hearing in December)
Health Services and Facilities
902 KAR 20:018. Operation and services; renal dialysis facilities.
Office of Inspector General
Inspector General
905 KAR 1:120E. Informal dispute resolution. ("E" expires 4/20/02) (Deferred from November)
Department for Medicaid Services
Services
907 KAR 1:019E. Outpatient Pharmacy Program. ("E" expires 4/20/02) (Deferred from November)
907 KAR 1:021E. Reimbursement for drugs. ("E" expires 4/20/02) (Deferred from November)
907 KAR 1:030E. Home health agency services. ("E" expires 6/20/02)
907 KAR 1:055E. Payments for primary care center, federally-qualified health center, and rural health clinic services. ("E" expires 6/20/02)
907 KAR 1:081E. Repeal of 907 KAR 1:080. ("E" expires 6/20/02) (Will Not Be Replaced by Ordinary)
907 KAR 1:145E. Supports for community living services for an individual with mental retardation or a developmental disability. ("E" expires 4/20/02) (Deferred from November)
907 KAR 1:320E. Kentucky Patient Access and Care System (KenPAC). ("E" expires 2/18/02) (Deferred from October)
907 KAR 1:660E. Relative responsibility requirements for Medicaid. ("E" expires 6/20/02)
907 KAR 1:810E. Presumptive eligibility for pregnant women. ("E" expires 5/20/02) (Deferred from January)
Payment and Services
907 KAR 3:030E. Coverage and payments for IMPACT Plus services. ("E" expires 5/20/02) (Deferred from January)

CABINET FOR FAMILIES AND CHILDREN
Department of Community Based Services
Family Support
Child Support
921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.

Protection and Permanency

Child Welfare
922 KAR 1:300. Standards for child-caring facilities.
922 KAR 1:305. Licensure of child-caring facilities and child-placing agencies.
922 KAR 1:460. Standards for youth wilderness camps.
922 KAR 1:470E. Central registry. ("E" expires 5/20/02) (Deferred from January)

Day Care
922 KAR 2:090E. Child care facility licensure. ("E" expires 5/20/02) (Deferred from January)
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.
TEACHERS' RETIREMENT SYSTEM

January 14, 2002

(1) 102 KAR 1:230. Limitations on benefits.

(2) Teachers' Retirement System of the State of Kentucky, 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 February 21, 2002, at 9 a.m. local time, in the Board Room located on the second floor of the main building of the Teachers' Retirement System of the State of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

(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 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 calendar days prior to February 21, 2002, the public hearing will be canceled.

(a) Persons wishing to request a public hearing should mail their written request to the following address: Robert B. Barnes, General Counsel, Teachers' Retirement System of the State of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601, (502) 848-8500, (502) 573-0199 (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."

(c) 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.

(d) Persons who wish to file this request may obtain a request form from Robert B. Barnes, General Counsel, Teachers' Retirement System of the State of Kentucky, at the address or phone number provided above.

(e) 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.

(f) Information relating to the proposed amended administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to limitation of benefits is KRS 161.716.

(b) The administrative regulation that the Teachers' Retirement System of the State of Kentucky intends to promulgate is a new regulation that will ensure compliance with the federal Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA").

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 161.716 authorizes the Board of Trustees of the Teachers' Retirement System of the State of Kentucky to adopt such regulations as are necessary to remove any conflicts with federal laws and to protect the interests of members, survivors of members and the retirement system. The function of this administrative regulation shall be to adopt the effective date for increasing the defined benefit dollar limitation from $140,000 to $160,000.

(d) The benefit expected from this administrative regulation is: To provide members regulatory direction and authority for the increase in the defined benefit dollar limitation authorized by EGTRRA.

(e) The administrative regulation will be implemented as follows: By the Teachers' Retirement System of the State of Kentucky by applying the higher defined benefit dollar limitation on the adopted effective date as authorized by EGTRRA.

January 14, 2002

(1) 102 KAR 1:240. Increase in compensation limit.

(2) Teachers' Retirement System of the State of Kentucky, 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 February 21, 2002, at 9 a.m. local time, in the Board Room located on the second floor of the main building of the Teachers' Retirement System of the State of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

(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 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 calendar days prior to February 21, 2002, the public hearing will be canceled.

(a) Persons wishing to request a public hearing should mail their written request to the following address: Robert B. Barnes, General Counsel, Teachers' Retirement System of the State of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601, (502) 848-8500, (502) 573-0199 (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."

(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 Robert B. Barnes, General Counsel, Teachers' Retirement System of the State of Kentucky, at the address or phone number provided above.

(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.

(f) Information relating to the proposed amended administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to increase in compensation limits is KRS 161.716.

(b) The administrative regulation that the Teachers' Retirement System of the State of Kentucky intends to promulgate is a new regulation that will ensure compliance with the federal Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA").
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(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 161.716 authorizes the Board of Trustees of the Teachers' Retirement System of the State of Kentucky to adopt such regulations as are necessary to remove any conflicts with federal laws and to protect the interests of members, survivors of members and the retirement system. The function of this administrative regulation shall be to increase the annual compensation of each member taken into account in determining benefit accruals in any plan year beginning after December 31, 2001 from $170,000 to $200,000.

(d) The benefit expected from this administrative regulation is: To provide members regulatory direction and authority for the increase in the annual compensation of each member taken into account in determining benefit accruals authorized by EGTRRA.

(e) The administrative regulation will be implemented as follows: By the Teachers' Retirement System of the State of Kentucky by applying the higher annual compensation of each member taken into account in determining benefit accruals in any plan year on the adopted effective date as authorized by EGTRRA.

January 14, 2002

(1) 102 KAR 1:250. Rollovers from other plans.

(2) Teachers' Retirement System of the State of Kentucky, 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 February 21, 2002, at 9 a.m. local time, in the Board Room located on the second floor of the main building of the Teachers' Retirement System of the State of Kentucky, 479 Versailles 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 1 person representing 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 calendar days prior to February 21, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Robert B. Barnes, General Counsel, Teachers' Retirement System of the State of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601, (502) 848-8500, (502) 673-0199 (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) A person who wishes to file this request may obtain a request form from Robert B. Barnes, General Counsel, Teachers' Retirement System of the State of Kentucky, at the address or phone number provided above.

(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.

(7) Information relating to the proposed amended administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to increase in compensation limits is KRS 161.716.

(b) The administrative regulation that the Teachers' Retirement System of the State of Kentucky intends to promulgate is a new regulation that will ensure compliance with the federal Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA").

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 161.716 authorizes the Board of Trustees of the Teachers' Retirement System of the State of Kentucky to adopt such regulations as are necessary to remove any conflicts with federal laws and to protect the interests of members, survivors of members and the retirement system. The function of this administrative regulation is to allow, effective January 1, 2002, the retirement system to accept rollovers for the purchase of service credit with monies rolled over from Internal Revenue Code Section 457 plans, from Internal Revenue Code Section 403(b) plans and Individual Retirement Accounts with certain limitations.

(d) The benefit expected from this administrative regulation is: To provide regulatory direction and authority for the acceptance of rollovers for the purchase of service credit with monies rolled over from the plans specified in sub-section (7)(c) above and as authorized by EGTRRA.

(e) The administrative regulation will be implemented as follows: By the Teachers' Retirement System of the State of Kentucky by accepting rollovers for the purchase of service credit with monies rolled over from the plans specified in sub-section (7)(c) above and as authorized by EGTRRA.

BOARD OF PHARMACY

January 15, 2002

(1) 201 KAR 2:105. Licensing and drug distribution requirements for drug manufacturers and wholesalers.

(2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:105 relating to the requirements for manufacturers.

(3) A public hearing to receive oral and written comments on the proposed amendment to the existing administrative regulation has been scheduled for February 25, 2002, at 9 a.m. local prevailing time, at 23 Mill Creek Park-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 February 25, 2002, 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, 23 Mill Creek Park, Frankfort, Kentucky 40601-9230, (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.

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(7) Information relating to the proposed administrative regulation.
   (a) The statutory authority for the promulgation of an administrative regulation relating to 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 315.036 and 315.191(1)(a) authorize and require the Board of Pharmacy to promulgate administrative regulations to establish the parameters by which manufacturers operate their businesses.
   (d) The benefit expected from the amendment to the administrative regulation is a greater ability of pharmacists to provide consultant services to the manufacturer on a quarterly basis and remain the pharmacist-in-charge.
   (e) The amendment to the administrative regulation will be implemented as follows: The board proposes to clarify the procedure by which a pharmacist serves as pharmacist-in-charge for a manufacturer.
   (f) 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. Monê at the above-mentioned address no later than February 15, 2002.

KENTUCKY BOARD OF MEDICAL LICENSURE

December 26, 2001

(1) 201 KAR 9:310. Continuing medical education.
(2) The Kentucky Board of Medical Licensure 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 Thursday, February 28, 2002 at 1 p.m. at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222.
(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.
(5) (a) 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 February 28, 2002, the public hearing shall be canceled.
(6) (a) Persons wishing to request a public hearing should mail their written request to the following address: C. Lloyd Vest, II, Esq., Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046, or fax (502) 429-9923.
(7) (a) Persons wishing to request a public hearing should mail their written request to the following address: C. Lloyd Vest, II, Esq., Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046, or fax (502) 429-9923.
(8) A public hearing, a person shall state:
   1. "I agree to attend the public hearing;" or
   2. "I will not attend the public hearing;"
(9) (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.
(10) (a) Persons who wish to file this request may obtain a request form the Kentucky Board of Medical Licensure at the address above.

(7) Information relating to the proposed amendments:

(8) (a) The statutory authority for the amendment of an administrative regulation relating to the subject matter of administrative regulation is KRS 311.565, 311.601, 214.610, 214.615, and 614.620.
(9) (a) The administrative regulation that the Kentucky Board of Medical Licensure intends to promulgate will amend 201 KAR 9:310, Continuing medical education. It will effect physicians who are licensed to practice medicine in the Commonwealth of Kentucky and is necessary for the board's housekeeping purposes.
(10) (a) The necessity and function of the proposed administrative regulation is as follows: Fulfills the requirements of KRS 214.610, 214.615 and 614.620 that physicians, during each 10 year period of their practice, complete a minimum of 2 hours of continuing medical education in HIV/AIDS courses.
(11) (a) The benefits expected from the administrative regulation are: The board feels that the amendment is necessary to fulfill the requirements of KRS 214.610, 214.615 and 614.620.
(12) (a) The administrative regulation will be implemented as follows: The regulation will be implemented during the 10 year period after December 2002. The current reporting cycle runs from January 1, 2000 to December 31, 2002.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources

January 11, 2002

(1) 301 KAR 1:015. Boats and motor restrictions.
(2) The Department of Fish and Wildlife Resources 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 February 22, 2002 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.
(5) (a) If a request for a public hearing is not received from the required number of people at least 10 days prior to February 22, 2002 the public hearing will be cancelled.
(6) (a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzinger, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.
(7) (a) Persons who wish to file this request may obtain a request from the department at the address listed above.
(8) Information relating to the proposed administrative regulation.
(a) The statutory authority for the promulgation an administrative regulation governing wild turkey hunting is KRS 235.280.
(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.
(c) The necessity and function of the proposed administrative regulation is to limit the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.
(d) The benefits expected from the administrative regulation is to ensure boating safety on Kentucky lakes.
(e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be implemented by the Division of Law Enforcement.

January 14, 2002
(1) 301 KAR 2:049. Small game and furbearer hunting on public areas.
(2) The Department of Fish and Wildlife Resources 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 February 22, 2002 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.
(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 is not received from the required number of people at least 10 days prior to February 22, 2002 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3400, FAX (502) 564-0506.
(b) On the 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 the department at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation an administrative regulation governing small game and wildlife management areas is KRS 150.170, 150.195 and 150.225.
(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.
(c) The necessity and function of the proposed administrative regulation is to establish quota hunts on the 2 fox hunting field trials for Clay WMA. Clubs selected for the events would be required to monitor and authorize the eligibility of participants through the use of laminated badges.
(d) The benefits expected from the administrative regulation are to help alleviate the expense of staff time used to supervise a field trial and to decrease the impacts of large amounts of people participating in the field trials are having on the WMAs.
(e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; the division of law enforcement will supervise the field trials; and the division of wildlife will rehabilitate damage caused by the heavy traffic of field trials on the WMAs.

December 20, 2001
(1) 301 KAR 2:083. Captive cervids.
(2) The Department of Fish and Wildlife Resources 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 February 22, 2002 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.
(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 is not received from the required number of people at least 0 days prior to February 22, 2002 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax: (502) 564-0506.
(b) On the 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 the department at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation an administrative regulation governing wild turkey hunting is KRS 235.180.
(b) The administrative regulation that the department intends to promulgate amends existing administrative regulation. It is a new regulation that will establish the standards for holding members of the cervidae family.
(c) The necessity and function of the proposed administrative regulation is to promote and maintain healthy native populations of wildlife.
(d) The benefit expected from the administrative regulation is the maintenance of healthy wildlife populations through the prevention of disease transmission and escaped exotic wildlife.
(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.

January 10, 2002
(1) 301 KAR 2:132. Elk depredation permits and quota hunts.
(2) The Department of Fish and Wildlife Resources 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 February 22,
2002 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 is not received from the required number of people at least 10 days prior to February 22, 2002 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3400, fax (502) 564-0506.

(b) On the 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.

(c) The statutory authority for the promulgation an administrative regulation governing wild turkey hunting is KRS 150.390(3) and (4).

(d) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.

(e) The necessity and function of the proposed administrative regulation is to delete the requirement that an applicant for an elk quota hunt having a current hunting license.

(f) The benefits expected from the administrative regulation are to relieve some of the burden on applying for the elk quota hunt and encourage more people to apply.

(g) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and media outlets; it will be enforced by the department's Division of Law Enforcement.

January 11, 2002

(1) 301 KAR 2:185. Hunter education training.

(2) The Department of Fish and Wildlife Resources 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 February 22, 2002 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 is not received from the required number of people at least 10 days prior to February 22, 2002 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3400, fax (502) 564-0506.

(b) On the 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.

(c) The statutory authority for the promulgation an administrative regulation governing wild turkey hunting is KRS 150.025(1).

(d) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.

(e) The necessity and function of the proposed administrative regulation is to bring the regulation up to date with new technological methods of presenting the hunter education course.

(f) The benefits expected from the administrative regulation are to allow people more options for taking the hunter education course such as by video and CD-rom.

(g) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and media outlets; the Division of Information and Education within the department will implement the administrative regulation.

January 14, 2002

(1) 301 KAR 2:300. Field trials on wildlife management areas.

(2) The Department of Fish and Wildlife Resources 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 February 22, 2002 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 is not received from the required number of people at least 10 days prior to February 22, 2002 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3409, FAX (502) 564-0506.

(b) On the 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.

(c) The statutory authority for the promulgation an administrative regulation governing wildlife management areas is KRS 150.025(1) and
150.620.
(b) The administrative regulation that the department intends to promulgate is a new administrative regulation.
(c) The necessity and function of the proposed administrative regulation is to designate which wildlife management areas may be used for field trials and which Wildlife Management Areas may not.
(d) The benefits expected from the administrative regulation are to help alleviate the impacts the field trials are having on the WMAs.
(e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; the division of law enforcement will supervise the field trials; and the division of wildlife will reestablish damage caused by the heavy traffic of field trials on the WMAs.

January 14, 2002
(1) 301 KAR 3:022. License, tag and permit fees.
(2) The Department of Fish and Wildlife Resources 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 February 22, 2002 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 is not received from the required number of people at least 10 days prior to February 22, 2002 the public hearing will be cancelled.
(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3400, FAX (502) 564-0506.
(b) On the 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 an administrative regulation governing licenses and permits is KRS 150.170, 150.195 and 150.225.
(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.
(c) The necessity and function of the proposed administrative regulation is to establish a per person user fee for individuals participating in field trials where a hunting license is not required and exempt Addington Enterprises employees and their guests from having to have an Addington Enterprises-Robinson Forest individual permit.
(d) The benefits expected from the administrative regulation are to help alleviate the expense of staff time used to supervise a field trial and the impacts the field trials are having on the WMAs.
(e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; the division of law enforcement will supervise the field trials; and the division of wildlife will reestablish damage caused by the heavy traffic of field trials on the WMAs.

January 11, 2002
(1) 301 KAR 3:100. Special commission permits.
(2) The Department of Fish and Wildlife Resources 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 February 22, 2002 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 is not received from the required number of people at least 10 days prior to February 22, 2002 the public hearing will be cancelled.
(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.
(b) On the 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 an administrative regulation governing licenses and permits is KRS 150.170, 150.195 and 150.225.
(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.
(c) The necessity and function of the proposed administrative regulation is to establish a per person user fee for individuals participating in field trials where a hunting license is not required and exempt Addington Enterprises employees and their guests from having to have an Addington Enterprises-Robinson Forest individual permit.
(d) The benefits expected from the administrative regulation are to help alleviate the expense of staff time used to supervise a field trial and the impacts the field trials are having on the WMAs.
(e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; the division of law enforcement will supervise the field trials; and the division of wildlife will reestablish damage caused by the heavy traffic of field trials on the WMAs.

January 11, 2002
(1) 301 KAR 4:001. Selection of Fish and Wildlife Commission nominees.
(2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed above.
January 11, 2002
(1) 301 KAR 5:040. Selling and purchasing migratory game bird and waterfowl permits.
(2) The Department of Fish and Wildlife Resources 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 February 22, 2002 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 is not received from the required number of people at least 10 days prior to February 22, 2002, the public hearing will be cancelled.
(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.
(b) On the 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."
(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.
(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 an administrative regulation governing the nomination of commission members is KRS 025(1).
(b) The affirmative regulation that the department intends to promulgate amends an existing administrative regulation.
(c) The necessity and function of the proposed administrative regulation is to establish the procedure for nominating Fish and Wildlife Resources Commission members.
(d) The benefits expected from the administrative regulation are to ensure a just and fair selection process.
(e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be implemented through KRS Chapter 13B.

January 11, 2002
(1) 301 KAR 5:050. Purchasing licenses electronically.
(2) The Department of Fish and Wildlife Resources 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 February 22, 2002 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 is not received from the required number of people at least 10 days prior to February 22, 2002 the public hearing will be cancelled.
(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.
(b) On the 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."
(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.
(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 an administrative regulation governing wild turkey hunting is KRS 150.195, 150.603 and 50 CFR 20.20.
(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.
(c) The necessity and function of the proposed administrative regulation is to enable the collection of migratory bird harvest information.
(d) The benefits expected from the administrative regulation are to accurately set the following year’s season and bag limits for migratory birds with the data collected.
(e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be a requirement for purchasing migratory bird stamps for the current migratory bird season. The administrative division within the department will collect the data and forward it to the USFW.
(7) Information relating to the proposed administrative regulation.
   (a) The statutory authority for the promulgation an administrative regulation governing wild turkey hunting is KRS 150.025(1) and 150.195(1).
   (b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.
   (c) The necessity and function of the proposed administrative regulation is to enable persons to purchase licenses by way of telephone and the internet.
   (d) The benefits expected from the administrative regulation are to allow more convenient methods of purchasing licenses.
   (e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be implemented by the administrative division within the department.

January 10, 2002

(1) 301 KAR 6:060. Safe boating certificate.
(2) The Department of Fish and Wildlife Resources 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 February 22, 2002 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 is not received from the required number of people at least 10 days prior to February 22, 2002 the public hearing will be cancelled.
(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Berzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3400, fax (502) 564-0506.
(b) On the 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 request to be informed must file a request at the address listed above.
(7) Information relating to the proposed administrative regulation.
(a) The statutory authority for the promulgation an administrative regulation governing wild turkey hunting is KRS 235.280 and 235.285(7).
(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.
(c) The necessity and function of the proposed administrative regulation is to update the administrative regulation to conform with the new boating manual being used, "Kentucky Boating Safety Manual."
(d) The benefits expected from the administrative regulation are to ensure boating safety students are using the most current study materials.
(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.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water

January 14, 2002

(1) 401 KAR 5:002. Definitions for 401 KAR Chapter 5. The subject matter of the administrative regulation to be promulgated is definitions for 401 KAR Chapter 5.
(2) The Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, intends to amend an existing 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 Thursday, February 21, 2002, at 9:30 a.m. (Eastern Time), in the Auditorium of the Capital Plaza Tower, Merro Street and Wilkinson Boulevard, Frankfort, Kentucky.
(4)(a) The public hearing will be held if it is requested by at least 10 calendar days prior to February 21, 2002. The request must be in writing, by 5 persons, or by an administrative body, or an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agrees 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 February 21, 2002, the public hearing will be canceled.
(5) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.
(6) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.
(5)(a) Persons wishing to request a public hearing should mail or fax their written request to the following address: Jeffrey W. Pratt, Director, Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.
(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."
(8)(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 Division of Water at the address listed above.
(7) Information relating to the proposed administrative regulation.
(a) The statutory authority for the existing administrative regulation relating to the definitions for 401 KAR Chapter 5 is: KRS 224.10-100, 224.10-110, 224.16-050, 224.70-100, 224.70-110, 224.73-120, 33 USC 1281, 1288, 1313(e), 1314(b), 341, 1342 and relates to KRS 224.01-010, 224.01-400, 224.16-050, 40 CFR Parts 35, 116, 130, 131, 136, 401-471, 33 USC 1251, et seq., 42 USC 300f-j, and 42 USC 9601-9675.
(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, intends to promulgate will be an amended regulation to be consistent with changes that the U.S. Environmental Protection Agency made in the corresponding federal regulation. The amendment to 401 KAR 5:002 will incorporate new and amended definitions that are the result of other administrative regulations being amended. The definition changes relate to the regulations for general provisions of the KPDES permitting program, the scope and applicability of the KPDES program, KPDES pretreatment requirements, KPDES application requirements, KPDES permit conditions, provisions of the KPDES permit, cabinet review procedures for KPDES permits, and criteria and standards for the KPDES program.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 224.13-100 authorizes the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. 401 KAR Chapter 5 establishes administrative regulations for the issuance of permits to construct, modify, and operate facilities which discharge pollutants to waters of the Commonwealth. This administrative regulation establishes definitions for terms and acronyms, abbreviations, and symbols used in 401 KAR Chapter 5, relating to the issuance of these permits. Where applicable, these definitions are the same as definitions used for the federal National Pollutant Discharge Elimination System program in 40 CFR Parts 116, 136, 401-471, and the planning requirements in 40 CFR Part 130; there are no definitions that are more stringent than federal requirements.

(d) The expected benefits from the administrative regulation are: The new and amended definitions will be the same as the federal definitions, allowing the cabinet to maintain primacy for the administration of the federal National Pollutant Discharge Elimination System. Only definitions related to the KPDES program will be changed. Regulated entities and the public will benefit from the cabinet’s definitions being consistent with the federal definitions.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, the cabinet will use the new definitions in the administration and enforcement of 401 KAR Chapter 5.

January 14, 2002

(1) 401 KAR 5:050. General provisions of KPDES permitting program. The subject matter of this administrative regulation is general provisions of KPDES permitting program.

(2) The Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, intends to amend an existing 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 Thursday, February 21, 2002, at 9:30 a.m. (Eastern Time), in the Auditorium of the Capital Plaza Tower, Mero Street and Wilkinson Boulevard, Frankfort, Kentucky.

(a) The public hearing will be held if it is requested by at least 10 calendar days prior to February 21, 2002. The request must be in writing, by 5 persons, or by an administrative body, or an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agrees 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 requested number of people at least 10 days prior to February 21, 2002, the public hearing will not be held.

(c) Considerations will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5) (a) Persons wishing to request a public hearing should mail or fax their written request to the following address: Jeffrey W. Pratt, Director, Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601, phone (502) 554-3410, fax (502) 554-0111.

(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."

(5)(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 Division of Water at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the existing administrative regulation relating to general provisions of KPDES permitting program is: KRS 224.13-100, 224.10-10, 224.10-11, 224.10-10, 224.70-10, 224.70-100, 224.70-110, 224.70-110, 33 USC 1281, 1288, and 1342, and relates to KRS 224.01-010, 224.10-110, 224.16-050, 224.70-100, 224.70-110, 224.69-010 and 33 USC 1251, et seq.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, intends to promulgate will be an amended regulation to be consistent with changes that the U.S. Environmental Protection Agency made in the corresponding federal regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS Chapter 224 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into the waters of the Commonwealth. KRS 224.16-050 empowers the cabinet to issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act (33 USC Section 1251, et seq.). Permits issued pursuant to KRS 224.16-050 shall be referred to as KPDES permits.

(d) The expected benefits from the administrative regulation are: The new and amended regulations will be the same as the federal regulations, allowing the cabinet to maintain primacy for the administration of the federal National Pollutant Discharge Elimination System. Regulated entities and the public will benefit from the cabinet’s amendments being consistent with the federal regulations.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, the cabinet will use the new amendments in the administration and enforcement of the general provisions of the KPDES permitting program.

January 14, 2002

(1) 401 KAR 5:055. Scope and applicability of the KPDES program. The subject matter of this administrative regulation is scope and applicability of the KPDES program.

(2) The Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, intends to amend an existing 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 Thursday, February 21, 2002, at 9:30 a.m. (Eastern Time), in the Auditorium of the Capital Plaza Tower, Mero Street and Wilkinson Boulevard, Frankfort, Kentucky.

(a) The public hearing will be held if it is requested by at least 10 calendar days prior to February 21, 2002. The request must be in
writing, by 5 persons, or by an administrative body, or an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agrees 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 February 21, 2002, the public hearing will be canceled.

(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing should mail or fax their written request to the following address: Jeffrey W. Pratt, Director, Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

(b) On a request for public hearing, a person shall state:
   1. "I agree to attend the public hearing";
   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 Division of Water at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the existing administrative regulation relating to the scope and applicability of the KPDES program is: KRS 224.10-100, 224.10-110, 224.16-050, 224.70-100, 224.70-110, and 33 USC sections 1281, 1288 and 1342, and relates to KRS 224.16-050, 224.70-100, 224.70-110, 224.99-010 and 33 USC 1251, et seq.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, intends to promulgate will be an amended regulation to be consistent with changes that the U.S. Environmental Protection Agency made in the corresponding federal regulation.

(c) The existing regulatory authority and function of the proposed administrative regulation is as follows: KRS 224.10-100 provides that the Natural Resources and Environmental Protection Cabinet may require for permits discharging into the waters of the Commonwealth, by administrative regulation, technological levels of treatment and effluent limitations. KRS 224.16-050(1) provides that the cabinet may issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act (33 USC Section 1251, et seq.) subject to the conditions imposed in 33 USC Sections 1342(b) and (d). KRS 224.16-050(1) requires that any exemptions granted in the issuance of these permits shall be pursuant to 33 USC Sections 1311, 1312, and 1326(a). Further, KRS 224.16-050(4) requires that the cabinet shall not impose under any permit issued pursuant to this administrative regulation an effluent limitation, monitoring requirement or other condition which is more stringent than the effluent limitation, monitoring requirement or other condition which would have been applicable under the federal regulation if the permit were issued by the federal government. This administrative regulation contains the scope and applicability of the KPDES program including: specific inclusions and exclusions, prohibitions, requirements for general permits, requirements for disposal into wells and into publicly-owned treatment works (POTWs) and disposal by land application.

(d) The expected benefits from the administrative regulation are: The new and amended regulations will be the same as the federal regulations, allowing the cabinet to maintain primacy for the administration of the federal National Pollutant Discharge Elimination System. Regulated entities and the public will benefit from the cabinet's amendments being consistent with the federal regulations.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, the cabinet will use the new amendments in the administration and enforcement of the scope and applicability of the KPDES program.

January 14, 2002

(1) 401 KAR 5:057. KPDES pretreatment requirements. The subject matter of this administrative regulation is KPDES pretreatment requirements.

(2) The Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, intends to amend the existing administrative regulation governing the subject matter listed above.

(a) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, February 21, 2002, at 9:30 a.m. (Eastern Time), in the Auditorium of the Capitol Plaza Tower, Mero Street and Wilkinson Boulevard, Frankfort, Kentucky.

(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 February 21, 2002, the public hearing will be canceled.

(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing should mail or fax their written request to the following address: Jeffrey W. Pratt, Director, Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

(b) On a request for public hearing, a person shall state:
   1. "I agree to attend the public hearing";
   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 Division of Water at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the existing administrative regulation relating to KPDES pretreatment requirements is: KRS 224.10-100, 224.10-110, 224.16-050, 224.70-100, 224.70-110, 224.73-120, 33 USC 1281, 1288, and 1342, and relates to: 224.10-210, 224.16-050, 224.70-100, 224.70-110, and 224.99-010, 40 CFR parts 136, 400-471 and 503, and 33 USC 1251, et seq.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, intends to promulgate will be an amended regulation to be consistent with changes that the U.S. Environmental Protection Agency made in the corresponding federal regulation.

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(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation implements Sections 301, 304, 307, 306, 309, 402, and 405 of the Federal Water Pollution Control Act of 1977 (PL 95-217) or the Act. It establishes responsibilities of the Commonwealth of Kentucky, local government, industry, and the public to implement the rational pretreatment program to control pollutants which pass through or interfere with treatment processes in publicly owned treatment works (POTWs) which may contain sewage sludge. Its objectives are to prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; to prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with the treatment works, and to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

(d) The expected benefits from the administrative regulation are: The new and amended regulations will be the same as the federal regulations, allowing the cabinet to maintain primacy for the administration of the federal National Pollutant Discharge Elimination System. Regulated entities and the public will benefit from the cabinet's amendments being consistent with the federal regulations.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, the cabinet will use the new amendments in the administration and enforcement of KPDES pretreatment requirements.

January 14, 2002

(1) 401 KAR 5:060. KPDES application requirements. The subject matter of this administrative regulation is KPDES application requirements.

2. The Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, intends to amend an existing 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 Thursday, February 21, 2002, at 9:30 a.m. (Eastern Time), in the Auditorium of the Capital Plaza Tower, Mero Street and Wilkinson Boulevard, Frankfort, Kentucky.

4(a) The public hearing will be held if it is requested by at least 10 calendar days prior to February 21, 2002. The request must be in writing, by 5 persons, or by an administrative body, or an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agrees to be present at the public hearing.

5. 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 February 21, 2002, the public hearing will be canceled.

6. Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

7. The hearing is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

8. Persons wishing to request a public hearing should mail or fax their written request to the following address: Jeffrey W. Pratt, Director, Division of Water, 44 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

9. On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing";
2. "I will not attend the public hearing."

10. 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.

11. Persons who wish to file this request may obtain a request form from the Division of Water at the address listed above.

12. The statutory authority for the existing administrative regulation relating to KPDES application requirements is: KRS 224.10-100, 224.10-110, 224.10-150, 224.70-100, 224.70-110, and 33 USC 1291, 1288 and 1342, and relates to 224.16-050, 224.70-100, 224.70-110, 224.10-110, and 33 USC 1251, et seq.

13. The administrative regulation that the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, intends to promulgate will be an amended regulation to be consistent with changes that the U.S. Environmental Protection Agency made in the corresponding federal regulation. This amendment will include, additional application requirements for storm water discharges and time constraints for submittal of permit applications from small municipal separate storm sewer systems.

14. The necessity and function of the proposed administrative regulation is as follows: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe the permit to discharge into any waters of the Commonwealth. KRS 224.16-050 further empowers the cabinet to issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act (33 USC Section 1251, et seq.) subject to the conditions imposed in 33 USC Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act. This administrative regulation sets forth the application requirements for all KPDES permits and contains additional requirements for general and specific categories of dischargers.

15. The expected benefits from the administrative regulation are: The new and amended regulations will be the same as the federal regulations, allowing the cabinet to maintain primacy for the administration of the federal National Pollutant Discharge Elimination System. Regulated entities and the public will benefit from the cabinet's amendments being consistent with the federal regulations.

16. The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, the cabinet will use the new amendments in the administration and enforcement of KPDES application requirements.

January 14, 2002

(1) 401 KAR 5:065. KPDES permit conditions. The subject matter of this administrative regulation is KPDES permit conditions.

2. The Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, intends to amend an existing 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 Thursday, February 21, 2002, at 9:30 a.m. (Eastern Time), in the Auditorium of the Capital Plaza Tower, Mero Street and Wilkinson Boulevard, Frankfort, Kentucky.

4(a) The public hearing will be held if it is requested by at least 10 calendar days prior to February 21, 2002. The request must be in writing, by 5 persons, or by an administrative body, or an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agrees to be present at the public hearing.

5(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 February 21, 2002, the public hearing will be canceled.

6(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing.
of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing should mail or fax their written request to the following address: Jeffrey W. Pratt, Director, Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

(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 a request may obtain a request form from the Division of Water at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the existing administrative regulation relating to KPDES permit conditions is KRS 224.10-100, 224.10-110, 224.16-050, 224.70-100, 224.70-110 and 33 USC 1281, 1288 and 1342, and relates to 224.16-050, 224.70-100, 224.70-110, 224.99-010 and 33 USC 1251, et seq.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, intends to promulgate will be an amended regulation to be consistent with changes that the U.S. Environmental Protection Agency made in the corresponding federal regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 further empowers the cabinet to issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act (33 USC Section 1251, et seq.) subject to the conditions imposed in 33 USC Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act. This amendment to the administrative regulation sets forth the conditions applicable to all KPDES permits and the procedures for establishing and calculating permit conditions.

(d) The expected benefits from the administrative regulation are: The new and amended regulations will be the same as the federal regulations, allowing the cabinet to maintain primacy for the administration of the federal National Pollutant Discharge Elimination System. Regulated entities and the public will benefit from the cabinet’s amendments being consistent with the federal regulations.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, the cabinet will use the new amendments in the administration and enforcement of KPDES permit conditions.

January 14, 2002

(1) 401 KAR 5:070. Provisions of the KPDES permit. The subject matter of this administrative regulation is the provisions of the KPDES permit.

(2) The Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, intends to amend an existing 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 Thursday, February 21, 2002, at 9:30 a.m. (Eastern Time), in the Auditorium of the Capital Plaza Tower, Mercy Street and Wilkinson Boulevard, Frankfort, Kentucky.

(4)(a) The public hearing will be held if it is requested by at least 10 calendar days prior to February 21, 2002. The request must be in writing, by 5 persons, or by an administrative body, or an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agrees 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 February 21, 2002, the public hearing will be canceled.

(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing should mail or fax their written request to the following address: Jeffrey W. Pratt, Director, Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

(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 a request may obtain a request form from the Division of Water at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the existing administrative regulation relating to provisions of the KPDES permit is KRS 224.10-100, 224.10-110, 224.16-050, 224.70-100, 224.70-110, and 33 USC 1281, 1288 and 1342, and relates to 224.16-050, 224.70-100, 224.70-110, 224.99-010 and 33 USC 1251, et seq.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, intends to promulgate will be an amended regulation to be consistent with changes that the U.S. Environmental Protection Agency made in the corresponding federal regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 224.10-050(1) provides that the Natural Resources and Environmental Protection Cabinet may issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act (33 USC Section 1251, et seq.) subject to the conditions imposed in 33 USC Sections 1342(b) and (d), KRS 224.16-050(1) requires that any exemption granted in the issuance of NPDES permits shall be pursuant to 33 USC Sections 1311, 1312, and 1326(a). Further, KRS 224.16-050(4) requires that the cabinet shall not impose under any permit issued pursuant to this section any effluent limitation, monitoring requirement or other condition which is more stringent than the effluent limitation, monitoring requirement or other conditions which would have been applicable under the federal regulation if the permit were issued by the federal government. This administrative regulation contains the basis for provisions, terms, and effect of a KPDES permit, including permit duration, schedule of compliance, and basis for permit modification or revocation and reissuance.
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(d) The expected benefits from the administrative regulation are: The new and amended regulations will be the same as the federal regulations, allowing the cabinet to maintain primacy for the administration of the federal National Pollutant Discharge Elimination System. Regulated entities and the public will benefit from the cabinet’s amendments being consistent with the federal regulations.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, the cabinet will use the new amendments in the administration and enforcement of the provisions of the KPDES permit.

January 14, 2002

(p. 401 KAR 5:075. Cabinet review procedures for KPDES permits. The subject matter of this administrative regulation is cabinet review procedures for KPDES permits.

(2) The Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, intends to amend an existing 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 Thursday, February 21, 2002, at 9:30 a.m. (Eastern Time), in the Auditorium of the Capital Plaza Tower, Meri Street and Wilkinson Boulevard, Frankfort, Kentucky.

(a) The public hearing will be held if it is requested by at least 10 calendar days prior to February 21, 2002. The request must be in writing, by 5 persons, or by an administrative body, or an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agrees 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 February 21, 2002, the public hearing will be canceled.

(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing should mail or fax their written request to the following address: Jeffrey W. Pratt, Director, Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

(b) On a request for public hearing, a person shall state:
   1. "I agree to attend the public hearing"; or
   2. "1 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 Division of Water at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the existing administrative regulation relating to cabinet review procedures for KPDES permits is: KRS 224.10-100, 224.10-110, 224.16-050, 224.70-100, 224.70-110, and 33 USC 1281, 1288 and 1342, and relates to KRS 224.01-010, 224.10-420, 224.10-440, 224.10-470, 224.16-050, 224.70-100, 224.70-110, 224.99-010 and 33 USC 1251, et seq.

(b) The administrative regulations of the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, intends to promulgate an amended regulation to be consistent with changes that the U.S. Environmental Protection Agency made in the corresponding federal regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth, KRS 224.16-050(1) establishes that the cabinet may issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act (33 USC Section 1251, et seq.) subject to the conditions imposed in 33 USC Section 1342(b) and (d). This administrative regulation sets forth the procedures through which the cabinet will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits.

(d) The expected benefits from the administrative regulation are: The new and amended regulations will be the same as the federal regulations, allowing the cabinet to maintain primacy for the administration of the federal National Pollutant Discharge Elimination System. Regulated entities and the public will benefit from the cabinet’s amendments being consistent with the federal regulations.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, the cabinet will use the new amendments in the administration and enforcement of Cabinet review procedures for KPDES permits.

January 14, 2002

(1) 401 KAR 5:080. Criteria and standards for the Kentucky Pollutant Discharge Elimination System. The subject matter of this administrative regulation is criteria and standards for the Kentucky Pollutant Discharge Elimination System.

(2) The Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, intends to amend an existing 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 Thursday, February 21, 2002, at 9:30 a.m. (Eastern Time), in the Auditorium of the Capital Plaza Tower, Meri Street and Wilkinson Boulevard, Frankfort, Kentucky.

(a) The public hearing will be held if it is requested by at least 10 calendar days prior to February 21, 2002. The request must be in writing, by 5 persons, or by an administrative body, or an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agrees 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 February 21, 2002, the public hearing will be canceled.

(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing should mail or fax their written request to the following address: Jeffrey W. Pratt, Director, Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

(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."

(b) Persons who wish to file this request may obtain a request form from the Division of Water at the address listed above.

(c) Information relating to the proposed administrative regulation:

(a) The statutory authority for the existing administrative regulation relating to criteria and standards for the Kentucky Pollutant Discharge Elimination System is: KRS 224.10-100, 224.10-110, 224.16 050, 224.70-100, 224.70-110, and 33 USC 1281, 1286 and 1342, and relates to KRS 224.16-050, 224.70-100, 224.70-110, 224.99-010 and 33 USC 1251, et seq.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, intends to promulgate will be an amended regulation to be consistent with changes that the U.S. Environmental Protection Agency made in the corresponding federal regulation.

(c) The necessity of function of the proposed administrative regulation is as follows: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 provides that the cabinet may issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act (33 USC Section 1251, et seq.) subject to the conditions imposed in 33 USC Section 1342(b) and (d). This section further provides that any exemptions granted in the issuance of KPDES permits shall be pursuant to 33 USC Sections 1311, 1312, and 1326(a). This administrative regulation sets forth the criteria and standards for the KPDES permitting system.

(d) The expected benefits from the administrative regulation are: The new and amended regulations will be the same as the federal regulations, allowing the cabinet to maintain consistency for the administration of the federal National Pollutant Discharge Elimination System. Regulated entities and the public will benefit from the cabinet's amendments, which are consistent with the federal regulations.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, the cabinet will use the new amendments in the administration and enforcement of criteria and standards for the Kentucky Pollutant Discharge Elimination System.

Division for Air Quality

January 15, 2002

1. (a) KAR 51:001, Definitions for 401 KAR Chapter 51. The subject matter of this administrative regulation is the establishment of definitions for terms used in 401 KAR Chapter 51.

(b) The Division for Air Quality intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.

(c) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for February 28, 2002, at 10 a.m. (Eastern Time), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

(d) The public hearing will be held if it is requested at least 10 calendar days prior to February 28, 2002, in writing, by 5 persons, or by an administrative body, or by an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agree to be present at the public hearing.

(e) 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 February 28, 2002, the public hearing will be canceled.

(f) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (g)(a) below.

(g) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (f)(b) below at least 10 calendar days prior to the public hearing.

(h) Persons wishing to request a public hearing should mail or FAX this information to Millie Ellis, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, fax (502) 573-3787, phone (502) 573-3362, extension 338.

(i) The request for public hearing, a person shall state:

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

(j) KAR Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation may file a request to be informed by the administrative body.

(k) Persons who wish to file this request may obtain a request form from the Division for Air Quality at the address listed above.

(l) Information relating to the proposed amendment to this administrative regulation:

(a) The statutory authority for the promulgation of the proposed amendment to this administrative regulation is KRS 224.10-100, 224.20-100, 224.20-110, 224.70-100, and 40 CFR 51.121.

(b) The amendment to the administrative regulation that the Division for Air Quality intends to promulgate will include new and amended terms used in the administrative regulations that implement the requirements of the federal mandate to reduce nitrogen oxides emissions (NOx SIP Call), which is codified at 40 CFR 51.121.

(c) The necessity of function of the proposed amendment to this administrative regulation is as follows: 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 is being amended to include new and amended terms that will be necessary for the cabinet to provide for the auctioning of NOx allowances that are currently allocated to new NOx budget units under 401 KAR 51:160, Section 4(2)(a)1 and 2 (effective 8-15-01). The definitions to be proposed in the amendment to this administrative regulation, which have corresponding federal definitions, are not intended to be more stringent or otherwise different than the provisions allowed under the federal mandate.

(d) The expected benefit from the proposed amendment to this administrative regulation is that Kentucky's State Implementation Plan (SIP) will continue to meet the requirements of the federal mandate and will also facilitate the auctioning of the NOx allowances that are currently allocated to new NOx budget units under 401 KAR 51:160, Section 4(2)(a)1 and 2 (effective 8-15-01); KAR Chapter 13A concerning the definition of terms.

(e) The proposed amended administrative regulation will be implemented as follows: On and after the effective date of the amended administrative regulation, the administrative regulations in 401 KAR Chapter 51 will use these definitions as part of the existing regulatory program.
January 15, 2002

(1) 401 KAR 51:150, General provisions for NOx emission reductions. The subject matter of this administrative regulation is the establishment of general provisions for sources subject to the federal mandate to reduce nitrogen oxides emissions (NOx SIP Call) which is codified at 40 CFR 51.121.

(2) The Division for Air Quality intends to promulgate a new 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 February 28, 2002, at 10 a.m. (Eastern Time), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

(4)(a) The public hearing will be held if it is requested at least 10 calendar days prior to February 28, 2002, in writing, by 5 persons, or by an administrative body, or by an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agree 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 calendar days prior to February 28, 2002, the public hearing will be canceled.

(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing should mail or FAX this information to Millie Ellis, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, fax (502) 573-3787, phone (502) 573-3362, extension 338.

(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 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 Division for Air Quality 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 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7410, and 40 CFR 51.121.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will establish general provisions for NOx budget units that commence commercial operation after May 1, 2001.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 224.13-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The proposed administrative regulation establishes general provisions for NOx budget units that commence commercial operation after May 1, 2001.

(d) The expected benefit from the proposed administrative regulation is that Kentucky's State Implementation Plan (SIP) will continue to meet the requirements of the federal mandate, and provisions will be established for the Commonwealth to auction NOx allowances that are currently allocated to new NOx budget units under 401 KAR 51:160, Section 4(2)(a) and 2 (effective 8-15-01).

(e) The proposed administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, owners and operators of sources subject to the requirements of the NOx SIP Call shall comply with the provisions of 401 KAR 51:150 as part of the existing regulatory program.

January 15, 2001

(1) 401 KAR 51:160, NOx requirements for large utility and industrial boilers. The subject matter of this administrative regulation is the establishment of emission limits for large utility and industrial boilers to meet the requirements of the federal mandate to reduce nitrogen oxides emissions (NOx SIP Call) which is codified at 40 CFR 51.121.

(2) The Division for Air Quality 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 February 28, 2002, at 10 a.m. (Eastern Time), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

(4)(a) The public hearing will be held if it is requested at least 10 calendar days prior to February 28, 2002, in writing, by 5 persons, or by an administrative body, or by an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agree 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 calendar days prior to February 28, 2002, the public hearing will be canceled.

(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing should mail or FAX this information to Millie Ellis, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, fax (502) 573-3787, phone (502) 573-3362, extension 338.

(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 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 Division for Air Quality at the address listed above.

(7) Information relating to the proposed amendment to this administrative regulation.

(a) The statutory authority for the promulgation of the proposed amendment to this administrative regulation is KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7410, and 40 CFR 51.121.

(b) The amendment to the administrative regulation that the Division for Air Quality intends to promulgate will revise the allocation methodology for NOx budget units that commence commercial operation after May 1, 2001.

(c) The necessity and function of the proposed amendment to this administrative regulation is as follows: KRS 224.10-100 requires the
Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The proposed amendment will revise the NOx allowance allocation methodology to enable the Commonwealth to auction NOx allowances that are currently allocated to new NOx budget units under 401 KAR 51:160, Section 4(2)(a)1 and 2 (effective 8-15-01).

(d) The expected benefit from the proposed amendment to this administrative regulation is that Kentucky's State Implementation Plan (SIP) will continue to meet the requirements of the federal mandate and provisions will be established for the Commonwealth to auction NOx allowances that are currently allocated to new NOx budget units under 401 KAR 51:160, Section 4(2)(a)1 and 2 (effective 8-15-01).

(3) The proposed amended administrative regulation will be implemented as follows: On and after the effective date of the amended administrative regulation, owners and operators of sources having large utility and industrial boilers shall comply with the provisions of 401 KAR 51:160 as part of the existing regulatory program.

January 15, 2002

(1) 401 KAR 51:190, Banking and trading NOx allowances. The subject matter of this administrative regulation is the establishment of a program for the banking and trading of NOx allowances as recommended in the federal mandate to reduce nitrogen oxides emissions (NOX SIP Call), codified at 40 CFR 51.121.

(2) The Division for Air Quality 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 February 28, 2002, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

(a) The public hearing will be held if it is requested at least 10 calendar days prior to February 28, 2002, in writing, by 5 persons, or by an administrative body, or by an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agree 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 calendar days prior to February 28, 2002, the public hearing will be canceled.

(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services, necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing should mail or FAX this information to Millie Ellis, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. The FAX number is (502) 573-3787. The telephone number is (502) 573-3382, extension 338.

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

(a) "I agree to attend the public hearing;" or

(b) "I will not attend the public hearing."

(7) The amendment to the administrative regulation that the Division for Air Quality intends to promulgate will remove provisions which are incorporated by reference which govern the allocation of NOx allowances to NOx budget units that commenced commercial operation after May 1, 2001.

(c) The necessity and function of the proposed amendment to this administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The proposed amendment to the administrative regulation will delete material incorporated by reference that will no longer be needed.

(d) The expected benefit from the proposed amendment to this administrative regulation is that Kentucky's State Implementation Plan (SIP) will continue to meet the requirements of the federal mandate, and provisions will be established for the Commonwealth to auction NOx allowances that are currently allocated to new NOx budget units under 401 KAR 51:160, Section 4(2)(a)1 and 2 (effective 8-15-01).

The proposed amended administrative regulation will be implemented as follows: On and after the effective date of the amended administrative regulation, owners and operators of sources having large utility and industrial boilers shall comply with the provisions of 401 KAR 51:190 as part of the existing regulatory program.

Department for Surface Mining Reclamation and Enforcement

January 7, 2002

(1) 405 KAR 16:090, Sedimentation ponds. The subject matter of this administrative regulation is performance standards for the location, design, construction, certification, maintenance, removal and retention of sedimentation ponds, and performance standards for other treatment facilities, for surface mines.

(2) The Natural Resources and Environmental Protection Cabinet 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 February 28, 2002 at 10 a.m. (Eastern Time), in Room D-16 (Training Room) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, Frankfort, Kentucky.

(a) The public hearing will be held if it is requested at least 10 calendar days prior to February 28, 2002, in writing, by 5 persons, or by an administrative body, or by an association having at least 5 members, provided that a minimum of 5 persons, or a person representing an administrative body or association, agree 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 calendar days prior to February 28, 2002, the public hearing will be canceled.

(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing should mail or FAX this information to Jim Villines, Department for Surface Mining, 2
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Hudson Hollow, Frankfort, Kentucky 40601-4321, fax (502) 564-5698, phone (502) 564-6940, extension 436.

(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."

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

(h) Persons who wish to file this request may obtain a request form from the Department for Surface Mining at the address given in (5)(a) above.

(7) Information relating to the proposed administrative regulation.
(a) The statutory authority for the promulgation of this administrative regulation is KRS 350.028, 350.100, 350.420, 350.465, 30 CFR Parts 730-732, 735, 817.46, 917, 30 USC 1253, 1255, 1266.
(b) The Administrative Regulation that the Department for Surface Mining intends to promulgate will amend an existing administrative regulation. The proposed administrative regulation will include a new section that will establish requirements for "other treatment facilities" as defined in 405 KAR 16:001. Other treatment facilities will be subject to all requirements for sedimentation ponds that can appropriately be applied to the other treatment facilities. The cabinet will determine the applicable requirements on a case-by-case basis, depending upon the type of other treatment facilities selected, but certain requirements pertaining to location, sediment storage volume, detention time, sediment removal, and short-circuiting, will be applicable in every case. Other treatment facilities may be used in conjunction with sedimentation ponds, or may be used in place of sedimentation ponds if specifically approved by the cabinet for that purpose on a case-by-case basis.
(c) The necessity and function of the proposed administrative regulation are as follows: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations related to surface and underground coal mining operations. This administrative regulation establishes the requirements for the location, design, construction, certification, maintenance, removal and retention of sedimentation ponds for surface mines. The proposed amendment will establish performance standards for other treatment facilities. The changes are intended to make the cabinet's requirements for other treatment facilities consistent with the federal regulations at 30 CFR 817.46(d), which require that other treatment facilities meet all applicable requirements of 816.46(c) for sedimentation ponds. Other treatment facilities will in every case be subject to state equivalents to 30 CFR 816.46(c)(ii) and 816.46(c)(ii)(A), (B), (E) and (F).
(d) The expected benefits from this administrative regulation are consistency with the corresponding federal requirements, expansion and clarification of requirements applicable to other treatment facilities, and additional flexibility for permittees to use other treatment facilities in place of sedimentation ponds in some cases.
(e) The proposed administrative regulation will be implemented as follows: The amendments described herein will be implemented upon the effective date of this administrative regulation, under the cabinet's existing regulatory program.

January 7, 2002

(1) 405 KAR 18:990, Sedimentation ponds. The subject matter of this administrative regulation is performance standards for the location, design, construction, certification, maintenance, removal and retention of sedimentation ponds, and performance standards for other treatment facilities, for underground mines.

(2) The Natural Resources and Environmental Protection Cabinet 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 February 28, 2002 at 10 a.m. (Eastern Time), in Room D-16 (Training Room) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, Frankfort, Kentucky.

(4)(a) The public hearing will be held if it is requested at least 10 calendar days prior to February 28, 2002, in writing, by 5 persons, or by an administrative body, or by an association having at least 5 members; provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agree 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 calendar days prior to February 28, 2002, the public hearing will be canceled.
(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.
(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing should mail or FAX this information to Jim Villines, Department for Surface Mining, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, fax (502) 564-5698, phone (502) 564-6940, extension 436.

(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 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 for Surface Mining at the address given in (5)(a) above.

(7) Information relating to the proposed administrative regulation.
(a) The statutory authority for the promulgation of this administrative regulation is KRS 350.028, 350.100, 350.151, 350.420, 350.465, 30 CFR Parts 730-732, 735, 817.46, 917, 30 USC 1253, 1255, 1266.
(b) The Administrative Regulation that the Department for Surface Mining intends to promulgate will amend an existing administrative regulation. The proposed administrative regulation will include a new section that will establish requirements for "other treatment facilities" as defined in 405 KAR 16:001. Other treatment facilities will be subject to all requirements for sedimentation ponds that can appropriately be applied to the other treatment facilities. The cabinet will determine the applicable requirements on a case-by-case basis, depending upon the type of other treatment facilities selected, but certain requirements pertaining to location, sediment storage volume, detention time, sediment removal, and short-circuiting, will be applicable in every case. Other treatment facilities may be used in conjunction with sedimentation ponds, or may be used in place of sedimentation ponds if specifically approved by the cabinet for that purpose on a case-by-case basis.
(c) The necessity and function of the proposed administrative regulation are as follows: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations related to surface and underground coal mining operations. This administrative regulation establishes the requirements for the location, design, construction, certification, maintenance, removal and retention of sedimentation ponds for underground mines. The proposed amendment will establish performance standards for other treatment facilities. The changes are intended to make the cabinet's requirements for other treatment facilities consistent with the federal regulations at 30 CFR 817.46(d),
which require that other treatment facilities meet all applicable requirements of 817.46(c) for sedimentation ponds. Other treatment facilities will in every case be subject to state equivalents to 30 CFR 817.46(c)(i) and 817.46(c)(iii)(A), (B), (E) and (F).

d) The expected benefits from this administrative regulation are consistency with the corresponding federal requirements, expansion and clarification of requirements applicable to other treatment facilities, and additional flexibility for permittees to use other treatment facilities in place of sedimentation ponds in some cases.

e) The proposed administrative regulation will be implemented as follows: The amendments described herein will be implemented upon the effective date of this administrative regulation, under the cabinet's existing regulatory program.

JUSTICE CABINET
Department of Corrections

January 15, 2002

(1) 501 KAR 6:090, Frankfort Career Development Center.
(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 February 21, 2002, at 9 a.m., in the Conference Room, at the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky.
(4) a) The public hearing will be held if:
   1. 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 February 21, 2002, the public hearing will be canceled.
(5) a) Persons wishing to request a public hearing should mail written comments to the following address: Justice Cabinet, Department of Corrections, Frankfort, Kentucky 40602.
   (b) On a request for public hearing, a person shall state:
   1. "I agree to attend the public hearing;"
   2. "I will not attend the public hearing."
(6) a) KRS Chapter 13A provides that persons who wish 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 6:090, as follows:
   1. Launder, Clothing, Hygiene and Grooming Services (FCDC 13-03-01) shall be amended to incorporate hair care services in the inmate recreational area, added annual review language, and reflect grammatical corrections.
   2. Use of Pharmaceutical Products (FCDC 13-01-01) shall be amended to reflect proper procedures, grammatical corrections, and added annual review language.
   3. Medical Emergencies and Medical and Psychiatric Transfers (FCDC 13-01-02) shall be amended to authorize and review a suicide prevention plan and reflect grammatical corrections. Added annual review language.
   4. Inmate Medical Screenings and Health Evaluations (FCDC 13-02-01) shall be amended to authorize only medical personnel to conduct medical screening and health appraisal on arrival of new inmates and clarify language on dispensing of medication for inmates leaving the institution.
   5. Psychiatric and Psychological Services (FCDC 13-03-01) shall be amended to delete nonpertinent information and to correct referring institution. Changes in references.
   6. Parenteral Administration of Medications and Use of Psychotropic Drugs (FCDC 13-03-02) shall be deleted, as this institution is not authorized to house inmates that require psychotropic medications.
   7. Chronic and Convalescent Care (FCDC 13-06-01) shall be amended to reflect grammatical corrections.
   8. Sick Call and Physicians Weekly Clinic (FCDC 13-06-01) shall be amended to reflect changes in references, added annual review language, and grammatical corrections.
   9. Management of Serious and Infectious Diseases (FCDC 13-09-01) shall be amended to correct initial screening facility, added annual review language, and reflect grammatical corrections. Changes in references.
   10. Health Education: Provision of Special Health Care Needs (FCDC 13-11-01) shall be amended to reflect grammatical corrections, change is required.
   11. Physicians Referrals (FCDC 13-13-01) shall be amended to change procedure for ordering a referral, added annual review language, and reflect a change in reference.
   12. Routine and Emergency Dental Appointments (FCDC 13-15-01) shall be amended to change reference, reflect grammatical corrections, added orthodontic devices, and added annual review language.
   13. Routine and Emergency Eye Examinations (FCDC 13-16-01) shall be amended to reflect grammatical changes and changes in references.
   14. Legal Services Program (FCDC 14-04-01) shall be amended to delete procedures for mail and set forth the procedure to provide copying service. Added annual review language.
   15. Inmate Access to Telephones (FCDC 16-03-01) shall be amended to clarify phone usage and added annual review language.
   16. Inmate Packages (FCDC 16-04-01) shall be deleted as duplicate information is found in FCDC 17-01-01.
   17. Personal Property Control (FCDC 17-01-01) shall be amended to comply with changes made in CPP 17.1 and simplify language that is repetitive.
   18. Privilege Trips (FCDC 22-01-01) shall be amended to include activities other than recreation and designate the warden as the approving staff for trips. Change reference.
   19. Shopping Trips (FCDC 22-01-03) shall be deleted as this activity has ceased.
   20. Recreation and Inmate Activities (FCDC 22-02-01) shall be amended to include an organized recreation program and grammatical changes.
   21. Release Preparation Program (FCDC 25-03-01) shall be amended to reflect change in program schedule, added annual review lan-
guage, and change in reference.

(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 standard of the American Correctional Association.
2. This administrative regulation updates operating procedures at the Frankfort Career Development Center 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.

EDUCATION PROFESSIONAL STANDARDS BOARD

January 2002

(1) 704 KAR 20:210. Substitute teachers and emergency school personnel.
(2) The Education Professional Standards Board 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 February 25, 2002 at 9 a.m. at the Kentucky Department of Education State Board Room, 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 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 February 25, 2002, the hearing will be canceled.
(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Dr. Susan Leib, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, fax (502) 573-1610.
(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 Education Professional Standards Board 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 standards and requirements for obtaining and maintaining a teaching certificate is KRS 161.028 and 161.030. The authority for issuing emergency certificates is KRS 161.100.
(b) The administrative regulation that the Education Professional Standards Board intends to amend is 704 KAR 20:210, Substitute teachers and emergency school personnel. The amendment to this administrative regulation will allow districts to make application to the Education Professional Standards Board for the Emergency Noncertified School Personnel Program and allow personnel employed in their second and subsequent years of the program to be used as district-wide substitutes.
(c) The necessity and function of the proposed administrative regulation is as follows:
1. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate.
2. KRS 161.030 grants the Education Professional Standards Board certification authority.
3. KRS 161.100 allows the Education Professional Standards Board (EPSB) to issue emergency certificates to persons meeting the qualifications established by the EPSB.
(d) The benefits expected from administrative regulation are: This administrative regulation provides local school districts more options in staffing classrooms while guaranteeing that every Kentucky student has a qualified substitute teacher when his/her regular teacher must be absent from the instructional setting. The amendment will allow school districts to make application to the Education Professional Standards Board throughout the school year as they develop a need for additional substitute personnel; the current regulation had set a cutoff date for applications at August 1. Additionally, the amendment will allow personnel employed in their second and subsequent years to be used to fill openings throughout the school district; the current regulatory language restricts the noncertified personnel to employment in one school only.
(e) The administrative regulation will be implemented as follows: Local districts, teacher training institutions, and private education associations will be notified of the changes, and publications of the Education Professional Standards Board will be updated to reflect the changes.

January 2002

(1) 704 KAR 20:770, Probationary certificate for middle school teachers.
(2) The Education Professional Standards Board 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 February 25, 2002 at 9 a.m. at the Kentucky Department of Education State Board Room, 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 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 February 25, 2002, the hearing will be canceled.
(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Dr. Susan Leib, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, fax (502) 573-1610.
(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 admin-
ISTRATIVE 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 Education Professional Standards Board 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 establishing of standards and requirements for obtaining and maintaining a teaching certificate is KRS 161.028 and 161.030.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate is 704 KAR 20.770, Probationary Certificate for middle school teachers. The Education Professional Standards Board is promulgating this administrative regulation to create a probationary certificate for teaching in the middle school, grades 5-9.

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

1. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate.

2. KRS 161.030 grants the Education Professional Standards Board certification authority.

(d) The benefits expected from administrative regulation are: This administrative regulation will create a probationary option for obtaining full certification for teaching at the middle school level, grades 5-9. Currently, there is a shortage of certified teachers available to teach at this grade level. Many teachers with this grade level certification are reaching retirement age, and the admission data from the institutions indicate that there are too few teacher candidates enrolled in the preparation programs to meet the demand. The probationary option will allow a teacher who holds at least a statement of eligibility in another area and minimum preparation in the content area, to receive a probationary certificate and be allowed to teach in the middle school while he/she is concurrently completing the remaining preparation requirements for full certification.

(e) The administrative regulation will be implemented as follows: Local districts, educator preparation programs, and private education associations will be notified of the changes, and publications of the Education Professional Standards Board will be updated to reflect the changes.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care

December 19, 2001

(1) 806 KAR 17:280, Registration, utilization review, and internal appeal.

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

(3) A public hearing to receive written and oral comments on the proposed administrative regulation has been scheduled for February 27, 2002, at 9 a.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

(4) 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 a 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 February 27, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Char Hummel, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602, phone (502) 564-6032, fax (502) 564-1456.

(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 Department of Insurance 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 304.2-110(1), 304.17A-609 and 304.17A-613.

(b) The administrative regulation that the department intends to promulgate will amend an existing regulation. It will establish and clarify requirements for the registration of insurers or private review agents, and the utilization review process, including internal appeal of decisions.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.2-110(1) provides that the commissioner may make administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-609 and 304.17A-613 require that the department promulgate administrative regulations to develop a process for the registration of insurers or private review agents, the utilization review process and procedure for handling complaints. This administrative regulation establishes requirements for the registration of insurers or private review agents, and the utilization review process, including internal appeal of decisions and procedure for handling complaints.

(d) The benefits expected from the administrative regulation are as follows: This administrative regulation will establish the grounds for registration of insurers or private review agents, and the utilization review process, including internal appeal of decisions.

(e) This administrative regulation will be implemented as follows: The department shall issue or renew a registration to insurers or private review agents that apply to the department and have met all the requirements of KRS 304.17A-609 and 304.17A-611 and this administrative regulation. This administrative regulation also establishes the requirements for the utilization review process, including internal appeal of decisions and the procedure for handling complaints.

December 19, 2001

(1) 806 KAR 17:290, Independent External Review Program.

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

(3) A public hearing to receive written and oral comments on the proposed administrative regulation has been scheduled for February 27, 2002, at 10:30 a.m. (ET), at the Kentucky Department of Insurance, 215 West Main 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 the administrative body or association, agree, in writing, to be present at a 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 February 27, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Char Hummel, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602, phone (502) 564-6032, fax (502) 564-1456.

(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".

(b) Persons who wish to file this request may obtain a request form from the Department of Insurance 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 304.2-110(1) and 304.17A-629.
(b) The administrative regulation that the department intends to promulgate will amend an existing regulation. It will clarify insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions. It also establishes disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.
(c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.2-110(1) provides that the commissioner may promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-629 requires that the department promulgate administrative regulations regarding the independent external review program. This administrative regulation establishes insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions. It also establishes disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.
(d) The benefits expected from the administrative regulation are as follows: This administrative regulation will establish the insurer requirements, procedures for certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions.
(e) This administrative regulation will be implemented as follows: Insurers and independent review entities are required to conduct external reviews of utilization review decisions in the manner set forth in this administrative regulation and KRS 304.17A-621 through 304.17A-629.

Kentucky Racing Commission

January 11, 2002

(1) 811 KAR 1:035. Claiming races.
(2) The Kentucky Racing Commission 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 February 25, 2002, 10 a.m. at the Commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 February 25, 2002, the public hearing will be cancelled.

(a) Persons wishing to request a public hearing should mail their written request to the following address: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Phone: (859) 246-2040. Fax: (859) 246-2039.
(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."

(c) 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.
(d) Persons who wish to file this request may obtain a request form from the Kentucky Racing Commission at the address listed above.
(e) 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.

(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 304.2-110(1) and 304.17A-629.
(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend an existing regulation. It will clarify insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions. It also establishes disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.
(c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.2-110(1) provides that the commissioner may promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-629 requires that the department promulgate administrative regulations regarding the independent external review program. This administrative regulation establishes insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions. It also establishes disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.
(d) The benefits expected from the administrative regulation are as follows: This administrative regulation will establish the insurer requirements, procedures for certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions.
(e) The administrative regulation will be implemented as follows: Insurers and independent review entities are required to conduct external reviews of utilization review decisions in the manner set forth in this administrative regulation and KRS 304.17A-621 through 304.17A-629.

Association wording for registration papers will be incorporated.

January 14, 2002

(1) 811 KAR 1:055. Declaration to start; drawing horses.
(2) The Kentucky Racing Commission 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 February 25, 2002, 10 a.m. at the Commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 February 25, 2002, the public hearing will be cancelled.

(a) persons wishing to request a public hearing should mail their written request to the following address: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Phone: (859) 246-2040. Fax: (859) 246-2039.
(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 from the Kentucky Racing Commission at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.260.

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 011 KAR 1.005.

(c) The necessity and function of the proposed administrative regulation is as follows: The function of this administrative regulation is to regulate declarations to start and drawing horses.

(d) The benefits expected from administrative regulation are: The presiding judge will be allowed to appoint the racing secretary to draw the races in his absence.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

January 14, 2002

(1) 811 KAR 1:105. Review and appeal.

(2) The Kentucky Racing Commission 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 February 25, 2002, 10 a.m. at the Commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 or 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 February 25, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Phone: (859) 246-2040. Fax: (859) 246-2039.

(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 Kentucky Racing Commission at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.260.

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:105.

(c) The necessity and function of the proposed administrative regulation is as follows: The function of this administrative regulation is to regulate review and appeals of the commission and the Franklin Circuit Court.

(d) The benefits expected from administrative regulation are: By increasing the appeal fee will help eliminate unnecessary appeals that are very costly to the commission.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

January 14, 2002


(2) The Kentucky Racing Commission 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 February 25, 2002, 10 a.m. at the Commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 or 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 February 25, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Phone: (859) 246-2040. Fax: (859) 246-2039.

(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 Kentucky Racing Commission at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.260.

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:125.

(c) The necessity and function of the proposed administrative regulation is as follows: The function of this administrative regulation establishes the requirement for pari-mutuel wagering at race meetings.

(d) The benefits expected from administrative regulation are: Superfecta wagering needs to be incorporated into the regulations since the tracks offer this type of wagering.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

January 14, 2002


(2) The Kentucky Racing Commission 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 February 25, 2002, 10 a.m. at the Commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.
(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 or 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 February 25, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Phone: (859) 246-2040. Fax: (859) 246-2039.

(b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."
2. "I will not attend the public hearing."

(c) 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.

(d) KRS 230.770.

(e) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:215.

(f) The necessity and function of the proposed administrative regulation is as follows: The function of this administrative regulation establishes eligibility standards, administrative practices to enforce standards, mandatory criteria for races and the administration of purses and payments in these races.

(g) The benefits expected from administrative regulation are: The wording "five-eighths (5/8) mile track" should be added to all areas that mention a one-half (1/2) mile track since one of our tracks is a five-eighths (5/8) mile track. Also wording will be clarified as to what horses are eligible to race in the elimination races and consolation races.

(h) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

January 14, 2002

(1) 811 KAR 1:225. Substance abuse by commission employees and licensees.

(2) The Kentucky Racing Commission 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 February 25, 2002, at 10 a.m. at the Commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 or 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 February 25, 2002, the public hearing will be cancelled.

(c) 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.

(d) Persons who wish to file this request may obtain a request from the Kentucky Racing Commission at the address listed above.

(e) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.215, 230.260, 230.290, 230.310, and 230.320.

(f) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:225.

(g) The necessity and function of the proposed administrative regulation is as follows: The function of this administrative regulation provides for the testing of officials and licensees for alcohol and drugs.

(h) The benefits expected from administrative regulation are: To have the standardbred racing substance abuse regulation read the same as the thoroughbred substance abuse regulation.

(i) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

Department of Housing, Buildings and Construction

January 3, 2002


(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 February 21, 2002, at 10 a.m., EST, in the Department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

(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 or 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 February 21, 2002, the public hearing will be canceled.

(c) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Janet M. Hall, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, phone (502) 564-8044, fax (502) 564-3833.

(d) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing.";
2. "I will not attend the public hearing."

(e) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an admin-
ISTRATIVE 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 1988.040(7) and 1988.050.

(b) The department intends to amend 815 KAR 7:120, Kentucky Building Code/2002 to extend the mandatory effective date of the Kentucky Residential Code/2002 until July 1, 2002 and adopt the 2002 National Electrical Code to become effective January 1, 2002 with the 2002 Kentucky Building Code.

(c) The necessity and function of the proposed administrative regulation is as follows: It is necessary to promulgate the intended administrative regulation in order to put into place an updated edition of the Kentucky Building Code, based on the 2000 International Building Code. The amendment is necessary to allow sufficient time for training by local building officials in the new residential code. The code books will not be available until the end of the year and allowing a 6 month training/education period is necessary. Also, it is necessary at this time to update the edition of the National Electrical Code to prevent conflicting provisions between the 2 codes.

(d) The benefits expected from this administrative regulation are: The implementation of a newer edition of the Kentucky Building Code allows the adoption and inclusion of updated codes and standards since the 1997 Edition. It is in the best interest and protection of the public that sufficient notice of new requirements for residential dwellings be provided, and to keep updated to the latest edition of national codes available.

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

January 3, 2002

(1) 815 KAR 7:125, Kentucky Residential Code.

(2) The department intends to amend 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 10 a.m., local time, on February 21, 2002, 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 February 21, 2002, 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 Janet M. Hall, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, phone (502) 564-8044, fax (502) 564-3833.

(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)(c) 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 1988.040(7) and 1988.050.

(b) The department intends to amend the administrative regulation establishing standards for construction of 1 and 2 family dwellings and townhouses.

(c) The necessity and function of the proposed administrative regulation is as follows: Kentucky Revised Statutes require the Board of Housing to establish and enforce administrative regulations governing standards for the construction of buildings. The board has identified the International Residential Code as the appropriate document on which to base the regulation of 1 and 2 family dwellings and townhouses. All other building construction is governed by the International Building code, with Kentucky amendments promulgated in 815 KAR 7:120. The necessity of this amendment is extend the mandatory effective date until July 1, 2002 to allow sufficient time for training by local building officials in the new residential code. The books will not be available until the end of the year and allowing a 6 month training/education period is necessary.

(d) The benefits expected from this administrative regulation are: This administrative regulation is intended to assure safety for owners and occupants of 1 and 2 family dwellings and townhouses. It is in the best interest and protection of the public that sufficient notice of new requirements for residential dwellings be provided.

(e) This administrative regulation will be implemented by local building inspection programs.

January 15, 2002

(1) 815 KAR 20:020; Parts or materials list.

(2) The Department 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 10 a.m., EST, on February 21, 2002, in the department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

(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 at least 10 days prior to February 21, 2002, the public hearing will be canceled.

(c) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Janet M. Hall, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, phone (502) 564-8044, fax (502) 564-3833.

(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."

(c) 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.
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(7) Information relating to the proposed administrative regulation:
(a) The statutory authority for the promulgation of this administrative regulation is KRS 318.130.
(b) The department intends to amend Section 5 of this administrative regulation to include the following new products approved by the State Plumbing Code Committee: a Quick Snap multi-level flange as manufactured by Jett Plumbing Products; Bosch Aqua Star tankless water heater, model 125FX; Powerstar PS19T and PS28T electric instantaneous water heater; Aquasat AQ240 FX gas fired instantaneous water heater.
(c) The necessity and function of the proposed administrative regulation is as follows: The function of this administrative regulation is to allow the department to promptly permit the use of new parts or materials.
(d) The benefits expected from this administrative regulation are: To allow the use of newly-approved products.
(e) This administrative regulation will be implemented by state plumbing inspectors.

Mine Safety Review Commission


(1) 825 KAR 1:030. Penalties for subsequent violations; criteria for modification of civil penalties and fines.
(2) The Mine Safety Review Commission 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 February 28, 2002 at 1 p.m. EST, in the Boardroom, Mine Safety Review Commission, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714.

(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 calendar days prior to February 28, 2002 the public hearing will be cancelled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Diane Schuler Fleming, General Counsel, Mine Safety Review Commission, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714, phone (502) 573-9316, fax (502) 573-6625.

(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."

(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 the General Counsel, Mine Safety Review Commission, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714.

(7) Information relating to the proposed administrative regulation.
(a) The statutory authority for the promulgation of an administrative regulation relating to the establishment of penalties for subsequent violations is KRS 351.025(1)(a) and (c).

(b) The administrative regulation the Mine Safety Review Commission intends to promulgate will establish penalties for subsequent violations of the mine safety laws of the Commonwealth of Kentucky. In addition, the administrative regulation will set forth the criteria the commission will use when determining whether to modify a civil penalty or fine established under KRS Chapter 351.

(c) The necessity and function of the proposed administrative regulation is to set forth the procedures that will be utilized by the commission when determining penalties as required by statute.

(d) The benefits expected from this administrative regulation are increased clarity of the procedures to be used by the commission when determining penalties as required by statute.

(e) The administrative regulation will be implemented by the Mine Safety Review Commission.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services

January 15, 2002

(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 February 28, 2002 at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(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 February 28, 2002, the public hearing will be cancelled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, 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."

(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 Financial Management, 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 ac-
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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 (VTDD).

(7) INFORMATION RELATING TO THE PROPOSED ADMINISTRATIVE REGULATION.

(a) THE STATUTORY AUTHORITY FOR THE PROCLAMATION OF AN ADMINISTRATIVE REGULATION RELATING TO PAYMENTS FOR HOSPITAL INPATIENT SERVICES ARE KRS 194A.030(3), 194A.050(1), 205.580(2), 205.637, 205.640, 216.390(10), 20 CFR 405.402 through 405.488, 42 CFR 412, 413, 414.10, 440.140, 447.250 through 447.280, 42 USC 1395(f), (g), (h), (m), 1396a, b, d, r-4, 2000 KY. Acts. ch. 310 and 439.

(b) THE ADMINISTRATIVE REGULATION THAT THE DEPARTMENT FOR MEDICAID SERVICES INTENDS TO PROMULGATE WILL AMEND 907 KAR 1:015 TO CORPORATE SUPPLEMENT PAYMENTS FOR PEDIATRIC TEACHING HOSPITALS, URBAN TRAUMA CENTER HOSPITALS, PSYCHIATRIC ACCESS HOSPITALS, PUBLIC (NONSTATE) HOSPITALS AND PRIVATE HOSPITALS; TO INCREASE POLICY FOR DISPROPORTIONATE SHARE HOSPITAL PAYMENTS; TO ESTABLISH INDIGENT CARE ELIGIBILITY CRITERIA; TO ESTABLISH THE REIMBURSEMENT METHODOLOGY FOR CRITICAL ACCESS HOSPITALS; AND TO ESTABLISH THE RATE SETTING METHODOLOGY FOR SFY 2000 AND SFY 2001 FOR INPATIENT AND OUT OF STATE ACUTE CARE AND PSYCHIATRIC HOSPITALS.

(c) THE NECESSITY, FUNCTION AND CONFORMITY OF THE PROPOSED ADMINISTRATIVE REGULATION IS AS FOLLOWS: THIS ADMINISTRATIVE REGULATION ESTABLISHES THE REIMBURSEMENT METHODOLOGY FOR INPATIENT HOSPITAL SERVICES.

(d) THE BENEFITS EXPECTED FROM THIS ADMINISTRATIVE REGULATION ARE: THIS ADMINISTRATIVE REGULATION ALLOWS THE DEPARTMENT TO REIMBURSE PROVIDERS OF INPATIENT HOSPITAL SERVICES THE MAXIMUM AMOUNT ALLOWABLE UNDER FEDERAL LAW.

(e) THE ADMINISTRATIVE REGULATION WILL BE IMPLEMENTED AS FOLLOWS: BY THE DIVISION OF HOSPITAL SERVICES, DEPARTMENT FOR MEDICAID SERVICES, CABINET FOR HEALTH SERVICES.

January 15, 2002

1) 907 KAR 1:015. PAYMENTS FOR HOSPITAL OUTPATIENT SERVICES.

2) CABINET FOR HEALTH SERVICES, DEPARTMENT FOR MEDICAID SERVICES INTENDS TO PROMULGATE AN ADMINISTRATIVE REGULATION GOVERNING THE SUBJECT MATTER LISTED ABOVE.


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 FEBRUARY 28, 2002, THE PUBLIC HEARING WILL BE CANCELED.

5) PERSONS WISHING TO REQUEST A PUBLIC HEARING SHOULD MAIL THEIR WRITTEN REQUEST TO THE FOLLOWING ADDRESS: JILL BROWN, CABINET REGULATION COORDINATOR, CABINET FOR HEALTH SERVICES, OFFICE OF THE COUNSEL, 275 EAST MAIN STREET - 5W-B, FRANKFORT, KENTUCKY 40621, (502) 564-7673 (FAX).

6(a) 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.”

(b) 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 MUST FILE A REQUEST TO BE INFORMED BY THE ADMINISTRATIVE BODY.

(c) PERSONS WHO WISH TO FILE THIS REQUEST MAY OBTAIN A REQUEST FORM FROM THE ADMINISTRATIVE REGULATION COORDINATOR, DEPARTMENT FOR MEDICAID SERVICES, DIVISION OF FINANCIAL MANAGEMENT, CHR BUILDING, 275 EAST MAIN STREET, FRANKFORT, KENTUCKY 40621.

CABINET FOR FAMILIES AND CHILDREN
DEPARTMENT FOR COMMUNITY BASED SERVICES
DIVISION OF POLICY DEVELOPMENT

January 15, 2001

1) 921 KAR 2:015. SUPPLEMENTAL PROGRAMS FOR PERSONS WHO ARE AGED, BLIND, OR HAVE A DISABILITY.

2) CABINET FOR FAMILIES AND CHILDREN, DEPARTMENT FOR COMMUNITY BASED 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 FEBRUARY 28, 2002, AT 9 A.M., IN THE DEPARTMENT FOR HEALTH SERVICES AUDITORIUM, HEALTH SERVICES BUILDING, FIRST FLOOR, 275 EAST MAIN STREET, FRANKFORT, KENTUCKY.

4(a) THE PUBLIC HEARING WILL BE HELD IF:

1. IT IS REQUESTED, IN WRITING, BY AT LEAST 5 PERSONS, OR AN ADMINISTRATIVE BODY, OR AN ASSOCIATION HAVING AT LEAST 5 MEMBERS; AND

2. A MINIMUM OF 5 PERSONS, OR 1 PERSON REPRESENTING 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 CALENDAR DAYS PRIOR TO FEBRUARY 28, 2002, THE PUBLIC HEARING WILL BE CANCELED.
(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kellie Peace, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-9128 (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 Community Based Services, Division of Policy Development, Third Floor West, CHR Building, 275 East Main, 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 Families and Children’s regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 921 KAR 2:015 are KRS 194B.050(1), 205.245, 42 USC 1382 e-g.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate is a proposed amendment to administrative regulation, 921 KAR 2:015. The proposed administrative regulation is necessary due to:
1. Revise the standard of need for all levels of care for the State Supplementation program due to the pass along of the 2002 Supplemental Security Income cost of living adjustment. Also, the standard of need for all levels of care includes an additional 2.4 percent state supplementation cost of living adjustment.
2. Clarify eligibility pertaining to residency requirements.
3. Modify MI/IMR provider requirements.
4. If necessary make changes to material incorporated by reference.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary to implement the mandated increases in the standard of need for the State Supplementation Program due to the pass along of the Supplemental Security Income 2001 cost of living adjustment. 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.

(d) The benefits expected from this administrative regulation are: This administrative regulation will increase the standard of need for all levels of care the recipients of the State Supplementation Program due to the pass along of the supplemental security Income cost of living increase.

(e) The administrative regulation will be implemented as follows: This administrative regulation will be administered by the Department for Community Based Services, Division of Policy Development.
STATEMENT OF EMERGENCY
815 KAR 7:120E

815 KAR 7:120, The Kentucky Building Code, mandates that the effective date of the Kentucky Residential Code/2002 as January 1, 2002. Due to unforeseen delays in the printing of the Kentucky Residential Code/2002, this code will not be available to builders or the public until late December, 2001 which will provide insufficient time for builders and the public to be made aware of the new requirements, including safety-related building code requirements. It is in the interest and protection of the public that sufficient notice of new requirements for residential dwellings be provided. Therefore, the department, upon approval of the Board of Housing, Buildings and Construction, submits this emergency administrative regulation extending the deadline for mandatory compliance with the Kentucky Residential Code/2002 until July 1, 2002. An ordinary administrative regulation will not be sufficient and an emergency exists in order to extend the mandatory effective date of the Kentucky Residential Code/2002. It is also necessary at this time to update the 1996 edition of the National Electrical Code currently referenced in The Kentucky Building Code/2002 to the latest edition which is 2002 in order to prevent conflicting provisions between The Kentucky Building Code/2002 and the current NEC. These codes will become mandatory on January 1, 2002. This emergency administrative regulation will be replaced by an ordinary administrative regulation, and a Notice of Intent will be filed simultaneously with this emergency administrative regulation.

PAUL E. PATTON, Governor
DENNIS J. LANGFORD, Commissioner
RONALD B. MCILOUD, Secretary

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(EMERGENCY AMENDMENT)


RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990
STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050
EFFECTIVE: January 3, 2002
NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform statewide building code, based on a model code, which establishes standards for construction of buildings in the state. This administrative regulation adopts the International Building Code/2000, First Edition, Chapters 1 through 35 with modifications, thereby establishing the Kentucky Building Code's basic provisions relating to construction, including general building limitations, special use and occupancy, light, ventilation and sound transmission control, means of egress, structural and foundation loads and stresses, acceptable materials and tests, fire-resistive construction and fire protection systems, safety during building operations, mechanical systems, energy conservation, electrical systems and accessibility to physically disabled persons. Amendment of this administrative regulation is necessary to accomplish two (2) objectives: (a) to update the referenced edition of the National Electrical Code to 2002; and (b) to extend the mandatory compliance deadline of the new Kentucky Residential Code/2002 until July 1, 2002. Publication of the new Kentucky Residential Code/2002 has been delayed allowing insufficient time for builders and the public to be made aware of the new requirements.

Section 1. Definitions. (1) "Board of Housing or Board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "Building" is defined by KRS 198B.010(4).

(3) "Commissioner" is defined by KRS 198B.010(9).

(4) "Department" is defined by KRS 198B.010(11).

(5) "Farm" means property located outside the corporate limits of a municipality on at least ten (10) acres and having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) and qualified by and registered with the property valuation administrator in that county.

(6) "Fire Code Official" means the State Fire Marshal, fire chief or other enforcement officer designated by the appointing authority of the jurisdiction for the enforcement of the provisions of KRS 227.300 and the Kentucky Standards of Safety (Fire Prevention Code) as set forth in 815 KAR 7:126.

(7) "Industrialized building system or building system" is defined in KRS 198B.010(19) [448].

(8) "KBC" means the Kentucky Building Code as established in 815 KAR Chapter 7.


(10) "Kentucky Standards of Safety" means the administrative regulations established in 815 KAR Chapter 10, which were established by the Commissioner of the Department of Housing, Buildings and Construction pursuant to KRS 227.300 to serve as the fire prevention code for existing buildings as well as a supplement to this code, where applicable.

(11) "KRS" means the Kentucky Revised Statutes.

(12) "Manufactured home" is defined by KRS 198B.010(23) and 227.550.

(13) "Modular home" means an industrialized building system, which is designed to be used as a residence and which is not a manufactured or mobile home.

(14) "Ordinary repair" is defined by KRS 198B.010(19).

(15) "Single-family or one (1) family dwelling" means a single unit containing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which shall not be connected to any other unit or building.

(16) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(17) "Two (2) family dwelling" means a building containing not more than two dwelling units.

Section 2. Administration and Enforcement of the Building Code.

(1) Notwithstanding the requirements of the International Building Code/2000, the Kentucky changes set forth in the Kentucky Building Code Supplement, May 10, 2001, shall be mandatory and shall supersede any conflicting provision of the International code. Except as superseded by the provisions of this administrative regulation or the Kentucky Building Code Supplement, the International Building Code/2000, First Edition, Chapters 1 through 35 shall be the mandatory state building code for Kentucky for all buildings; except that one (1) and two (2) family dwellings and townhouses shall be governed by 815 KAR 7:126.


Section 3. State Plan Review and Inspection Fees. The fees required by this section shall apply for plan review and inspection by the department, only.

(1) Fast track elective. A request for expedited site and foundation approval of one (1) week or less, prior to full review of complete set of construction documents, shall be accompanied by the fee.
required by 121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee. The additional fifty (50) percent fee shall not be less than $400 and not more than $3,000. The entire fee shall be paid at the time of the initial plan submission.

(2) Calculation of departmental inspection fees shall require:
(a) New buildings shall require multiplying the total building area under construction by the cost per square foot of each occupancy type listed in subsection (3) of this section;
(b) Computing the square footage by the outside dimensions of the building.
(c) The fee for buildings with multiple or mixed occupancies may be calculated using the cost per square foot multiplier of the predominant use.
(3) Table 121.3.1. Basic Department Fee Schedule. The basic plan review or inspection fee shall be:
(a) Assembly occupancies, 8.5 cents;
(b) Business occupancies, 7.5 cents;
(c) Day care centers, 7.5 cents;
(d) Educational occupancies, 7.5 cents;
(e) Frozen food plants, 6.5 cents;
(f) High hazard occupancies, 7.5 cents;
(g) Industrial factories, 6.25 cents;
(h) Institutional occupancies, 8.5 cents;
(i) Mercantile occupancies, 7.5 cents;
(j) Residential occupancies, 7.5 cents;
(k) Warehouses, 5.5 cents;
(l) All other nonresidential, 6.5 cents.
(4) Additions to existing buildings. Plan review fees for additions to existing buildings which shall not require the entire building to conform to the Kentucky Building Code, shall be calculated in accordance with the schedule listed in subsection (3) of this section by determining the square footage of the addition, as determined by the outside dimensions of the addition. Minimum fee for review of plans under this section shall be $200.
(5) Change in use. Plan review fees for existing buildings in which the use group or occupancy type shall be calculated in accordance with the schedule listed in subsection (3) of this section by determining the square footage of the entire building or structure under the new occupancy type as determined by the outside dimensions of the area being altered or repaired. The minimum fee for review of plans under this section shall be $200.
(6) Alterations and repairs.
(a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by multiplying the cost for the alterations or repairs by 0.0025; or
(b) The total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.
(c) The minimum fee for review of plans under this section shall be $200.
(7) Specialized fees. In addition to the fees listed in subsections (1) through (6) of this section, the following fees shall be applied for the specialized plan reviews listed:
(a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule:
1. 4-200 sprinklers, $150;
2. 201-300 sprinklers, $175;
3. 301-400 sprinklers, $210;
4. 401-750 sprinklers, $250;
5. Over 750 sprinklers, $250 plus twenty (20) cents per sprinkler over 750.
(b) Fire detection system review fee: zero to 20,000 square feet shall be $150; over 20,000 square feet shall be $150 plus twenty (20) dollars for each additional 10,000 square feet in excess of 20,000 square feet.
(c) Standpipe plan review fee: $150 (combination stand pipe and riser plans shall be reviewed under the automatic sprinkler review fee schedule).
(d) Carbon dioxide suppression system review fee: one (1) to 200 pounds of agent shall be $150; over 200 pounds of agent shall be $150 plus two (2) cents per pound in excess of 200 pounds.
(e) Clean agent suppression system review fee: up to thirty-five (35) pounds of agent shall be $150, over thirty-five (35) pounds shall be $150 plus six (6) cents per pound in excess of thirty-five (35) pounds. The fee for gaseous systems shall be five (5) cents per cubic foot and not less than $50.
(f) Foam suppression system review fee: fifty (50) cents per gallon of foam concentrate where the system is not part of an automatic sprinkler system. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed under the automatic sprinkler review fee schedule. The fee for review of plans under this section shall not be less than $150 or more than $1,500.
(g) Commercial range hood review fee: $150 per hood.
(h) Dry chemical suppression system review fee (except range hoods): one (1) to thirty (30) pounds of agent shall be $150; over thirty (30) pounds of agent shall be $150 plus 25 cents per pound in excess of thirty (30) pounds.
(i) Flammable, combustible liquids in vessels and hazardous materials plan review fee: $100 per tank, plus fifty (50) dollars for each additional tank and $100 per piping system including valves, fill pipes, vents, leak detection, spill and overfill detection, cathodic protection or associated components.
(j) Boiler and unfired pressure vessel fees: plan review fees of boiler and unfired pressure vessel installations shall be in accordance with 815 KAR 15:027.

Section 4. General. (1) The fees required by Section 3 of this administrative regulation shall take effect August 15, 2001 or the effective date of this administrative regulation, whichever occurs last.
(2) As it relates to the design and construction requirements, the building official shall accept plans in compliance with the requirements of either the 1997 or 2002 edition of the Kentucky Building Code through December 31, 2001.
(3) Effective January 1, 2002, all plans, except as otherwise set forth in this section, shall be designed and submitted to conform to the 2002 edition of the Kentucky Building Code [this code].
(4) Plans for family or one (1) family dwellings, two (2) family dwellings and townhouses may be designed and submitted to conform to either the 1997 edition of the Kentucky Building Code or the Kentucky Residential Code2002 through June 30, 2002. Effective July 1, 2002, all plans for these dwellings shall be designed and submitted to conform to the Kentucky Residential Code2002.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "International Building Code2000", First Edition, as adopted by the Kentucky Board of Housing, Buildings and Construction, except as amended by the Kentucky Building Code Supplement, also incorporated; and
(b) "Kentucky Building Code Supplement", November 29, 2001 [Mandatory].
(3) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Kentucky Department of Housing, Buildings and Constructions, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JANET M. HALL, Office of General Counsel
DENNIS J. LANGFORD, Commissioner
RONALD MCCLoud, Secretary
APPROVED BY AGENCY: January 2, 2002
FILED WITH LRC: January 3, 2002 at 10 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Janet M. Hall
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Building Code2002 by adopting the 2000 Edition of the International Building Code and making applicable modifications.
(b) The necessity of this administrative regulation: To upgrade
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the NEC to the most current standard and to extend the mandatory effective date of the Kentucky Residential Code/2002 until July 1, 2002 to allow builders and the public to be made aware of the new requirements, including safety-related building code requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes; it utilizes the International Building Code as the basis for construction standards and allows the Board of Housing to make amendments for Kentucky after due consideration of equivalent safety measures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth the standards authorized by the statute and the processes for the enforcement of construction code standards, incorporating all applicable laws into its processes.

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

(a) How the amendment will change this existing administrative regulation: It will incorporate the latest edition of the National Electric Code (NFPA 70) and extend the mandatory effective date of the Kentucky Residential Code until July 1, 2002 (from January 1, 2002).

(b) The necessity for the amendment to this administrative regulation: Update to most current standards available and allow builders and design professionals some time to become familiar with the new residential code before it becomes effective.

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

List the type and number of individuals, businesses, organizations, state and local governments affected by this administrative regulation: Property owners which are remodeling, altering or constructing new buildings; architects and engineers, building inspectors, and all building construction related industries.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendments are technical in nature, modifying the standards in some way which will cause industry to design and construct in accordance with the new amendments as well as all other code provisions.

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

(a) Initially: Because this is the continuation of an existing program, with only updated codes, the cost of implementation really is a continuing one. Fees were recently increased to run the building inspection program under the Division of Building Codes Enforcement.

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The administrative fees for plan review and inspection.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if now, or by the change if it is an amendment: Fees for this purpose were increased earlier this year.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No increase in fees with this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied because there are standards that apply equally to all construction depending upon the type of building.

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. This administrative regulation will affect every local government since KRS Chapter 198B requires each local government to enforce the state building code on certain specifically identified occupancies.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation will affect the local building inspection program. KRS 198B.060 requires local government to provide for building officials to enforce the Kentucky Building Code and they will be required to learn and enforce the Kentucky Building Code/2002.

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: New code books must be purchased, some inspectors will have to train and be tested on the new codes.

STATEMENT OF EMERGENCY
815 KAR 7:125E

Due to unforeseen delays in the printing of the Kentucky Residential Code/2002, the code will not be available to builders or the public until late December 2001. 815 KAR 7:120, The Kentucky Building Code, and Section 116.0 of the Kentucky Residential Code mandate that the effective date of the residential code is January 1, 2002, providing insufficient time for builders and the public to be made aware of the new requirements, including safety-related building code requirements. It is in the interest and protection of the public that sufficient notice of new requirements for residential dwellings be provided. Therefore, the department, upon approval of the Board of Housing, Buildings and Construction, submits this emergency administrative regulation extending the deadline for mandatory compliance with the Kentucky Residential Code/2002 until July 1, 2002. An ordinary administrative regulation will not be sufficient and an emergency exists in order to extend the mandatory effective date of the Kentucky Residential Code/2002. This emergency administrative regulation will be replaced by an ordinary administrative regulation, and a Notice of Intent will be filed simultaneously with this emergency administrative regulation.

PAUL E. PATTON, Governor
DENNIS J. LANGFORD, Commissioner
RONALD B. MCCLOUD, Secretary

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
Emergency Amendment


RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.230, 198B.990

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

EFFECTIVE: January 3, 2002

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform statewide building code, based on a model code, which establishes standards for construction of buildings in the state. This administrative regulation adopts the International Residential Code for One- and Two-Family Dwellings, 2000, First Edition, Chapters 1 through 42 with modifications, to establish the basic mandatory uniform statewide code provisions relating to construction of one (1) and two (2) family dwellings and townhouses. Amendment of this administrative regulation is necessary to extend the mandatory compliance deadline until July 1, 2002. Publication of the new Kentucky Residential Code/2002 has been delayed allowing insufficient time for builders and the public to be made aware of the new requirements. Therefore, Section R116, Effective Dates, of the 2002 KRC Supplement, filed on June 15, 2001, shall be amended.

Section 1. Definitions. (1) "Board of Housing" or "Board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "Building" is defined by KRS 198B.010(4).
(3) "Commissioner" is defined by KRS 198B.010(9).
(4) "Department" is defined by KRS 198B.010(11).
(5) "Farm" means property having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) which is qualified by and registered with the property valuation administrator in the county in which the property is located.
(6) "KBC" means the Kentucky Building Code as established in 615 KAR 7:120.
(7) "Manufactured home" is defined by KRS 198B.010(23) and 227.550.
(8) "Modular home" means an industrialized building system, which is designed to be used as a residence and which is not a manufactured or mobile home.
(9) "Ordinary repair" is defined by KRS 198B.010(19).
(10) "Single-family" or "one (1) family dwelling" means a single unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which shall not be connected to any other unit or building.
(11) "Two (2) family dwelling" means a single family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.
(12) "Two (2) family dwelling" means a building containing not more than two (2) family dwelling units which are connected.

Section 2. Mandatory Building Code Requirements for Dwellings. (1) Except as provided in subsection (2) of this section, a single-family dwelling, two (2) family dwelling or townhouse shall not be constructed unless it is in compliance with the International Residential Code, 2000 as amended by this administrative regulation and the Kentucky Residential Code Supplement.
(2) Exceptions.
(a) Permits, inspections and certificates of occupancy shall not be required for a single-family dwelling unless required by a local ordinance.
(b) All residential occupancies which are not single-family, two-family or townhouses shall comply with the Kentucky Building Code, 2002 as set forth in 815 KAR 7:120.
(3) The International Residential Code shall be amended as set forth in the Kentucky Residential Code Supplement.
(4) Effective date. Plans for single-family or one (1) family dwellings, two (2) family dwellings and townhouses may be designed and submitted to conform to either the 1997 edition of the Kentucky Building Code or the Kentucky Residential Code/2002 through June 30, 2002. Effective July 1, 2002, all plans for these dwellings shall be designed and submitted to conform to the Kentucky Residential Code/2002.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "International Residential Code/2000", First Edition, as adopted by the Kentucky Board of Housing, Buildings and Construction; and
(3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JANET M. HALL, Office of General Counsel
DENNIS J. LANGFORD, Commissioner
RONALD MCCLOUD, Secretary
APPROVED BY AGENCY: January 2, 2002
FILED WITH LRC: January 3, 2002 at 10 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Janet M. Hall
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the building construction requirements for one and two family dwellings and townhouses.
(b) The necessity of this administrative regulation: The current building code is being upgraded, and in doing so, the international codes separate the construction requirements for single family dwellings and other buildings into two documents. This administrative regulation establishes the Kentucky Residential Code.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This is the portion of the uniform mandatory statewide building code for single family dwellings as authorized by KRS Chapter 198B.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation contains all the enforcement requirements and technical standards for small residential construction.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will extend the mandatory effective date until July 1, 2002 (from January 1, 2002).
(b) The necessity of the amendment to this administrative regulation: This amendment will allow builders and design professionals some time to become familiar with the new residential code before it becomes effective.
(c) How the amendment conforms to the content of the authorizing statutes:
(d) How the amendment will assist in the effective administration of the statutes:
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Home-builders and purchasers as well as local governments, but only if they elect to have a building inspection program for single family dwellings are affected.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The new residential code is more comprehensive and understandable than the current code.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) In a briefing:
(b) On a continuing basis:
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees for plan review and inspection.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fees must be established by local governments if they choose to have an enforcement program.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not establish fees.
(9) TIERING: Is tiering applied? No, this administrative regulation applies equally to all homes, townhouses, duplexes, except manufactured homes and farm homes.

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. This administrative regulation will affect a part of local government.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation affects local government where there is a local building inspection program and ordinance extended to cover single family dwellings. KRS 198B.006 requires local government to provide for building officials to enforce the uniform mandatory statewide building code on certain statutorily defined buildings; but enforcement in terms of
inspections, permits and certificates of occupancy on single family homes of the residential code is a local option.

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: There is no increased fiscal impact created by this administrative regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased nor decreased by this administrative regulation.

STATEMENT OF EMERGENCY
907 KAR 1:013E

This emergency administrative regulation is being promulgated to implement supplemental payment provisions for inpatient hospital services provided by public (nonstate) hospitals and private hospitals. These providers play a critical role in the delivery of inpatient services to Kentucky’s indigent citizenry who might otherwise be denied services within their communities, necessitating the need to travel outside of their communities. The amount of this supplemental payment is governed by 42 CFR 447.272 and may be reduced due to a recently issued federal proposed rule. This amount must be taken on an emergency basis to ensure the continued delivery of hospital services throughout the Commonwealth and the maximum funding available under current federal regulations. Failure to enact this administrative regulation on an emergency basis would result in the loss of federal funds. These federal funds are critical at this time due to the Medicaid budget deficit. This administrative emergency regulation differs from the emergency administrative regulation on the same subject that was filed on June 29, 2001, as follows: this emergency administrative regulation establishes the supplemental payment methodology for public (nonstate) and private hospitals. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The Notice of Intent for 907 KAR 1:013 has been filed concomitantly with this emergency administrative regulation.

PAUL E. PATTON, Governor
MARcia R. MORgan, Interim Secretary

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Physical Health
(Emergency Amendment)

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


EFFECTIVE: January 9, 2002

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. (Executive Order 98-83, effective July 2, 1998, 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(3) 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 an acute care hospital service in accordance with 902 KAR 20:016.
(2) "Base year" means the cost reporting period upon which a rate is based.
(3) "Capital costs" means capital-related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.
(4) "Countable resource" means cash or an asset readily convertible to cash including a checking account, savings account, stock, bond, mutual fund, certificate of deposit, money market account, or similar financial instrument.
(5) "Critical access hospital" means a hospital meeting the licensure requirements established in 902 KAR 1:110.
(6) "Department" means the Department for Medicaid Services or its designated agent.
(7) "Disproportionate share hospital" or "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).
(8) "DRI" means Data Resources, Incorporated.
(9) "Government entity" means an entity that qualifies as a unit of government for the purposes of 42 USC 1396b(w)(6)(A).
(10) "Indexing factor" means the percentage that the cost of providing a service is expected to increase during the universal rate year.
(11) "Indigent care" means the unreimbursed cost to a hospital of providing a service on an inpatient or outpatient basis to an individual determined to be indigent in accordance with KRS 205.640 and for which an individual shall not be billed by the hospital. Unreimbursed cost for a service provided to a Medicaid recipient shall not be included in indigent care.
(12) "Indigent care eligibility criteria" means the criteria as specified in Section 19 of this administrative regulation used by a hospital to determine if an individual is eligible for indigent care.
(13) "Inflation factor" means the percentage that the cost of providing a service has increased, or is expected to increase, for a specific period of time.
(14) "Medicaid shortfall" means the difference between a provider’s cost of providing services to Medicaid recipients and the amount received in accordance with the payment provisions in Sections 3, 4, 5, and 15 of this administrative regulation.
(15) "Medically necessary" or "medical necessity" means that a covered benefit shall be provided in accordance with 907 KAR 3:130.
(16) "Pediatric teaching hospital" is defined in KRS 205.565.
(17) "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 only.
(18) "Psychiatric access hospital" means an acute care hospital which:
(a) Is not located in a metropolitan statistical area as determined by the U.S. Census Bureau;
(b) Provides at least 65,000 days of inpatient care;
(c) Provides at least twenty (20) percent of inpatient care to Medicaid eligible recipients; and
(d) Provides at least 5,000 days of inpatient psychiatric care to Medicaid recipients in a fiscal year.
(19) "Psychiatric hospital" means a hospital which meets the licensure requirements as established in 902 KAR 20:180.
(20) "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 3 of this administrative regulation.
(21) "Rehabilitation hospital" means a hospital meeting the licensure requirements as established in 902 KAR 20:240.
(22) "Resident" means an individual living in Kentucky and who is not receiving public assistance in another state.
(23) "State university teaching hospital" means:
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(a) A hospital that 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 teaching facility (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 possessing only a residency program or rotation agreement.

(24) "Third-party payor" means any private or public entity or program that may be liable by law, administrative regulation or contract to make payment to, or on behalf of, an individual for a health care service.

(25) "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.

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

(27) "Type II hospital" 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 hospital.

(28) "Type III hospital" means an in-state disproportionate share state university teaching hospital, owned or operated by either the University of Kentucky or the University of Louisville medical school.

(29) "Type IV hospital" means an in-state disproportionate share hospital participating in the Medicaid Program that is a state-owned psychiatric hospital.

(30) "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning July of each year, for which payment is established for a hospital regardless of the hospital's fiscal year end.

(31) "Upper payment limit" means the maximum amount the Medicaid Program shall pay for an inpatient day of care with the maximum varying based on the following:

(a) Utilization;
(b) Peer grouping; and
(c) Age of patient.

(32) "Urban trauma center hospital" means an acute hospital that:
(a) Is designated as a Level I Trauma Center by the American College of Surgeons;
(b) Has a Medicaid utilization rate greater than twenty-five (25) percent; and
(c) At least fifty (50) percent of its Medicaid population are residents of the county in which the hospital is located.

(33) "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. Reimbursement for an Inpatient Hospital Service. (1) The department shall reimburse for an inpatient hospital service provided to an eligible Medicaid recipient through the use of a rate that meets the requirements of 42 USC 1396(a)(13).

(2) Excluding critical access hospitals, reimbursement for an inpatient hospital service shall be prospective.

Section 3. Acute Care Hospital and Rehabilitation Hospital Inpatient Services. (1) The reimbursement rate for an acute care hospital and for a rehabilitation hospital for the rate year beginning July 2000 shall be determined by utilizing a rate on rate methodology as follows:

(a) The department shall utilize a hospital's June 30, 2000, 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 two and eight-tenths (2.8) percent;

(2) A payment for a child under age six (6) years shall be made in accordance with Section 14 of this administrative regulation;

(3) Payment for the following transplants shall be made in accordance with Section 3 of this administrative regulation:

(a) Kidney;

(b) Cornea;
(c) Pancreas; or
(d) Kidney and pancreas;

(4) Payment for a transplant not listed in subsection (3) of this section shall be made in accordance with 907 KAR 1:350; and

(5) Payment for a federally-defined hospital swing bed shall be made in accordance with 907 KAR 1:065.

Section 4. Psychiatric Hospital Inpatient Service. (1) The Department for Medicaid Services shall pay for an inpatient psychiatric hospital service provided to an eligible Medicaid recipient in a psychiatric hospital by multiplying the hospital's per diem rate by the number of allowed patient days.

(2) The per diem rate for a psychiatric hospital for the universal rate year beginning or after July 2000 shall be determined by the department in accordance with Sections 6 through 13 of this administrative regulation.

(3) A payment for a child under age six (6) years shall be made in accordance with Section 14 of this administrative regulation.

Section 5. Critical Access Hospital. (1) The department shall pay for an inpatient service provided by a critical access hospital to an eligible Medicaid recipient through an interim per diem rate as established by the Centers for Medicare and Medicaid Services (CMS) for the Medicare Program.

(2) The effective date of a rate shall be the same as used by the Medicare Program.

(3) A hospital's final reimbursement shall reflect any adjustment made by the Centers for Medicare and Medicaid Services (CMS) for the Medicare Program.

(4) The provisions of Sections 6 through 15 of this administrative regulation shall not apply to a critical access hospital, except:

(a) A hospital shall be required to submit an annual Medicare cost report;
(b) The cost report submitted by a hospital shall be subject to audit and review; and
(c) Total payments made to a hospital under this section shall be subject to the payment limitation in 42 CFR 447.271.

(5) Payment for a federally defined swing bed in a critical access hospital shall be made in accordance with 907 KAR 1:025.

Section 6. Use of a Prospective Rate. (1) A hospital shall be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days.

(2) An allowable Medicaid cost shall:

(a) Be a cost allowed after a Medicaid or Medicare audit;
(b) Be in accordance with 42 CFR 412 and 413;
(c) Include a hospital provider tax; and
(d) Not include costs listed in Section 13(11) of this administrative regulation or Section 106 of the Medicaid Reimbursement Manual for Inpatient Hospital Services.

(3) The most recent Medicaid cost report available as of May 1 preceding the current universal rate year shall:

(a) Be the basis of the prospective payment; and
(b) Establish the base year;

(4) A prospective rate shall include both routine and ancillary costs.

(5) A prospective rate shall not be subject to retroactive adjustment, except for:

(a) A critical access hospital; or
(b) A facility with a rate based on unaudited data.

(6) A facility listed in subsection (5)(a) or (b) of this section shall have its rate revised by the department for the universal rate year when the audited cost report for the base year becomes available to the department.

(7) Total Medicaid payments to a hospital shall be consistent with the requirements of 42 CFR 447.271.

(8) An overpayment shall be recouped by the department as follows:

(a) A provider owing an overpayment shall submit the amount of the overpayment to the department; or
(b) The department shall withhold the overpayment amount from a future Medicaid payment due the provider.
Section 7. Use of a Universal Rate Year. (1) A universal rate year shall be 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 year to conform with a universal rate year.

Section 8. Trending of a Cost Report. (1) An allowable Medicaid cost, excluding a 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 universal rate year to update a hospital’s Medicaid cost and billing data.

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

Section 9. Indexing for Inflation. (1) After an allowable Medicaid cost has been trended to the beginning of a universal rate year, an indexing factor shall be applied to project inflationary cost in the universal rate year.

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

Section 10. Peer Grouping. (1) For rate setting, a hospital shall bepeer grouped based on the number of beds licensed as of May 1 preceding the universal rate year;

(2) A peer group shall be:

(a) Zero to fifty (50) beds;
(b) Fifty-one (51) to 100 beds;
(c) 101-200 beds;
(d) 201-400 beds; and
(e) 401 beds or more;

(3) 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 payment 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; and

(5) A rehabilitation hospital and an acute care hospital that is restricted to providing rehabilitation services shall not be:

(a) Peer grouped;
(b) Arrayed; or
(c) Subject to the operating cost upper payment limit.

Section 11. Minimum Occupancy Factor. (1) If a hospital’s minimum occupancy is not met, allowable Medicaid capital costs shall be reduced by:

(a) Artificially increasing the occupancy factor to the minimum factor; and

(b) Calculating the capital costs using the calculated minimum occupancy factor.

(2) The following minimum occupancy factors shall apply:

(a) A sixty (60) percent minimum occupancy factor shall apply to a hospital with 100 or fewer beds;

(b) A seventy-five (75) percent minimum occupancy factor shall apply to a hospital with 101 or more beds; and

(c) A newly-constructed hospital shall be allowed one (1) full universal rate year before a minimum occupancy factor shall be applied.

Section 12. Reduced Depreciation Allowance. (1) The allowable amount for depreciation on a hospital 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 report.

(2) The use of a reduced depreciation allowance shall not be applicable to a psychiatric hospital.

Section 13. Upper Payment Limits and Payment Principles. (1) An acute care hospital with 101 beds or more shall have an upper payment limit established on allowable Medicaid costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost of the hospital’s peer group.

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

(3) 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 payment limit set at 120 percent of the weighted median per diem cost of the hospital in that peer group.

(4) A state university teaching hospital shall have an upper payment limit on allowable Medicaid costs (except Medicaid capital costs and professional component costs) established at 106 percent of the weighted median per diem cost of the hospital’s peer group.

(5) 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 payment limit set at 126 percent of the weighted median per diem cost of the hospital’s peer group.

(6) A pediatric teaching hospital shall have an upper payment limit set at 126 percent of the weighted median per diem cost of its peer group.

(7) A psychiatric hospital:

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

(b) Shall be exempt from the upper payment limit for the array if designated by the department as a primary referral and service resource for a child in the custody of the Cabinet for Families and Children and be paid at projected actual cost as follows:

1. Projected actual cost shall be determined by:
   a. The Medicare and Medicaid cost reports supplemented by any expenditures allowed on the Medicaid cost report incurred since the filing of the cost report; and
   b. Projected additional expenditures for the rate year;

2. Projected additional expenditures for the rate year not subsequently incurred shall be subject to a cost settlement based on actual expenditures allowed on a Medicaid cost report; and

3. The cost determined in subparagraph 1a of this paragraph shall be adjusted for inflation using the DRI index.

(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.

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

(10) The payment principles established in this section, Section 2 of this administrative regulation, and the Medicaid Inpatient Hospital Services Reimbursement Manual shall govern reimbursement for an inpatient hospital service.

(11) An array and an upper payment limit shall not be altered after being set by the department.

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

(13) A provider tax attributable to Medicaid utilization shall be an allowable cost and

(14) The following limits shall be applied to a per diem rate increase for an acute care hospital excluding a hospital restricted to rehabilitative services:

(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) A limit shall be applied to the capital and operating cost per diem components;

(c) Rate growth beyond an amount specified in paragraph (a) of this subsection shall be an allowable cost; and

(d) An allowable cost resulting from the use of a limit established in paragraph (a) of this subsection shall not be included in the base for future rate setting.

Section 14. Payment for an Inpatient Service for a Child Under Age Six (6) Years. For a child under age six (6) years in a disproportionate share hospital and a child under age one (1) year in a
nondisproportionate share hospital the following shall apply:
(1) For the first thirty (30) days of inpatient service, payment shall be made in accordance with Sections 3, 4, 5, and 22 of this administrative regulation; and
(2) After thirty (30) days, an amount equal to 110 percent of a hospital's per diem rate shall be paid, and the payment shall apply: To an inpatient service determined by the department to be medically necessary;
1. Thirty (30) days after the date of admission of a child; or
2. For a newborn, thirty (30) days from the date of discharge of the mother; and
(b) Without regard to length of stay or number of admissions.

Section 15. Acute Care Hospital, Rehabilitation Hospital and Psychiatric Hospital Inpatient Rates Effective July 1, 2001. (1) The reimbursement rate for the rate year beginning July 1, 2001, for an acute care hospital or a rehabilitation hospital shall:
(a) Be the rate in effect on June 30, 2001; and
(b) Include an operating, capital, and, if applicable, professional component.
(2) The reimbursement rate for the rate year beginning July 1, 2001, for a psychiatric hospital shall be the lesser of:
(a) The rate established pursuant to Section 4 of this administrative regulation; or
(b) The rate in effect on June 30, 2001.

Section 16. Supplemental Payments. (1) In addition to a payment based on a rate developed under Section 3, 4, or 15 of this administrative regulation, the department shall make quarterly supplemental payments to:
(e) A hospital that qualifies as a pediatric teaching hospital in an amount:
1. Equal to a hospital's Medicaid shortfall for pediatric patient days; and
2. That is prospectively determined by the department with an end-of-the-year settlement;
(a) A hospital that qualifies as a pediatric teaching hospital and additionally meets the criteria of a Type III hospital in an amount:
1. 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. That is prospectively determined with an end-of-the-year settlement; and
3. Based on the state matching contribution made available for this purpose by a facility that qualifies under this paragraph;
(c) A hospital that qualifies as an urban trauma center hospital in an amount:
1. Based on the state matching contribution made available for this purpose by a government entity on behalf of a facility that qualifies under this paragraph;
2. Based upon a hospital's proportion of Medicaid patient days to total Medicaid patient days for all hospitals that qualify under this paragraph;
3. That is prospectively determined with an end-of-the-year settlement; and
4. That is consistent with the requirements of 42 CFR 447.271;
(d) A hospital that qualifies as a psychiatric access hospital in an amount:
1. Equal to a hospital's uncompensated costs of providing services to Medicaid recipients and individuals not covered by a third-party payer, not to exceed $6,000,000 annually; and
2. That is consistent with the requirements of 42 CFR 447.271;
(e) A nonstate government-owned hospital that has entered into an intergovernmental transfer agreement with the Commonwealth in an amount equal to the lesser of:
1. The difference between the payments made in accordance with Section 3, 4, or 15 of this administrative regulation and the maximum amount allowable under 42 CFR 447.272; or
2. The difference between the payments made in accordance with Section 3, 4, or 15 of this administrative regulation and an amount consistent with the requirements of 42 CFR 447.271; and
(f) A private, nongovernment owned or operated hospital in an amount:
1. Proportional to its Medicaid cost as compared to the total Medicaid costs of all hospitals qualifying under this paragraph;
2. Not to exceed its Medicaid shortfall; and
3. Subject to available funds in accordance with an intergovernmental transfer agreement under paragraph (e) of this subsection and 907 KAR 1:015E, Section 2. Available funds shall be:
(a) An amount equal to fifty (50) percent of the payments received by hospitals under paragraph (e) of this subsection after deducting the nonfederal share of the funds, less the total Medicaid shortfall of hospitals participating under paragraph (e) of this subsection; and
(b) Matched with federal funds.
(2) An overpayment made to a facility under this section shall be recovered by subtracting an overpayment amount from a succeeding year's payment to be made to the facility.
(3) For the purpose of this section of this administrative regulation, Medicaid patient days shall not include days for a Medicaid recipient eligible to participate in the state's Section 1115 waiver as described in 907 KAR 1:705.
(4) A payment made under this section of this administrative regulation shall not duplicate a payment made under Section 17 of this administrative regulation.
(5) A payment made in accordance with subsection (1)(d) and (e) of this section shall be for a service provided on and after April 2, 2001.
(6) A payment made in accordance with subsection (1)(f) of this section shall be for a service provided on and after November 5, 2001.
(7) A payment made in accordance with this section of this administrative regulation shall be in compliance with the limitations in 42 CFR 447.272.

Section 17. Disproportionate Share Hospital Payment. (1) A disproportionate share hospital payment shall be made to a qualified hospital based upon available funds in accordance with KRS 205.300;
(2) A payment to a Type I hospital or a Type II hospital shall:
(a) Be a prospective amount;
(b) Distributed based upon a hospital's proportion of indigent care; and
(c) Not be subject to settlement or revision based on a change in utilization during the year to which it applies;
(3) The cost of indigent care for the purpose of making a payment to a Type I hospital or Type II hospital shall be determined by:
(a) Calculating the costs of inpatient indigent care by multiplying each day of indigent care provided by the facility by its Medicaid per diem rate on file August 1, 2000; and
(b) Calculating the costs of outpatient indigent care by:
1. Calculating an outpatient to inpatient ratio by dividing a hospital's average Medicaid outpatient payment per visit by its average Medicaid inpatient payment per day; and
2. Multiplying the number of outpatient visits by the ratio determined in subparagraph 1 of this paragraph by the facility's Medicaid per diem rate on file as of August 1, 2000.
(4) Effective October 1, 2001, the cost of indigent care for the purpose of making a payment to a Type I or Type II hospital shall be determined by:
(a) Calculating the costs of inpatient indigent care by multiplying each day of indigent care provided by the facility by its Medicaid per diem rate on file August 1, 2001; and
(b) Multiplying each facility's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 25.001.
(5) Distributions to a Type III hospital shall:
(a) Be based on a facility's historical proportion of the costs of services to Medicaid recipients minus the amount paid by Medicaid under Sections 3, 14 and 16 of this administrative regulation, plus the costs of services to indigent and uninsured patients minus any payments made on behalf of indigent and uninsured patients;
(b) Be a prospective amount and shall not be subject to settlement or revision based on a change in utilization during the year to which it applies;
(c) Be made on an annual basis; and
(d) Be contingent upon a facility providing up to 100 percent of matching funds to receive federal financial participation for payment
under this subsection.

(6) Distributions to a Type IV hospital shall:
(a) Be equal to the costs of services provided to indigent patients minus any payments made on behalf of an indigent individual;
(b) Be proportionally reduced by the department if the cost exceeds available funds; and
(c) Be made annually.

Section 18. Indigent Care Eligibility. (1) Prior to billing a patient and prior to submitting the cost of a hospital service to the department as uncompensated, a hospital shall use the indigent care eligibility form (DSH-001) to assess a patient's financial situation to determine if
(a) Medicaid or Kentucky Children's Health Insurance Program (KCHIP) may cover hospital expenses; or
(b) A patient meets the indigent care eligibility criteria.

(2) An individual referred to Medicaid or KCHIP by a hospital shall apply for the referred assistance (Medicaid or KCHIP) within thirty (30) days of completing the DSH-001 form at the hospital.

Section 19. Indigent Care Eligibility Criteria. (1) A hospital shall receive funding for an inpatient or outpatient medical service provided to an indigent patient under the provisions of Sections 17 and 18 of this administrative regulation if the following apply:
(a) The patient is a resident of Kentucky;
(b) The patient is not eligible for Medicaid or KCHIP;
(c) The patient is not covered by a third-party payor;
(d) The patient is not in the custody of a unit of government that is responsible for coverage of the acute care needs of the individual;
(e) The hospital shall consider all income and countable resources of the patient's family unit and the family unit shall include:
1. The patient;
2. The patient's spouse;
3. The minor's parent or parents living in the home; and
4. Any minor living in the home;
(f) A household member who does not fall in one (1) of the groups listed in paragraph (e) of this subsection shall be considered a separate family unit;
(g) Countable resources of a family unit shall not exceed:
1. $2,000 for an individual;
2. $4,000 for a family unit size of two (2); and
3. Fifty (50) dollars for each additional family unit member;
(h) Countable resources shall be reduced by unpaid medical expenses of the family unit to establish eligibility; and
(i) The patient or family unit's gross income shall not exceed the federal poverty limits published annually in the Federal Register and in accordance with KRS 205.640.

(2) Total annual gross income shall be:
(a) Income received during the twelve (12) months preceding the month of receiving a service;
(b) The amount determined by multiplying the patient's or family unit's income, as applicable, for the three (3) months preceding the date the service was provided by four (4); or
(c) Used unless a patient is self-employed and has a work expense that can be deducted from gross income;
(d) A work expense for a self-employed patient shall be deducted from gross income if:
(a) The work expense is directly related to producing a good or service; and
(b) Without it the good or service could not be produced;
(e) A hospital shall notify the patient or responsible party of his eligibility for indigent care; and
(f) If indigent care eligibility is established for a patient, the patient shall remain eligible for a period not to exceed six (6) months without another determination.

Section 20. Indigent Care Eligibility Determination Fair Hearing Process. (1) If a hospital determines that a patient does not meet indigent care eligibility criteria as established in Section 19 of this administrative regulation, the patient or responsible party may request a fair hearing regarding the determination within thirty (30) days of receiving the determination.

(2) If a hospital receives a request for a fair hearing regarding an indigent care eligibility determination, impartial hospital staff not involved in the initial determination shall conduct the hearing within thirty (30) days of receiving the hearing request.

(3) A fair hearing regarding an patient's indigent care eligibility determination shall allow the individual to:
(a) Review evidence regarding the indigent care eligibility determination;
(b) Cross-examine witnesses regarding the indigent care eligibility determination;
(c) Present evidence regarding the indigent care eligibility determination; and
(d) Be represented by counsel.

(4) A hospital shall render a fair hearing decision within fourteen (14) days and shall provide a copy of its decision to:
(a) The patient or responsible party who requested the fair hearing; and
(b) The department.

(5) A fair hearing process may be terminated if a hospital revokes its earlier decision and notifies, prior to the hearing, the patient or responsible party who requested the hearing.

(6) A patient or responsible party may appeal a fair hearing decision to a court of competent jurisdiction in accordance with KRS 13B.140.

Section 21. Indigent Care Reporting Requirements. (1) On a quarterly basis, a hospital shall collect and report to the department indigent care patient and cost data.

(2) If a patient meeting hospital indigent care eligibility criteria is later determined to be Medicaid or KCHIP eligible or has other third-party payor coverage, a hospital shall adjust its indigent care report previously submitted to the department in a future reporting period.

Section 22. Payment to a Participating Out-of-State Hospital. (1) A participating out-of-state hospital shall be reimbursed for a covered inpatient service provided to an eligible Kentucky Medicaid recipient at the lesser of:
(a) Seventy-five (75) percent of its usual and customary charges; or
(b) A per diem rate equal to the in-state operating per diem upper limit for a comparable size hospital, plus:
1. A provision for capital cost that is equal to the mean capital cost per diem for the appropriate peer group in accordance with Section 10 of this administrative regulation; and
2. If applicable, a professional component that shall be paid at seventy-five (75) percent of charges;
(2) Payments for a child under age six (6) years in a disproportionate share hospital or under age one (1) year in a nondonor proportionate share hospital shall be made at the lesser of:
(a) Eighty-five (85) percent of usual and customary charges; or
(b) An amount specified in Section 14 of this administrative regulation.

For the universal rate year beginning July 1, 1999, the per diem rate shall be an amount equal to the per diem determined by increasing the per diem determined under subsection (1)(b) of this section for universal rate year 1998, by three (3 percent); and

(4) For the universal rate year beginning July 2000, the per diem rate shall be an amount equal to the per diem rate determined under subsection (3) of this section, increased by two and eight-tenths (2.8) percent.

(5) For the universal rate year beginning July 2001, the per diem rate shall be in accordance with Section 15 of this administrative regulation.

Section 23. Provider Appeal Rights. A hospital may appeal a department decision involving the application of this administrative regulation to the hospital's reimbursement in accordance with 907 KAR 1:671.


(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. ["Acute-care hospital" means a
hospital licensed and certified to provide acute care hospital services in accordance with 902 KAR 20:018.
(2) "Base-year" means the cost-reporting period upon which a rate is based.
(3) "Capital costs" means capital-related expenses including insurance, taxes, interest and depreciation related to plant and equipment.
(4) "Categorical share" means the share of the provider's inpatient cost incurred by the provider in the base year.
(5) "Department" means the Department for Medicaid Services or its agent.
(6) "Disproportionate share hospital" (DSH) means a hospital that:
(a) Meets the criteria established in 42 USC 1396r-4(d) and
(b) Meets the criteria established in 42 USC 1396r-4(f); or
2. Has a Medicaid utilization of one (1) percent or higher.
(7) "DRI" means Data Resources Incorporated.
(8) "Indexing factor" means the amount the cost of providing a service is expected to increase during the universal rate year.
(9) "Individual days" means days in excess of fourteen (14) covered days for a Medicaid recipient and days of services 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 007 KAR 1:635, and which are uninsured or unreimbursed by another source.
(10) "Inflation factor" means the amount the cost of providing a service has increased, or is expected to increase, for a specific period of time.
(11) "Pediatric teaching hospital" is defined in KRS 205.565.
(12) "Professional component cost" means a physician's compensation cost paid by the provider for a service to a patient and includes the following categories of practice:
(a) Anesthesiology,
(b) Cardiology,
(c) Electrophysiology,
(d) Pathology,
(e) Radiology, and
(f) Psychiatry in a psychiatric hospital.
(13) "Psychiatric hospital" means a hospital which meets the minimum licensure requirements established in 902 KAR 20:180.
(14) "Rehabilitation hospital" means a hospital meeting the minimum licensure requirements established in 902 KAR 20:240.
(15) "State university teaching hospital" means:
(a) A hospital which is owned or operated by a Kentucky state supported university with a medical school.
(b) A hospital in which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical schools are physically located and which are used as the primary (greater than fifty (50) percent) teaching facility for the medical students of the University of Kentucky or the University of Louisville; however, this shall not include a hospital having a residency program or rotation agreement.
(16) "Trending factor" means the inflation factor as applied to that period of time between a facility's base fiscal year and the beginning of the universal rate year.
(17) "Type I hospital status" means an in-state disproportionate share hospital with 100 beds or less that participates in the Medicaid Program.
(18) "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 IV status hospital.
(19) "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.
(20) "Type IV hospital status" means an in-state disproportionate share hospital participating in the Medicare Program that is a state owned psychiatric hospital.
(21) "Type V hospital status" means an out-of-state disproportionate share hospital participating in the Medicaid Program.
(22) "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.
(23) "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.
(24) "Weighted median" means the per diem associated with the median point of cumulative inpatient days calculated by averaging per diem within a specified peer group from lowest to highest.

Section 2. Acute Care Hospital, Rehabilitation Hospital and 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 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 3. Use of a Prospective Rate. (1) A hospital shall be paid using a prospective payment rate based on allowable Medicaid inpatient costs and Medicaid inpatient days.
(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 a facility with a rate based on unaudited data. This facility shall have its rate appropriately revised for the rate year when its 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 4. Use of a Universal Rate. (1) A universal rate 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 year.

Section 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 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 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

2. The peer grouping 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 shall not be:

   (a) Peer-grouped;
   (b) Arrayed; or
   (c) Subject to the operating cost upper limit.

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

   (4) A sixty percent (60%) occupancy factor shall apply to hospitals with 100 or fewer beds; or
   (5) A seventy-five percent (75%) occupancy factor shall apply to a hospital with 101 or more beds.

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

   (4) The allowable amount for depreciation on building and fixtures, excluding movable equipment, shall be sixty-five percent (65%) of the reported depreciation amount as shown in the hospital's cost report.
   (5) The use of a reduced depreciation allowance shall not be applicable with regard to a psychiatric hospital.

Section 10. Upper limits and payment principles shall apply to a hospital, with additional limitations to a disproportionate share hospital established in Section 11 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 cost 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 150 percent of the weighted median per diem cost for a hospital in its peer group.
   (4) A psychiatric hospital 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.

Section 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, shall have an upper limit set at 150 percent of the weighted median per diem cost for a hospital in that peer group.
   (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, shall have an upper limit set at 150 percent of the weighted median per diem cost for a hospital in that peer group.

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percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the hospital.

(4) Psychiatric 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.

(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.

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

(7) A hospital shall be reimbursed an additional amount equal to 44 percent of a hospital's per diem rate for medically necessary hospital services provided for an extended period of stay 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, these costs and days of stay for a child under the age of six (6) that:

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

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

(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 and Type II hospital shall include a volume adjustment,

1. The adjustment shall be made by paying for each indigent care-day, including equivalent days not in outpatient service, at a rate that is equal to each hospital's Medicaid per diem rate.

2. Total disproportionate share volume adjustment payments to a Type I and Type II hospital for indigent care services provided during the 1995 fiscal year shall not exceed $100,000,000. If a payment will cause the limit to be exceeded, each hospital's volume adjustment amount shall be adjusted proportionally.

3. The inpatient equivalent care days for a hospital shall be determined by dividing the hospital's average Medicaid allowable outpatient payment per day by the Medicaid allowable outpatient 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, less the amount paid by Medicaid as a usual Medicare per diem payment, plus the cost of services to an uninsured patient, less any cash payment made by an uninsured patient. Type III status shall be granted to a university teaching hospital if the hospital agrees to a part of the request for a Type III status for:

1. Forgo 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 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.

Section 12. In accordance with KRS 205.640, except for nonemergency 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 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 upper limit for a comparable size hospital using equivalent days or a charge payment capitated rate. The capitated rate shall be computed by using the mean value of the capital cost per diem paid per poor-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 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 non-disproportionate share hospital or a child under age six (6) in disproportionate share hospitals with 100 beds or less, the length of stay or number of admissions of the infant or child. Exceptionally high cost or long length of stay shall be those costs and days of stay:

(a) In a disproportionate share hospital, as defined in Section 12(11) of this administrative regulation; and

(b) In a disproportionate share hospital, as defined in Section 14(7) of this administrative regulation.

(3) This section, containment of section (2), of this section, disproportionate state shall be reimbursed in accordance with Section 12(11) and (3)(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 14. Provider Appeal Rights. If appealed, negative action shall be appealed in accordance with 007 KAR 1.671.

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

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

MIKE ROBINSON, Commissioner
MARIA R. MORGAN, Secretary
APPROVED BY AGENCY: January 7, 2002
FILED WITH LRC: January 9, 2002 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Mike Robinson or Wanda Fowler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for inpatient hospital services provided to Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to reimburse hospitals for inpatient hospital services provided to Medicaid recipients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes of this administrative regulation grant the Department for Medicaid Services (DMS) the authority to reimburse for inpatient hospital services provided to Medicaid recipients. This administrative regulation establishes the reimbursement methodology for those inpatient hospital services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement methodology for inpatient hospital services provided to Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: This amendment will provide supplemental payments to public (nonstate) and private hospitals.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to increase reimbursement for inpatient hospital services to assure continued access for Medicaid recipients.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms by ensuring that payments do not exceed the maximum additional payments the department may make to hospitals.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assure access to hospital services for patients in the Commonwealth by increasing the amount of reimbursement.

(3) List the type and number of individuals, businesses, organi-
CABINET FOR HEALTH SERVICES  
Department for Medicaid Services  
Division of Hospitals and Outpatient Facilities Services  
(Emergency Amendment)  

907 KAR 1:015E: Payments for hospital outpatient services.  
RELATES TO: KRS 205.520, 42 CFR 440.2, 440.20(a)  
STATUTORY AUTHORITY: KRS 194A.030(9), 194A.050(1),  
205.520(3), 205.560, 205.567, 42 USC 1396a(a), (b), (d)  
EFFECTIVE: January 1, 2001  
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method or determining amounts payable by the Medicaid Program for hospital outpatient services.  

Section 1. Outpatient Hospital Services. (1) For services provided on or after March 15, 2001, the Department for Medicaid Services shall reimburse a participating in-state hospital for outpatient services:  
(a) On an interim basis by multiplying the hospital's Medicaid-billed outpatient service charges by a ratio determined by dividing its Medicaid-allowable cost of covered outpatient services from its most recently filed and reviewed cost report by the hospital's Medicaid-billed charges for covered outpatient services for the same cost report period; and  
(b) With a year-end settlement to the lower of the hospital's Medicaid-allowable cost of covered outpatient services or Medicaid-allowable charges for covered outpatient services.  
(2) Effective July 1, 2001, a participating out-of-state hospital providing outpatient services exceeding $100,000 in paid claims for services provided for the period July 1, 1999 to June 30, 2000, shall submit to the department a copy of the Medicare cost report and any specific supplemental schedules required by their state. Reimbursement shall be determined based on a cost-to-charge ratio from the most recent Medicare cost report filed for the hospital's fiscal year end. The cost-to-charge ratio shall be determined as specified in subsection (1)(a) of this section for the rate effective July 1, 2001. An interim rate shall be paid for the period July 1, 2001 to September 1, 2001 or until the cost report is received. The interim rate shall be the Kentucky statewide average cost-to-charge ratio for in-state hospitals for the fiscal period.  
(3) By March 1, 2002, and continuing annually, out-of-state hospitals providing outpatient services exceeding $100,000 in paid claims for services provided during the preceding year shall provide the department a copy of their most recent Medicare cost report which shall be used to determine a cost-to-charge ratio to set the interim rate effective for the subsequent July 1 rate period.  
(a) The $100,000 threshold shall be determined from the amount paid through December 31 for services provided during the immediately preceding state fiscal year ending June 30. Hospitals required to submit a Medicare cost report shall be notified by the department in writing by January 31.  
(b) The cost report shall be due before March 1. A thirty (30) day extension for filing the cost report may be granted by the department if Medicare grants an extension or if catastrophic circumstances exist.  
(c) Failure to provide the required cost report in the allowed period shall result in a reduction of future payments to the lesser of the cost-to-charge ratio determined from the hospital's most recently submitted cost report, or the Kentucky statewide average rounded to the nearest percentage for in-state hospitals until the cost report is received and reviewed by the department.  
(d) The interim rate shall be subject to year-end cost settlement specified in subsection (1)(b) of this section.  
(4) A participating out-of-state hospital with $100,000 or less in paid claims for outpatient services provided for the period specified in subsection (3)(a) of this section shall not be required to submit a cost report. Reimbursement shall be the Kentucky statewide aver-
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age cost-to-charge ratio for in-state hospitals, rounded to the nearest percentage, adjusted annually. (5) Charges or costs shall not be transferred between the inpatient and outpatient service units. (6) Outpatient hospital laboratory services shall be reimbursed at the Medicare-established rate in accordance with 507 KAR 1:029. (7) For outpatient hospital laboratory services with no established Medicare rate, reimbursement shall be sixty-five (65) percent of Medicaid-billed charges with no settlement to the lower of cost or charges.

Section 2. Supplemental Payments. (1) In addition to a payment received in accordance with the provisions contained in Section 1 of this administrative regulation, a nonstate government hospital that has entered into an intergovernmental agreement with the Commonwealth shall receive a quarterly supplemental payment in an amount equal to the difference between the payments made in accordance with Section 1 of this administrative regulation and the maximum amount allowable under 42 CFR 447.321.

(2) A payment made under this section of this administrative regulation shall:

(a) Not be subject to the cost settlement provisions contained in Section 1 of this administrative regulation; and

(b) Apply to a service provided on or after April 2, 2001.

Section 3. Appeal Rights. A hospital may appeal a department decision involving the application of this administrative regulation to the hospital's reimbursement in accordance with 907 KAR 1:563. (1) An appeal of a negative action regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:561.

MIKE ROBINSON, Commissioner
MARcia R. MORGAN, Secretary
APPROVED BY AGENCY: December 26, 2002
FILEd WITH LRC: January 9, 2002 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Teresa Goodrich or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for hospital outpatient services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to reimburse hospitals for the provision of outpatient services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes of this administrative regulation grant the Department for Medicaid Services (DMS) the authority to reimburse hospitals for the provision of outpatient services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement methodology for hospitals for outpatient services.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides for a supplemental payment for public (nonstate) providers that are consistent with the limitations in 42 CFR 447.321.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that providers are reimbursed to the maximum allowable under federal regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms by ensuring that payments are consistent with federal regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by providing for a supplemental payment for public (nonstate) providers that are consistent with the limitations in 42 CFR 447.321.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All hospitals are affected by this regulation and 20 public hospitals are affected by this amendment.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. Reimbursement will be increased to the 20 public hospitals that are affected by this amendment.

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

(a) Initially: This regulation will increase expenditures by $11,883,464 which will be offset by an intergovernmental transfer of funds from public providers.

(b) On a continuing basis: The amount on a continuing basis is contingent upon the reenacted federal rule 42 CFR 447.321. Upon finalization of the rule, there will be no expenditures with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act and state matching funds of general and agency appropriations. State matching funds will be offset by intergovernmental transfers from participating government facilities.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need for an increase in funds or funding in order to implement this amendment.

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

(9) 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.

STATEMENT OF EMERGENCY
921 KAR 2:015E

The administrative regulation 921 KAR 2:015E, Supplemental programs for persons who are aged, blind or have a disability, changes the standards for all levels of care for the State Supplemental Program due to the Supplemental Security Income 2002 cost of living increase. 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. The Social Security Administration notified this agency of the amount of the supplemental security income cost of living adjustment in October, 2001. An ordinary administrative regulation would not allow the agency sufficient time to implement the change in the standards for the state supplementation applicant or recipient for January, 2002. In order to implement the mandated 2002 cost of living increases for eligibility determinations made on or after January 1, 2002, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
VIOLA P. MILLER, Secretary
CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(Emergency Amendment)

921 KAR 2:015E. 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 1382a-g

EFFECTIVE: December 28, 2001

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 that [wwould] 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 Section 1(13) of 921 KAR 2:006.

(4) "Specialized personal care home" means a licensed personal care home that 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 as established in [pursuant to] 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 has a disability pursuant to 907 KAR 1:011, Sections 1(4), (5), (6), (7), (11), (13), 9, 10, and 11, 907 KAR 1:540, Sections 1(1), (5), (6), (9), (3)(1)(c), 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(2b), (c), (e), (3), (4), (5), (7); and

(b) Requires a full-time special living arrangement; and

(c) Has insufficient income to meet the need for care.

(2) A special full-time living arrangement shall include:

(a) Residence in a personal care home that:

1. Meets the requirements and provides services established in [pursuant to] 902 KAR 20:036; and

2. Is licensed under KRS 2168.010 to 2168.131; or

(b) Residence in a family care home that:

1. Meets the requirements and provides services established in [pursuant to] 902 KAR 20:041; and

2. Is licensed under KRS 2168.010 to 2168.131; 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

(b) If a Social Security number has not been issued, apply for a Social Security number.


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;

(b) The caretaker service is provided by the following persons living with the applicant:

1. The spouse;

2. Parent of an adult or minor child who has a disability; 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 how:

(a) 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 907 KAR 1:640, Sections 1(1), (5), (6), (9), (3)(1)(c), 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(2b), (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 (8) of this section, income and earned income deducts shall be considered according to the policy for the medically needy pursuant to 907 KAR 1:640, Sections 1(1), (5), (6), (9), (3)(1)(c), 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(2b), (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 or 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) 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.
(8) The Supplemental Security Income Program twenty (20) dollars general exclusion shall not be an allowable deduction from income.
(9) For a resident in the Elder Shelter Network Program:
(a) Income and resources of the spouse shall be disregarded for the month of separation; and
(b) A third-party payment on behalf of an applicant or recipient made by the Elder Shelter Network Program shall be disregarded for ninety (90) days from the date of admission.

Section 7. Standard of Need. (1) The standard shall be based on the living arrangement of an eligibility determination as follows:
(a) A resident of a personal care home made
   1. on or after January 1, 2002, $985 [2001, $948; or
   2. Effective August 1, 2001, $967;]
(b) A resident of a family care home made
   1. on or after January 1, 2002, $717; or [2001, $685; or
   2. Effective August 1, 2001, $685; and]
(c) Caretaker;
   1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability made
      1. on or after January 1, 2002, $607 [2001, $573; or
      2. Effective August 1, 2001, $573;]
   2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care made on or after January 1, 2002, $886; or [2001, $844; and]
   3. An eligible couple, both aged, blind or have a disability and both requiring care made on or after January 1, 2002, $932 [2001, $898;]
(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 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. Hospital;
   2. Psychiatric hospital; or
   3. 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) Citizen of the United States; or
(2) Qualified alien pursuant to Section 1(3) 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; and
(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; and
(d) 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.
(3) To be eligible for a supplemental payment while placed out-of-state:
(a) The individual shall require the level of care provided in the out-of-state placement;
(b) There shall not be a suitable placement available in Kentucky; and
(c) The placement shall be preauthorized by staff of the Department for Community-Based Services.
(4) Except as specified in subsection (10) of this section, an applicant placed in Kentucky by another state shall not be considered a resident of Kentucky.
(5) 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.
(6) 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);  
   [r]
   7. Wechsler Preschool and Primary Scale of Intelligence (WPPSI);  
   (b) Is judged legally incompetent; or
   (c) Is found incapable of indicating intent based on medical or other documentation acceptable to the state.
(7) 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.
Community-Based Services with its tax identification number and address as part of the application process;

(c) A "Notice of Decision to Personal Care Home" shall be provided to a personal care home following approval or denial of an application;

(7) Provide the Department for Community-Based Services with a "Monthly Report Form";

(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, a personal care home shall annotate the monthly report as follows with a:
1. Star indicating a resident has a mental illness or mental retardation diagnosis;
2. Check mark indicating a resident receives state supplementation;
3. Star and a check mark indicating 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. Verification;
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) 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 personal care home may be randomly audited to verify percentages and payment accuracy.

Section 12. Training. (1) A personal care home's 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 personal care home 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, bipolar 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 personal care home, 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) A personal care home shall have on staff a licensed nurse or individual who has successfully completed certified medication technician training who:
1. Has received 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 a personal care home.

(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.

(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 Cabinet for Health Services, Office of the Inspector General, 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; and

(d) The Department for Community-Based Services shall notify the Cabinet for Health Services, Office of Inspector General that the personal care home is ready to be certified.

(2) The Cabinet for Health Services, Office of Inspector General shall review records, observe and interview residents and staff during the certification process. The Office of Inspector General 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.

(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; and

(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 effects.

(3) The Cabinet for Health Services, Office of Inspector General 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 cabinet shall receive from the Cabinet for Health Services, Office of Inspector General, a completed form, "Person with Mental Illness or Mental Retardation Supplement Program Certification Survey" within five (5) working days of receipt by the Cabinet for Health Services.

(6) The Cabinet for Health Services, Office of Inspector General, shall inform the Department for Community-Based Services monthly of a personal care home that [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 Cabinet for Health Services, Office of Inspector General, pursuant to 921 KAR 2:050.

(8) A form, "Notice of Decision to Personal Care Home" shall be provided to a personal care home following the certification survey by the Cabinet for Health Services, Office of Inspector General 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[1], edition 3/99";

(b) "Monthly Report Form[1], edition 3/99";

(c) "Application for MI or MR Supplement Program Benefits[1], edition 3/99"; and

(d) "Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey[2], edition 3/99."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, 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
APPROVED BY AGENCY: December 26, 2001
FILED WITH LRC: December 28, 2001 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Shirley Eldridge, Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a program for supplemental payments to persons requiring care in a personal care or family care home or receiving caretaker services in accordance with KRS 205.245.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform conditions and requirements regarding the State Supplementation Program and the persons with mental illness or mental retardation supplement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 205.245 by complying with an agreement with the Department of Health and Human Services to pass along any supplemental security income benefit increases to state supplementation recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the State Supplementation Program. It establishes eligibility requirements and payment standards for the
State Supplementation Program for personal care, family care and caretaker services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation will revise the standard of need for all levels of care for the State Supplementation Program due to the pass along of the 2002 Supplemental Security Income cost of living adjustment. Also, the standard for need for all levels of care includes an additional 2.4 percent state supplementation state cost of living adjustment.
(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this administrative regulation due to the mandated pass along of the 2002 Supplemental Security Income cost of living increases for eligibility determinations made on or after January 1, 2002.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to KRS 205.245 by complying with an agreement with the Department of Health and Human Services to pass along any supplemental security income benefit increases to state supplementation recipients.
(d) How the amendment will assist in the effective administration of the statute: This amendment changes the standard of payments for all levels of care for the State Supplementation Program.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of October 2001, there were approximately 4,775 recipients of state supplementation benefits who will be affected by the increase in the state supplementation standards due to the mandate cost of living adjustment.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment implements the mandated pass along of the 2002 supplemental security Income cost of living increases for eligibility determinations made on or after January 1, 2002. Also, the standard of need for all levels of care includes an additional 2.4 percent state supplementation cost of living adjustment. The state supplementation recipients residing in personal or family care homes or receiving caretaker services will be assured of the ability to continue to purchase these services in order to avoid costly institutional care under Title XIX (Medicaid).
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be a cost of $501,800 for the first year to the Cabinet for Families and Children to implement the mandated pass along of the 2002 SSI cost of living and 2.4 percent state cost of living increases.
(b) On a continuing basis: There will be a cost of $1,003,600 to the Cabinet for Families and Children on a continuing basis to implement the mandated pass along of the 2002 SSI cost of living and 2.4 percent state cost of living increases.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds/agency funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The annual pass through of the SSI cost of living increase is absorbed within the existing state supplementation budget. The 2000 biennial budget approval provided restricted funds to support the 2.4% state cost of living increase.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? 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.
ARRS = Administrative Regulation Review Subcommittee

KENTUCKY EDUCATIONAL SAVINGS PLAN TRUST
Division of Student Services
(As Amended at ARRS, January 8, 2002)

11 KAR 12:010. Definitions for 11 KAR Chapter 12.

RELATES TO: KRS 164A.300 to 164A.380
STATUTORY AUTHORITY: KRS 164A.325(9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(9) authorizes the board to promulgate administrative regulations to implement the Kentucky Educational Savings Plan Trust. This administrative regulation establishes the definitions for 11 KAR Chapter 12.

Section 1. Definitions. (1) "Academic period" means one (1) semester or one (1) quarter or an equivalent period for a vocational technical institution.
(2) "Account" means the account in the program fund established and maintained under the trust for a beneficiary.
(3) "Account balance" means the fair market value of an account as of the accounting date.
(4) "Accounting date" means the date, not later than the last business day of each quarter as determined by the program administrator.
(5) "Administrative fund" is defined in KRS 164A.305(2).
(6) "Beneficiary" is defined in KRS 164A.305(3).
(7) "Benefits" is defined in KRS 164A.305(4).
(8) "Board" is defined by KRS 164A.305(5).
(9) "Dependent person" means a person who is unable to meet the criteria for an independent person as defined in subsection (14) of this section.
(10) "Designated date" means the date on which each beneficiary is eligible to be designated in a participation agreement.
(11) "Domicile" or "legal residence" means a person's true, fixed, and permanent home and is the place where the person intends to remain, and to which the person expects to return if absent without intending to establish a new domicile elsewhere.
(12) "Effective date" means the date which a participant may enter into a participation agreement with the trust, which is on or after July 1, 1989.
(13) "Higher education costs" is defined by KRS 164A.305(6).
(14) "Independent" means a person:
(a) Who has not been claimed by his parent as a dependent on a federal or state income tax return for the tax year preceding the date of application for reclassification of residency status;
(b) Who demonstrates no financial dependence upon a parent; and
(c) Whose parent's income is not taken into account by a private or governmental agency furnishing educational financial assistance to the person, including a scholarship, loan, or other assistance.
(15) "Institution of higher education" is defined in KRS 164A.305(7).
(16) "Kentucky lies" means a participant or beneficiary who has contact or ties with the Commonwealth, including current or former residence or employment in the Commonwealth, or a family member with current or former residence in the Commonwealth.
(17) "Notice to authorize payroll deduction" means the participant's written instruction to the participant's employer to deduct payments from the participant's earnings and forward that amount to the trust.
(18) "Notice to increase or decrease payments under participation agreement" means the participant's written instruction to the program administrator of the trust to increase or decrease payments under a participation agreement.
(19) "Notice to preauthorize debit" means the participant's written instruction to the participant's financial institution to debit or charge the participant's checking or savings account for payments due under the participation agreement.
(20) "Notice to substitute beneficiary" means the participant's written instruction to the program administrator of the trust to substitute a beneficiary.
(21) "Notice to terminate the participation agreement" means the participant's written instruction to the program administrator of the trust to terminate a participation agreement under the trust.
(22) "Notice to use trust benefits" means the participant's written instruction to the program administrator of the trust to notify the trust of the date benefits are to begin and level of benefits paid.
(23) "Parent" means one (1) of the following:
(a) A person's father or mother;
(b) A court-appointed legal guardian if the guardianship was not established primarily to confer Kentucky residency on the person.
(24) "Participant" is defined in KRS 164A.305(9).
(25) "Participation agreement" is defined in KRS 164A.305(10).
(26) "Payments" means the money paid by the participant to the trust under the participation agreement.
(27) "Program administrator" is defined in KRS 164A.305(11).
(28) "Program fund" is defined in KRS 164A.305(12).
(29) "Property settlement agreement" or "decree of dissolution by the court" means the agreement or judgment approved or entered by a court of competent jurisdiction which sets forth the participant's right, if any, to the participant's interest in the participation agreement.
(30) "Trust year" means the fiscal year beginning July 1 and ending the following June 30 of each year for purposes of the calculation of benefits.
(31) "Vested participation agreement" is defined in KRS 164A.305(13).

MARY JO YOUNG, Chairman.
APPROVED BY AGENCY: September 24, 2001
FILED WITH LRC: November 14, 2001 at 10 a.m.

KENTUCKY EDUCATIONAL SAVINGS PLAN TRUST
Division of Student Services
(As Amended at ARRS, January 8, 2002)


RELATES TO: KRS 164A.305(14), 164A.330(9)
STATUTORY AUTHORITY: KRS 164A.325(9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(9) authorizes the board to promulgate administrative regulations to implement the Kentucky Educational Savings Plan Trust. 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. This administrative regulation establishes the standards for proof of residency of a beneficiary for a vested participation agreement.

Section 1. Residency Requirement. (1) A person who has been a resident of the Commonwealth of Kentucky for at least eight (8) continuous years and was designated as a beneficiary under a participation agreement that is in full force and effect for that entire eight (8) year period, shall be deemed to have a vested participation agreement, even if the beneficiary leaves the state prior to enrollment in an institution of higher education.
(2) For purposes of subsection (1) of this section, a participation
agreement shall be deemed to be in full force and effect if, at the end of the eight (8) year period, the total contributions of principal to the account that remain in the account balance equals $2400 and the participation agreement has not been cancelled at the time that the beneficiary first enrolls in an institution of higher education.

Section 2. Proof of Residency. (1) Following the expiration of the period of eight (8) years of continuous residency by the beneficiary, either the participant or the beneficiary shall submit to the program administrator evidence of the residency to establish a vested participation agreement. Evidence submitted on behalf of a dependent person shall pertain to the domicile of either parent during the claimed period of residency. An individual who enrolls in college immediately following graduation from high school and remains enrolled shall:

(a) Be treated as a dependent person unless the contrary is evident from the information submitted; and
(b) Have his domicile inferred from the student's permanent address, parent's mailing address, or location of high school of graduation.

(2) A person claiming independent status shall document independent status under subsection (4) of this section and shall demonstrate by clear and convincing evidence that domicile in Kentucky has been established by that person's acts.

(3) The determination of residency shall be based upon verifiable circumstances or actions. A single fact shall not be paramount, and each situation shall be evaluated to identify those facts which are essential to the determination of domicile.

(4) The following facts, although not conclusive, shall have probative value in support of a claim for resident classification:

(a) Full-time employment in Kentucky or transfer to an employer in contiguous area while maintaining domicile in Kentucky;
(b) Filing of Kentucky resident income tax return for each applicable calendar year of claimed residency status;
(c) Attendance as a full-time, nonresident student at an out-of-state institution of higher education while determined to be a resident of Kentucky;
(d) Abandonment of a former domicile and establishing domicile in Kentucky with attendance at an institution of higher education following and incidental to the change in domicile;
(e) Payment of occupational taxes in Kentucky;
(f) Payment of real property taxes in Kentucky;
(g) Payment of intangible personal property taxes in Kentucky;
(h) Ownership of real property in Kentucky, if the property was used as a residence during the claimed period of residency status;
(i) Long-term lease of housing during the claimed period of residency status;
(j) Kentucky automobile registration during the claimed period of residency;
(k) Kentucky driver's license during the claimed period of residency status;
(l) Registration as a Kentucky voter during the claimed period of residency; or
(m) Corroborating affidavit of a nonrelative.

(5) The determination of residency shall be based upon verifiable circumstances or actions and authenticated copies of relevant documentation. The program administrator may request additional documentation to clarify circumstances and shall formulate a decision that considers all relevant facts.

Section 3. Nontransferability of Vested Participation Agreement. Although the participant may freely substitute beneficiaries under a participation agreement, the residency status acquired by a beneficiary of a vested participation agreement shall not be used to confer residency status on a substituted beneficiary, nor shall the residency status of one (1) beneficiary be taken into account in the establishment of a vestment period for a substituted beneficiary.

MARY JO YOUNG, Chairman
APPROVED BY AGENCY: September 24, 2001
FILED WITH LRC: November 14, 2001 at 10 a.m.

OFFICE OF THE GOVERNOR
Department for Local Government
Division of Local Resources
(As Amended at ARRS, January 8, 2002)

110 KAR 2:020. Training incentive.

RELATES TO: KRS 64.5275(1), (2), (6), (7)
STATUTORY AUTHORITY: 64.5275(6)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 64.5275(6) and (7) provide that specified eligible officers shall receive a training incentive [an increase] of $100 for each forty (40) hour training unit that is successfully completed. KRS 64.5275(6) provides that each forty (40) hour training unit shall be approved and certified by the Department for Local Government and shall be available to those officials based upon continuing service in their respective offices and completion of a forty (40) hour training unit each subsequent year. This administrative regulation establishes the criteria for receipt of the training incentive fringe benefit, and for department approval and certification of qualifying courses.

Section 1. Definitions. (1) "Department" means the Department for Local Government.
(2) "Division" means the Division of Local Resources [Training and Area Development District Services], Department for Local Government.
(3) "Director" means the Director of the Division of Local Resources [Training and Area Development District Services], Department for Local Government.
(4) "Eligible officer" means:
(a) County judge/executive;
(b) County clerk;
(c) Jail officer who operates a full-service jail, as determined by the Department of Corrections;
(d) Sheriff, and
(e) In a county that does not contain an urban-county form of government, a:
1. Justice of the peace who serves on a fiscal court; and
2. County commissioner.
(5) "Training incentive" means the training increase of $100, for each forty (40) hour training unit, adjusted pursuant to KRS 64.5275(6)
Section 2. Areas of Learning. The director shall base approval and certification of courses for the training incentive upon their relation to the following primary areas of instruction regarding the operation of county government:

1. County financial reporting, including course instruction in:
   (a) Budget preparation;
   (b) Adoption of tax rates;
   (c) Tax collection policy and enforcement;
   (d) Investment policy; and
   (e) Audits.

2. Duties and responsibilities of elected county officials, including course instruction in:
   (a) Election law and procedure;
   (b) Conducting meetings of the fiscal court and various local government committees, including:
      1. Proper keeping of fiscal court minutes;
      2. Parliamentary procedure; and
      3. The legal ramifications of the open meetings and open records law;
   (c) Ethics in county government, and ethics codes;
   (d) Dealing appropriately with juveniles; and
   (e) Money for roads and the county road plan.

3. Personnel law and regulation, including course instruction in:
   (a) Labor and wage and hour law and regulation;
   (b) Payroll procedures; and
   (c) Avoiding legal pitfalls in the area of personnel administration, including:
      1. Harassment and sexual harassment;
      2. Equal employment opportunity;
      3. Americans with Disabilities Act;
      4. Family Medical Leave Act;
      5. Political terminations;
      6. Personnel policies and procedures; and
      7. Other legal issues that may affect county government personnel.

4. County legislative issues, including course instruction in:
   (a) Adopting an effective county administrative code; and
   (b) Proper adoption of county ordinances and resolutions.

5. The director may certify and approve additional courses or areas of learning in addition to those found in subsections (1) through (4) of this section, based on the criteria established in this section and Section 3 of this administrative regulation.

Section 3. Approval of Courses or Additional Areas of Learning. The director shall:

1. Approve each course of instruction prior to an eligible officer attending that course and receiving hourly credit for that course;
2. Approve and certify each course on an hourly basis, or portion of an hour;
3. Approve and certify each course pursuant to KRS 64.5275(6), based upon the following criteria:
   (a) Relevance of instruction to the statutory duties performed by the officer seeking certification and approval;
   (b) Relevance of instruction to the areas of learning established in Section 1 of this administrative regulation;
   (c) Organization or entity sponsoring the training event;
   (d) Extent of actual training at the event;
   (e) Ability of the entity sponsoring the training to verify that the officer attended the training event;
   (f) Qualifications of the training instructor; and
   (g) Other information relevant to the approval and certification of the training course or event;
4. Refuse to certify and approve a training course or event that fails to meet criteria established in Section 2 of this administrative regulation or this section;
5. Automatically approve and certify a training course sponsored by the department; and
6. Assign hourly credit in accordance with subsection (1) of this section;
7. Approve and certify a training course sponsored by another entity or organization if the director determines that the course or training event meets the criteria established in this section and Section 2 of this administrative regulation; or
   (a) Consider submissions for approval and certification from an organization, entity, or individual, if it is submitted at least fourteen (14) days prior to the scheduled training event, and if it contains:
      1. A description of the proposed training course or event on a Training Approval Request [for Training Credit] Form; and
      2. An outline of the proposed training course or event, including the names and qualifications of the instructors; and
   (b) Any additional dates the training course or event is scheduled to be performed. [No] Credit shall not be given for any training course or event if the director is not notified of the course or event's scheduled or additionally-scheduled dates; or
   (c) [The director shall] Review the proposal and notify the organization or entity of his decision concerning approval of the training course or event prior to the scheduled training; and
   (d) [The director shall] Not approve training courses or events submitted after the scheduled training course or event, except upon a showing of [extreme] hardship by the organization, entity or individual; or
   (e) Not allow training course credit for any eligible officer where proof of attendance was submitted more than sixty (60) days after the date of the event; and
   (f) [The director shall] Have the discretion to offer training course credit to an eligible officer if [whereas] the eligible officer is conducting a training session which meets the criteria established in Section 2 of this administrative regulation or this section.

Section 4. Annual Training Unit Approval. (1) The director shall approve and certify only one (1) training incentive per eligible officer per calendar year [twelve (12) month period], based upon the eligible officer's continuing service in office. The training incentive shall be paid upon completion of the training unit and annually on the [anniversary date of] completion of the next calendar year [that] training incentive unit [only during the eligible officer's term of office in which the training incentive was earned].

(2) The twelve (12) month period shall begin with the payment of the eligible officer's first forty (40) hour training unit.

(3)(a) An eligible officer may carry forward into the next calendar year no more than forty (40) [twelve (12) month period] any hours earned in addition to those necessary to receive the training incentive for the calendar year [twelve (12) month period] just completed.

(b) If an eligible officer does not receive sufficient hours in a calendar year [twelve (12) month period] to earn the training incentive, the officer may carry forward no more than forty (40) [any] hours earned into the next calendar year [twelve (12) month period].

(3) Pursuant to KRS 64.5275(6), (44) an eligible officer shall not receive [an] more than four (4) training incentives during a calendar year [for a four (4) year term of office].

(4) [[4][4]] An eligible officer shall [not] carry training incentives received into a new term of office based upon continuing service in that office.

(5) Upon reselection and assuming office for the new term, an eligible officer may receive new training incentives based upon his continuing service in that office.

Section 5. Certification by the Department. (1) The division shall:

(a) Keep track of the hours earned by each eligible officer; and
(b) Certify the hours earned to an eligible officer upon his request.

(2) Upon successful completion of the forty (40) hour training unit, the director shall certify to the eligible officer, the fiscal court, and the county treasurer that the officer shall receive the training incentive.

(3)(a) In order to receive credit for an approved course or training event, the eligible officer shall submit a Training Approval Request [for Training Credit] Form to the division for processing.
(b) Failure by an eligible officer to submit a Training Approval Request [for Training Credit] Form for a particular training course or event may [shall] result in:
   1. The eligible officer losing credit toward his training incentive; and
   2. An inaccurate transcript for that eligible officer.
(4) Training incentives shall be included as a part of the county budget.

Section 6. Evaluations. (1) The division may [shall] provide a Workshop Evaluation Form for each participant at a training course or event approved and certified by the division.

(2) Each organization, state agency, or entity hosting a training course or event shall assure that each participant completes and turns in the Workshop Evaluation Form prior to leaving the training.

(3) The department shall use the completed evaluation forms to:
   (a) Measure the success of the training program;
   (b) Expand the training curriculum; and
   (c) Identify additional areas of potential training.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [The Course Description, April, 1990 edition;]
(b) The Department for Local Government Training Approval Request Form, December 2001 [Request for Training Credit, Individual, April, 1990 edition; and]
(c) The Workshop Evaluation, December, 2001 [April, 1990 edition; and]
(d) The Department for Local Government Request for Training Credit Organization, April, 1990 edition;]

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the offices of the Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JODY A. LASSITER, Commissioner
RICHARD J. ORNSTEIN, Attorney
APPROVED BY AGENCY: October 30, 2001
FILED WITH LRC: October 31, 2001 at 1 p.m.

KENTUCKY BOARD OF PHARMACY
(As Amended at ARRS, January 8, 2002)

201 KAR 2:090. Reference material and prescription equipment.

RELATES TO: KRS Chapter 315
STATUTORY AUTHORITY: KRS 315.035(6), 315.191(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.035(6); authorizes the Board of Pharmacy to promulgate administrative regulations regarding reference material and equipment suitable for pharmaceutical practice. This administrative regulation establishes the minimum reference material and equipment required for pharmaceutical practice. [This administrative regulation specifies the minimum reference material and prescription equipment, supplies, and instruments to provide the usual and necessary professional services.]

Section 1. (1) A pharmacy located within the Commonwealth that receives a pharmacy permit shall be required to maintain at least one (1) current reference from each of the following categories:

(a) Category I - Pharmacology;
(b) Category II - Drug Interactions;
(c) Category III - Drug Product Composition; and
(d) Category IV - State and Federal Laws and Regulations.

(2) References shall be relevant to the professional practice of pharmacy at the permitted pharmacy.

(3) Electronic references shall be [are] acceptable if [when] the information is readily retrievable such that the pharmacist is not required to exit the dispensing program to obtain information from the electronic references. The existence of drug information on the Internet and the mere ability of the pharmacist to connect to the Internet shall not be [are] sufficient to meet the requirements of this administrative regulation. The following shall be deemed as minimum reference material required of a pharmacy:

Category I - Pharmacology
Goodman & Gilman Pharmacological Basis of Therapeutics

Category II - Drug Interactions
Rodman, Smith
Cutting's Handbook of Pharmacology
Introductory Clinical Pharmacology
Merck Manual

Category III - Drug Product Composition
American Drug Index
Pharm Index
USP Dispensing Information

Category IV - State and Federal Laws and Regulations
 Copies of summaries of federal and state laws governing the practice of pharmacy

Any books not on the above list should be referred to the board for its approval. A minimum of one (1) current text per category is required.

Section 2. (1) The following shall be deemed as minimum equipment required of a pharmacy:

(a) A prescription balance with a sensitivity not less than that of a Class 3 balance; [i] [4] Prescription Class A Balance;
(b) Weights - metric or apothecary - complete set; [4]
(c) Graduates capable of accurately measuring from 1 ml to 250 ml; [4]
(d) Mortars and pestles - glass, porcelain, or wedgewood;
(e) Spatulas - steel and nonmetallic; [4]
(f) Filtration funnel with filter papers; [4]
(g) A heating unit; [4]
(h) Suitable refrigeration unit for proper storage of drugs; and
(i) Ointment slab or ointment papers.

(2) All equipment shall be maintained in a clean condition.

Section 3. The pharmacy shall have [such] other reference material and equipment as dictated by experience to meet the needs of the particular pharmacy and necessary to compound and dispense in a safe manner [the required safe custom].

Section 4. A pharmacy may be granted an exemption to required reference material and prescription equipment upon written petition to the board.

Section 5. The prescription counter upon which prescriptions are dispensed shall be used for the prime purpose of dispensing prescriptions. All pharmacies shall comply with all sanitation laws and administrative regulations.

WILLIAM A. CONYERS, III, President
APPROVED BY AGENCY: November 15, 2001
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VOLUME 28, NUMBER 8 – FEBRUARY 1, 2002

BOARD OF PHARMACY
(As Amended at ARRS, January 8, 2002)

201 KAR 2:165. Transfer of prescription information.

RELATES TO: KR 217.215(2), 315.191(1)(f)
STATUTORY AUTHORITY: KR 217.215(2), 315.191(1)(a), (f)
NECESSITY, FUNCTION, AND CONFORMITY: KRS
315.191(f) authorizes the Board of Pharmacy to promulgate administrative regulations to control the transfer of prescription drug orders between pharmacists and pharmacies. This administrative regulation establishes the procedures by which a prescription may be transferred from pharmacist to pharmacist for the purpose of dispensing. KRS 315.191(1)(g) provides for the board to adopt administrative regulations necessary to control the transfer of prescriptions. This administrative regulation will set the requirements for the transfer of information.

Section 1. (1) The transfer of prescription information for any noncontrolled substance prescription for the purpose of refilling may occur [shall be permissible] if:
(a) It is orally communicated directly between two (2) pharmacists;
(b) It is made through an on-line real-time computer system that provides documentation of the presence of a pharmacist when the information is transferred [subject to the following requirements]; or
(c) It is made through the use of a facsimile machine and [whether] all the information required by this administrative regulation is provided to the sending and receiving pharmacist.

(2) The transferring pharmacist shall record the following information:
(a) That the prescription is void;
(b) The name and address of the pharmacy to which it was transferred and the name of the pharmacist receiving the prescription information; and
(c) The date of the transfer and the name of the pharmacist transferring the information.

(3) The pharmacist receiving the transferred prescription shall record the following information:
(a) That the prescription is a transfer;
(b) The date of issuance of the original prescription;
(c) The refill authorization on the original prescription;
(d) The date of original dispensing;
(e) The refill authorization remaining and the date of the last refill;
(f) The pharmacy’s name and address and the original prescription number from which the prescription was transferred; and
(g) The name of the transferor pharmacist;
(h) All additional information required by law.

(4) Both the original prescription and the transferred prescription shall [must] be maintained for a period of five (5) years from the date of the last refill.

(5) Pharmacies electronically accessing the same prescription record shall [must] satisfy all information of a manual mode for a prescription transfer.

Section 2. The transfer of prescription information for a controlled substance prescription, except a Schedule II controlled substance, for the purpose of refilling may occur [shall be permissible] if the transfer complies with the requirements of 21 CFR [Section 1306.25].

Section 3. Violation of a provision of this administrative regulation shall constitute unethical or unprofessional conduct in accordance with KRS 315.121(2)(d), (f), and (g).

WILLIAM A. CONYERS, III, President
APPROVED BY AGENCY: November 15, 2001
FILED WITH LRC: November 15, 2001 at noon

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VOLUME 28, NUMBER 8 – FEBRUARY 1, 2002

Section 7. In any disciplinary action for a violation other than impairment in which a licensee establishes the violation for which the licensee is being prosecuted was due to or connected with impairment and he further establishes that the licensee is satisfactorily progressing through or has successfully completed an approved treatment program, the [such] information may be considered by the board as a mitigating factor in determining the appropriate penalty.

Section 8. (1) A treatment provider shall disclose to the consultant all information in its possession regarding the issue of a licensee's impairment and participation in the treatment program. All information obtained by the consultant shall be [sic] confidential and may only be shared with the board or the Impaired Pharmacists Committee.

(2) Failure of the treatment provider to provide information to the consultant shall be [sic] a basis for the withdrawal of the use of the program or provider.

(3) In the opinion of the consultant, an impaired licensee has not progressed satisfactorily in a treatment or recovery program, all information regarding the issue of a licensee's impairment and participation in a treatment or recovery program in the consultant's possession shall be disclosed to the board. Such disclosure shall constitute a complaint. If [Michigan] the consultant concludes that the impairment is affecting (affect] the licensee's practice and constitutes an immediate, serious danger to the public health, safety, or welfare, that conclusion shall be communicated to the board.

[Section 9. A consultant, licensee or treatment provider who makes a disclosure pursuant to this administrative regulation is not subject to civil liability for such disclosure or its consequences.]

WILLIAM A. CONVERS, III, President
APPROVED BY AGENCY: November 15, 2001
FILED WITH LRC: November 15, 2001 at noon

KENTUCKY BOARD OF MEDICAL LICENSURE
(As Amended at ARRS, January 8, 2002)


RELATES TO: KRS 311.550, 311.595(9), 311.597 [311.530 to 311.620]

STATUTORY AUTHORITY; KRS 311.565(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of licensees. KRS 311.595(9) and 311.597 authorize disciplinary action against licensees for specified offenses. This administrative regulation establishes the requirements governing the use of amphetamine and amphetamine-like anorectic controlled substances. KRS 311.567 empowers the State Board of Medical Licensees to regulate the conduct of the licensees. [In accordance therewith. The purpose of this administrative regulation is to regulate and control the use of amphetamine and amphetamine-like anorectic controlled substances.]

Section 1. Definitions. (1) "Board" is defined in KRS 311.550(1), (means the Kentucky Board of Medical Licensure.)

(2) "Body mass index" means the weight of the patient in kilograms divided by the height in meters, squared.

(3) "Schedule II amphetamine or amphetamine-like controlled substance" means:
(a) Amphetamine, its salts, optical isomers, and salts of optical isomers;
(b) Phenmetrazine and its salts; or
(c) Methylphenidate.

(4) "Schedule III or IV amphetamine-like controlled substance" means a drug classified as a stimulant pursuant to:
(a) 902 KAR 55:025, Section 2; or
(b) 902 KAR 55:030, Section 1.

Section 2. Prior to prescribing, ordering, dispensing, adminis-
tering, selling, supplying or giving a Schedule II, III or IV amphetamine or amphetamine-like controlled substance, a physician shall take into account the:
(1) Drug's potential for abuse;
(2) Possibility that a drug may lead to dependence;
(3) Possibility a patient will obtain the drug for a nontherapeutic use;
(4) Possibility a patient will distribute it to others; and
(5) Potential illicit market for the drug.

Section 3. Schedule II Amphetamine or Amphetamine-like Controlled Substances. (1) The patient's record shall denote the diagnosis that justifies treatment with a Schedule II amphetamine or amphetamine-like controlled substance.

(2) A Schedule II amphetamine or amphetamine-like controlled substance shall be used to treat only:
(a) Narcolepsy;
(b) Attention deficit/hyperactive disorder;
(c) Resistant depressive disorder in combination with other antidepressant medications, or if alternative antidepressants and other therapeutic modalities are contraindicated;
(d) Drug-induced brain dysfunction; or [asdc]
(e) A diagnosis for which the clinical use of the Schedule II amphetamine or amphetamine-like controlled substance is investigational and the investigatory protocol has been submitted, reviewed and approved by the board prior to the clinical use of the drug.

(3) A Schedule II amphetamine or amphetamine-like controlled substance shall not be utilized to treat obesity.

Section 4. Treatment of Obesity with a Schedule III or IV Amphetamine-like Controlled Substance. (1) Prior to prescribing, administering, dispensing, ordering, selling, supplying, or giving a Schedule III or IV amphetamine-like controlled substance to treat obesity, the physician shall:
(a) Establish a physician/patient relationship;
(b) Determine that the patient is an obese adult with a BMI greater than 30; or
(c) Consider and record the extent of prior anorectics or other controlled substances used by the patient;
(d) Determine that the body mass index of the patient is between twenty-seven (27) or more, unless the body mass index is twenty-five (25) to twenty-seven (27) and the patient has a comorbidity such as a cardiovascular disease, diabetes mellitus, dyslipidemia, hypertension, or sleep apnea; and
(e) Provide the patient with a carefully prescribed diet, together with counseling on exercise, behavior modification and other appropriate supportive and collateral therapies.

(2) During treatment for obesity, a physician shall:
(a) Maintain a physician/patient relationship throughout the treatment process;
(b) Maintain an adequate patient record in accordance with subsection (4) of this section; and
(c) Justify in the patient record the use of any [all] Schedule III or IV amphetamine-like controlled substance beyond three (3) months.

(3) A physician shall terminate the use of Schedule III or IV amphetamine-like controlled substances if:
(a) A patient does not demonstrate weight loss and does not attempt to comply with exercise and dietary changes;
(b) A body mass index of a patient without a comorbid condition is less than twenty-seven (27) or
(c) The body mass index of a patient with a comorbid condition is less than twenty-five (25).

(4) The board shall consider the following factors in reviewing the adequacy of a patient record:
(a) Medical history, including:
1. Illnesses, with particular emphasis on cardiovascular diseases;
2. Surgery;
3. Lifestyle;
4. Medications;
5. Eating habits;
6. Exercise;
7. Weight gain and loss;
8. Prior efforts at weight control and reduction;
9. Prior treatment compliance;
10. Menstruation and pregnancy; and
11. Psychiatric history with particular reference to depression, paranoia, psychosis and chemical dependency; [1]
   (b) Social history;
   (c) Family history;
   (d) Complete physical examination;
   (e) Evaluation of laboratory tests including:
   1. CBC;
   2. Fasting blood sugar;
   3. Thyroid panel or TSH;
   4. Lipid profile;
   5. Serum potassium;
   6. Liver function test and
   7. Renal function test;
   (f) An informed consent signed by the [a] patient that cites the limitations and risk of anorectic treatment including potential dependency and psychiatric illness;
(a1). A signed agreement that the patient has voluntarily agreed to:
   a. Have one (1) prescribing physician for controlled substances;
   b. Use one (1) pharmacy to fill prescriptions for controlled substances;
   c. Not have early refills on the prescriptions for controlled substances; and
   d. Provide full disclosure of other medications taken; or
   2. Documentation that:
   a. The physician requested the patient sign an agreement meeting the requirements of subparagraph 1 of this paragraph;
   b. The patient declined to sign the agreement; and
   c. Indicates the physician’s clinical reasons for prescribing, or continuing to prescribe, a Schedule II or IV amphetamine-like controlled substance to the patient, in light of the patient’s refusal to sign the agreement; and [A signed agreement that a patient has agreed to one (1) prescribing physician, one (1) pharmacy, no early refills, and full disclosure of other medications taken;]
   (h). A record of each office visit including:
   1. The patient’s weight;
   2. The patient’s blood pressure;
   3. The patient’s pulse;
   4. The presence or absence of medication side effects or complications;
   5. The doses of medications prescribed;
   6. The patient's body mass index; and [BMI]
   7. Evaluation of patient’s compliance with the total treatment regimen.

Section 5. Waiver. For a legitimate medical purpose, a physician may apply in writing for a written waiver of any requirement in this administrative regulation. The board may issue a waiver with terms and conditions it deems appropriate.

Section 6. Failure to comply with the requirements of this administrative regulation shall constitute dishonest, unethical or unprofessional conduct by a physician which is apt to deceive, defraud or harm the public under KRS 311.595(5) and 311.597. (A physician shall not prescribe, order, dispense, administer, supply, sell or give any amphetamine or amphetamine-like anorectic controlled substance designated as Schedule II pursuant to KRS 219A.0730 or by duly promulgated administrative regulation without taking into account the drug’s potential for abuse; the possibility the drug may lead to dependence; the possibility the patient will obtain the drug for a nontherapeutic use or distribute to others; and the presence of an illicit market for the drug. The patient's record and the prescription order shall indicate the specific diagnosis/purpose for which the drug is being given. Such diagnosis/purpose shall be restricted to:
   (1) The treatment of anorexia;
   (2) The treatment of hypoglycemia;
   (3) The treatment of drug-induced brain dysfunction;
   (4) The treatment of epilepsy;
   (5) The differential diagnostic psychiatric evaluation of depression;
   (6) The treatment of depression shown to be refractory to other therapeutic modalities;
   (7) The treatment of attention deficit disorders, however, when methylphenidate is prescribed for the treatment of attention deficit disorder in minor children, the administrative regulation does not require the diagnosis/purpose to be noted on the prescription order; and
   (8) The clinical investigation of the effects of such drugs or compounds in which case an investigative protocol therefore shall have been submitted, reviewed and approved by the board before such investigation has begun.

Section 2. Amphetamine means all Schedule II controlled substances in this group, including but not limited to dextroamphetamine and methamphetamine. Amphetamine-like means all Schedule II controlled substances with pharmacologic activity similar to the prototype drugs of the amphetamine class, including but not limited to phenmetrazine and methylphenidate.

Section 3. Amphetamine and amphetamine-like controlled substances shall not be prescribed, ordered, dispensed, administered, supplied, sold or given except as provided in this administrative regulation. A departure from the administrative regulation shall constitute dishonest, unethical or unprofessional conduct by a character likely to deceive, defraud or harm the public or a member thereof.

Section 4. For legitimate medical purposes, a physician may apply in writing for a written waiver of any of these requirements. The board may issue such waivers with terms and conditions if it deems appropriate.

DANNY M. CLARK, President
APPROVED BY AGENCY: July 9, 2001
FILED WITH LRC: July 13, 2001 at 9 a.m.

BOARD OF PHYSICAL THERAPY
(As Amended at ARRS, January 8, 2002)

RELATES TO: KRS 327.050
STATUTORY AUTHORITY: KRS 327.040(10), 327.050 [144]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.050
establishes the licensing provisions for physical therapists. This administrative regulation describes the criteria for eligibility, methods, and procedures of applying for a license to practice physical therapy in Kentucky.

Section 1. To be eligible to sit for the licensure examination, the applicant shall:
(1) Have successfully completed the academic and clinical requirements of a physical therapy program accredited by the CAPTE (Commission on Accreditation in Physical Therapy Education);
(2) Submit certification of completion by the educational administrator of that program;
(3) Have completed an educational course at least four (4) hours in length which has been approved by the Cabinet for Health Services (CHS) [Human Resources (CHS)] on the transmission, control, treatment and prevention of human immunodeficiency virus infection and AIDS;
(4) Submit a completed:
   (a) Application for Licensure as a Physical Therapist; or
   (b) Application for Certification as a Physical Therapist's Assistant [application form provided by the board]; and
(5) Submit the correct fee as required in 201 KAR 22:135.

Section 2. To be eligible for licensure application by endorsement, the applicant shall:
(1) Meet the requirements established in Section 1 of this administrative regulation; and
(2) Have successfully completed the examination required
by 201 KAR 22:031, Section 1(2). To be eligible for alicensure application by endorsement, the applicant shall have, in addition, successfully completed an examination approved by the board.

Section 3. Candidates shall be accepted for licensure based on successful completion of one (1) of the following processes:

1. Examination;
2. Endorsement; or
3. Reinstatement.

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

(a) "Application for Licensure as a Physical Therapist 11/08/01 [201 KAR 32: 030(2)]";

(b) "Application for Certification [Licensure] as a Physical Therapist’s Assistant 02/01/01".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SANDRA S. PAYNE, PT, Chairman
APPROVED BY AGENCY: November 8, 2001
FILED WITH LRC: November 13, 2001 at 9 a.m.

BOARD OF PHYSICAL THERAPY
(As Amended at ARRS, January 8, 2002)


RELATES TO: KRS 327.050(8), (9)
STATUTORY AUTHORITY: KRS 327.040(10) [443]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.050(8) requires all licenses and certificates to be renewed biennially. This administrative regulation provides specific directions for the biennial renewal of the physical therapy license or temporary permit.

Section 1. A physical therapist’s license or temporary permit may be renewed upon payment on or before March 31st of each even year of the renewal fee established in 201 KAR 22:135 [relating to administrative regulation] and submission of the Biennial Renewal Application with the following written information to the executive director of the board:

(1) Current complete home address and telephone number, including county of residence;

(2) Current, complete name(s) and address(es), telephone number(s), and county(ies) of each location in which physical therapy services are provided;

(3) Confirmation of completion of a Cabinet for Health Services (CHS) approved two (2) hour course on the transmission, control, treatment and prevention of human immunodeficiency virus infection and AIDS, pursuant to KRS 214.615 in the biennial renewal period that it is due. This course shall be required not more than every ten (10) years upon notice by the board. The course shall [cause awal] be completed within the renewal biennial period that it is due;

(4) Written confirmation that the person has not since his license or permit was issued or renewed:

(a) Been convicted of a felony or any crime in the courts of this state or any other state, territory or country;

(b) Had his license disciplined or under current disciplinary review in another state;

(c) Had a civil judgment entered against him which concerned his practice; or

(d) [Has] Engaged in any other conduct which was in violation of KRS 327.070. A person convicted or disciplined in the interim period before renewal of his or her license or temporary permit shall submit that information during that period for consideration by the board prior to license renewal. Notice of violation by a licensee except minor traffic violations which do not involve substance abuse shall be reviewed by the board.

Section 2. If payment and complete information are not received by the executive director on or before March 31 of each even numbered year, the license or permit shall lapse and the person shall not work as a physical therapist in Kentucky.

Section 3. Upon initial licensing and each subsequent renewal, each therapist shall be furnished:

1. A validation that shall be posted to the original certificate and displayed at the primary physical therapy service location; and

2. A billfold license which is a means of identifying a person holding himself out as a physical therapist.

Section 4. (1) "Biennial Renewal Application 11/08/01 [443:000]" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Physical Therapy at 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SANDRA S. PAYNE, PT, Chairman
APPROVED BY AGENCY: November 8, 2001
FILED WITH LRC: November 13, 2001 at 9 a.m.

BOARD OF PHYSICAL THERAPY
(As Amended at ARRS, January 8, 2002)

201 KAR 22:070. Requirements for foreign-educated physical therapists.

RELATES TO: KRS 327.040(1), (10), 327.060[93]
STATUTORY AUTHORITY: KRS 327.040(1), (10), 327.060[93]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.060(1)b) establishes requirements, including education and experience requirements, for licensure of foreign-educated physical therapists. KRS 327.060(3) authorizes the board to approve services to provide an evaluation of an applicant’s educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become licensed in the state of Kentucky. Because of variances in curriculums of foreign countries, specific requirements are needed to insure that the applicant possesses adequate educational and clinical preparation.

Section 1. A foreign-educated physical therapist applicant shall be licensed if the applicant:

1. Furnishes the board an original favorable educational credentials evaluation report from:

(a) International Credentialing Associates, Inc. (ICA); [44]

(b) Foreign Credentialing Commission on Physical Therapy (FCCPT); or

(c) If the report is submitted prior to August 31, 2002, International Consultants of Delaware, Inc. ([ICD will only be accepted through August 31, 2002)];

2. (a) Has graduated from a recognized physical therapy program in the country in which he was educated. The applicant shall have earned a degree [at least 120 semester credits in a program substantially equivalent to a [CAPTE- or ACAT-accredited] U.S. baccalaureate degree program in physical therapy accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE)] of which at least sixty (60) semester credits shall be in professional physical therapy courses;

3. Speaks English as his or her native language or has submitted the results of the Test of Spoken English (TSE) with a total score of at least fifty (50) if seeking licensure by examination;

4. Provides proof that he or she has attained legal authorization to reside and work without limitations in any US jurisdiction. If required to undergo prescreening for immigration purposes, the board approves use of the Foreign Credentialing Commission on Physical Therapy (FCCPT) or other agencies approved by US Immigration and Naturalization Service to provide this service;

5. Provides for verification of licensure without limitations directly from the licensing authority in the country of education to an
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BOARD OF PHYSICAL THERAPY
(As Amended at ARRS, January 8, 2002)


RELATES TO: KRS 327.040(12)
STATUTORY AUTHORITY: KRS 327.040(12)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the board to promulgate administrative regulations to regulate physical therapist's assistants, including requirements for certification. This administrative regulation establishes the requirements for certification to offer a high level of assistance to the physical therapist in delivery of his services. The role of the physical therapist’s assistant was developed. This administrative regulation identifies the requirements and mechanisms by which one may become certified as a physical therapist’s assistant [and define supervision of practice].

Section 1. A [(44)] [The] physical therapist’s assistant shall be [is] a skilled health care worker who performs physical therapy and related duties as assigned by the physical therapist.

(1) This work shall be carried out only under the supervision and direction of the therapist to whom the employee is responsible.

(2) Supervision of a physical therapist’s assistant requires the responsible physical therapist to be available to the assistant by telecommunication at all times during the working hours of the assistant and to be responsible for the direction of the actions of the person supervised when services are performed by the assistant.

[(5)(a) [(54)] Only individuals certified as a physical therapist's assistant [under the chapter] may hold himself out as a physical therapist's assistant, and may use the initials PTA or CPTA, in any other manner imply that he is a physical therapist's assistant in designating his title.

(b) A [From the effective date of this administrative regulation, no] person shall not act, or hold himself out to be able to act, as an assistant in this state unless the person [has] is certified in accordance with 201 KAR Chapter 22 [the provisions of the board's administrative regulations].

Section 2. To be eligible for the certification examination, the applicant shall [board certification, the assistant applicant shall have]:

(1) Have successfully completed the academic and clinical requirements of a physical therapist's assistant program accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE) (American Physical Therapy Association (APTA)), or been approved by the board as a special candidate for certification in accordance with [as defined in] 201 KAR 22:106;

(2) Submit [been granted] certification of [upon] completion by the educational administrator of the program;

(3) Successfully completed an examination required by the Kentucky State Board of Physical Therapy;

(4) Paid a fee to the board relative to that person's vehicle of certification as required in 201 KAR 22:135; and

(5) Beginning July 1, 2001 also shall have completed an educational course at least four (4) hours in length which has been approved by the Cabinet for Health Services (CHS) Human Resources (CHR) on the transmission, control, treatment, and prevention of human immunodeficiency virus infection and AIDS;

(6) Submit a completed Application for Certification as a Physical Therapist’s Assistant [form provided by the board]; and

(5) Submit the correct fee as required in 201 KAR 22:135.

Section 3. To be eligible for certification application by endorsement, the applicant shall:

(1) Meet the requirements established [have] in [addition to] Section 2(1), (3), (4), and (5) of this administrative regulation; and

(2) Have successfully completed the examination required by 201 KAR 22:031, Section 1(2) [successfully completed an examination approved by the board]. [A person desiring to practice as a physical therapist’s assistant in Kentucky shall apply to the Kentucky State Board of Physical Therapy. When requested, an application form and instructions shall be sent to the applicant by the]
board. When the completed application, certification of completion of all academic and clinical portions of an approved program, and correct fee have been received, the applicant becomes an official candidate for certification.

Section 4. Four (4) types of candidates may be accepted for certification:
(1) Examination, if the requirements of Section 2 of this administrative regulation are met;
(2) Endorsement, if the requirements of Section 3 of this administrative regulation are met;
(3) Reinstatement, if the requirements of 201 KAR 22:106, Section 6, are met; and
(4) Special, if the requirements of 201 KAR 22:106, Section 7, are met.

Section 5. Incorporation by Reference. (1) Application for Certification as a Physical Therapist's Assistant, 02/01/01, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SANDRA S. PAYNE, PT, Chairman
APPROVED BY AGENCY: November 8, 2001
FILED WITH LRC: November 13, 2001 at 9 a.m.

BOARD OF PHYSICAL THERAPY
(As Amended at ARRS, January 8, 2002)

201 KAR 22:110. Renewal of assistant's certification.

RELATES TO: KRS 327.040(12), 327.050(8)
STATUTORY AUTHORITY: KRS 327.040(12), 327.050(8)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(12) authorizes the board to establish certification renewal requirements for physical therapist's assistants. KRS 327.050(8) requires the board to establish a renewal fee and requirements for a specified course. This administrative regulation establishes requirements [specify specific direction] for the biennial renewal of the physical therapist's assistant certificate [or temporary permit].

Section 1. A physical therapist's assistant certificate shall [or temporary permit] may be renewed upon payment on or before March 31 of each even numbered year of the renewal fee established in 201 KAR 22:135 [see by administrative regulation] and submission of the Biennial Renewal Application with the following written information to the board:
(1) Current complete home address and telephone number, including county of residence;
(2) Current, complete name(s), address(es), telephone number(s), and county(ies) of each location in which physical therapy service is provided;
(3) Confirmation of completion of a Cabinet for Health Services (CHS) [or Human Resources (HR)] approved two (2) hour course on the transmission, control, treatment and prevention of human immunodeficiency virus infection and AIDS, pursuant to KRS 214.615 in the biennial renewal period that it is due. This course shall be required not more than every ten (10) years upon notice by the board.
(4) The course shall [course must] be completed within the renewal biennial period that it is due; [ ]
(5) All persons who renewed a certificate in 1991 shall have completed a course of at least four (4) hours in length before June 30, 1992.
(b) Subsequently, a renewal applicant shall have completed an approved course of at least two (2) hours in length.
(c) The name and license number of the assistant's primary physical therapist supervisor at each Kentucky work location; and
(d) Written confirmation that the person has not since his certificate [or permit] was issued or renewed:
(a) Been convicted of a felony or any crime in the courts of this state or any other state, territory, or country;
(b) Had his license disciplined or under current disciplinary review in another state;
(c) Had a civil judgment entered against him which concerned his practice; or
(d) [Had] Engaged in any other conduct which was in violation of KRS 327.070. Persons convicted or disciplined in the interim period before renewal of their certificate [or temporary permit] shall submit that [such] information during that period for consideration by the board prior to certificate [license] renewal. Notice of a violation by a certificant, except minor traffic violations which shall not involve substance abuse, shall be reviewed by the board.

Section 2. If payment and complete information are not received by the board on or before [by] March 31 of each even numbered year, the certificate [or permit] shall lapse and the person shall not work as a physical therapist's assistant in Kentucky.

Section 3. Upon initial certification and each subsequent renewal, each physical therapist's assistant shall be furnished:
(1) A validation that shall be posted to the original certificate and displayed at the primary physical therapy service location; and
(2) A bilfold certificate which is a means of identifying a person holding himself out as a physical therapist's assistant.

Section 4. Incorporation by Reference. (1) "Biennial Renewal Application 11/08/01" is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Physical Therapy at 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SANDRA S. PAYNE, PT, Chairman
APPROVED BY AGENCY: November 8, 2001
FILED WITH LRC: November 13, 2001 at 9 a.m.

KENTUCKY BOARD OF PODIATRY
(As Amended at ARRS, January 8, 2002)


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) 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, except for the continuing education records related to the course of study required by subsection (4) of this section on HIV, which shall be kept for twelve (12) 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) Every ten (10) years, each licensed podiatrist [requesting renewal of the license] shall submit [to the Kentucky Board of Podiatry] successfully complete (completed) two (2) hours of continuing education which:
(a) Complies with the requirements of KRS 214.610(1); and
(b) Is approved by:
   1. 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; or
   2. The [less] board.

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; or
(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 extension.

Section 5. Inactive Status. (1) A licensee may apply for inactive status by submitting a written letter to the board.

(2) A licensee granted inactive status shall be relieved of the obligation to meet the requirements for continuing education established in this administrative regulation.

(3) A person on inactive status shall be 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 seeking relicensure from inactive to active status shall fulfill the following requirements:
(a) If the licensee has been inactive for no more than five (5) consecutive years, he shall:
   1. Provide written notice to the board requesting reactivation to active status by filing a License Renewal Application 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 3(4) [403] 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 has been in inactive status for more than five (5) consecutive years, he shall:
   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, 1/02 [406].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Podiatry, 908B S. 12th Street, Murray, Kentucky 42071-2947, Monday through Friday, 8 a.m. to 4:30 p.m.

J. P. LEONE, DPM, President
APPROVED BY AGENCY: October 5, 2001
FILED WITH LRC: November 15, 2001 at 10 a.m.

KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
(As Amended at AARRS, January 8, 2002)

201 KAR 26:115. Definition of psychological testing.

RELATES TO: KRS 319.010
STATUTORY AUTHORITY: KRS 319.032
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.010(6) includes in the practice of psychology the administering and interpreting of tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotion, and motivation. [The purpose of defining psychological testing is to protect the people of this state from the unlawful, unqualified, and improper use of psychological tests.] The intent of this administrative regulation is to provide a definition of psychological testing sufficient to allow this board to regulate effectively this aspect of psychological practice. The ability to administer and interpret psychological testing assumes formal academic training at the graduate level in statistics, test construction, sampling theory, tests and measurement, individual differences, and personality theory. In addition, the interpretation of psychological tests for diagnostic purposes assumes formal academic training in the areas of abnormal psychology, psychopathology, psychodiagnosis and, in the case of neuropsychological diagnosis, training in neuropsychology. Competent administration and interpretation of psychological tests also requires [includes] formal supervised practice experience.

Section 1. Definitions. "Psychological testing" means [is defined as] the use of one or more standardized measurement instruments, devices, or procedures including the use of computerized psychological tests, to observe or record human behavior, and which require the application of appropriate normative data for interpretation or classification and [Psychological testing] includes the use of standardized instruments for the purpose of the diagnosis and treatment of mental and emotional disorders and disabilities, the evaluation or assessment of cognitive and intellectual abilities, personality and emotional status and traits, and neuropsychological functioning.

Section 2. Psychological Tests. (1) Individual tests for the evaluation of cognitive and intellectual abilities, examples of which are:
(a) The Wechsler series;
(b) The Stanford-Binet; and
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(c) The Kaufman Assessment Battery for Children.
(2) Individual, objective and projective tests of personality and emotional states and traits, examples of which are:
(a) The Minnesota Multiphasic Personality Inventory; and
(b) The Millon Clinical Multiaxial Inventory;
(c) The Millon Adolescent Clinical Inventory; and
(d) Projective techniques including:
1. The Rorschach Ink Blots;
2. Thematic Apperception Test; and
3. The Holtzman Ink Blots.
(3) Individual tests of neuropsychological functioning, examples of which are:
(a) The Halstead-Reitan Battery;
(b) The Luria-Nebraska Battery; and
(c) The "Lorek" Kaplan Battery; and
(d) The NEPSY.

Section 3. Services which are described as "psychological testing" may only be administered and interpreted by persons credentialed (licensed or certified) by this board or who meet the formal academic training and experience qualifications described above and who are otherwise exempt by statute.
(1) Persons credentialed (licensed or certified) by this board, as well as other licensed or certified professionals, may also use tests of language, education and achievement, as well as tests of abilities, interests, and aptitudes. With the exception of the test categories and psychological tests listed in Section 2 of this administrative regulation, the use of these other tests is not exclusively within the scope of this administrative regulation.
(2) Members of other professions may not train or supervise any person in performing psychological testing.
(3) The practice of psychology shall be construed within the meaning of the definition contained in KRS 319.010(6) [43] without regard to whether payment is received for services rendered.
(4) Services which are described as "psychological testing and treatment" may be administered to minors only upon the notification of and the granting of written permission by the parent or legal guardian, unless otherwise required by the courts subject to specific state or federal law.

ROBERT J. ILLBACK, Psy.D., Chair
APPROVED BY AGENCY: November 13, 2001
FILED WITH LRC: November 14, 2001 at 10 a.m.

KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
(As Amended at ARRS, January 8, 2002)

201 KAR 26.121. Scope of practice and dual credentialing.

RELATES TO: KRS 319.032(1)(b), 319.056(7)
STATUTORY AUTHORITY: KRS 319.032(1)(b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(b) requires the board to promulgate administrative regulations establishing and defining the [the] scope of practice (within each area of specialty) within the field of psychology. This administrative regulation establishes the required [specialty areas and the] scope of practice for licensed psychologists who hold the health service provider designation, certified psychologists, certified psychologists with autonomous functioning, licensed psychological associates, and licensed psychological practitioners. It also provides guidance about scope of practice for credential holders of this board who also hold mental health credentials from another regulatory board.

Section 1. A credential holder (licensed psychologist, certified psychologist with autonomous functioning, certified psychologist, or psychological associate) shall not practice or present himself or herself outside the area or areas (areas) of competency specified in the application for a credential and the area approved by the board based upon examination and review of qualifications, training and experience, unless the credential holder has obtained additional education, training, experience or supervision appropriate to the new practice area.

Section 2. (4) A completed application for a change in a licensed or certified area of competency shall be submitted to the board as required by 201 KAR 26.115.
(2) The board shall review the applicant's credentials, qualifications and experience.
(3) Upon approval of the completed application by the board, the applicant shall take an examination in the requested area.
(4) The applicant shall submit the appropriate fee for the examination as required by 201 KAR 26.115.

Section 3. Change from Licensed to Certified Psychologist. (1) If a person has been licensed and later completes, to become licensed as a psychologist, a new and complete application for licensure as a psychologist with area of competency required shall be submitted with an approved application fee as required by 201 KAR 26.115 and 201 KAR 26.116.
(2) The board shall accept the applicant's previous examination results for the objective (ERCO) examination if the original test score satisfies the licensure requirement as to criterion level.
(3) The oral portions of the examination shall be successfully completed by the applicant.

Section 4. Scope of Practice. (1) A licensed psychologist who holds the health service provider designation, a certified psychologist with autonomous functioning, a certified psychologist, a licensed psychologist associate, or a licensed psychological practitioner [or a psychological associate] may:
(a) Work in various health care service delivery settings, including but not limited to a hospital, clinic, counseling center, school, community agency, mental health center, correctional facility, the judicial system, or independent practice; and
(b) Provide one (1) or more of the following direct or supportive services:
1. Diagnosis of an emotional, mental, or nervous disorder, including substance abuse or an adjustment problem of an individual or group through the use of psychological testing or other technique;
2. Evaluation or assessment of the functioning of an individual, group, or organization;
3. Treatment and amelioration of an emotional, mental, or nervous disorder, substance abuse, or an adjustment problem of an individual or group;
4. Intervention or a preventive technique that facilitates the functioning of an individual, group, or organization;
5. Consultation services;
6. Program planning or development services;
7. Evaluation of a psychological or human service program; or
8. Supervision of health service delivery as described in 201 KAR 26.171.
(2) All credential holders from this board [A licensed psychologist who holds the health service provider designation, a certified psychologist with autonomous functioning, a certified psychologist, or a psychological associate] shall restrict their [his] practice to the delivery of specific services for which they are [he is] competent based on professional education, training, and experience.

Section 3. Dual Credentialing. (1) An individual who holds both a credential to practice psychology from this board and a mental health credential from another regulatory board authorized by Kentucky statute shall:
(a) Maintain separate and distinct practices in relation to each credential;
(b) Inform the recipient of a particular service under which credential the provider is practicing;
(c) Demonstrate that representations about the practice, including [but not limited to] letterhead, signs, invoices, and advertisements, and the activities of the practice, are designed to maintain those [such] distinctions; and
(d) Not deliver psychological services as defined by KRS 319.010 under the auspices of another credential, recognizing that some activities are exempted by KRS 319.015.
(2) [Under no circumstances may] Psychological testing, as defined by 201 KAR 26.115, shall not be delivered under a credential other than that issued by the Board of Examiners of Psychology.
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Section 5. Clinical Psychology. (1) Clinical psychological service shall refer to the application of principles, methods, or procedures for understanding, predicting, preventing, or alleviating intellectual, emotional, biological, psychological, social, or behavioral maladjustment, disability or distress, applied to a wide range of client populations.

(2) A clinical psychologist may diagnose and assess the following:
(a) The nature and causes of subjective distress or psychopathology;
(b) A personal, social, or work dysfunction;
(c) The psychological or emotional factors involved in, or consequential to, physical disease or disability;
(d) Neuropsychological functioning;
(e) Substance use or abuse;
(f) Sexual dysfunction or paraphilia;
(g) Physical and cognitive decline.
(3) Procedures may include:
(a) Interviewing;
(b) Behavioral assessment; or
(c) Constructing, validating, administering or interpreting a test of an intellectual or cognitive ability, aptitude, emotion, motivation, personality characteristic, a psychological aspect of physical illness, accident, injury, or disability, or other aspect of human experience or behavior.

(4) (a) A clinical psychologist may intervene:
1. At the primary, secondary, or tertiary levels, including an intervention directed at preventing, treating or correcting the psychopathology, emotional conflict, personality disturbance, or skills deficit underlying distress or dysfunction; or
2. To promote:
   a. Health or adjustment; or
   b. The full range of individual, interpersonal, or social adaptation or health.
(b) An intervention may:
1. Reflect a variety of theoretical orientations, techniques, and modalities; and
2. Include psychotherapy, psychoanalysis, behavior therapy, cognitive therapy, interpersonal therapy, marital or family therapy, group therapy, social learning approach, biofeedback, hypnosis, cognitive retraining or rehabilitation, or environmental consultation or design.
(5) Within his area of expertise, a clinical psychologist may consult with a wide range of other professionals or individuals in many modes of consultation. The breadth of consultation by a clinical psychologist shall be commensurate with the breadth of problems, populations, and procedures with which clinical psychology concerns itself.
(6) A clinical psychologist may supervise a wide variety of health professionals or health care professionals in training.
(7) A clinical psychology service may be provided in a variety of health or human service settings, including a public or private school, educational or health care facility, youth correctional agency, social service department, special diagnostic center, child or family guidance center, community agency, hospital, the judicial system, or independent practice.

Section 6. Scope of Practice—Counseling Psychology. (1) A counseling psychologist may facilitate personal or interpersonal functioning across the life span with a focus on an emotional, social, vocational, educational, health-related, developmental, or organizational concern. Counseling psychology may focus on typical, as well as atypical or dysfunctional development as it applies to human experience from the individual, family, group, system, or organizational perspective. Through the integration of theory, research, and practice, and with the awareness and skills to work with a diverse population, counseling psychology shall encompass a broad range of practices that help a person improve his well-being, alleviate distress or maladjustment, resolve a crisis, or increase his ability to live a more highly functioning life.

(2) The procedures and techniques used by a counseling psychologist may include:
(a) Individual, family, group or systemic counseling or a psychotherapeutic intervention;
(b) Crisis intervention, disaster or trauma management;
(c) Psychodiagnostic or assessment techniques;
(d) Psychoeducational or pre-vocational programming;
(e) Organizational consulting;
(f) Program or treatment evaluation;
(g) Training;
(h) Clinical supervision;
(i) Test construction, validation, administration, or interpretation;
or
(j) A methodology for qualitative or qualitative inquiry.
(2) An intervention procedure shall:
(a) Have as its focus change in a clinical cognition, feeling, or behavior;
(b) Be preventive, skill enhancing or remedial; and
(c) Be either short-term or long-term specified to a longer term.
(4) A counseling psychology service may be used by an individual, couple, or family to cope with a problem concerned with education, career choices, vocational, marital, family, social, social relations, health, aging, or a handicap in a physical or social nature.
(5) A counseling psychology service may be provided in an educational, rehabilitational, or health institution, or a public or private agency, including a counseling center, psychiatric hospital, general medical hospital, mental health center, clinic, school, correctional facility, residential treatment center, the judicial system, or independent practice.

Section 7. Scope of Practice—School Psychology. (1) A school psychologist shall be concerned with the practice of psychology with children, youth, or families; learners of all ages; or the schooling process;

(b) May provide a range of psychological diagnosis or assessment, intervention, prevention, health promotion, or a program development or evaluation service with a special focus on the developmental process of a child or youth within the context of a school, family, or other system;
(c) Shall facilitate healthy growth and development through the promotion of a competent and effective educational, familial, or organizational system; and
(d) May serve a diverse population of clients in various settings, including a public or private school, educational or health care facility, youth correctional agency, social service department, special diagnostic center, child or family guidance center, community agency, hospital, the judicial system, or independent practice.
(2) A school psychological assessment activity shall be designed to evaluate the functioning of a child, youth, or adult using a technically adequate and valid procedure, which shall include the construction, validation, administration, or interpretation of a scientifically validated, psychometrically or educationally sound test of intellectual functioning, cognitive development, effective behavior, or neuropsychological status, interview, observation, or behavioral evaluation.

(3) A school psychological intervention shall be designed to facilitate the functioning of an individual or group, including:
(a) Recommending, planning, or evaluating an education or mental health service;
(b) Psychoeducational therapy;
(c) Counseling;
(d) An affective educational program;
(e) Prevention programming;
(f) A skill development training program;
(g) Facilitating an affective educational or mental health function of school or community agency personnel, a parent, or other care giver;
(h) Planning, training, coordination, or evaluation of a program;
(i) Consultation or collaboration with a school or community agency personnel or a parent concerning a specific problem of a child or youth or a professional problem of staff;
(j) Enhancing integration of services across system interfaces; or
(k) Program or development services to an individual, school, school administrative system, or community agency.

ROBERT J. ILLBACK, Psy.D. Chair
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KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
(As Amended at ARRS, January 8, 2002)

201 KAR 26:125. Health service provider designation.

RELATES TO: KRS 319.050(7)
STATUTORY AUTHORITY: KRS 319.032(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(7) provides that the designation of "health service provider" shall be granted for a licensed psychologist who delivers or supervises a psychological [direct] health care service. This administrative regulation establishes the requirements for the granting of that designation.

Section 1. The designation "health service provider" shall refer to:
1) A licensed psychologist defined in KRS 319.050(7) who:
(a) Delivers psychological [direct] health care services; or
(b) Supervises a certified psychologist, temporarily [temporary] licensed psychologist, licensed psychological associate, student, intern, or resident pursuing a course of graduate study in psychology;
2) An applicant for licensure at the doctoral level [or certification] who is delivering psychological [direct] health care services.

Section 2. Psychological [direct] health care services shall [may] [shall] include [but not be limited to] the:
1) Delivery of [direct] diagnosis, assessment, psychotherapy, treatment, or other therapeutic [intervention] services to individuals, couples, families, or groups [individual or group] whose growth, adjustment, or functioning is impaired or who otherwise seek [seek] psychological health care services, in service and
2) Delivery of indirect prevention or health promotion activities.

Section 3. A health care provider shall be a licensed psychologist who has completed appropriate training and supervised experience in psychological health service delivery at the doctoral level. The training and experience:
1) Shall include supervised experience within one (1) or more health care settings in which the provider delivered direct psychological health care services, pursuant to Section 2 of this administrative regulation; and
2) May occur in a variety of psychological health care delivery sites [settings] including, but not limited to, a hospital, clinic, counseling center, school, mental health center, community agency, correctional facility, the judicial system, residential treatment center, or independent practice.

Section 4. A licensed psychologist who does not have the designation "health service provider" shall not deliver or supervise psychological [direct] health care services.

Section 5. In addition to completion of a doctoral training program in an area of psychological health service delivery, a candidate for health service provider designation shall complete required predoctoral and postdoctoral supervised experience requirements in a health care setting as established in this administrative regulation, [that are] consistent with the requirements of 201 KAR 26:190.

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holder or applicant for a license is physically or mentally incapable of practicing psychology with reasonable skill and safety to clients, the board may order the current holder or applicant to submit to an examination by a psychologist or a physician designated by the board to determine the credential holder's or applicant's psychological or physical status to practice psychology.

(b) The expense of this examination shall be borne by the board.

(c) The board shall then consider the findings and conclusion of the examination and the final investigative report at its next regularly scheduled meeting or soon thereafter.

(d) Investigation. The person about whom the initiating complaint has been considered shall be contacted. With the consent of the respondent, a meeting may be scheduled at which time he or she may respond to the allegations of the initiating complaint. A copy of the complaint shall be made available to the respondent prior to the meeting. The board and the respondent shall have the right to be represented at the meeting by legal counsel. The board shall then consider the findings and conclusion of the examination and the final investigative report at its next regularly scheduled meeting or soon thereafter.

(e) Consideration of complaint and investigative report. Based on consideration of the complaint, the investigative report, if any, and the psychological or physical examination, if any, the board shall determine if there has been a prima facie violation of the Act. If the investigator is a member of the board, he or she shall not vote. If it is determined that the facts alleged in the complaint or investigative report do not constitute a prima facie violation of the statute or administrative regulations, the board shall notify the person making the complaint that no further action shall be taken at the present time. If it is determined that there is a prima facie violation of KRS 319.082 or administrative regulations, the board shall issue a formal complaint against the credential holder/licensee/certificate holder/ applicant. In the case of a prima facie violation of KRS 319.005, the board shall file suit to enjoin the violator or shall seek criminal prosecution pursuant to KRS 319.990.

Section 3. Formal Complaint. If the board determines that the initiating complaint shall be made a formal complaint, the following action shall be initiated:

(1) [4][5][6][7] If there is reasonable cause to believe that a license, certificate holder or applicant for a license or certificate is physically or mentally incapable of practicing psychology with reasonable skill and safety to clients, the board may order the license, certificate holder, or applicant to submit to an examination by a psychologist or a physician designated by the board to determine the licensee's, certificate holder's, or applicant's psychological or physical status to practice psychology.

(b) The expense of this examination shall be borne by the board.

(c) The board shall then consider the findings and conclusion of the examination and the final investigative report at its next regularly scheduled meeting or soon thereafter.

(d) Issuance of formal complaint. The board shall provide the respondent with a written formal complaint which shall set forth:

(a) Each offense charged;

(b) Notice of the respondent's right to be represented by counsel;

(c) Notice of the respondent's right to subpoena witnesses in the respondent's behalf; and

(d) Notice of the respondent's right to appeal after an adverse adjudication.

(2) [4][5][6][7] Service of formal complaint. Service of process shall be provided in accordance with KRS 13B.050(2) [as sufficient if served on the respondent personally or by certified mail, return receipt requested, to his or her last known address, whether or not the complaint is subsequently claimed by respondent].

(3) [4][5][6][7] Issuance of hearing notice. Notice of the hearing shall be provided as required by KRS 13B.050(1) and (3), [at least twenty (20) days prior to the hearing, the board shall serve the respondent with notice of the hearing giving the date, time, and place of the hearing].

Section 4. Formal Response. Within twenty (20) days of service of the formal complaint, the respondent shall file with the board a written response to the specific allegations set forth in the formal complaint. Allegations not properly responded to shall be deemed admitted. The board may, for good cause, permit the late filing of a response.

Section 5. Allegations of Sexual Misconduct by a Credential Holder. (1) To assure confidentiality for the complainant, the alleged victim's name shall not be used in any written document. This individual shall be identified by initials only or by some other mechanism adopted by the board for identification.

(2) Upon request, the testimony of the alleged victim may be taken by deposition in order to assure his or her confidentiality.

(3) To protect the confidentiality of all parties, the board may issue an order restraining all parties and their representatives, including counsel, from any discussion or release of information about the allegations outside of the investigative and hearing processes.

(4) In accordance with the provisions of KRS 319.032(1)(d), the board may hold some or all of the hearing procedures in closed session, with only the necessary parties and individuals present, to assure privacy, prevent the alleged victim from becoming re-victimized by the process, and reduce the possible harm to a credential holder who may have been falsely accused.

Section 6. Board Member Training for Cases of Sexual Misconduct. (1) Within six (6) months of their appointment, all board members and investigators shall undergo specialized training to cover the content specified by KRS 319.032(1)(a).

(2) No investigator shall be assigned to cases where sexual misconduct has been alleged until such training has been completed.

(3) Training shall consist of a three (3) hour course which includes the content specified by KRS 319.032 and may be delivered by means of either live presentation, individual tutorial, or videotape.

ROBERT J. ILLBACK, Psy.D., Chair
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KENNESWY BOARD OF EXAMINERS OF PSYCHOLOGY
(As Amended at AARRS, January 8, 2002)

201 KAR 26:140. Procedures for disciplinary hearings.

RELATES TO: KRS 319.092
STATUTORY AUTHORITY: KRS 319.032
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.092 mandates a hearing upon the filing of a complaint alleging a violation of KRS Chapter 319 to be conducted in accordance with the provisions of KRS Chapter 13B. This administrative regulation establishes procedures which supplement the provisions of KRS Chapter 13B for the conduct of administrative hearings held pursuant to KRS 319.002.

Section 1. [Purpose and Role of Construction] The purpose of this administrative regulation is to enable the board to conduct an orderly and reasonably expeditious search for the truth while ensuring that due process is afforded to the credential licensee, certificate holder or applicant. Accordingly, this administrative regulation shall be liberally construed so as to aid in that process.

Section 2] Composition of the Hearing Panel. (1) Disciplinary actions shall be heard by a hearing panel consisting of the hearing officer and at least one (1) board member appointed by the board.

(2) A board member who has participated in the investigation of an initiating complaint or who has personal knowledge of the facts giving rise to the complaint or for other reasons is unable to render a fair and impartial decision shall not sit as a member of the panel hearing that particular complaint.

(3) Separation of functions. No member, officer, or employee of the board who is engaged in the performance of investigative or prosecutorial functions for the board in a particular case or a factually related case, shall participate in or advise in the decision of the
disciplinary action, except as a witness or counsel in the hearing.

Section 3. Rights of the Respondent. The credentialed [licensee, certificate] holder or applicant shall have the right to:
(1)(a) Represent himself or herself or;
(b) Be represented by legal counsel;
(2) Be present and be heard at a hearing;
(3) Present evidence;
(4) Cross-examine witnesses;
(5) Present opening and closing statements; and
(6) Request the board to issue subpoenas in accordance with KRS 310.022.

Section 4. Subpoenas. The board or the hearing officer shall issue subpoenas upon request. The person requesting the subpoena shall bear the cost of serving the subpoena, paying witness fees and expenses. The board shall bear the cost of witnesses subpoenaed on the board’s behalf.

Section 5. Prehearing Disclosure of Evidence. (1) By the board. The respondent shall have the right to inspect the investigative file relating to a disciplinary action either in person or by legal counsel. The credentialed [licensee, certificate] holder or applicant shall have the right to such other information as the board or the hearing officer deems appropriate within ten (10) days of the hearing. Nothing in this section shall be construed as requiring the credentialed [licensee, certificate] holder or applicant the right to examine or copy the personal notes, observations, conclusions, or work product of legal counsel prosecuting the allegations of the complaint or the Attorney General. An appointment for the examination of an investigative file shall be made upon reasonable notice, during regular office hours, and at a time acceptable to the staff members involved in the investigation. The credentialed [licensee, certificate] holder or applicant shall be allowed to examine any item of tangible evidence in the possession of the board.
(2) By the respondent. At least ten (10) days prior to the scheduled hearing date the [licensee, certificate] holder or applicant shall furnish to the legal counsel prosecuting allegations of the complaint:
(a) Copies of any documents which the respondent intends to introduce at the hearing;
(b) A list of the names, addresses, and home and work telephone numbers of any witnesses to be presented by the respondent at the hearing;
(c) Copies of any documents or other items of tangible evidence in the possession of the [licensee, certificate] holder or applicant which he or she intends to introduce at the hearing;
(d) Other information as the board or the hearing officer deems appropriate.
(3) Continuing duty to disclose. After disclosure has been completed, each party shall remain under an obligation to disclose any new or additional items of evidence which may come to its attention. Such additional disclosure shall take place as soon as practicable. Failure to disclose may result in the exclusion of the new evidence or testimony from the hearing.
(4) Sanctions for failure to comply with prehearing disclosure. If a party fails to comply with this section, the board hearing the disciplinary action may refuse to allow into evidence such items or testimony as have not been disclosed, may continue the action to allow the opposing party a fair opportunity to meet the new evidence, or may make such other order as it deems appropriate. Sanctions may be applied by the presiding officer, subject to being overturned by a majority vote of the board.

Section 6. Order of Proceeding. (1) Call to order. The presiding officer shall call the meeting to order and shall identify the parties to the action and the persons present. The presiding officer shall rule upon any objections to motions, subject to being overturned by a majority vote of the board.
(2) Opening statements. Opening statements shall be made with the attorney prosecuting the allegations of the complaint proceeding. Either side may waive opening statement, but opening statements may not be revised. The presiding officer may impose reasonable limitations upon the time allowed for opening state-
ing officer, if any, shall retire into closed session for the purpose of deliberations. The board shall make a decision based upon the evidence submitted. A decision shall be made by a majority vote of the board. Each board member shall have one (1) vote. The hearing officer shall not vote.

(2) An order including findings of fact and conclusions of law consistent with the board’s decision shall be drafted. Said proposed order shall be submitted for signature to the board on the day of the deliberation or at the next regularly-scheduled meeting of the board or as soon thereafter as possible.

(4) A copy of the order shall be provided to the respondent, the person initiating the complaint, and the attorney proceeding the case.

Section 9. Record to be Maintained. (1) The hearing shall be transcribed by a court stenographer.

(2) A transcript of the testimony taken during the hearing shall be kept by the board. A copy of that transcript shall be available to the respondent from the court stenographer or, if the stenographer is unable to furnish a copy of the record, from the board upon request and payment of the appropriate fee. A copy of the transcript of the hearing shall be available to all board members. Any documents or exhibits introduced into evidence shall be kept with the transcript or as ordered by the presiding officer.

Section 10. Continuance; Proceedings in Absentia. It is the policy of the board not to postpone cases which have been scheduled for hearing absent good cause. A request by a credential licensee, certificate holder or applicant or attorney presenting the allegations of the complaint for a continuance may be considered if communicated to the staff reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the hearing officer or chair of the board. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

Section 2. [44:] Hearing Fee. If the board finds against the respondent on any charge, or if the hearing is scheduled at the request of a credential licensee, certificate holder or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS 319.010, the board shall assess a hearing fee in an amount equal to the costs of stenographic services and the costs of the services of a hearing officer, if any, shall be assessed against the respondent. In case of financial hardship, the board may waive all or part of the fee.

Section 3. [42:] Notification of Action Taken. A press release describing all final disciplinary actions taken by the board to suspend, revoke, or refuse to issue or renew a license or certificate, or accept an assurance of voluntary compliance, restrict, or place a credential licensee or certificate holder on probation shall be provided as mandated by federal law, to the Association for State and Provincial Psychology Boards for publication in their data base, and at least to the newspapers with the largest circulation in Louisville, Kentucky, and the city of business of the respondent and to the AP wire service. Nothing in this administrative regulation shall be construed to limit KRS 319.002(5).

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KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
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201 KAR 26:145. Code of conduct.

RELATES TO: KRS 319.032, 319.082
STATUTORY AUTHORITY: KRS 319.032(1)(c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(c) requires the board to establish requirements for disciplining a credential licensee or certificate holder of this board, whether a licensed psychologist, certified psychologist, certified psychologist with autonomous functioning, licensed psychological practitioner, licensed psychological associate, an applicant or a holder of a temporary license. This administrative regulation establishes a code of conduct for a person practicing psychology.

Section 1. Section 1. Definitions. (1) "Client" means a person who meets the requirements established in Section 2 of this administrative regulation.

(2) "Confidential information" means information revealed by a client or clients or otherwise obtained by a credential holder, if there is reasonable expectation that because of the relationship between the client and the credential holder, or the circumstances under which the information was revealed or obtained, the information shall not be disclosed by the credential holder without the informed written consent of the client.

(3) "Court order" means the written or oral communication of a member of the judiciary, or other court magistrate or administrator, if the authority has been lawfully delegated to the magistrate or administrator.

(4) "Credential holder" is defined by KRS 319.010(3), means a licensed psychologist, a certified psychologist, a certified psychologist with autonomous functioning, or a licensed psychological associate, or a licensed psychological practitioner.

(5) "Professional relationship" means a mutually agreed upon relationship between a credential holder and a client for the purpose of the client obtaining the credential holder's professional expertise.

(6) "Professional service" means all actions of the credential holder in the context of a professional relationship with a client.

(7) "Supervisee" means a person who functions under the extended authority of the credential holder to provide psychological services.

Section 2. Client Requirements. (1) Identification of a client.
(a) A client shall be a person who receives an evaluation for diagnostic purposes, psychological testing, a counseling, psychotherapeutic, or other professional psychological services [service] for the treatment or amelioration of an emotional, mental, nervous or behavioral disorder or distress or individual-level psychological consultation in the context of a professional relationship [relationship] [associate].

(b) A corporate entity or other organization shall be considered the client if the professional contract is to provide a psychological service of benefit to the corporate entity or organization.

(2) A legal guardian of a minor or legally incompetent adult shall be considered the client for a decisionmaking purpose.

The minor or legally incompetent adult shall be considered the client for an issue that:
(a) Directly affects the physical or emotional safety of the individual, including a prohibited relationship; or
(b) Is specifically reserved to the individual and agreed to by the guardian prior to the rendering of the service.

(2) A person identified as a client pursuant to subsection (1) of this section shall be deemed to continue to be a client for a period of two (2) years following the last date of service rendered to the person.

Section 3. Competence. (1) Limits on practice. The credential holder shall limit practice and supervision to the areas of competence in which proficiency has been gained through education, training, and experience.

(2) Maintaining competency. The credential holder shall maintain current competency in the areas in which he or she practices, through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge.

(3) Adding new services and techniques. The credential holder, if developing competency in a service or technique that is either new to the credential holder or new to the profession, shall become in
(4) Referral. The credential holder shall make or recommend referral to other professional, technical, or administrative resources if a referral is clearly in the best interests of the client.

(5) Sufficient professional information. A credential holder rendering a formal professional opinion about a person shall not do so without direct and substantial professional contact with or a formal assessment of that person.

(6) Maintenance and retention of records. (a) The credential holder rendering professional services to an individual client, or services billed to a third-party payor, shall maintain professional records that include:
   1. The presenting problem, purpose or diagnosis;
   2. The fee arrangement;
   3. The date and substance of each billed or service-count contact or service;
   4. Test results or other evaluative results obtained and the basic test data from which the results were derived;
   5. Notation and results of a formal consult with another provider; and
   6. A copy of all test or other evaluative reports prepared as part of the professional relationship.

(b) The credential holder shall assure that all data entries in the professional records are maintained for a period of not less than five (5) years after the last date that service was rendered.

(c) The credential holder shall store and dispose of written, electronic and other records in a manner which shall insure their confidentiality.

(d) For each person supervised pursuant to KRS Chapter 319, the credential holder shall maintain for a period of not less than five (5) years after the last date of supervision a record of each supervisory session that shall include the type, place, date, and general content of the session.

(7) Continuity of care. The credential holder shall make arrangements for another appropriate professional or professionals to deal with an emergency need of a client, as appropriate, during a period of his or her foreseeable absence from professional availability.

Section 4. Impaired Objectivity and Dual Relationships. (1) Impaired credential holder. (a) The credential holder shall not undertake or continue a professional relationship with a client if the credential holder is impaired due to a mental, emotional, physiologic, pharmacologic, or substances abuse condition.

(b) If a condition develops after a professional relationship has been initiated, the credential holder shall:
   1. Terminate the relationship in an appropriate manner;
   2. Notify the client in writing of the termination; and
   3. Assist the client in obtaining services from another professional.

(2) Prohibited dual relationships. (a) The credential holder shall not undertake or continue a professional relationship with a client if the objectivity or competency of the credential holder is impaired because of the credential holder's present or previous familial, social, sexual, emotional, financial, supervisory, administrative, legal, or personal relationship with the client or a relevant person associated with or related to the client.

(b) The credential holder, in interacting with a client, shall not:
   1. Engage in verbal or physical behavior toward the client which is sexually seductive, demeaning, or harassing;
   2. Engage in sexual intercourse or other physical intimacy with the client; or
   3. Enter into a potentially exploitative relationship with the client.

(c) The prohibitions established in paragraph (b) of this subsection shall extend indefinitely if the client is proven to be clearly vulnerable, by reason of emotional or cognitive disorder, to exploitative influence by the credential holder.

Section 5. Client Welfare. (1) Providing explanation of procedure. The credential holder shall give a truthful, understandable, and appropriate account of the client's condition to the client and those responsible for the care of the client. The credential holder shall keep the client fully informed as to the purpose and nature of an evaluation, treatment, or other procedure, and of the client's right to freedom of choice regarding services provided.

(2) Termination of services. (a) If professional services are terminated, the credential holder shall offer to help locate alternative sources of professional services or assistance if indicated.

(b) The credential holder shall:
   1. Terminate a professional relationship if the client is not benefiting from the relationship; and
   2. Prepare the client appropriately for the termination.

(3) Stereotyping. The credential holder shall not impose on the client a stereotype of behavior, values, or roles related to age, gender, religion, race, disability, nationality, sexual preference, or diagnosis which would interfere with the objective provision of psychological services to the client.

(4) Sexual or other dual relationship with a client. The credential holder shall not enter into a sexual or other dual relationship with a client, as specified in Section 4(2) of this administrative regulation.

(5) Solicitation of business by clients. The credential holder providing services to an individual client shall not induce that client to solicit business on behalf of the credential holder.

(6) Referrals on request. The credential holder providing services to a client shall make an appropriate referral to the client to another professional if requested to do so by the client.


(2) Welfare of research subjects. The credential holder shall respect the dignity and protect the welfare of his or her research subjects, and shall comply with all relevant statutes and administrative regulations concerning treatment of research subjects.

Section 7. Protecting the Confidentiality of Clients. (1) General. The credential holder shall safeguard the confidential information obtained in the course of practice, teaching, research, or other professional services. Except as provided in this section, the credential holder shall obtain the informed written consent of the client prior to disclosing confidential information.

(2) Disclosure without informed written consent. The credential holder shall disclose confidential information without the informed consent of the client if the credential holder has a duty to warn an intended victim of the client's threat of violence pursuant to KRS 202A.400 or 645.270.

(3) Disclosure if the client is a corporation or other organization. If the client is a corporation or other organization, the requirements for confidentiality established in this section shall:

(a) Apply to information that pertains to:
   1. The corporation or organization; or
   2. An individual, including personal information, if the information is obtained in the proper course of the contract; and

(b) Not apply to personal information concerning an individual if the individual had a reasonable expectation that the information was:
   1. Obtained in a separate professional relationship between the credential holder and the individual; and
   2. Subject to the confidentiality requirements established in this section, to the client.

(4) Services involving more than one (1) interested party. If more than one (1) party has an appropriate interest in the professional services rendered by the credential holder to a client or clients, the credential holder shall clarify to all parties prior to rendering the services the dimensions of confidentiality and professional responsibility that shall pertain in the rendering of services.

(5) Multiple clients. If service is rendered to more than one (1) client during a joint session, the credential holder shall at the beginning of the professional relationship clarify to all parties the manner in which confidentiality shall be handled.

(6) Legally dependent clients. At the beginning of a professional relationship the credential holder shall inform a client who is below the age of majority or who has a legal guardian, of the limit the law imposes on the right of confidentiality with respect to his or her communications with the credential holder.

(7) Limited access to client records. The credential holder shall limit access to client records to preserve their confidentiality and
shall assure that all persons working under the credential holder’s authority comply with the requirements for confidentiality of client material.

(8) Release of confidential information. The credential holder shall release confidential information upon court order or to conform with state or federal law or regulation.

(9) Reporting of abuse of children and vulnerable adults. The credential holder shall be familiar with the relevant law concerning the reporting of abuse of children and vulnerable adults, and shall comply with those laws, including KRS 620.030.

(10) Discussion of client information among professionals. If rendering professional services as part of a team or if interacting with appropriate professionals concerning the welfare of the client, the credential holder may share confidential information about the client if the credential holder takes reasonable steps to assure that all persons receiving the information are informed about the confidential nature of the information and abide by the rules of confidentiality.

(11) Disguising confidential information. If case reports or other confidential information is used as the basis of teaching, research, or other published reports, the credential holder shall exercise reasonable care to insure that the reported material is appropriately disguised to prevent client identification.

(12) Observation and electronic recording. The credential holder shall ensure that diagnostic interviews or therapeutic sessions with a client are observed or electronically recorded with the informed written consent of the client.

(13) Confidentiality after termination of professional relationship. The credential holder shall continue to treat as confidential information regarding a client after the professional relationship between the credential holder and the client has ceased.

Section 8. Representation of Services. (1) Display of credentials. The credential holder shall display his or her current credential to practice psychology on the premises of his or her professional office.

(2) Misrepresentation of qualifications. The credential holder shall not misrepresent directly or by implication his or her professional qualifications such as education, experience, or areas of competence.

(3) Misrepresentation of affiliations. The credential holder shall not misrepresent directly or by implication his or her affiliations, or the purposes or characteristics of institutions and organizations with which the credential holder is associated.

(4) False misleading information. The credential holder shall not include false or misleading information in a public statement concerning professional services offered.

(5) Misrepresentation of services or products. The credential holder shall not associate with or permit his or her name to be used in connection with a service or product in a way which misrepresents:

(a) The service or product;
(b) The degree of his or her responsibility for the service or product; or
(c) The nature of his or her association with the service or product.

(6) Correction of misrepresentation by others. The credential holder shall correct others who misrepresent the credential holder’s professional qualifications or affiliations.

Section 9. Disclosure of Cost of Services. The credential holder shall not mislead or withhold from the client, a prospective client, or third party payor, information about the cost of his or her professional services.

Section 10. Assessment Procedures. (1) Confidential information. The credential holder shall treat an assessment result or interpretation regarding an individual as confidential information.

(2) Communication of results. The credential holder shall accompany communication of results of assessment procedures to the client, parent, legal guardian or other agent of the client by an adequate explanation or explanation.

(3) Protection of integrity of assessment procedures. The credential holder shall not reproduce or describe in a popular publication, lecture, or public presentation a psychological test or other assessment device in a way that might invalidate them.

(3) Information for professional users. The credential holder offering an assessment procedure or automated interpretation service to another professional shall accompany this offering by a manual of the printed material which fully describes the development of the assessment procedure or service, the rationale, evidence of validity and reliability, and characteristics of the normative population. The credential holder shall explicitly state the purpose and application for which the procedure is recommended and identify special qualifications required to administer and interpret it properly. The credential holder shall ensure that the advertisements for the assessment procedure or interpretive service are factual and descriptive.

Section 11. Aiding Illegal Practice. (1) Delegating professional responsibility. The credential holder shall not delegate professional responsibilities to a person not appropriately credentialed or otherwise appropriately qualified to provide psychological services.

(2) Supervision. The credential holder shall exercise appropriate supervision over a supervisee, as required by 201 KAR 26:171.

ROBERT J. ILLBACK, Psy.D., Chair
APPROVED BY AGENCY: November 13, 2001
FILED WITH LRC: November 14, 2001 at 10 a.m.

KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
(As Amended at ARRS, January 8, 2002)

201 KAR 26:155. Licensed psychologist: application procedures and temporary license [or certificate].

STATUTORY AUTHORITY: 319.032(1)(a), (c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychologist [or certification as a psychological associate]. This administrative regulation establishes the requirements for applications for licensure [and certification], and the conditions for a temporary license [or certificate].

Section 1. Application. (1) An application for a credential as a licensed psychologist [license to practice psychology] may be submitted after the requirements established in KRS 319.050(2) are met.

(2) An application for a certificate to perform functions as a psychological associate may be submitted after the requirements established in KRS 310.064(1) are met.

(3) The application required by subsection (1) or (2) of this section shall be made by submitting a completed Form Psy-1 to the board. The application shall:

(a) Include a certification by the applicant that the:
1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and
2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and
(b) Be accompanied by:
1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160; and
2. A check or money order payable to the Kentucky State Treasurer for the examination fee as required by 201 KAR 26:160.

Section 2. Temporary Licensure [or Certification]. (1) Pending successful completion of required examinations, an applicant may request permission to:

(a) Practice psychology at the doctoral level on a temporary basis pursuant to KRS 319.050(3). The request for a temporary credential shall [must] be signed by the candidate and the pro-
posed supervisor, who shall [must] be a licensed psychologist approved by the board. [or]
(b) Perform functions as a psychological associate pursuant to KRS 319.052(3).
(2) Supervision during the period of temporary licensure shall be a minimum of one (1) hour of individual, face-to-face supervision on a weekly basis.
(3) A report of supervision shall be submitted on a regular basis as required by 201 KAR 26:171, Section 6.
(4) The candidate shall take the Examination for Professional Practice in Psychology (EPPP) within sixty (60) days from the date on the authorization-to-test letter, which comes from the ASPPB examination contractor. Upon receipt of the application for licensure, the candidate shall [will] receive a packet of materials from the board about the EPPP which shall [will] instruct the candidate to contact the ASPPB examination contractor directly for the procedures to follow regarding test application, payment and taking the examination.
(5) The period of temporary licensure shall be terminated upon successful completion of all credentials and examination procedures or upon one (1) of the following:
(a) The candidate’s failure to pass the EPPP within one (1) year of the date of the authorization-to-test letter after approval for temporary license.
(b) The candidate’s failure to pass the oral examination within one (1) year of completion of the postdoctoral year, at the next regularly scheduled date.
(c) The period of temporary licensure shall be terminated upon successful completion of all credentials and examination procedures or upon the candidate’s failure to pass the third administration of the oral examination or upon the withdrawal of the application.
(b) The period of temporary certification shall be terminated upon successful completion of all credentials and examination procedures or upon the candidate’s failure to pass the third administration of the EPPP or upon the withdrawal of the application.

Section 3. Postdoctoral Supervisory Experience. (1) The one (1) year of postdoctoral experience required by KRS 319.052(2)(c) shall be a training-oriented professional experience.
(2) During the year of postdoctoral experience, the candidate shall:
(a) Obtain and maintain a temporary license as required in Section 2 of this administrative regulation;
(b) Be under supervision as required by 201 KAR 26:171; and
(c) Be employed:
1. By a:
   a. Regional mental health/mental retardation board;
   b. College or university;
   c. State government agency;
2. In the supervisor’s independent practice, if the supervisor is responsible for the direction and control of the practice of the candidate; or
3. In an independent practice that is approved by the board after submission of a special application letter.
   a. A supervisor and a candidate employed in an independent practice shall submit to the board if:
      (I) The supervisor of record is not the employer;
      (II) The employer is not an organization listed in subparagraph 1 of this paragraph.
   b. The board shall approve the independent practice before the practice begins.
   c. The special application letter shall identify the temporarily licensed psychologist [psychological associate], supervisor, and employer.
   d. The special application letter shall certify that:
      (I) The supervising licensed psychologist is not hired, employed or engaged under contract by the candidate and shall not be terminated by the candidate;
      (II) The candidate is not one (1) of the owners of the independent practice or organization, but rather serves as an employee; and
      (III) The candidate has both administrative and clinical supervision which are provided by the independent practice or organization.
(3) The postdoctoral year shall be served: (a) in a formalized postdoctoral internship program in a health care facility; or
(b) in an informal arrangement that meets the requirements of subsection (5) of this section.
(4) The supervised professional experience shall include a planned and organized sequence of activities that includes explicit training and supervision in the following areas:
(a) Clinical skill development;
(b) Legal and regulatory issues;
(c) Ethical dilemmas and issues; and
(d) Supervisory skill development.
(5) The candidate and the supervisor of record shall design and describe the proposed experience, including the areas listed in subsection (4) of this section, at the time of application for temporary licensure.
(6) To qualify as postdoctoral supervisory experience, a supervisory experience at a university shall:
(a) Be proffered by a full-time faculty member;
(b) Include a plan that contains each of the areas established in subsection (4) of this section; and
(c) Include a minimum of 400 hours of direct and indirect client involvement that:
   1. Is supervised by a licensed psychologist; and
   2. Includes:
      a. Supervising student clinical work;
      b. Diagnostically and interviewing activity that occurs within clinical research projects; or
      c. Clinical work in the context of teaching psychotherapy, interviewing, or psychological testing.
(7) The board shall not grant a request for temporary licensure if the request does not contain an explicit and acceptable plan for the postdoctoral experience as required by this section.

Section 4. Grace Period for Submission of Credentials. In order to allow for processing of the candidate’s materials by the board, there shall be a grace period of no more than sixty (60) days within which candidates who have completed their degree requirements may begin employment by an agency to practice psychology under supervision of a board-approved supervisor.
(1) Upon acceptance of employment, the candidate and the licensed psychologist who shall [will] serve as his or her [their] supervisor shall immediately submit a letter of notice to the board indicating that he or she has begun to practice in Kentucky and that application materials are forthcoming. Failure to submit this notice shall [may] be deemed as grounds for disciplinary action against the candidate and the supervisor.
(2) It is the responsibility of the candidate to ensure that all materials are forwarded to the board within thirty (30) days from the date of agency employment. Once the application is complete, the board shall review the material at its next scheduled meeting and, if appropriate, issue either a temporary or permanent credential. If the candidate does not meet the requirements for the credential, or if their application material is insufficient to take any action, he or she shall be directed to cease practice until [such time as] the requirements are met.
(3) Under no circumstances shall the grace period be extended beyond sixty (60) days. Candidates who fail to achieve approval within this timeframe shall not practice psychology until credentialed by the board.
(4) Upon filing the notice set forth in Section 3(1) of this administrative regulation, the candidate is deemed to be practicing psychology under the jurisdiction of the board, and is subject to all relevant laws and regulations. Incorporation by Reference. (1) "Form Ps1", "Form Ps1", (January 3000 Edition), Kentucky Board of Examiners of Psychologists, is incorporated by reference.
(2) It may be inspected, copied, or obtained at the Board of Examiners of Psychologists, 201 Louitville Road, Park Hill Annex, Suite 8, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 5. Incorporation by Reference. (1) "Form Ps1", (January 2002 edition), is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Examiners
VOLUME 28, NUMBER 8 — FEBRUARY 1, 2002

of Psychology, 700 Louisville Road, Berry Hill Annex, Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT J. ILLBACK, Psy.D., Chair
APPROVED BY AGENCY: November 13, 2001
FILED WITH LRC: November 14, 2001 at 10 a.m.

KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
(As Amended at ARRS, January 8, 2002)

201 KAR 26:160. Fee schedule.

RELATES TO: KRS 319.050(2)(a), 319.064(1)(a), 319.071(1)
STATUTORY AUTHORITY: KRS 319.032(), (m), 319.071(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(2)(a) and 319.064(1)(a) require an applicant to pay a fee for applying for licensure [or certification]. KRS 319.071(1) requires a credential [license or certificate] holder to pay a renewal fee established by the board. KRS 319.032(1)(m) requires the board to promulgate administrative regulations increasing or decreasing the fees for an applicant [licensee], or credential [certificate] holder as the board deems necessary. This administrative regulation establishes the application and renewal fees for credential holders [psychologists and psychological associates].

Section 1. (1) Except as provided in subsection (3) of this section, an applicant [the fee for application] for licensure as a psychologist shall pay the following [be computed as follows]:
(a) A $100 nonrefundable [A fifty (50) dollar] application review fee;
(b) The fee [of] taking the EPPP, which shall be paid directly [payable] to the ASPPB examination contractor;
(c) A $100 nonrefundable fee for taking the structural oral examination.

(2) Except as provided in subsection (3) of this section, an applicant [the fee for application] for licensure [certification] as a psychological associate shall pay the following [be computed as follows]:
(a) A $100 nonrefundable application review fee;
(b) The fee for taking the EPPP, which shall be paid directly [payable] to the ASPPB examination contractor; [A fifty (50) dollar]
(c) A fee for the taking of the Examination for Professional Practice in Psychology (EPPP), which shall be:
1. Until March 31, 1999, $250;
2. Beginning April 1, 1999, $350;
(c) A fifty (50) dollar fee for the taking of the structural oral examination.

Section 2. (1) If the applicant fails the Examination for Professional Practice in Psychology (EPPP) and applies to retake this examination, the applicant shall submit the examination fee as established by the ASPPB examination contractor directly to the contractor. [The fee shall be $250.]

(2) If the applicant fails the structured oral examination and applies to retake this examination, the fee shall be fifty (50) dollars.

Section 3. (1) The board may refund the fee for the EPPP and the fee for the structural oral examination, if applicable, if an application was:
(a) Approved; and
(b) Withdrawn prior to the applicant taking the examination for professional practice in psychology.

(2) The board shall refund the fee for the EPPP or the structural oral examination, if applicable, if the application to sit for the examination is denied.

ROBERT J. ILLBACK, Psy.D., Chair
APPROVED BY AGENCY: November 13, 2001
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KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
(As Amended at ARRS, January 8, 2002)

201 KAR 26:171. Requirements for supervision.

RELATES TO: KRS 319.032(1)(l), 319.050(3), (6), 319.056(23),
(4), 319.064(3) (23), (4), 319.082(1), 319.092(3)(d), 319.118(1)
STATUTORY AUTHORITY: KRS 319.032(1)(l)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(l) requires the board to promulgate an administrative regulation governing the supervision of a certified psychologist, licensed psychological associate, candidate for licensure [or certification], or a credential [license or certificate] holder sanctioned by the board. This administrative regulation establishes the requirements for supervision.

Section 1. A supervisory arrangement shall have the prior approval of the board, with both supervisor and supervisee petitioning the board in writing. The supervisor and supervisee shall submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement at least thirty (30) days prior to the effective date of the arrangement or change.

Section 2. (1) All supervision requirements shall:
(a) BE met with individual, face-to-face, weekly contact between supervisor and supervisee except as provided in subsection (2) of this section and Section 12 of this administrative regulation; and
(b) include additional supervision sessions as needed.

(2) An alternative format of supervision, including two (2) way interactive video, may be substituted for the supervisey contact, required by subsection (1) of this section, upon specific approval by the board.

Section 3. (1) A certified psychologist or licensed psychological associate may petition the board to be relieved of his or her obligation to maintain supervision during which period he or she shall not practice psychology.

(2) The certified psychologist or licensed psychological associate shall obtain a supervisor approved by the board before the resumption of practice.

(3) Upon renewal, the certified psychologist or licensed psychological associate shall document compliance with continuing education requirements and shall report on their professional activities and employment during the period without supervision.

Section 4. (1) A licensed psychologist, who obtains the first time after December 30, 1995 board approval to function as a supervisor, shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining approval as a supervisor [supervisory status].

(2) [Beginning July 1, 1999] A board approved supervisor shall
obtain a minimum of three (3) continuing education hours as required by 201 KAR 26:175, Section 1(3). The board shall suspend its approval of a supervisor if the supervisor does not complete the required continuing education.

Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee’s practice is in compliance with this administrative regulation.

(2) The supervisor shall report to the board an apparent violation of KRS 319.082(1) on the part of the supervisee.

(3) The supervisor shall inform the board immediately of a change in the ability to supervise, or in the ability of a supervisee to function in the practice of psychology in a competent manner.

(4) The supervisor shall control, direct or limit the supervisee’s practice as appropriate to insure that the supervisee’s practice of psychology is competent.

(5) The supervisor of record shall be responsible for the practice of psychology by the supervisee. If the board initiates an investigation concerning a supervisee, the investigation shall include the supervisor of record. The board may temporarily withdraw the licensed psychologist’s supervisory privileges. The board may require additional supervisory training for the licensed psychologist in order to resume supervisory activities approved by the board.

(6) For each person supervised pursuant to KRS 319.05(k)(3), (6), 319.06(3), (4), 319.06(4)(2), (4), or 319.092(3)(d), the supervisor shall maintain for a period of not less than five (5) years after the last date of supervision a record of each supervisory session that shall include the type, place, and general content of the session. This record shall be maintained for a period of not less than five (5) years after the last date of supervision.

Section 6. (1) In calculating the amount of time spent in full-time practice while under supervision, 2,000 hours of supervised practice shall be equivalent to one (1) year of experience if the practice was obtained postlicensure (postcertification).

(2) The supervisor shall provide reports to the board of the supervision of each supervisee according to the following schedule:

<table>
<thead>
<tr>
<th>Credential Status</th>
<th>Reporting Period</th>
<th>Report Due Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Licensed psychological associate or certified psychologist with 4 or less years of full-time practice, or its equivalent</td>
<td>Yearly</td>
<td>January 15th</td>
</tr>
<tr>
<td>(b) Licensed psychological associate or certified psychologist (with 4 or more years of full-time practice or its equivalent)</td>
<td>Every 2 years (with prior board approval)</td>
<td>January 15th</td>
</tr>
<tr>
<td>(c) Temporarily Licensed Psychologist</td>
<td>Every 6 Months and 1 month prior to oral exam</td>
<td></td>
</tr>
<tr>
<td>(d) Temporarily licensed psychological associate</td>
<td>Every 6 Months</td>
<td>April and October 15th</td>
</tr>
<tr>
<td>(e) Sanctioned credential holder [Psychologist]</td>
<td>Quarterly</td>
<td>January, April, July and October 15th</td>
</tr>
</tbody>
</table>

(3) The report shall include:

(a) A description of the frequency, format and duration of supervision;
(b) An assessment of the functioning of the supervisee, including the strengths and weaknesses; and
(c) Other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. (1) If a supervisee has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with one another at least once every six (6) months, and they shall provide supervisory plans and reports to the board and copies to one another.

(2) A request to have more than two (2) supervisors at one (1) time shall require a special application to the board which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 8. If the supervisee is a licensed psychological associate or a certified psychologist with less than four (4) years of full-time, postlicensure (postcertification) practice, or its equivalent, or a licensure candidate with temporary permission to practice, the supervising record shall:

(1) Read and countersign all psychological assessments;
(2) Review treatment plans, progress notes and correspondence on an as-needed basis to assess the competency of the supervisee to render psychological services;
(3) Jointly establish with the supervisee and submit a supervisory plan to the board at the beginning of the supervisory relationship. The plan shall:
   (a) Be updated or revised and submitted to the board with the regular report of supervision;
   (b) Include intended format, and goals to be accomplished through the supervisory process; and
   (c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process.
(4) Have direct observation of the supervisee’s work at least once every two (2) months. Direct observation can be accomplished through audiotaping, videotaping, one (1) way mirror or as a cotherapist;
(5) Have direct knowledge of the size and complexity of the supervisee’s caseload;
(6) Limit and control the caseload as appropriate to the supervisee’s level of competence;
(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and
(8) Have knowledge of the supervisee’s physical and emotional well-being when it has a direct bearing on the supervisee’s competence to practice.

Section 9. If the supervisee is a licensed psychological associate or certified psychologist with more than four (4) years of full-time, postlicensure (postcertification) practice, or its equivalent, the supervising record shall:

(1) Review and countersign psychological assessments as needed or appropriate;
(2) Review treatment plans, notes, and correspondence as needed or appropriate;
(3) Jointly establish with the supervisee and submit a supervisory plan to the board at the beginning of the supervisory relationship. The plan shall:
   (a) Be updated or revised and submitted to the board with the regular report of supervision;
   (b) Include intended format, and goals to be accomplished through the supervisory process; and
   (c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process.
(4) Have direct observation of the supervisee’s work on an as-needed basis;
(5) Have direct knowledge of the size and complexity of the supervisee’s caseload;
(6) Limit and control the caseload as appropriate to the supervisee’s level of competence;
(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and
(8) Have knowledge of the supervisee’s physical and emotional well-being when it has a direct bearing on the supervisee’s competence to practice.

Section 10. (1) The supervisee shall:

(a) Keep the supervisor adequately informed at all times of his or her activities and ability to function; and
(b) Seek supervision as needed in addition to a regularly scheduled supervisory session.

(2) The supervisee shall:

(a) Participate with the supervisor in establishing supervisory
goals and in completing the regular supervisory reports;
(b) Be jointly responsible with the supervisor for ensuring that a supervisory report or plan has been sent to the board in accordance with the reporting schedule established in Section 6(1) of this administrative regulation; and
(c) Report to the board a apparent violation of KRS 319.082(1) on the part of the supervisor.

Section 11. Identification of Provider. The actual deliverer of a service shall be identified to the client. A billing for a rendered service shall identify which service was performed by the certified psychologist, licensed psychological associate, trainee, or other provider and supervised by the licensed psychologist.

Section 12. Frequency of Supervision. (1) A licensed psychological associate or certified psychologist shall have a minimum of one (1) hour of individual face-to-face supervision on a weekly basis for the first two (2) years of full-time practice or its equivalent following certification.
(2) After two (2) years of full-time, postlicensure [postcratication] practice, or its equivalent, the supervisor and supervisee may petition the board to alter the format, frequency or duration of supervision as long as the proposed change includes a minimum of two (2) one (1) hour individual face-to-face meetings every four (4) weeks, and the total amount of supervision is not less than four (4) hours per four (4) week period. This [Such a] petition may include a request to change the format from individual to group supervision. Supervision requirements for part-time practice may be modified at the discretion of the board on the board’s submission of an approved plan.
(3)(a) After four (4) years of full-time, postlicensure [postcratication] practice, or its equivalent, the supervisor and supervisee shall petition the board for further modification of the format, frequency, or duration of supervision, with a minimum amount of one (1) hour of face-to-face supervision per month. Board approval of additional modification of the format, frequency or duration of supervision shall be reviewed upon request made to the board.
(b) Upon a change of supervisor, a new plan for supervision shall be submitted by the supervisor and supervisee to the board for approval. This plan may require additional supervision than was previously approved by the board.
(c) Upon termination of the supervisor-supervisee relationship, the final report of supervision shall be submitted to the board.

Section 13. Supervision of a Disciplined Credential Holder [Psychologist]. (1) The board shall appoint an approved supervisor to supervise a disciplined credential holder [psychologist] for the period of time defined by the board.
(2) The disciplined psychologist shall be responsible for paying the fee for supervision.
(3) The supervisor shall have completed the board approved training course in supervision.
(4) The supervisor shall:
(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;
(b) Meet with the disciplined psychologist and the board liaison to:
1. Summarize the actions and concerns of the board;
2. Review the goals and expected outcomes of supervision submitted by the board liaison;
3. Develop a specific plan of supervision; and
4. Review the reporting requirements that shall be met during the period of supervision;
(c) Meet with the disciplined psychologist at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;
(d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board mandated supervision;
(e) Make all reasonable efforts to insure that the disciplined credential holder’s [psychologist] practice is in compliance with KRS Chapter 319 and 201 KAR Chapter 25;
(f) Report to the board an apparent violation of KRS 319.082(1) on the part of the disciplined credential holder [psychologist];
(g) Report to the board immediately a change in the ability to supervise, or in the ability of the disciplined credential holder [psychologist] to function in the practice of psychology in a competent manner;
(h) Review and countersign psychological assessments as needed or appropriate;
(i) Review treatment plans, notes, and correspondence as needed or appropriate;
(j) Have direct observation of the disciplined credential holder’s [psychologist] work on an as-needed basis;
(k) Have direct knowledge of the size and complexity of the disciplined credential holder’s [psychologist] caseload;
(l) Have knowledge of the therapeutic modalities and techniques being used by the disciplined credential holder [psychologist]; and
(m) Have knowledge of the disciplined credential holder’s [psychologist] physical and emotional well-being when it has direct bearing on the disciplined credential holder’s [psychologists] competence to practice.
(5) The supervisor shall control, direct or limit the disciplined credential holder’s [psychologist] practice as appropriate to insure that the disciplined credential holder’s [psychologist] practice is competent.
(6) The supervisor shall contact the board liaison with a concern or problem with the disciplined credential holder [psychologist], his or her practice or the supervision process.
(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined credential holder [psychologist] and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 14. Board Liaison for Disciplined Credential Holder [Psychologist]. The board shall appoint a board member to serve as a liaison between the board and the approved supervisor. The board liaison shall:
(1) Recruit the supervising psychologist from a list provided by the board,
(2) Provide the supervising psychologist with the originating complaint, agreed order or findings of the hearing and supply other material relating to the disciplinary action as deemed appropriate by the liaison;
(3) Insure that the supervising psychologist is provided with the necessary documentation for liability purposes to clarify that he or she shall act as an agent of the board pursuant to KRS 319.118(1) and has immunity commensurate with that of the board;
(4) Provide the supervising psychologist with a written description of the responsibilities of the supervisor and a copy of the responsibilities of the liaison;
(5) Insure that the board has sent a written notification letter to the disciplined credential holder [psychologist]. The notification letter shall:
(a) State the name of the supervising psychologist; and
(b) Specify that the disciplined credential holder [psychologist] shall meet with the supervising psychologist and the liaison within thirty (30) days of the date of the notification letter;
(c) Meet with the supervising psychologist and disciplined credential holder [psychologist] within thirty (30) days of the date of the notification letter to summarize the actions of the board, review the applicable statutes and administrative regulations regarding supervision requirements for a disciplined credential holder [psychologist] and assist with the development of a plan of supervision. The plan of supervision shall be written at the first meeting;
(7) Submit the report of supervision to the board for approval. The board shall place the report of supervision on the agenda for review and approval at the next regularly scheduled board meeting in the interim, the supervising psychologist and disciplined credential holder [psychologist] shall continue to meet;
(8) Remain available to the supervising psychologist to provide assistance and information as needed;
(9) Report a problem or concern to the board regarding the supervision and communicate a directive of the board to the supervising psychologist;
(10) Review the quarterly report of supervision and forward to the supervision committee of the board for approval; and
(11) Meet with the supervising psychologist and the disciplined credential holder (psychologist) at the end of the term of supervision to summarize the supervision.

Section 15. Psychology Graduate Students. Graduate-level psychology students who are providing services in psychological health care settings including independent practice settings shall:
(1) Be supervised by a psychologist licensed by the board with health service provider status, who is affiliated with either the university training program or the practice setting;
(2) Be registered for credit in his or her course of study;
(3) Clearly identify their status as psychology trainees and non-credential holders to all clients and payors;
(4) Give to all clients and payors the name of the licensed psychologist responsible for their work;
(5) Not accept employment or placement to perform the same or similar activities following the completion of their university-sanctioned placement, regardless of the job title given, unless the student holds a credential from the board.

ROBERT J. ILLBACK, Psy.D., Chair
APPROVED BY AGENCY: November 13, 2001
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KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
(As Amended at ARRS, January 8, 2002)

201 KAR 28:175. Continuing education.

RELATES TO: KRS 319.032(1)(f), 319.050, 319.053, 319.064, 319.071 [319.054]
STATUTORY AUTHORITY: KRS 319.032(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(f) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license [or certificate]. This administrative regulation establishes the continuing education requirements for renewal of a license [or certificate].

Section 1. Definitions. (1) "Continuing education" means participation in an approved program beyond the basic educational requirements that meets the requirements established in Section 2(1) of this administrative regulation.
(2) "Continuing education (CE) hour" means a fifty-five (55) minute clock hour of instruction.

Section 2. (1) Each credential [license or certificate] holder shall document the completion of at least thirty (30) continuing education hours approved by the board within each three (3) year renewal period. The continuing education shall:
(a) Provide specific content planned and evaluated to improve the credential [license or certificate] holder’s professional competence;
(b) Make possible the acquisition of new skills and knowledge required to maintain competence; and
(c) Strengthen the habits of critical inquiry and balanced judgment.
(2) Continuing educational hours shall not carry over from one (1) renewal period to the next.
(3) (a) Except as provided in paragraph (b) of this subsection, beginning July 1, 2000, a licensed psychologist who provides supervision to a certified psychologist or a licensed psychological associate shall include as part of the thirty (30) hours of continuing education required by subsection (1) of this section a minimum of three (3) continuing education hours in the area of supervision theory or techniques.
(b) The requirement established in paragraph (a) of this subsection shall begin with the renewal period immediately following the period in which the original supervisory training required by 201 KAR 26:171, Section 4(1) and (2), is received.

Section 3. Hours required to satisfy the continuing education requirement shall be completed and reported at the time of credential [license or certificate] renewal. The credential [license or certificate] holder shall maintain and provide adequate records including a certificate of attendance and documentation of completion of an approved program of continuing education hours.

Section 4. A continuing education activity approved by the board shall satisfy the continuing education requirements for renewal of a credential [license or certificate]. A credential [license or certificate] holder shall determine prior to attending a specific continuing education program that the program:
(1) Has been approved by the board; or
(2) Is offered or sponsored by an organization approved by the board to sponsor a continuing education program.

Section 5. Approved Sponsoring Organizations and Approved Programs. (1) Participation in a continuing education program that is offered or sponsored by an organization listed in this subsection shall satisfy the requirement for continuing education established in Section 2(1) of this administrative regulation:
(a) The American Psychological Association; American Medical Association; American Psychiatric Association; National Association of Social Workers, or an affiliated state chapter;
(b) A recognized state, regional, national, or international psychological association;
(2) The following programs shall be approved for continuing education:
(a) A course for graduate-level academic credit or a workshop in psychology or psychiatry offered by a national, regional, or state accredited academic institution or an affiliated hospital or medical center;
(b) The Kentucky Mental Health Institute or the Kentucky School of Alcohol and Other Drug Studies sponsored by the Kentucky Department for Mental Health and Mental Retardation Services;
(c) A home study course provided by the American Psychological Association; and
(d) Interactive videoconferencing provided by an organization listed in subsection (1) of this section.

Section 6. A continuing education program which satisfies the requirements for license [or certificate] renewal shall meet the following criteria:
(1) The program shall be:
(a) Offered or sponsored by an organization which has been approved by the board; or
(b) A specific program approved by the board;
(2) The program shall:
(a) Have a clearly-stated purpose and defined content area; and
(b) Be consistent with the overall goals of continuing education as defined in Section 1 of this administrative regulation;
Section 7. Equivalencies. (1) A graduate-level psychology course taken at an accredited academic institution shall earn continuing education hours on the following basis:
   (a) Each one (1) hour semester course shall be the equivalent of fifteen (15) continuing education hours for the purposes of meeting the requirements of this administrative regulation; and
   (b) Each one (1) hour quarter course shall be the equivalent of nine (9) continuing education hours for the purposes of meeting the requirements of this administrative regulation.

   (2) A person who teaches a three (3) hour semester or quarter graduate-level course in psychology at an accredited academic institution shall:
      (a) Earn six (6) continuing education hours for teaching the course; and
      (b) Not receive:
         1. Credit more than once for teaching a particular course during a renewal period; and
         2. More than six (6) continuing education hours for these teaching activities.

   (3) A person who teaches an approved continuing education workshop or program shall:
      (a) Earn continuing education hours on a one (1) to one (1) basis; and
      (b) Not receive:
         1. Credit more than once for teaching a particular workshop or program during a renewal period; and
         2. More than six (6) continuing education hours for these teaching activities.

   (4) A person who completes a home study course shall:
      1. Earn six (6) continuing education hours; and
      2. Not receive:
         a. Credit more than once for completing a particular study course during a renewal period; and
         b. More than six (6) continuing education hours through home study in a renewal period.

   (5) A person who participates in teleconferencing in an interactive setting shall:
      1. Earn one (1) continuing education hour for each clock hour of participation; and
      2. Not receive more than six (6) continuing education hours through interactive teleconferencing participation.

ROBERT J. ILLBACK, Psy.D., Chair
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KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
(As Amended at ARRS, January 8, 2002)

RELATES TO: KRS 319.032(1)(i)
STATUTORY AUTHORITY: KRS 319.032(1)(i)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing the granting of a license as a psychologist [or certificate in psychology] to an applicant from another jurisdiction. This administrative regulation establishes the requirements for granting a license [or certificate in psychology] to an applicant from another jurisdiction that does not have an agreement of reciprocity with this board.

RELATIONS TO: KRS 319.032(1)(i)
STATUTORY AUTHORITY: KRS 319.032(1)(i)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing the granting of a license as a psychologist [or certificate in psychology] to an applicant from another jurisdiction. This administrative regulation establishes the requirements for granting a license [or certificate in psychology] to an applicant from another jurisdiction that does not have an agreement of reciprocity with this board.

Section 1. The board shall consider an applicant for licensure in psychology in Kentucky who:
(a) Is licensed [or certified] in another state which does not have an agreement of reciprocity with the Kentucky Board of Examiners of Psychologists;
(b) Holds a current valid license or certificate in good standing, to practice psychology which has been granted by:
   1. At least one (1) state;
   2. The District of Columbia; or
   3. A Canadian province which maintains a psychology registration board that is a constituent member of the Association of State and Provincial Psychology Boards;

Section 2. The applicant for licensure as a psychologist [or certificate in psychology] by reciprocity shall:
(1) Hold a current valid license [or certificate] in good standing to practice psychology which has been granted by at least one (1) state or the District of Columbia or a Canadian province which maintains a psychology registration board:
   a. That is a constituent member of the Association of State and Provincial Psychology Boards; and
   b. With whom this board has an agreement of reciprocity;
(2) Have a minimum of five (5) years of full-time practice or its equivalent as determined by the board in the other jurisdiction; and
(3) Not have a report of disciplinary action filed with the Association of State and Provincial Psychology Boards.

Section 3. The board shall conduct a face-to-face examination of an applicant for licensure by reciprocity. The applicant shall demonstrate an acceptable level of knowledge of Kentucky mental health law.

Section 4. An applicant for licensure with the health service provider designation shall comply with KRS 319.050(7).

Section 5. If an applicant for licensure does not have a post-doctoral supervised year of experience as required by KRS 319.050(2)(c) [or (e)], the board may determine that the applicant's practice experience is equivalent to the required year of experience.

Section 6. A person holding the Certificate of Professional Qualification in Psychology (CPQ) issued by the Association of State and Provincial Psychology or a successor organization shall:
(1) Be deemed to meet the qualifications for licensure by reciprocity as established in this administrative regulation with the exception of the requirements established in Section 3 of this administrative regulation; and
(2) Meet the requirements established in Section 3 of this administrative regulation.

ROBERT J. ILLBACK, Psy.D., Chair
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KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
(As Amended at ARRS, January 8, 2002)

RELATES TO: KRS 319.032(1)(i)
STATUTORY AUTHORITY: KRS 319.032(1)(i)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing the granting of a license as a psychologist [or certificate in psychology] to an applicant from another jurisdiction. This administrative regulation establishes the requirements for granting a license [or certificate in psychology] to an applicant from another jurisdiction that does not have an agreement of reciprocity with this board.

RELATIONS TO: KRS 319.032(1)(i)
STATUTORY AUTHORITY: KRS 319.032(1)(i)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing the granting of a license as a psychologist [or certificate in psychology] to an applicant from another jurisdiction. This administrative regulation establishes the requirements for granting a license [or certificate in psychology] to an applicant from another jurisdiction that does not have an agreement of reciprocity with this board.

Section 1. The board shall consider an applicant for licensure in psychology in Kentucky who:
(a) Is licensed [or certified] in another state which does not have an agreement of reciprocity with the Kentucky Board of Examiners of Psychologists;
(b) Holds a current valid license or certificate in good standing, to practice psychology which has been granted by:
   1. At least one (1) state;
   2. The District of Columbia; or
   3. A Canadian province which maintains a psychology registration board that is a constituent member of the Association of State and Provincial Psychology Boards;
(c) Has a minimum of five (5) years of full-time practice or its equivalent as determined by the board in the other jurisdiction; and
(d) Does not have a report of disciplinary action filed with the Association of State and Provincial Psychology Boards.

(2) The board shall consider whether the applicant meets the requirements established in KRS 319.050(2) and 319.064(2). If an applicant for licensure does not have a postdoctoral supervised year of experience as required by KRS 319.050(2)(c) [and], the board may determine that the applicant's practice experience is equivalent to the required year of experience.

(3) An applicant for licensure as a psychologist shall:
(a) Submit to an examination composed of the Examination for Professional Practice in Psychology (EPPP);
1. Developed by the ASPPB examination contractor [Professional Examination Service]; and
2. Owned by the Association of State and Provincial Psychology Boards;
(b) Obtain an ASPPB-recommended passing score for licensure of seventy (70) percent (raw score of 140 on the paper and pencil form until April 1, 2002) or computerized EPPP scaled score of 500. The board shall accept the applicant's previous examination results for the objective (EPPP) examination if the original test scores satisfied the doctoral licensure requirement as to criterion level at the time of the examination; [a score equal to passage of seventy (70) percent of the test items];
(c) The board shall review the applicant's:
(a) Record as to complaints, or hearings held in previous jurisdictions; and
(b) Professional references.

Section 2. An applicant for licensure as a psychologist shall submit to a structured oral examination administered by two (2) licensed psychologists.
(1) The examination shall cover ethical principles, professional practice [in the candidate's specialty area], and Kentucky mental health law.
(2) Each examiner shall independently rate the applicant's performance.
(3) The applicant shall demonstrate an acceptable level of knowledge in each of the three (3) areas in order to pass the examination.
(4) An applicant who receives a pass rating from the two (2) examiners shall have successfully passed the oral examination.

[Section 3. An applicant for licensure with the health service provider designation shall comply with KRS 319.050(3).]

ROBERT J. LILBACK, Psy.D., Chair
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KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
(As Amended at ARR's, January 8, 2002)

201 KAR 26:190. Requirements for supervised professional experience.

RELATES TO: KRS 319.050, 319.053, 319.056, 319.064
STATUTORY AUTHORITY: KRS 319.032
NECESSITY, FUNCTION, AND CONFORMITY: Each credential issued by the board requires some type of supervised experience for the applicant. [Certain terms are used in the statute regulating the requirements for supervised professional experience for licensure applicants.] This administrative regulation establishes those requirements [Define these terms].

Section 1. Supervisory Requirements. [Definitions.]
(1) The predoctoral year, or the first year of a two (2) year postdoctoral supervised professional experience shall be [is defined as] 1,800 hours with at least one (1) hour of individual face-to-face supervision on a weekly basis.
(2) The postdoctoral year, or the second of a two (2) year postdoctoral supervised professional experience shall be [is defined as] 1,800 hours with at least one (1) hour of individual face-to-face supervision on a weekly basis.
(3) [Section 3. Supervisors shall be licensed psychologists or doctoral-level psychologists approved by the board who meet the standards of applicable state law.]

Section 2. For a person [a person] applying for licensure as a psychologist [psychologists] with the health service provider designation [in clinical or counseling psychology], the predoctoral internship or first year of a two (2) year postdoctoral program shall meet the following criteria:
(1) The experience shall occur within an organized training program, in contrast to supervised experience or on-the-job training and have [has] a planned, programmed sequence of training experiences;
(2) The training program shall have a clearly designated staff psychologist who shall be:
(a) Responsible for the integrity and quality of the training program;
(b) Actively licensed by the Board of Examiners in Psychology; or
(c) Licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists or otherwise meets the standards of applicable state law; and
(d) [For school psychology doctoral internships, the responsible psychologist director may be from an affiliate agency or from the university training program.]
(3) The internship agency shall have two (2) or more psychologists on the staff as supervisors, at least one (1) of whom shall be:
(a) Actively licensed as a psychologist by the Board of Examiners in Psychology; or
(b) Licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists or otherwise meets the standards of applicable state law; and
(c) [For school psychology doctoral internships, the responsible psychologist director may be from an affiliate agency or from the university training program.]
(4) Internship supervision shall be provided by a staff member of the internship agency or by an affiliate of that agency who has clinical responsibility for the cases being supervised. At least half of the internship supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree;
(5) [For school psychology doctoral internships, the responsible psychologist director may be from an affiliate agency or from the university training program.]
(6) The internship shall provide training in a range of assessment and treatment activities conducted directly with clients seeking psychological services;
(7) [For school psychology doctoral internships, the responsible psychologist director may be from an affiliate agency or from the university training program.]
(8) [For school psychology doctoral internships, the responsible psychologist director may be from an affiliate agency or from the university training program.]
(9) [For school psychology doctoral internships, the responsible psychologist director may be from an affiliate agency or from the university training program.]
Board of Examiners in Psychology or who shall be licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists or otherwise meets the standards of applicable state law.

(a) The supervisor shall be a staff member of the internship agency or an affiliate of that unit who carries responsibility for cases being supervised and when necessary can change procedures and techniques for the intern and provide input to the agency staff.

(b) The supervisor may be provided by the school (agency), the intern, or the sponsoring graduate program. When internship supervision is provided by an affiliate of that agency, a regular member of the agency staff shall be responsible for providing administrative review.

(5) The internship includes an average of at least two (2) hours per week of regularly scheduled, formal, face-to-face individual supervision with the specific intent of dealing with psychological services rendered directly by the intern. The supervisor shall provide an average of one (1) hour a week of supervision but may delegate supervision to appropriate members of the psychological services unit.

(6) In addition to individual supervision there shall be an additional average of at least two (2) hours per week in scheduled learning activities, which may be done in conjunction with professionals other than school psychologists, such as:

(a) Case conferences involving a case in which the intern is actively involved;
(b) Seminars dealing with professional issues; or
(c) Inservice training.

(7) Supervision and education shall account for at least ten (10) percent (150 hours) of the intern’s time. Some of the activities may occur at times other than the “regular” work day.

(8) The total internship experience may occur in more than one setting but shall include a minimum of 1,500 hours and be completed within twenty-four (24) months.

(9) At least twenty-five (25) percent (375 hours) of the trainee’s time shall be in direct client contact.

(10) The intern may spend up to twenty-five (25) percent (375 hours) of the time in research activity.

(11) The intern shall have scheduled and unscheduled opportunities to interact with interns, school psychologists, or other psychologists. It is desirable for the internship agency to have two (2) or more psychologists on the staff, but small agencies may meet this criterion by planning meetings with appropriate personnel in the area.

(12) The intern shall have the opportunity to interact professionally with persons from other disciplines and other agencies.

(13) The trainee has a title such as “intern,” “resident,” “fellow,” or other designation of trainee status; and

(14) The internship agency, preparing institution, and intern have a written agreement that describes the goals and content of the internship including clearly stated expectations for the nature of experiences offered in the agency and for the quantity and quality of the work.

Section 3. An applicant [Applicants] for licensure as a psychological associate [associates] shall complete supervised experience consisting of course-related field experiences, practica, and formal internships adding up to a minimum of 600 supervised hours which shall meet the following criteria:

(1) The experience shall occur within an organized training program, and consist of a planned, programmed sequence of training experiences;

(2) The preparing institution’s psychology training program shall have a clearly-designated placement director who shall be responsible for the integrity and quality of the experiential component of the training program;

(3) Weekly practicum and internship supervision shall be provided by a staff member of the placement agency, by an affiliate of that agency, or by a university faculty member. At least half of the supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree and license;

(4) Practica, placements, and internships shall provide training in a range of assessment and treatment activities conducted directly with clients seeking psychological services;

(5) At least twenty-five (25) percent of the trainee’s time shall be in direct client contact;

(6) The preparing institution shall maintain a written statement or brochure describing the goals and content of the required field experiences, practica, and internships.

(7) Students participating in university-sanctioned supervised experience shall be clearly identified to clients and payors as trainees.

Section 4. An applicant [Applicants] for licensure as a psychological practitioner [practitioners] shall complete the equivalent of five (5) full-time years of psychological practice under the direct supervision of a licensed psychologist approved by the board, consistent with the requirements of 201 KAR 26:171.

(1) For purposes of this requirement, a candidate shall [must] complete the equivalent of five (5) full-time years of supervised experience from the date of initial credentialing as a psychological associate, with a full-time year comprising at least 1,600 hours of supervised experience.

(2) A school psychologist who is [School psychologists who are] employed in a Kentucky school system, credentialed by the Professional Standards Board, and also credentialed as a psychological associate [associates] by this board, may contract for ongoing clinical supervision in the school setting with a board-approved licensed psychologist who is neither an employee nor a contractor of the school system.

(3) The supervised experience shall meet the requirements of this administrative regulation and may be used by the licensed psychological associate employed by the school system to meet the requirements for application to become a licensed psychological practitioner.

(4) To fulfill the requirements of 201 KAR 26:171, there shall be an explicit written plan approved by the board between the school system, the school psychologist, and the board-approved supervisor which delineates roles and responsibilities, not restricting the ability of the school district to direct or control the activities of its employee.

(5) A person [Persons] trained in school psychology, if employed by an agency other than a public school or engaged in practice outside of the school setting, shall [must] obtain clinical supervision in the manner specified by 201 KAR 26:171.

ROBERT J. ILLBACK, Psy.D., Chair
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KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
(As Amended at ARRS, January 8, 2002)

201 KAR 26:200. Definitions of terms used by the Board of Examiners of Psychologists for meeting educational requirements for licensure as a licensed psychologist.

RELATES TO: KRS 319.050
STATUTORY AUTHORITY: KRS 319.032
NECESSITY, FUNCTION, AND CONFORMITY: Certain terms are included in the statutory regulating educational requirements for applicants for a credential [psychologists]. This administrative regulation defines those terms as they relate to licensed psychologists.

Section 1. [In order to qualify as a licensed psychologist,...]

Section 2. A doctoral degree in psychology shall be [must]:

(1) A doctoral degree from a recognized institution of higher learning as defined in this administrative regulation; [above]; and

(2) The program, wherever it may be administratively housed, is clearly identified by the granting institution as a psychology program. The program shall [Such a program must] specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists [graduate];

(3) An dissertation required for the degree is psychological in method and content and an expected product of doctoral training in psychology; and

(4) The program stands as a recognizable, coherent, organized
entity within the institution; [and]
(5) Within the psychology faculty there is clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines; [and]
(6) The program is an integrated, organized sequence of study; [and]
(7) There is an identifiable psychology faculty and a psychologist responsible for the program; [and]
(8) The program has an identifiable body of students who are matriculated in that program for a degree; and
(9) In areas of training for health service providers, [clinical, counseling, and/or research; psychology] the program includes educational experiences with titles such as practicum, internship or field training.

Section 2. (1) In determining the acceptability of curricular experiences and course work, the following factors shall be considered:

(a) The curriculum shall encompass a minimum of three (3) academic years of full-time graduate study.
(b) In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following content areas. This typically will be met by including a minimum of three (3) or more graduate semester hours (five (5) or more graduate quarter hours) in each of these four (4) areas:

1. Biological bases of behavior, including the subject matters of [such as] physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology;
2. Cognitive-affective bases of behavior, including the subject matters of [such as] learning, thinking, motivation, emotion;
3. Social bases of behavior, including the subject matters of [such as] social psychology, group process, organizational psychology, and systems;
4. Individual differences, including the subject matters of [such as] personality theory, human development, abnormal psychology.

(c) In addition to the core program, the curriculum shall include appropriate coursework as determined by the board in the specialty area of training. For candidates who seek health service provider designation, that [such as] training shall include [including] specific training in [and] diagnosis and assessment of individual/organizational differences and the design and implementation of appropriate intervention techniques, e.g., psychotherapy, counseling, consultation, etc.

(2) The applicant shall provide any documentation required by the board in the manner and form prescribed by the board to confirm compliance with or satisfaction of the requirements of this law.

(3) At the discretion of the board, any deficiency in course work or other requirements may be corrected by appropriate remedial work.

Section 3. A regionally accredited educational institution means accreditation by any one (1) of the following: Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, and Western Association of Schools and Colleges.

Section 4. Accreditation means accreditation by one (1) of the aforementioned associations at Level 4 (doctoral degree granting accreditation) or at Level 5 (graduate or professional degree granting accreditation).

ROBERT J. ILLBACK, Psy.D., Chair
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implementation of appropriate intervention technique, e.g. psychotherapy, counseling, consultation, etc.

(2) [443] The applicant shall provide any documentation required by the board in the manner and form prescribed by the board to confirm compliance with or satisfaction of the requirements of this law.

(3) [123] At the discretion of the board, any deficiency in course work or other requirements may be corrected by appropriate remedial work.

Section 3. A regionally accredited educational institution means accreditation by any one (1) of the following: Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Colleges and Schools, and Western Association of Colleges and Schools.

Section 4. Accreditation means accreditation by one (1) of the aforementioned associations at Level 3 (master's degree granting accreditation).

ROBERT J. ILLBACK, Psy.D., Chair
APPROVED BY AGENCY: November 13, 2001
FILED WITH LRC: November 14, 2001 at 10 a.m.

KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
(As Amended at ARRS, January 8, 2002)


RELATES TO: KRS 310.022(a)(a), 319.050, 319.053, 319.064
STATUTORY AUTHORITY: KRS 310.022(a)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.032(a)(1) requires the board to promulgate an administrative regulation establishing the examination requirements for an applicant for licensure [or certification]. KRS 319.050(1) and 319.064(1)(c) require an applicant to successfully complete the required examination prior to licensure [or certification]. This administrative regulation establishes the examination requirements.

Section 1. Definitions. (1) The written examination shall be the Examination for Professional Practice in Psychology (EPPP) developed by the ASPPP examination contractor and owned by the Association of State and Provincial Psychology Boards. Prior to [Between April 1, 2001 and] April 1, 2002, applicants may choose either the computerized delivery or paper-and-pencil form. After April 1, 2002, the board shall publish instructions which include the schedule for administration of the examination.

(a) For those applicants taking a paper-and-pencil form of the EPPP in 2001-2002, the board shall publish instructions which include the schedule for administration of the examination.

(b) For those taking the computerized EPPP examination, the board shall publish instructions which include the schedule for administration of the examination.

(2) The oral examination shall be structured to cover ethical principles, professional practice and Kentucky mental health law.

Section 2. General Requirements. (1) An applicant for examination shall:
(a) Submit a completed application as required by 201 KAR 26:155, Section 1, and 201 KAR 26:121, Section 2; and
(b) Pay the applicable fee established in 201 KAR 26:160.

(2) Once the application has been approved by the board, the applicant shall [must] sit for the examination within sixty (60) days of the date on the authorization-to-test letter. Applicants may sit for the examination at any approved ASPPP examination center testing center in the United States, U.S. Territories and Canada, but shall register and pay for only one (1) administration.

(3) Failure to take the examination within sixty (60) days of the authorization-to-test date shall lead to a forfeiture of application fees and necessitate a reapplication to the board.

(4) If an applicant loses eligibility to sit for the EPPP because of failure to reschedule, cancel or appear to take the examination as stated in subsection (2) of this section:
(a) The applicant shall forfeit all fees paid; and
(b) Any temporary license issued to the applicant shall be terminated on the scheduled date of the examination. The board shall publish pertinent instructions and establish the examination schedule which shall include the:
(a) Place;
(b) Time; and
(c) Final date by which the board shall have received the applicant's materials.

(2)(a) An applicant for examination shall:
1. Submit a complete application as required by 201 KAR 26:155, Section 1, and
2. Pay the applicable fee established in 201 KAR 26:160.

(b) Once the application has been approved by the board, the applicant shall be scheduled to take the examination at the next regularly scheduled date.

(3)(a) If an applicant fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, including illness or death in the immediate family, the examination shall be deferred until the next regularly scheduled date without forfeiture of the examination fee. A temporary license or certificate issued to the applicant shall remain in effect if an examination is deferred pursuant to this subsection.

(b) If an applicant fails to appear for or to complete the examination without a valid reason:
(a) The applicant shall forfeit all fees paid; and
(b) A temporary license or certificate issued to the applicant shall be terminated on the scheduled date of the examination.

(5)(a) If an applicant fails to appear for a second regularly scheduled examination without presenting a valid reason in writing, including illness or death in the immediate family, the application shall be denied.

(b) The applicant shall be denied licensure or certification on the basis of failure of the examination by default.

Section 3. [2] Examination for Licensure as a Licensed Psychologist with the Health Service Provider Designation. (1) The application for licensure shall:
(a) Submit a written examination as required in subsection (2) of this section; and
(b) The applicant shall complete an examination as required in subsection (6) of this section.

(2) On the EPPP, the written examination shall be the Examination for Professional Practice in Psychology (EPPP) developed by the Professional Examination for Psychology Board of the Association of State and Provincial Psychology Boards. The applicant shall obtain an ASPPP recommended passing score for licensure of seventy (70) percent (raw score of 140 on the paper and pencil form and 140 on the computerized EPPP form) or 500 on the computerized EPPP scaled score of 500. The applicant shall be notified by the board of the score as well as the passing or failing the examination.

(a) Pursuant to KRS 310.032(5) [319.050(1)], an applicant for licensure as a licensed psychologist who has been approved to sit for the objective examination (EPPP) and whose supervisory arrangement has been approved by the board shall be considered to be functioning under a temporary license until all requirements for licensure have been completed.

(b) If an applicant for licensure as a licensed psychologist fails the EPPP (objective) examination, the candidate shall reapply to the board, pay the appropriate fees and be deemed eligible by the board to be permitted another sixty (60) day eligibility period. Failure to take the EPPP within sixty (60) days of the authorization-to-test letter will lead to a forfeiture of fees and necessitate a reapplication to the board. [with payment of the required fee, be rescheduled to take the examination at the next regularly scheduled date].

(c) The candidate shall continue to function under the supervision of the board-approved supervisor until:
1. The written and oral examinations are successfully completed; or
2. The temporary license is terminated.
(b) The candidate shall not be scheduled for the oral examination until the objective examination (EPPP) has been successfully passed and the required two (2) years of supervised experience has been approved by the board.

(5) If an applicant for licensure as a licensed psychologist fails the oral examination, the board shall, upon the development of a remediation plan acceptable to the board, reissue the temporary license to function under supervision until the results of the next examination are known. A temporary license shall not be renewed by the board more than two (2) times.

(6) An applicant for licensure as a licensed psychologist shall submit to a structured oral examination administered by two (2) licensed psychologists approved by the board.

(a) This examination shall cover ethical principles, professional practice and Kentucky Mental Health Law. The applicant shall demonstrate an acceptable level of knowledge in each of the three (3) areas in order to pass the examination.

(b) If the examiner shall independently rate the candidate's performance.

(c) The applicant shall demonstrate an acceptable level of knowledge in each of the three (3) areas in order to pass the examination.

(6) An applicant who receives a pass rating from each of the [two (2)] examiners shall have successfully passed the oral examination.

(7) If the applicant fails the first oral examination, the applicant may reapply with a remediation plan.

(a) Upon completion of the remediation plan approved by the board, the applicant shall be administered an oral examination by a second team composed in the same manner as the first team.

(b) If the second oral examination is failed, the applicant may reapply with a remediation plan approved by the board.

(c) Upon completion of the approved remediation plan, the applicant shall be administered an examination by a team of the licensed psychologist members of the board and appointed examiners as needed.

(d) A majority of the examining team shall rate the applicant as having passed in each of the three (3) areas in order to pass the examination.

If the applicant for licensure as a licensed psychologist fails to pass the examination, and wishes to apply to be credentialed as a licensed psychological associate [for certification], a completed application [for certification] and the appropriate fee, as required by 201 KAR 28:160, shall be submitted with the proposed area of competency and supervision indicated. The board shall accept the applicant's previous examination results to satisfy the [certification] requirements as to criteria level and area of competency.

Section 4. Examination for Licensure as a Licensed Psychological Practitioner. (1) The applicant shall pass:

(a) A written examination in accordance with subsection (2) of this section unless the applicant's previous examination results for the EPPP examination satisfied the doctoral licensure requirement as to criterion level at the time of that examination; and

(b) An oral examination in accordance with subsection (5) of this section.

(2) On the EPPP, the applicant shall obtain an ASPPB recommended passing score for licensure of seventy (70) percent (raw score of 140 on the paper-and-pencil form until April 1, 2002) or computerized EPPP scaled score of 500. The applicant shall be notified by the board of the score, as well as of passing or failing the examination.

(3) Pursuant to KRS 319.050(3), an applicant for licensure as a licensed psychological practitioner who has been approved to sit for the objective examination (EPPP) shall continue to be supervised until all requirements for licensure as a licensed psychological practitioner have been completed.

If an applicant for licensure as a licensed psychological practitioner fails the EPPP examination, the candidate may reapply to the board, pay the appropriate fees and be deemed eligible by the board to be permitted another sixty (60) day eligibility period. Failure to take the EPPP within sixty (60) days of the authorization-to-test letter will lead to a forfeiture of fees and necessitate a reapplication to the board.

(a) The candidate shall continue to function under the supervision of the board-approved supervisor until the written and oral examinations are successfully completed.

(b) The candidate shall not be scheduled for the oral examination until the objective examination (EPPP) has been successfully passed and the required five (5) years of supervised experience or its equivalent have been approved by the board.

(5) An applicant for licensure as a licensed psychological practitioner shall submit to a structured oral examination administered by an examination team consisting of at least one (1) licensed psychologist and either a certified psychologist with autonomous function or a licensed psychologist practicing primarily in mental health law. The applicant shall demonstrate an acceptable level of knowledge in each of the three (3) areas in order to pass the examination.

(6) Each examiner shall independently rate the applicant's performance, using the same criteria as the oral examination for licensed psychologists.

(c) An applicant who receives a pass rating from each of the examiners shall have successfully passed the oral examination.

(6) If the applicant fails the first oral examination, the applicant may reapply and shall be administered an oral examination by a second team composed in the same manner as the first team.

(7) If the applicant fails the second oral examination, the examiner shall reapply and shall be administered an oral examination by a team of the licensed members of the board and appointed examiners as needed. A majority of the examining team shall rate the applicant as having passed in each of the three (3) areas in order to pass the examination.

Section 5. [Section 3.] Examination for Licensure [Certification] as a Psychological Associate. (1) The [an applicant for certification as a psychologist associate shall submit to an examination composed of the Examination for Professional Practice in Psychology (EPPP), developed by the Professional Examination Service and owned by the Association of State and Professional Psychology Boards. The] applicant shall obtain on the EPPP a passing score of sixty (60) percent (raw score of 120 on the paper-and-pencil form until April 1, 2002) or computerized scaled score of 460. The applicant shall be notified of the score, as well as of passing or failing the examination by the board. A score equal to or greater than passage of sixty (60) percent of the test items.

(2) Pursuant to KRS 319.064(3) [22], an applicant for certification as a licensed psychological associate who has been approved to sit for examination and whose supervisory arrangement has been approved by the board shall be considered to be functioning under a temporary license [ isset forth the results of the next regularly scheduled examination are known.

(3) If an applicant for licensure as a psychological associate [certification] fails the examination, the board shall, upon the development of a remediation plan acceptable to the board, reissue the temporary license [certificates] to function under supervision until the results of the next regularly scheduled examination are known. A temporary license [certificates] shall not be renewed by the board more than two (2) times.

(4) If an applicant for certification fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date without forfeiture of the examination fee and with the approved application still constituting a temporary certificate to function under supervision.

(6) If an applicant for certification fails to appear for or to complete the examination without a valid reason, the applicant shall forfeit all fees paid. The approved application shall no longer constitute a temporary certificate and the applicant for certification shall not practice psychology, or use the title 'Psychologist' or 'Psychological Associate.'

ROBERT J. ILLBACK, Psy.D., Chair
APPROVED BY AGENCY: November 13, 2001
FILED WITH LRC: November 14, 2001 at 10 a.m.
VOLUME 28, NUMBER 8 – FEBRUARY 1, 2002

KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
(As Amended at ARRS, January 8, 2002)


RELATES TO: KRS 319.032(1)(b), (f), 319.064(5) [44]
STATUTORY AUTHORITY: KRS 319.032(1)(b), (f)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(j) requires the board to promulgate an administrative regulation governing the supervision and employment of a licensed psychological associate. KRS 319.064(5) [44] prohibits a licensed psychological associate from practicing independently, except under the employment and supervision of a board-approved licensed psychologist. This administrative regulation establishes the requirements for the employment of a licensed psychological associate.

Section 1. Employment of a licensed psychological associate by a regional mental health/mental retardation board, college or university, or government agency shall not be considered independent practice.

Section 2. A licensed psychological associate may be employed in a supervisor’s independent practice, if the supervisor is responsible for the direction and control of the practice of the licensed psychological associate.

Section 3. A special application [italic] shall: (1) Be submitted to the board by the [a] supervisor of record and a licensed psychological associate if: (a) The licensed psychological associate is employed in an independent practice; and (2) The supervisor of record is not the employer; or (b) The employer is not an organization listed in Section 1 of this administrative regulation; (2) Be approved by the board before the practice begins; (3) Identify the licensed psychological associate, supervisor, and employer; and (4) Certify that: (a) The supervising licensed psychologist is not hired, employed or engaged under contract by the licensed psychological associate and shall not be terminated by the licensed psychological associate; (b) The licensed psychological associate is not one of the owners of the independent practice or organization, but rather serves as an employee; and (c) The licensed psychological associate has both administrative and clinical supervision which are provided by the independent practice or organization. (5) The arrangement described in the application shall [must] be approved by the board before the practice begins.

Section 4. A licensed psychological associate who works as an employee for more than one (1) independent practice or organization shall obtain approval from the board of a supervisor of record for each independent practice or organization and shall comply with 201 KAR 26:171 for approval to have more than two (2) supervisors of record.

Section 5. In all communications and advertising with the public, the licensed psychological associate’s relationship with the employer and the supervisor shall be clearly indicated.

Section 6. The licensed psychological associate and the supervisor shall comply with the requirements for supervision established in 201 KAR 26:171.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Examiners of Psychology, 700 Louisville Road, Berry Hill Annex, Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT J. ILLBACK, Psy.D., Chair
APPROVED BY AGENCY: November 13, 2001
FILED WITH LRC: November 14, 2001 at 10 a.m.

KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
(As Amended at ARRS, January 8, 2002)

201 KAR 26:270. Change of credential status.

RELATES TO: KRS 319.053, 319.056
STATUTORY AUTHORITY: KRS 319.032(1)(c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032 requires the board to promulgate administrative regulations to enable persons credentialed by this board to change their credential status upon completion of additional training and experience. This administrative regulation establishes procedures to enable credential holders to change their credential status.

Section 1. Change of Credential Status to Licensed Psychologist. (1) If a person holds a credential as a certified psychologist with or without autonomous functioning, as a licensed psychological practitioner or as a licensed psychological associate and later completes the educational and supervised experience requirements to apply for licensed psychologist status, a new and complete application for licensure shall be submitted with an approved application fee as required by 201 KAR 26:155 and 201 KAR 26:160. (2) The board shall accept the applicant’s previous examination results for the objective (EPPP) examination if the original test score satisfies the doctoral licensure requirement as to criterion level. (3) If the previous EPPP score does not satisfy the requirements of subsection (2) of this section, the applicant shall successfully complete the written portion of the examination as described in 201 KAR 26:230. (4) The oral portions of the examination shall be successfully completed by the applicant as described in 201 KAR 26:230.

Section 2. Change of Credential Status to Licensed Psychological Practitioner by Certified Psychologists with Autonomous Functioning. (1) Persons holding a credential as a certified psychologist with autonomous functioning may continue to function with that title. (2) Any certified psychologist with autonomous functioning may notify the board in writing of their choice to permanently change their title to "licensed psychological practitioner". (3) The board shall then issue a new license with that title.

Section 3. Change of Credential Status to Licensed Psychological Practitioner by Certified Psychologists and Psychological Associates. (1) If a person holds a credential as a certified psychologist without autonomous functioning or as a licensed psychological associate and later completes the educational and supervised experience requirements to apply for licensed psychological practitioner status, a new and complete application for licensure shall be submitted with an approved application fee as required by 201 KAR 26:155 and 201 KAR 26:160. (2) The board shall accept the applicant’s previous examination results for the objective (EPPP) examination if the original test score satisfies the doctoral licensure requirement as to criterion level at the time of that examination. (3) If the previous EPPP score does not satisfy the requirements of Section 1(2) of this administrative regulation, the applicant shall successfully complete the written portion of the examination as described in 201 KAR 26:230. (4) The oral portions of the examination shall be successfully completed by the applicant as described in 201 KAR 26:230.

Section 4. Change of Credential Status to Licensed Psychological Associate by Certified Psychologists. (1) Persons holding a credential as a certified psychologist may continue to function with that title. (2) At the time of renewal of their credential, any certified psychologist may notify the board in writing of their choice to permanently change their title to "licensed psychological associate". (3) The board shall then issue a new license with that title.
Section 5. Change of Credential Status to Licensed Psychological Associate by Certified Psychological Associates. (1) Persons holding a credential as a psychological associate shall use the title licensed psychological associate.

(2) The board shall issue a new license with that title.

ROBERT J. ILLBACK, Psy.D., Chair
APPROVED BY AGENCY: November 13, 2001
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KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
(As Amended at ARRS, January 8, 2002)

201 KAR 26:280. Licensed psychological associate: application procedures and temporary license.

RELATES TO: KRS 319.064
STATUTORY AUTHORITY: 319.032(1)(a), (c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychological associate. This administrative regulation establishes the requirements for applicants for licensure, and the conditions for a temporary license.

Section 1. Application. (1) An application for a credential to perform certain functions as a licensed psychological associate may be submitted after the requirements established in KRS 319.064(2)(c)-(h) are met.

(2) The application required by subsection (1) of this section for this subsection shall be made by submitting a completed Form Psy-1 to the board. The application shall:

(a) Include a certification by the applicant that the:
   1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and
   2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:
   1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:150;
   2. Three (3) letters of reference from persons qualified to evaluate the applicant's professional ability, including two (2) persons who have received a doctorate in psychology (Ph.D. Psy.D., or Ed.D.); and
   3. An official transcript for all levels of education required for licensure.

Section 2. Temporary Licensure. (1) An applicant may request permission to perform functions as a licensed psychological associate on a temporary basis pursuant to KRS 319.064(3)(c). (2) The request for a temporary credential shall [must] be co-signed by the candidate and the proposed supervisor, who shall [must] be a licensed psychologist approved by the board and who holds the health services provider designation.

(3) The period of temporary licensure shall be terminated upon successful completion of all credentials and examination procedures or if the candidate fails to pass the EPPP within one (1) year of the date of the authorization-to-test letter after approval for temporary license.

Section 3. Grace Period for Submission of Credentials. In order to allow for processing of the candidate's materials by the board, there shall be a grace period not to exceed sixty (60) days within which candidates who have completed their degree requirements may begin employment by an agency to practice psychology under supervision with a board-approved supervisor.

(1) Upon acceptance of employment, the candidate and the licensed psychologist who shall serve as the supervisor shall [will serve as their supervisor must] immediately submit a letter of notice to the board indicating that he or she has begun to practice in Kentucky and that application materials are forthcoming. Failure to submit this notice may be deemed as grounds for disciplinary action against the candidate and the supervisor.

(2) It is the responsibility of the candidate to ensure that all materials are forwarded to the board within thirty (30) days from the date of agency employment. Once the application is complete, the board will review the material at its next scheduled meeting and, if appropriate, issue either a temporary or permanent credential. If the candidate does not meet the requirements for the credential, or if their application material is insufficient to take any action, he or she shall [will] be directed to cease practice until the requirements are met.

[Under no circumstances shall] The grace period shall not be extended beyond sixty (60) days. A candidate who fails to achieve approval within this timeframe shall not practice psychology until credentialed by the board.

(4) Upon filing the notice set forth in subsection (1) of this section, the candidate is deemed to be practicing psychology under the jurisdiction of the board, and is subject to all relevant laws and regulations.

ROBERT J. ILLBACK, Psy.D., Chair
APPROVED BY AGENCY: November 13, 2001
FILED WITH LRC: November 14, 2001 at 10 a.m.

KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
(As Amended at ARRS, January 8, 2002)

201 KAR 26:290. Licensed psychological practitioner: application procedures.

RELATES TO: KRS 319.053
STATUTORY AUTHORITY: 319.032(1)(a), (c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.053 requires the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychological practitioner. This administrative regulation establishes the requirements for applicants.

Section 1. Application. (1) An application for a credential as a licensed psychological practitioner may be submitted on form Psy-1, as incorporated in 201 KAR 26:155, after the requirements established in KRS 319.053(1)(b) of Section 5 are met.

(2) An application for a credential to perform functions as a licensed psychological practitioner may be submitted after the requirements established in KRS 319.053 are met.

(3) The application shall:

(a) Include a certification by the applicant that the:
   1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and
   2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:
   1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:150;
   2. Three (3) letters of reference from persons qualified to evaluate the applicant's professional ability, including two (2) persons who have received a doctorate in psychology (Ph.D. Psy.D., or Ed.D.); and
   3. An official transcript for all levels of education required for licensure.

Section 2. Temporary Licensure. Temporary credentials shall [will] not be issued to persons applying for a licensed psychological practitioner status. An applicant may continue to practice under board-approved supervision as a licensed psychological associate or as a certified psychologist pending successful completion of requirements for a change of status to a licensed psychological practitioner.

(1) The candidate shall obtain an acceptable score on the objective (EPPP) examination.

(a) The board shall accept the applicant's previous examination results for the objective (EPPP) examination if the original test scores satisfied the doctorate licensure requirement as to criterion level at the time of that examination or
(b) If the previous examination score does not satisfy the requirements of paragraph (a) of this subsection, the candidate shall take the Examination for Professional Practice in Psychology (EPPP) within sixty (60) days from the date on the authorization-to-test letter, which comes from the ASPBP examination contractor. Upon receipt of the application for licensure, the candidate will receive a packet of materials from the board about the EPPP which will instruct the candidate to contact the ASPBP examination contractor directly for the procedures to follow regarding test application, payment, and taking the examination.

(2) The applicant shall pass the structured oral examination established in 201 KAR 26:230, Section 4(5). [administered by the board.]

ROBERT J. ILLBACK, Psy.D., Chair
APPROVED BY AGENCY: November 13, 2001
FILED WITH LRC: November 14, 2001 at 10 a.m.

KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
(As Amended at ARRS, January 8, 2002)

201 KAR 26:300. [Definitions of terms used by the Board of Examiners of Psychologists for meeting] Educational requirements for licensure as a licensed psychological practitioner.

RELATES TO: KRS 319.053
STATUTORY AUTHORITY: KRS 319.032
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.053(1)(f) requires an applicant for licensure as a licensed psychological practitioner to document at least sixty (60) hours of graduate study in psychology or a related field acceptable to the board. This administrative regulation establishes requirements for the hours of graduate study. Certain terms are used in the statute regulating educational requirements for applicants for a credential. This administrative regulation defines those terms as they relate to licensed psychological practitioners.

Section 1. Educational Requirements. [In order to qualify as a licensed psychological practitioner, the applicant shall have been credited by the board as a certified psychologist or as a certified or licensed psychological associate.

Section 2. For the licensed psychological practitioner credential, the applicant shall have completed a minimum of sixty (60) semester hours of graduate study in psychology or a related field approved for the license established by the board.

(1) Graduate course work shall be related to psychological practice and may include independent study and distance learning. All graduate course work shall have been offered by a regionally accredited university meeting the standards described in Sections 2 and 3 of this administrative [2 and 4 of this] regulation. Continuing education credits shall not qualify to meet this requirement.

(3) At the discretion of the board, any deficiency in course work or other requirements may be corrected by appropriate remedial work.

Section 2. [3.] A regionally-accredited educational institution shall be accredited [means accreditation] by any one (1) of the following: Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, and Western Association of Schools and Colleges.

Section 3. [4.] Accreditation shall be [mean accreditation] by one (1) of the aforementioned associations at Level 3 (master's degree granting accreditation).

ROBERT J. ILLBACK, Psy.D., Chair
APPROVED BY AGENCY: November 13, 2001
individual who has fulfilled the requirements for licensure as an associate [a trainee] real property appraiser established by the board to appraise real property in connection with federally and confederally related transactions.

GEORGE K. COX, Chair
APPROVED BY AGENCY: October 19, 2001
FILED WITH LRC: November 15, 2001 at 10 a.m.

KENTUCKY REAL ESTATE APPRAISERS BOARD
(As Amended at ARRS, January 8, 2002)

201 KAR 30:030. Types of appraisers required in federally-related transactions; certification and licensure.

RELATES TO: KRS 324A.010, 324A.030, 324A.035(1), (3) to 324A.052
STATUTORY AUTHORITY: KRS 324A.035(1), (3)
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351). KRS 324A.035(1) and (3) require the board to promulgate administrative regulations for certification and licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the: (1) types of appraisers required in federally related transactions; (2) scope of the practice; and (3) general requirements for certification or licensure.

Section 1. Types of Appraisers. An appraiser for a federally related transaction shall be a:

(1) Certified general real property appraiser;
(2) Certified residential real property appraiser;
(3) Licensed real property appraiser; or
(4) Associate [Trainee] real property appraiser.

Section 2. Scope of Practice. (1) Certified general real property appraiser. A certified general real property appraiser may perform appraisals of all types of real property regardless of transaction complexity or value.

(2) Certified residential real property appraiser. A certified residential real property appraiser may perform residential appraisals of one (1) to four (4) units, regardless of transaction complexity or value, and nonresidential real property with a transaction value less than $250,000; and

(3) Licensed real property appraiser. A licensed real property appraiser may perform appraisals of:

(a) Noncomplex, one (1) to four (4) residential units with a transaction value less than $1,000,000;
(b) Complex, one (1) to four (4) residential units with a transaction value less than $250,000; and
(c) Nonresidential real property with a transaction value less than $250,000.

(4) Associate. An associate [Trainee, A trainee] real property appraiser:

1. May perform an appraisal of property that the supervising appraiser of the associate [Trainee] is permitted to appraise; and
2. Shall be subject to the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040.

(b) A separate appraisal log shall be maintained for each supervising appraiser.

(c) The associate [Trainee] shall record in the log for each appraisal the following:

1. Type of property;
2. Client name and address;
3. Address of appraised property;
4. Description of work performed;
5. Number of hours worked; and
6. Signature and state license or certification number of the supervising appraiser.

(d) The associate [Trainee] shall be entitled to obtain copies of the appraisal reports he or she prepared. The supervising appraiser shall keep copies of appraisal reports for a period of at least five (5) years or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last.

(e) The supervising appraiser shall:
1. Have been licensed or certified by the board for a period of one (1) year;
2. Be in good standing with the board; and
3. Be responsible for the training and supervision of the associate [Trainee].

(f) The supervising appraiser shall:
1. Accept responsibility for an associate’s [a trainee’s] appraisal report by signing and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040;
2. Review reports by the associate [Trainee];
3. Personally inspect each appraised property and the comparable sales with the associate [Trainee] on the [an] associate’s [the trainee’s] first fifty (50) real property appraisal assignments, to insure that the associate [Trainee] is competent and is acting in accordance with the competency provision of the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040, for the property type;
4. Allow an associate [a trainee] who has completed the fifty (50) appraisal assignments required by subparagraph 3 of this paragraph to inspect properties located within fifty (50) miles of the supervisor’s office without being accompanied by the supervisor, if the supervisor has determined that the associate [Trainee] is competent to perform an appraisal; and
5. For the twelve (12) months following the date of issuance of an associate [a trainee’s] license, accompany the associate [Trainee] and inspect each appraised property and the comparable sales on each appraisal assignment located more than fifty (50) miles from the supervisor’s office;
6. Be limited to a maximum of three (3) real property associates [trainees] at a time; and
7. Notify the board immediately when the supervision of a real property associate [trainee] has terminated.

(g) A person otherwise qualified for supervising appraiser who has been disciplined by the board under KRS 324A.050 shall be subject to one (1) or more of the following, according to the severity of the prior violation:

1. Prohibited from supervising associates [trainees];
2. Limited to the number of associates [trainees] to supervise; or
3. Be required to take additional courses approved by the board before being permitted to supervise an associate [a trainee].

(h) An associate [A trainee] shall submit to the board two (2) complete summary appraisal reports.

1. The first report shall be submitted to the board six (6) months following the date of issuance of the associate [trainee] license. The second report shall be submitted to the board twelve (12) months following the date of issuance of the associate [trainee] license.
2. If necessary to determine the competency of the associate [Trainee], the board shall request additional reports from the associate [Trainee].

Section 3. General Requirements for Certification or Licensure. Certification or licensure, as appropriate, of the types of appraisers specified in Section 1 of this administrative regulation, shall be granted if an applicant:

1. Has met the examination, education, experience, and fee requirements established by 201 KAR 30:050 and 201 KAR 30:060; and
2. Applies to the board on the "Appraiser Licensure [Licenser]/Certification Application [Form]."

Section 4. Incorporation by Reference. (1) "Appraiser Licensure [Licenser]/Certification Application KREAB Form APP100 - Revised 1/02 (September 2000)" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 1025 Capital Center Drive, Suite 100, Frankfort, Kentucky 40601-8205, (502) 573-0091, Monday through Friday, 8 a.m. to 4:30 p.m.
KENTUCKY REAL ESTATE APPRAISERS BOARD
(As Amended at ARRS, January 6, 2002)

201 KAR 30:050. Examination, education, and experience requirement.

RELATES TO: KRS 324A.035(1), (3), 324A.040(2), 12 USC 3331-3351

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(3) (d), (e), and (f) require the board to establish by administrative regulations requirements for experience, examination of applicants, and continuing education of appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 USC 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the examination, education, and experience requirements for appraisers of real property in federally-related transactions.

Section 1. Examination. An applicant for certification as a certified general real property appraiser, certified residential real property appraiser, or licensed real property appraiser shall pass an examination specific for the certification or license applied for and approved by:

1. The board; and
2. The Appraiser Qualifications Board of the Appraisal Foundation.

Section 2. Required Hours of Instruction. (1) An applicant for the certified general real property appraiser examination shall have completed 180 hours of approved instruction.

(2) An applicant for the certified residential real property appraiser examination shall have completed 120 hours of approved instruction.

(3) An applicant for the licensed real property appraiser examination shall have completed ninety (90) hours of approved instruction.

(4) An applicant for a license as an associate real property appraiser shall have completed seventy-five (75) hours of approved instruction.

(5) (a) Completed hours of instruction for one (1) type of appraiser may be credited to the number of hours of approved instruction required for another type of appraiser.

(b) Required hours of instruction shall have been completed prior to examination.

(6) The required hours of instruction for every applicant shall:

(a) Include at least:
   1. Fifteen (15) hours related to the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040; and
   2. Fifteen (15) hours related to basic income; and

(b) Be completed in an orderly progression of appraisal concepts and coursework commencing with basic appraisal courses and progressing to advanced courses.

1. The initial instructional course shall cover basic principles of appraising.

2. The fifteen (15) hours of instruction on the Uniform Standards of Professional Appraisal Practice shall not be taken until after the instructional course covering basic principles of appraising has been completed.

Section 3. Approved Instruction. Approved instruction for certified general real property appraisers, certified residential real property appraisers, and licensed real property appraisers shall be subjects related to real estate appraisal that:

1. Include coverage of the "Uniform Standards of Professional Appraisal Practice" of the Appraisal Standards Board of the Appraisal Foundation, incorporated by reference in 201 KAR 30:040; and

2. For licensed real property appraisers and certified residential real property appraisers, place particular emphasis on the appraisal of one (1) to four (1) unit residential properties;

3. For certified general real property appraisers, place particular emphasis on the appraisal of nonresidential properties; and

4. Include coverage of:
   (a) Influences on real estate value;
   (b) Legal consideration in appraisal;
   (c) Types of value;
   (d) Economic principles;
   (e) Real estate markets and analysis;
   (f) Valuation process;
   (g) Property description;
   (h) Highest and best use analysis;
   (i) Appraisal statistical concepts;
   (j) Sales comparison approach;
   (k) Site value;
   (l) Cost approach; and
   (m) Income approach, including:
      1. Gross rent multiplier analysis;
      2. Estimation of income and expenses;
      3. Operating expense ratios; and
      4. Direct capitalization;
      (n) Valuation of partial interests;
      (o) Appraisal standards and ethics; and
      (p) Narrative report writing.

Section 4. Credit for Instruction. (1) Credit for instruction shall be granted if:

(a) It is approved by the board;

(b) It complies with the provisions of this administrative regulation;

(c) It is documented by the applicant;

(d) It is a course that requires at least fifteen (15) hours of instruction; and

(e) The applicant has passed a written examination of the subject matter of the course.

(2) (a) Credit toward the classroom hour requirement may be granted to a teacher of appraisal courses.

(b) A teacher of appraisal courses who wishes to receive credit shall:

1. File a written request with the board for receipt of credit; and

2. Document the appraisal courses taught by title, date, place taught, and length of course;

3. Elect to receive credit for either the:
   a. Classroom hour requirement; or
   b. Experience requirement.

(3) The board shall grant credit for courses to an applicant if:

(a) The applicant received credit from the course provider by challenge examination;

(b) The credit was granted by the course provider prior to July 1, 1990; and

(c) The board is satisfied with the quality of the challenge examination administered by the course provider.

Section 5. Approved Providers of Instruction. (1) Instruction may be obtained from approved:

(a) Colleges or universities;

(b) Community or junior colleges;

(c) Real estate appraisal or real estate related organizations;

(d) State or federal agencies or commissions;

(e) Proprietary schools; or

(f) Other providers.

(2) A provider shall be approved by the board if the provider:

(a) Applies to the board for approval on the "Appraisal Education Provider Application Form"; and

(b) Is determined by the board to be a qualified appraisal education provider.

Section 6. Required Experience. (1) (a) Prior to certification as a
general real property appraiser, an applicant shall have acquired 3,000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than thirty (30) calendar months.

(b) Prior to certification as a residential real property appraiser, an applicant shall have acquired 2,500 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.

(c) Prior to licensure as a licensed real property appraiser, an applicant shall have acquired 2,000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.

(d) The appraisal experience required by this section may have been acquired in any calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(e) For certification as a general real property appraiser, at least 1,500 hours of appraisal experience shall consist of nonresidential appraisal experience.

(2)(a) An applicant shall verify experience credit in a form approved [on forms approved and provided] by the board.

(b) The board may request reports, file memoranda, and other documentation, if necessary to confirm the applicant's [of] appraisal experience.

(3) Acceptable appraisal experience shall include:

(a) Fee and staff appraisal;
(b) Ad valorem tax appraisal;
(c) Review appraisal;
(d) Appraisal analysis;
(e) Feasibility analysis or study; and
(f) Teaching of appraisal courses as provided by this section.

Section 7. Continuing Education: Number of Hours Required. [44] Certified general real property appraisers, certified residential real property appraisers, [and] licensed real property appraisers, and associate real property appraisers shall:

(1) [is] Complete fourteen (14) hours of approved continuing education each license year; and
(2) [is] Furnish the board with proof of compliance.

(2) Trainee real property appraisers who remain in this classification in excess of two (2) years shall be required in the third and successive years to:

(a) Complete fourteen (14) hours of approved continuing education before license renewal each license year; and
(b) Furnish the board with proof of compliance.

Section 8. Continuing Education. (1) Continuing education credit may be granted for:

(a) Approved continuing education courses; or
(b) [is] Participation, other than as a student, in appraisal educational programs and processes.

(2) Appraisal educational programs and processes shall include:

(a) Teaching;
(b) Program development;
(c) Authorship of textbooks; or
(d) Similar activities that are determined by the board to be equivalent to obtaining continuing education.

(3) Continuing education credit shall be granted if a course:

(a) Is at least two (2) hours in duration;
(b) Subject ensures that an appraiser's skill, knowledge, and competency in real estate appraisal will be maintained or increased; and
(c) Has been approved by the board.

(4) Application for continuing education credit shall be submitted to the board in writing and documented by the approved provider of instruction.


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Real Estate Appraisers Board).

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GEORGE K. COX, Chair
APPROVED BY AGENCY: October 19, 2001
FILED WITH LRC: November 15, 2001 at 10 a.m.

KENTUCKY REAL ESTATE APPRAISERS BOARD
(As Amended at ARRS, January 8, 2002)

201 KAR 30:110. Appraiser roster, transmission, fees, deletions, notification, and hearing.


STATIONS AUTHORITY: KRS 324A.020, 324A.065(1)(d), (2)(d), 12 USC 3338(a)(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.020 authorizes the board to provide a list of certified appraisers to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. The Appraisal Subcommittee of the Federal Financial Institutions Examination Council requires the board to maintain a roster of all licensed and certified appraisers. This administrative regulation establishes requirements relating to the roster of appraisers. This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, (12 USC 3331 through 12 USC 3354), to set standards, and to protect the public.

Section 1. The board shall maintain a roster of licensed real property appraisers, certified residential real property appraisers and certified general real property appraisers.

Section 2. The board shall transmit the roster to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council at least annually.

Section 3. The board shall collect an annual roster fee of twenty-five (25) dollars from each licensed real property appraiser, certified residential real property appraiser and certified general real property appraiser.

Section 4. The board shall transmit to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council the appropriate roster fees at least annually.

Section 5. (1) The board shall delete from its roster the name of any certified real property appraiser, certified residential real property appraiser, or certified general real property appraiser, who has been deleted from the roster maintained by the Federal Financial Institutions Examination Council's Appraisal Subcommittee.

(2) The board shall notify each licensed real property appraiser, certified residential real property appraiser, or certified general real property appraiser whose name it intends to delete from its roster of its intent, in writing, to the address on record with the board, at least fifteen (15) days before the board takes that action.

(3) Upon the written request of the licensed real property appraiser, certified residential real property appraiser, or certified general real property appraiser whose name the board intends to delete from the roster, the board or its designee shall conduct a hearing limited to the issue of whether the Federal Financial Institutions Examination Council's Appraisal Subcommittee has in fact deleted the [said] name from its federal roster.

GEORGE K. COX, Chair
APPROVED BY AGENCY: October 19, 2001
FILED WITH LRC: November 15, 2001 at 10 a.m.

KENTUCKY REAL ESTATE APPRAISERS BOARD
(As Amended at ARRS, January 8, 2002)

201 KAR 30:130. Standards for education approval - fees.

RELATES TO: KRS 324A.035(3)(d), (f), 12 USC 3331-3351

STATIONS AUTHORITY: KRS 324A.035(3)(d), (f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) and (f) require the board to establish requirements for education and continuing education of appraisers. This administrative regulation establishes the requirements for approval of education courses for real estate appraisers. This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, (12 USC 3331 through 12 USC 3354), to set standards, and to protect the public.

Section 1. (1) To qualify for education or continuing education credit, each real estate appraisal education course shall be approved by the board in advance, in accordance with this administrative regulation.

(2) Each education provider shall apply for approval by submitting a completed "Application for Course Approval". All real estate appraisal education courses, offered after July 1, 1994, in order to qualify for education credit or continuing education credit, shall be approved by the board in advance.

(3) Each education provider shall apply for approval on the "Application for Course Approval" revised May 1991. This application form is hereby incorporated by reference and may be obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 1205 Capital Center Drive, Suite 100, Frankfort, Kentucky 40601-8205, telephone: (502) 573-0061, FAX: (502) 573-0062, Research Park Drive, Room 308, Lexington, Kentucky 40511-8480, telephone: (606) 246-2017, Monday through Friday, 8 a.m. to 4:30 p.m.

(4) Board approval shall be given to those education courses which the board finds will provide competent instruction in real estate appraisal so as to establish, maintain and increase the student's skill, knowledge and competency in real estate appraisal.

(5) The board shall collect an annual nonrefundable fee from each education provider applying for board approval. The fee shall be:

(a) $100 for each sixteen (16) hour or less education course;

(b) Fifty (50) dollars for each two (2) hour continuing education course, and the fee shall be nonrefundable.

Section 2. Incorporation by Reference. (1) "Application for Course Approval, May 1991" is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 1205 Capital Center Drive, Suite 100, Frankfort, Kentucky 40601-8205, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE K. COX, Chair
APPROVED BY AGENCY: October 19, 2001
FILED WITH LRC: November 15, 2001 at 10 a.m.

DEPARTMENT OF AGRICULTURE
Division of Animal Health
(As Amended at ARRS, January 8, 2002)

302 KAR 20:240. Mycobacterium paratuberculosis (Johnne's).

RELATES TO: KRS Chapter 257

STATIONS AUTHORITY: KRS 257.020, 257.030(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.030 authorizes the board to order and enforce the cleaning and disinfection of premises and all articles and materials by which communica-
ble diseases may be transmitted, and the destruction of diseased and exposed animals, property, and materials. This administrative regulation establishes a voluntary procedure to prevent, control, and eradicate mycobacterium paratuberculosis (Johnne's) for bovine and bison.

Section 1. Definitions. (1) "Bovine" or "bison" means a sexually intact male or female bovine or bison twelve (12) months of age or older designated to be used for breeding.

(2) "Herd" means all bovine and bison animals that:
(a) Are maintained on common grounds under common ownership or supervision, including an animal which may be geographically segregated; and
(b) Have interchange or movement of animals without regard to health status.

(3) "Herd known to be infected with mycobacterium paratuberculosis" means a herd in which bovine, bison, or other animals on the premises have been determined to be infected with mycobacterium paratuberculosis by an official mycobacterium paratuberculosis epidemiologist or state veterinarian.

(4) "Johnne's" means a contagious, infectious and communicable disease caused by mycobacterium paratuberculosis bacteria.

(5) "Management agreement plan" or "MAP" means a plan voluntarily agreed to by the herd owner, designated herd veterinarian, and the Department of Agriculture or state veterinarian that is designed to qualify the herd as mycobacterium paratuberculosis free.

(6) "Negative herd" means a herd that tested negative to an official mycobacterium paratuberculosis test that was given to classify animals in the herd for participation in a voluntary management agreement plan.

(7) "Official ear tag" means an identification ear tag approved by the Animal Plant Health Inspection Service (APHIS) as being tamper-resistant and providing unique identification for each animal. An official ear tag may conform to the alphanumeric National Uniform Ear Tagging System, or may bear a valid premises identification number that is used in conjunction with the producer's livestock production numbering system to provide a unique identification number.

(8) "Individual animal identification" means a set of identifying characters which is uniquely associated with an individual animal, and which consists of one (1) of the following:
(a) The animal's official ear tag number;
(b) The animal's breed association tattoo;
(c) The animal's breed association registration number; or
(d) A registration freeze brand number which uniquely identifies the animal.

(9) "Official mycobacterium paratuberculosis epidemiologist" means a state or federal veterinarian that is designated by the state veterinarian and the federal veterinarian in charge to investigate, diagnose, and make recommendations concerning an animal affected with mycobacterium paratuberculosis.

(10) [463] "Official mycobacterium paratuberculosis test" means a serological test, fecal culture, DNA probe, or other test that is:
(a) Approved by the state veterinarian for the diagnosis of mycobacterium paratuberculosis; and
(b) Licensed or approved by the United States Department of Agriculture and the Kentucky Department of Agriculture.

(11) [463] "Positive animal" means an animal:
(a) Which has given a positive or suspect reaction to an official serology test or culture positive for the mycobacterium paratuberculosis organism; or
(b) In which the mycobacterium paratuberculosis organism has been found in:
1. The body of the animal; or
2. The body discharge of the animal.

Section 2. Voluntary Herd Participants. (1) The herd owner shall submit a written application requesting the herd be enrolled in a voluntary herd MAP for the control and eradication of mycobacterium paratuberculosis.

(2) The herd owner shall present all eligible animals for inspection and testing and shall provide adequate records to ensure implementation of the herd MAP.

(3) The herd owner shall officially identify all animals upon implementation of a voluntary herd MAP and shall officially identify all natural additions to the herd within seven (7) days following birth.

(4) The herd owner shall maintain adequate fencing to prevent contact with:
(a) A positive animal; or
(b) An animal with an unknown Johnne's disease status.

(5) The herd owner shall notify his veterinarian of all new additions to the herd.

(6) The herd owner shall follow all the guidelines and requirements of the herd MAP. The state veterinarian, the herd owner, and the veterinarian in charge of the herd plan shall approve changes in the herd MAP.

(7) The herd veterinarian, herd owner, official mycobacterium paratuberculosis epidemiologist, and state veterinarian shall develop a mycobacterium paratuberculosis MAP.

(8) The herd veterinarian shall:
(a) Advise the owner in implementing the herd MAP;
(b) Submit to the Office of the State Veterinarian, Division of Animal Health, a copy of the herd MAP; and
(c) Keep the state veterinarian informed of all MAP changes.

(9) The herd veterinarian shall conduct each quarterly on-site evaluation of the MAP including all management procedures and facilities. These evaluations shall be reported to the state veterinarian. One (1) of the quarterly inspections shall be conducted in the presence of a Board of Agriculture agent designated by the state veterinarian.

(10) The herd veterinarian shall collect samples or specimens that may be necessary to implement the herd MAP. A state or federal approved laboratory shall conduct the tests.

(11) The state veterinarian shall maintain a record of official individual animal identification, a record of all test results, a register of herds enrolled in MAP, and the herd mycobacterium paratuberculosis status.

(12) In an agreement with the herd owner and the designated herd veterinarian, the state veterinarian may provide assistance in implementing a MAP and shall review and approve all mycobacterium paratuberculosis MAP.

(13) The state veterinarian shall conduct a minimum of one (1) annual herd inspection.

(14)(a) The register for herds enrolled in a voluntary Johnne's program shall be public information.
(b) Information regarding herd test history or current Johnne's herd status shall not be public information.

Section 3. Test Requirements. (1) A herd known to be infected with mycobacterium paratuberculosis within the last five (5) years shall be tested as follows:
(a) All animals twenty (20) months of age or older shall have blood collected and a fecal culture for an official mycobacterium paratuberculosis test.

(b) A negative herd blood test and negative fecal culture may qualify the herd to be designated as a Phase III herd and the herd may then be classified as a mycobacterium paratuberculosis (Johnne's) test negative herd.

(c) To maintain a Johnne's test negative herd, the herd shall have:
1. An annual herd test of all animals twenty (20) months of age or older; and
2. A fecal culture conducted every third year.
(d) If a Johnne's positive animal is classified, the herd shall be tested following the requirements established in Section 3(2) of this administrative regulation.

(2) A herd known to be infected with mycobacterium paratuberculosis within the last five (5) years shall be treated as follows:
(a) All animals twenty (20) months of age or older shall have blood collected for an official mycobacterium paratuberculosis test.

(b) All animals twenty (20) months of age or older are positive to an official serology test shall:
1. Have a fecal culture for Johnne's; and
2. If removal of the animal is requested after a positive official serology test, the animal shall be "J" punched as set out in paragraph (c) of this subsection and consigned to slaughter only if the animal is to be slaughtered for home consumption, it shall be
slaughtered in an approved state or federal facility; and (c)
3. Not [No animal which has tested positive to an official serology test shall remain on the premises without being fecal culture tested for Johnne's, immediately be removed from the herd, and sent to slaughter.]
(c) A Johnne's fecal culture positive animal shall be immediately and permanently identified by punching the letter "J" through the left ear of the animal along with placement of an official ear tag, if an official ear tag is not already in place. The "J" punch shall be performed by an agent of the board of agriculture as designated by the state veterinarian. An animal so identified shall be consigned to slaughter when removed from the premises. [Isolated and sold for slaughter] The herd shall be eligible for a second herd test six (6) months after the last known Johnne's positive animal has been removed from the herd. The official mycobacterium paratuberculosis epidemiologist and state veterinarian shall determine which tests shall be conducted based on the herd's Johnne's prevalence and risk classification.
(d) A complete herd test of all animals twenty (20) months of age or older shall be conducted at six (6) month intervals until the age is classified as a Johnne's test negative herd.
(3) Johnne's herd risk classification.
(a) A herd with a Johnne's infection rate greater than five (5) percent shall be considered a "high risk" herd.
(b) The herd risk classification shall determine the types of test required to establish a Johnne's test negative herd. The official mycobacterium paratuberculosis epidemiologist and the state veterinarian shall determine test requirements.
(4) Herd addition test requirements.
(a) An animal twenty (20) months of age or older shall have a negative serology test result within thirty (30) days prior to change of ownership.
(b) A fecal sample shall be submitted for mycobacterium paratuberculosis culture within fifteen (15) days following the animal's introduction to the premises. An animal shall be isolated until the fecal culture has been completed and reported by the laboratory.
(c) Six (6) months post introduction into the herd, the animal shall be tested for Johnne's by serology.
(d) Twelve (12) months post introduction into the herd, the animal shall be tested for Johnne's by serology and fecal culture.
Section 4. Procedures for implementing a Mycobacterium Paratuberculosis MAP. The mycobacterium paratuberculosis MAP shall include:
(1) Phase I. Introductory to mycobacterium paratuberculosis MAP.
(a) A clean separate calving area shall be provided for each cow. The area shall be cleaned and disinfected following each calving.
(b) The udder shall be washed prior to calving and care shall be taken to remove all fecal material.
(c) The calf shall be removed from the dam immediately following calving and placed in a clean facility. A calf shall not nurse the "J".
(d) The udder shall be cleaned and disinfected prior to collecting colostrum for the initial feeding.
1. Except as provided in subparagraph 2 of this paragraph, colostrum shall:
   a. Be pasteurized; or
   b. Originated from a cow that has had two (2) negative tests at not less than six (6) month intervals.
2. For an older calf, pasteurized milk or commercial milk replacement shall be used.
(e) Caution shall be taken to prevent feed contamination. Clean feeding equipment shall be used.
(f) An individual hut or pen shall be used to house a calf. A calf housing facility shall be separate from the adult cattle. A calf shall not have exposure to adult cattle feed material.
   (g) Clean bedding shall be used. Caution shall be taken to prevent the introduction of manure into the calf housing facility by footwear, equipment, or other means. All clothing shall be changed and equipment cleaned and disinfected prior to entering the calf housing area.
   (h) A calf shall be housed and pastured in a designated Johnne's disease free area. A winter housing area shall be separate and apart from the adult herd.
(i) Clean Johnne's free water shall be provided.
   (j) The water source shall originate from developed tanks or free-flowing streams.
   (k) A stagnant pool shall be fenced to prevent livestock entry.
   (l) If it is not practical to separate the calves, the cows shall calve in a large, clean, open pasture area. Cows shall not be brought together or restricted to a small designated area if calving.
   (m) The requirements established in this subsection shall have been implemented and approved by the official mycobacterium paratuberculosis epidemiologist and the state veterinarian. The herd shall participate in Phase I for twelve (12) months.
(2) Phase II. Advanced mycobacterium paratuberculosis MAP.
(a) Mycobacterium paratuberculosis test protocol shall be implemented and all test eligible animals presented for test and culture.
(b) A classified Johnne's positive animal shall be isolated and sold for slaughter.
(c) Offspring from an animal with clinical mycobacterium paratuberculosis symptoms shall be removed from the herd:
   1. Immediately; or
   2. Prior to eighteen (18) months of age.
   (d) An animal with symptoms of mycobacterium paratuberculosis shall be immediately isolated and tested. The requirements established in Section 3(2)(a), (b), and (c) of this administrative regulation shall be completed.
(3) Phase III.
(a) A Phase III herd shall be a herd which has:
   1. Been a qualified Phase II herd for twenty-four (24) months or more:
   2. Had four (4) consecutive negative herd tests of all eligible animals at not less than six (6) month intervals.
   (b) To maintain a Johnne's test negative herd, the herd shall have an annual negative herd test of all eligible animals between ten (10) and twelve (12) months of the herd's Johnne's test negative anniversary date.
Section 5. Loss of Johnne's Test Negative Status. (1) Detection of mycobacterium paratuberculosis by a laboratory procedure shall constitute a suspension of the mycobacterium paratuberculosis negative herd status. The herd shall be removed from the Johnne's test negative herd registry.
(2) If there is a loss of Johnne's test negative herd status, reestablishment shall be granted after two (2) negative herd tests of all eligible animals have been conducted at six (6) months and twelve (12) months following the loss of Johnne's negative herd status.
(3) If a purchased addition causes a loss of Johnne's negative herd test status, the state veterinarian, the official mycobacterium paratuberculosis epidemiologist, the herd veterinarian and the owner shall amend the MAP for reinstatement of mycobacterium paratuberculosis Johnne's test negative herd status.
Section 6. Proper Test and Culture Payment. If available, the Kentucky Department of Agriculture shall provide funds for laboratory mycobacterium paratuberculosis (Johnne's) test culture for a herd enrolled in a MAP. Enrollment in a MAP shall be a requirement for payment of the initial test.
Section 7. Incorporation by Reference. (1) "Kentucky Department of Agriculture, Johnne's Herd Management Agreement Plan (MAP) (801 edition) is incorporated by reference.
(2) It may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, 100 Fair Oaks Lane [600 Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
BILLY RAY SMITH, Commissioner
MARK FARROW, General Counsel
APPROVED BY AGENCY: November 13, 2001
FILED WITH LRC: November 13, 2001 at 2 p.m.
VOLUME 28, NUMBER 8 – FEBRUARY 1, 2002

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, January 8, 2002)

704 KAR 20-555, Professional certificate for college faculty: secondary education.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.048
STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048 establishes the eligibility requirements for a candidate seeking to participate in an alternative teacher preparation program. This administrative regulation establishes the requirements for and renewal of the professional certificate for college faculty: secondary education. [This administrative regulation is not required by federal law.]

Section 1. Prerequisites. (1)(a) An eligible candidate who meets the requirements of KRS 161.048(4)(a) and (b) shall be issued a statement of eligibility for the professional certificate for college faculty: secondary education valid for five (5) years.

(b) Application for the statement of eligibility for the professional certificate for college faculty: secondary education shall be made on Form TC-194.

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on the statement of eligibility, the professional certificate shall be issued.

(3) Upon successful completion of the Kentucky Teacher Internship Program as provided in KRS 161.030 and 704 KAR 20-690, the professional certificate for college faculty: secondary education shall be issued, valid for an additional four (4) years.

Section 2. Renewal. Each five (5) year renewal of the professional certificate for college faculty: secondary education, shall require:

(1) Three (3) years of successful classroom teaching experience; or

(2) Six (6) semester hours of additional graduate credit.

Section 3. Equivalent College Teaching Experience. (1) Ninety (90) semester credit hours taught at the postsecondary level at a regionally- or nationally-accredited institution of higher education shall be accepted as the equivalent of five (5) years of full-time teaching experience.

(2) The ninety (90) hours of college teaching experience may:

(a) Be accumulated at more than one (1) institution of higher education; and

(b) Include part-time teaching or adjunct teaching positions.

(3)(g) A full-time faculty member’s experience at a regionally- or nationally-accredited institution of higher education may include the following activities in lieu of regular full-time teaching experience as established in subsection (1) of this section:

1. Action research;
2. Service to the P-12 schools; or
3. Other activities undertaken as part of a full-time faculty member’s assigned responsibilities at the institution of higher education.

(b) The head of the faculty member’s unit shall verify the validity of the experiences or responsibilities in this subsection in lieu of regular full-time teaching load on a per semester basis.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Monday through Friday, 8 a.m. to 4:30 p.m.

JOE EARLY, Chair
APPROVED BY AGENCY: November 14, 2001
FILED WITH LRC: November 15, 2001 at 8 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Department of Insurance
Financial Standards and Examinations Division
(As Amended at ARRS, January 8, 2002)


RELATES TO: KRS 304.12-170, 15 USC 6801 to 6810 [at sec. 2], the Gramm-Leach-Bliley Act
STATUTORY AUTHORITY: KRS 304.2-110, [304.12-170, 15 USC 6801(b), 6805 [et seq.], the Gramm-Leach-Bliley Act
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. The Gramm-Leach-Bliley Act, 15 USC 6801(b) and 6805 [et seq.] require [et seq. require] state insurance commissioners to establish standards for insurers, agencies and agents to safeguard the security and confidentiality of consumer records and information. [The Gramm-Leach-Bliley Act, 15 USC 6801 et seq., applies to insurers, brokers, and agents; this administrative regulation applies to all entities regulated by the Department of Insurance.] 15 USC 6801 to 6810 [et seq.] applies to financial institutions engaging in financial activities such as "insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for the purpose of the foregoing, in any State." 12 USC 1843(k)(4)(B).

This administrative regulation extends the application to protect individuals "who obtain or are claimants or beneficiaries of products or services primarily for personal, family, or household purposes from licensees" in harmony with the regulations of the federal functional regulators. This stricter standard will hold all Kentucky licensees to the same standard, protect the privacy of Kentucky citizens, and promote uniformity of state insurance administrative regulations since this administrative regulation was based on a national model adopted by the National Association of Insurance Commissioners, and all states are imposing similar standards by statute or regulation. The federal law does not prohibit financial institutions from discriminating against individuals who have used their right to opt out or refused to grant authorization to disclose nonpublic personal financial information. This administrative regulation is stricter in that it protects Kentucky citizens who choose [choose] to use their rights to opt-out of disclosure from discrimination. This administrative regulation establishes security requirements for an insurer’s, agency’s or agent’s use of consumers’ financial information.

Section 1. Definitions. (1) "Affiliate" means a company that controls, is controlled by, or is under common control with another company.

(2) "Annually" means at least once in a period of twelve (12) consecutive months during which a customer relationship exists.

(3) "Clear and conspicuous" means that a notice that is reasonably understandable and designed to call attention to the nature and significance of information in the notice.

(4) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(5) "Commissioner" is defined in KRS 304.1-050(1).

(6) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship, or similar organization.

(7) "Consumer" means:

(a) An individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about which the licensee has nonpublic personal information; or

(b) That individual’s legal representative.

(8) "Consumer reporting agency" is defined in 15 USC 1681a(f) of the federal Fair Credit Reporting Act.

(9) "Continuing relationship" means a relationship between
a customer and a licensee if:
(a) The consumer is a current policyholder of an insurance product issued by or through the licensee; or
(b) The consumer obtains financial, investment, or economic advisory services relating to an insurance product or service from the licensee for a fee.

(10) "Control" means:
(a) Ownership, control, or power to vote twenty-five (25) percent or more of the outstanding shares of any class of voting security of the company, or acting through one (1) or more other persons;
(b) Control over the election of a majority of directors, trustees, or general partners, or individuals exercising similar functions of the company; or
(c) The power to exercise a controlling influence over the management or policies of the company.

(11) "Controlled" means a consumer who has a customer relationship with a licensee.

(12) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one (1) or more insurance products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(13) "Designated to call attention" means that the notice:
(a) Uses a plain-language heading to call attention to the notice;
(b) Uses a typeface and type size that are easy to read;
(c) Provides wide margins and ample line spacing;
(d) Uses boldface or italics for key words; and
(e) Is in a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(f) If a licensee provides a notice on an Internet web page, "designated to call attention" means that the notice uses text or visual cues to encourage scrolling down the page to view the entire notice, if necessary, and ensures that other elements on the web site do not distract attention from the notice, and the licensee neither:
1. Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or
2. Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(14) "Financial institution" means any institution engaging in activities that are financial in nature or incidental to financial activities as described in 12 USC 1843(k).

(15) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to a financial activity described in 12 USC 1843(k).

(16) "Former customer" means an individual with whom a licensee no longer has a continuing relationship.

(17) "Insurance product or service" means any product or service that is offered by a licensee, pursuant to KRS Chapter 304.

(18) "Joint agreement" means a written contract pursuant to which a licensee and one (1) or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

(19) "Licensee" means all insurers holding a certificate of authority, licensed producers, companies, or business entities licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the Kentucky Insurance Code, KRS Chapter 304.

(20) "Necessary to effect, administer, or enforce a transaction" means that the disclosure is:
(a) Required, or is one (1) of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or
(b) Required, or is a usual, appropriate, or acceptable method:
1. To carry out the transaction, the product, or the service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the insurance product or service;
2. To administer or service benefits or claims relating to the transaction, product, or service business of which it is a part;
3. To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;
4. To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;
5. To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance:
   a. Account administration;
   b. Reporting;
   c. Investigating or preventing fraud or material misrepresentation;
   d. Processing premium payments;
   e. Processing insurance claims;
   f. Administering insurance benefits, such as utilization review activities;
   g. Participating in research projects; or
   h. As otherwise required or specifically permitted by federal or state law; or
6. In connection with:
   a. The authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check or account number, or by other payment means;
   b. The transfer of receivables, accounts, or interests; or
   c. The audit of debit, credit, or other payment information.

(21) "Nonaffiliated third party" means any person who is not:
(a) A licensee's affiliate; or
(b) Employed jointly by a licensee and a company that is not the licensee's affiliate.

(22) "Nonpublic personal financial information" means:
(a) Personally-identifiable financial information; and
(b) Any list, description, or other grouping of consumers, and publicly-available information pertaining to them that is derived using personally-identifying financial information that is not publicly available.

(23) "Opt out" means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 15, 16, and 17 of this administrative regulation.

(24) "Personally-identifiable financial information" means information:
(a) That a consumer provides to a licensee to obtain an insurance product or service from the licensee;
(b) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or
(c) That the licensee otherwise obtains about a consumer in connection with providing an insurance product or service to a consumer.

(25) "Publicly-available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:
(a) Federal, state, or local government records;
(b) Widely-distributed media; or
(c) Disclosures to the general public that are required to be made by federal, state, or local law.

(26) "Reasonable basis" to believe that information is lawfully made available to the general public means the licensee has taken steps to determine:
(a) That the information is the type that is available to the general public; and
(b) Whether an individual may direct that the information not be made available to the general public and, if so, that the
licensee's consumer has not done so.

(27) "Reasonably understandable" means a notice:

(a) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

(b) Uses short explanatory sentences or bullet lists, if possible;

(c) Uses definite, concrete, everyday words and active voice, if possible;

(d) Avoids multiple negatives;

(e) Avoids legal and highly technical business terminology, if possible; and

(f) Avoids explanations that are imprecise and readily subject to different interpretations.

Section 2. This administrative regulation governs the treatment of nonpublic personal financial information about individuals by all licensees of the state insurance department. This administrative regulation:

(1) Requires a licensee to provide notice to individuals about its privacy policies and practices;

(2) Describes the conditions under which a licensee may disclose nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties;

(3) Provides methods for individuals to prevent a licensee from disclosing that information; and

(4) Applies to nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This administrative regulation shall [exclude] not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes.

Section 3. (2) A licensee domiciled in this state that is in compliance with this administrative regulation in a state that has not enacted laws or regulations that meet the requirements of 15 USC 6801 [Subchapter I of Chapter 4D] of the Gramm-Leach-Bliley Act [15 USC 6801 et seq.], may [nonetheless] be deemed to be in compliance with 15 USC 6801 to 6810 [Subchapter I of Chapter 4D] of the Gramm-Leach-Bliley Act in such other state.

Section 4. (3) The examples and sample clauses in the material incorporated by reference are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, shall constitute [satisfy] compliance with this administrative regulation.

[Section 4 Definitions. (1) "Affiliate" means any company that controls, is controlled by, or is under common control with another company.

(2) "Clear and conspicuous" means that a notice is reasonably understandable and designed to bring the nature and significance of the information in the notice.

(3) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual irrespective of the source of the underlying information.

(4) "Commissioner" means the insurance commissioner of the Commonwealth of Kentucky.

(5) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

(6) "Consumer" means an individual who seeks to obtain, obtains or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, or that individual’s legal representative. An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service, regardless of whether the licensee establishes an ongoing advisory relationship.

(7) "Application for insurance prior to the inception of insurance coverage;"

(8) "An individual subject to disclosure by a licensee of nonpublic personal financial information to a nonaffiliated third party, other than as permitted under Sections 14, 15 and 16 of this administrative regulation; if:

1. The individual is a beneficiary of a life insurance policy underwritten by the licensee;

2. The individual is a claimant under an insurance policy issued by the licensee;

3. The individual is an insured or an annuitant under an insurance policy or an annuity issued by the licensee;

4. The individual is a mortgagee of a mortgage covered under a mortgage insurance policy.

(2) An individual is not a "consumer" of an insurer solely on the basis that:

(a) An individual is a consumer of another financial institution and the licensee is acting as agent for, or providing processing or other services to, that financial institution;

(b) An individual is a beneficiary of a trust for which the licensee is a trustee;

(c) An individual has designated the licensee as trustee for a trust;

(d) Provided that the licensees provides the initial, annual and revised notice under Sections 5, 6 and 9 of this administrative regulation to the plan administrator or blanket insurance policyholder or group annuity contract holder, workers compensation plan participant, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal information about such an individual other than as permitted under Sections 14, 15 and 16.

(3) A participant or a beneficiary of an employee benefit plan that the licensees administers on behalf of or for which the licensee acts as a trustee, insurer or fiduciary;

2. Covered under a group or blanket insurance policy or group annuity contract issued by the licensee, or


(a) The individual described in paragraph (d) through (i) of this subsection is a consumer if the insurer does not meet the conditions of paragraph (d) of this subsection.

(b) In no event shall the licensee, solely by virtue of the status described in paragraph (d) through (i) of this subsection, be deemed to be the consumer for purposes of this administrative regulation.

(4) "Consumer reporting agency" has the same meaning as in Section 603(1) of the federal Fair Credit Reporting Act (15 USC 1681a(f)).

(5) "A consumer has a "continuing relationship" with a licensee if:

(a) The consumer is a current policyholder of an insurance product issued by or through the licensee; or

(b) The consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

(c) A consumer does not have a "continuing relationship" with a licensee if:

1. The consumer applies for insurance, but does not purchase the insurance;

2. The licensee sells the consumer airline travel insurance in an isolated transaction;

3. The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

4. The consumer is a beneficiary or claimant under a policy and has submitted a claim under that policy, selecting a settlement option involving an ongoing relationship with the licensee;

5. The consumer is a beneficiary or claimant under a policy and has submitted a claim under that policy, selecting a lump sum settlement option;

6. The customer's policy has lapsed, expired, or is otherwise inactive and the claim is related to the customer's business practices, and the claims of the customer have not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or federal authority, or promotional materials;

7. The individual is an insured or an annuitant under an insurance policy or an annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or
8. For the purposes of this administrative regulation, the individual's last-known address, according to the licensee's records, is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

10. "Control" means:
(a) Ownership, control or power to vote twenty-five (25) percent or more of the outstanding shares of any class of voting stock of the company, directly or indirectly, or acting through one or more other persons;
(b) Control, in any manner, over the election of a majority of the directors, trustees or general partners, or individuals exercising similar functions of the company; or
(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

11. "Customer" means a consumer who has a customer relationship with a licensee.

12. "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one (1) or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes.

13. "Designed to call attention" means that the notice:
(a) Uses a plain language heading to call attention to the notice;
(b) Uses a typeface and type size that are easily to read;
(c) Provides wide margins and ample line spacing;
(d) Uses boldface or italics for key words; and
(e) In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

14. "Financial institution" means any institution engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 USC 1843(k)).

15. "Insurance institution" does not include:
(a) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 USC 1 et seq.);
(b) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 USC 2001 et seq.);
(c) Institutions chartered by Congress specifically to engage in securities, secondary market sales, including sales of servicing rights, or similar transactions related to a transaction of a consumer, as long as the institution does not sell or transfer nonpublic personal information to a nonaffiliated party.

16. "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such financial activity under Section 4(k) of the Bank Holding Company Act of 1956 (12 USC 1843(k)). A financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

17. "Insurance product or service" means any product or service that is offered by a licensee under the insurance laws of Kentucky. An insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

18. "Licensee" means all insurers holding a certificate of authority, licensed producers and other persons, companies or business entities licensed or required to be licensed, or authorized or required to be authorized, to engage in any activity that is financial in nature or incidental to such financial activity under Section 4(k) of the Bank Holding Company Act of 1956 (12 USC 1843(k)). The principal officer or officers of the company, or other person exercising similar functions, that is required to be licensed pursuant to KRS Chapter 304, but shall not include registered service contract marketers as defined in 800-KAR 5:060.

19. "Nonaffiliated third party" means any person except:
(a) A licensee's affiliate;
(b) A person employed jointly by a licensee and any company that is not the licensee's affiliate, however, "nonaffiliated third party" includes the other company that jointly employs the person;
(c) Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Section 4(k)(1)(B) of the federal bank holding company act as described in Sections 4(k)(4)(C) of the federal bank holding company act (12 USC 1843(k)(4)(C)) and (4)(C).

20. "Nonpublic personal financial information" means:
(a) Personally identifiable financial information;
(b) Any list, description or grouping of consumers, and publicly available information pertaining to them, that is derived using any personally identifiable financial information, that is not publicly available, including any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.
(c) Nonpublic personal financial information does not include:
1. Health information;
2. Publicly available information, except as included on a list described in paragraph (b) of this subsection;
3. Any list, description or grouping of consumers and publicly available information pertaining to them that is derived without using any personally identifiable financial information, that is not publicly available, including any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information, that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.


22. "Personally identifiable financial information" means any
b. The individual is a claimant under an insurance policy issued by the licensee;

c. The individual is an insured or annuitant under an insurance policy or an annuity issued by the licensee; or

d. The individual is a mortgagor of a mortgage covered under a mortgage insurance policy.

(b) An individual shall not be a "consumer" solely on the basis that:

1. An individual is a consumer of another financial institution and the licensee is acting as agent for, or provides processing or other services to, that financial institution;

2. An individual is a beneficiary of a trust for which the licensee is a trustee;

3. An individual has designated the licensee as trustee for a trust;

(c) An individual shall not be a "consumer" solely based on the status listed in subparagraph (2a) through (c) of this paragraph, if:

1. The licensee provides the initial, annual, and revised notices under Sections 6, 7, and 10 of this administrative regulation to the plan sponsor, group, or blanket insurance policyholder or group annuity contract holder, workers' compensation plan participant; and

2. The licensee does not disclose to a nonaffiliated third party nonpublic personal financial information, other than as permitted under Sections 15, 16, and 17 of this administrative regulation, about an individual who is:

a. A participant or a beneficiary of an employee benefit plan that the licensor administers or sponsors or for which the licensor acts as a trustee, insurer, or fiduciary;

b. Covered under a group or blanket life insurance policy or group annuity contract issued by the licensor; or

c. A beneficiary in a workers' compensation plan.

(d) The individual described in paragraph (c)(2a) through (c) of this subsection shall be consumers of a licensee if the licensor fails to meet all the conditions of paragraph (c)(1) and (2) of this subsection.

(2) Nonpublic personal financial information.

(a) "Nonpublic personal financial information" shall include any list of individuals' names and street addresses that is derived in whole or in part using personally-identifiable financial information that is not publicly available, such as account numbers.

(b) "Nonpublic personal financial information" shall not include:

1. Health information;

2. Publicly-available information, except as included on a list described in Section 6(2)(b) of this administrative regulation or paragraph (a) of this subsection; or

3. Any list, description, or other grouping of consumers and publicly-available information pertaining to them that is derived without using any personally-identifiable financial information that is not:

a. Publicly available, including any list of individuals' names and addresses that contains only publicly-available information;

b. Derived in whole or in part using personally-identifiable financial information that is not publicly available; and

c. Disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(3) "Nonaffiliated third party" shall include:

(a) Any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in 12 USC 1843(k)(4)(H) and (I) of the Federal Bank Holding Company Act; and

(b) A company that is not the licensee's affiliate that jointly employs a person who is also employed by the licensee.

(4) "Financial institution" shall not include:

(a) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under 7 USC 1 to 27 of the Commodity Exchange Act;
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(b) The federal Agricultural Mortgage Corporation or any entity charged and operating under 12 USC 2001-2279cc of the Farm Credit Act of 1971; or

(c) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales, including sales of servicing rights, or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(5) "Financial service" shall include a financial institution’s evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(6) "Insurance service" shall include a licensee’s evaluation, brokerage, or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

(7) Personally-identifiable financial information.

(a) "Personally-identifiable financial information" shall include:

1. Information a consumer provides to a licensee on an application to obtain an insurance product or service;

2. Account balance information and payment history;

3. The fact that an individual is or has been one of the licensee’s customers or has obtained an insurance product or service from the licensee;

4. Any information about the licensee’s consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee’s consumer;

5. Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

6. Any information the licensee collects through an Internet cookie, an information-collecting device from a web server; and

7. Information from a consumer report.

(b) "Personally-identifiable financial information" shall not include:

1. Health information;

2. A list of names and addresses of customers of an entity that is not a financial institution; and

3. Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(8) Licensee.

(a) A licensee shall not be subject to the notice and opt-out requirements for nonpublic personal financial information established in this administrative regulation if the licensee is an employee, agent, or other representative of another licensee, the "principal", and

1. The principal otherwise complies with, and provides the notices required by, the provisions of this administrative regulation; and

2. The licensee does not disclose any nonpublic personal financial information to any person other than the principal or its affiliates in a manner permitted by this administrative regulation.

(b) Subject to paragraph (a) of this subsection, "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed surplus broker in Kentucky, but only in regard to the surplus lines placements placed pursuant to KRS 304.10.

(c) A surplus lines broker or surplus lines insurer shall be in compliance with the notice and opt-out requirements for nonpublic personal financial information established in this administrative regulation if:

1. The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 15 of this administrative regulation, except as permitted by Section 16 or 17 of this administrative regulation; and

2. The broker or insurer delivers a notice to a consumer when a customer relationship is established on which the following is printed in sixteen point type:

"PRIVACY NOTICE - NEITHER THE U.S. BROTHERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROTHERS OR INSURERS EXCEPT AS PERMITTED BY LAW."

(d) A licensee shall not include registered service contract makers as defined in 806 KAR 5:060.

(9) Continuing relationship. A consumer shall not be deemed to have a continuing relationship with the licensee if:

(a) The consumer applies for insurance but does not purchase the insurance;

(b) The licensee sells the consumer airline travel insurance in an isolated transaction;

(c) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(d) The consumer is a beneficiary or claimant under a policy and has submitted a claim under that policy choosing a settlement option involving an ongoing relationship with the licensee;

(e) The consumer is a beneficiary or claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

(f) The customer’s policy has lapsed, expired, or is otherwise inactive or dormant under the licensee’s business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or administrative regulation, communication at the direction of a state or federal authority, or promotional materials;

(g) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

(h) The individual’s last known address according to the licensee’s records is deemed invalid. An address of record shall be deemed invalid if mail sent to that address by the licensee is returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual are unsuccessful.

Section 6. Initial Privacy Notice to Consumers Required. (1) Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

(a) Customer. An individual who becomes the licensee’s customer not later than when the licensee establishes a customer relationship, except as provided in subsection (5) of this section; and

(b) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 16 and 17 (15 and 16) of this administrative regulation.

(2) When initial notice to a consumer is not required. A licensee shall not be required to provide an initial notice to a consumer under subsection (1)(b) of this section if:

(a) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 16 and 17 (15 and 16) of this administrative regulation; and

(b) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

(3) When the licensee establishes a customer relationship.

(a) General rule. A licensee establishes a customer relationship when (at the time) the licensee and the consumer enter into a continuing relationship.

(b) Establishing customer relationship examples are contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.
(4) Existing customers. If [When] an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of subsection (1) of this section as follows:

(a) The licensee may provide a revised policy notice, under Section 10 [of this administrative regulation] that covers the customer's new insurance product or service; or

(b) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee shall not be required to provide a new privacy notice under subsection (1) of this section.

(5) Exceptions to allow subsequent delivery of notice.

(a) A licensee may provide the initial notice required by subsection (1)(a) of this section within a reasonable time after the licensee establishes a customer relationship if:

1. Establishing the customer relationship is not at the customer's election;

2. Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(b) Examples of exceptions are contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

(6) Delivery. When a licensee is required to deliver an initial private notice by this section, the licensee shall deliver it according to Section 11 [40] of this administrative regulation. If the licensee uses a short-form initial notice for noncustomers according to Section 8 [2](4) of this administrative regulation, the licensee may deliver its privacy notice according to Section 8 [2](4)(c) of this administrative regulation.

Section 7. [6.] Annual Privacy Notice to Customers Required.

(1)(a) General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. [Annually means at least once in any period of twelve (12) consecutive months, during which that relationship exists.] A licensee may define the twelve (12) consecutive month period, but the licensee shall apply it to the customer on a consistent basis.

(b) An example of an annual privacy notice is contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

(2)(a) Termination of customer relationship. A licensee shall not be [is not] required to provide an annual notice to a former customer. [A former customer is an individual with whom a licensee no longer has a continuing relationship.]

(b) Examples of customer terminations are contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

(3) Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 11 [40] of this administrative regulation.

Section 8. [7.] Information to be Included in Privacy Notices. (1) General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 6, 7, and 10 [5-6 and 9] of this administrative regulation shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(a) The categories of nonpublic personal financial information that the licensee collects;

(b) The categories of nonpublic personal financial information that the licensee discloses;

(c) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under Sections 16 and 17 [45 and 46] of this administrative regulation;

(d) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about nonpublic personal financial information to a nonaffiliated third party under Section 15 [44] of this administrative regulation, except no other exception in Sections 16 and 17 [15 and 16] of that administrative regulation applies to that disclosure, a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(e) An explanation of the consumer's right under Section 12 [44] of this administrative regulation to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(f) Any disclosures that the licensee makes under 15 USC 1681a(d)(2)(A)(iii) [Section 503(d)(2)(A)(iii)] of the federal Fair Credit Reporting Act, [35 USC 1681a(d)(2)(A)(iii)] notices regarding the ability to opt out of disclosures of information among affiliates; and

(g) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(i) Any disclosure that the licensee makes under subsection (2) of this section.

(2) Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections 16 and 17 [45 and 46] of this administrative regulation, the licensee shall be required to list those exceptions in the initial or annual privacy notices required by Sections 6 and 7 [5 and 4] of this administrative regulation. If [When] describing the categories of parties to whom disclosure is made, the licensee shall [is required to] state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(3) Examples. (a) Categories of nonpublic personal financial information that the licensee collects. A licensee shall satisfy [satisfy] the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

1. Information from the consumer;

2. Information about the consumer's transactions with the licensee or its affiliates;

3. Information about the consumer's transactions with nonaffiliated third parties; and

4. Information from a consumer reporting agency.

(b) Categories of nonpublic personal financial information a licensee discloses. A licensee shall satisfy [satisfy] the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in subparagraph 3 of this paragraph, as applicable, and provides a few examples to illustrate the types of information in each category. These may [might] include:

a. Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and Social Security number;

b. Transaction information, such as information about balances, payment history and parties to the transaction; and

c. Information from consumer reports, such as a consumer's creditworthiness and credit history.

2. A licensee shall not [does not adequately] categorize the information that it discloses by using [in the licensee use] only general terms, such as transaction information about the consumer.

3. If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

(c) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

1. A licensee shall satisfy [satisfy] the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers
if the licensee identifies the types of businesses in which they engage.

2. Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term "financial services" if it includes appropriate examples of significant lines of business, such as life insurer, automobile insurer, consumer banking or securities brokerage.

3. A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

4. Disclosures under exception for service providers and joint marketers. If the licensee discloses nonpublic personal financial information under the exception in Section 15 [44] of this administrative regulation to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee shall satisfy [satisfy] the disclosure requirement of subsection (1)(e) of this section if:

   a. Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of subsection (1)(b) of this section, as applicable; and

   b. States whether the third party is a service provider that performs marketing services on the licensee’s behalf or on behalf of the licensee and another financial institution; or a financial institution with whom the licensee has a joint marketing agreement.

5. Simplified notices. If a licensee does not disclose, and does not want to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections 16 and 17 [45 and 46] of this administrative regulation, the licensee may simply state that fact, in addition to the information it shall provide under subsections (1)(a), (h), (i), and (2) of this section.

6. Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

   a. Describes in general terms who is authorized to have access to the information; and

   b. States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee’s policy. The licensee shall not be required to describe technical information about the safeguards it uses.

(4) Short-form initial notice with opt-out notice for noncustomers.

   a. A licensee may satisfy the initial notice requirements in Sections 6 [51](b) and 9 [52](3) of this administrative regulation for a consumer who is not a customer by providing a short-form initial notice at the same time the licensee delivers an opt-out notice as required in Section 9 [53] of this administrative regulation.

   b. A short-form initial notice shall:

      1. Be clear and conspicuous;

      2. State that the licensee’s privacy notice is available upon request; and

      3. Explain a reasonable means by which the consumer may obtain that notice.

   c. The notice shall deliver its short-form initial notice according to Section 11 [54] of this administrative regulation. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice, if a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy note according to Section 11 [54] of this administrative regulation.

   d. Examples of obtaining privacy notice are contained in the list of Sample Clauses and Examples (Edition, 11/01), PCVCY-01.

(5) Future disclosures. The licensee’s notice may include:

   a. Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

   b. Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

(6) Sample clauses. Sample clauses illustrating some of the notice content required by this section are included in the list of Sample Clauses and Examples (Edition, 11/01), PCVCY-01.

Section 9, [53] Form of Opt-out Notice to Consumers and Opt-out Methods. (1)(a) Form of opt-out notice. If a licensee is required to provide an opt-out notice under Section 12 [54](1) of this administrative regulation, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

   1. That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

   2. That the consumer has the right to opt out of that disclosure; and

   3. A reasonable means by which the consumer may exercise the opt-out right.

(b)(1) Adequate opt-out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

   a. Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in Section 8 [55](b) and (c) of this administrative regulation, and states that the consumer may [may] opt out of the disclosure of that information; and

   b. Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt-out direction would apply.

2. Reasonable opt-out means. A licensee provides a reasonable means to exercise an opt-out right if it:

   a. Designates check-off boxes in a prominent position on the relevant forms with the opt-out notice;

   b. Includes a reply form together with the opt-out notice;

   c. Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee’s web site, if the consumer agrees to the electronic delivery of information;

   d. Provides a toll-free telephone number that consumers may call to opt out.

3. Unreasonable opt-out means. A licensee does not provide a reasonable means of opting out if:

   a. The only means of opting out is for the consumer to write his or her own letter to exercise that opt-out right; or

   b. The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

4. Specific opt-out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(2) Same form as initial notice permitted. A licensee may provide the opt-out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 6 [56] of this administrative regulation.

(3) Initial notice required when opt-out notice delivered subsequent to initial notice. If a licensee provides the opt-out notice later than required for the initial notice in accordance with Section 6 [56] of this administrative regulation, the licensee shall also include a copy of the initial notice with the opt-out notice in writing or, if the consumer agrees, electronically.

(4) Joint relationships. If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt-out notice. The licensee’s opt-out notice shall explain how the licensee will treat an opt-out direction by a joint consumer.

(a) Any of the joint consumers may exercise the right to opt out. The licensee may either:

   1. Treat an opt-out direction by a joint consumer as applying to all of the associated joint consumers; or

   2. Permit each joint consumer to opt out separately.

(b) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one (1) of the joint consumers to opt

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out on behalf of all of the joint consumers.

(d) A licensee may not require all joint consumers to opt out before it implements any opt-out direction.

(e) Example of joint consumers opt out is contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

(5) Time to comply with opt out. A licensee shall comply with a consumer's opt-out direction as soon as reasonably practicable after the licensee receives it.

(6) Continuing right to opt out. A consumer may exercise the right to opt out at any time.

(7) Duration of consumer's opt-out direction.

(a) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(b) When a customer relationship terminates, the customer's opt-out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt-out direction that applied to the former relationship does not apply to the new relationship.

(8) Delivery. When a licensee is required to deliver an opt-out notice by this section, the licensee shall deliver it according to Section 11 [40] of this administrative regulation.

Section 10. [66] Revised Privacy Notices. (1) General rule. Except as otherwise authorized in this administrative regulation, a licensee shall not disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 6 [5] of this administrative regulation, unless:

(a) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(b) The licensee has provided to the consumer a new opt-out notice;

(c) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(d) The consumer does not opt out.

(2)(a) Except as otherwise permitted by Sections 15, 16, and 17 [44, 45, and 46] of this administrative regulation, a licensee shall provide a revised notice before it:

1. Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;

2. Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or

3. Discloses nonpublic personal financial information about a former consumer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt-out right regarding that disclosure.

(b) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

(3) Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section 11 [40] of this administrative regulation.

Section 11. [44] Delivery. (1) How to provide notices. A licensee shall provide any notices that this administrative regulation requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

1. Hand-delivers a printed copy of the notice to the consumer;

2. Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;

3. For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service; or

4. For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(b) Illustrations of unreasonable expectation of actual notice. A licensee shall [may] not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

1. Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

2. Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(3) Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(a) The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site;

(b) The customer has requested that the licensee refrain from sending any notice regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(4) Oral description of notice insufficient. A licensee may not provide any notice required by this administrative regulation solely by orally explaining the notice, either in person or over the telephone.

(5) Retention or accessibility of notices for customers.

(a) For customers only, a licensee shall provide the initial notice required by Section 6 [5](1)(a) of this administrative regulation, the annual notice required by Section 7 [6](1) of this administrative regulation, and the revised notice required by Section 10 [9] of this administrative regulation so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(b) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

1. Hand-delivers a printed copy of the notice to the customer;

2. Mails a printed copy of the notice to the last known address of the customer; or

3. Makes its current privacy notice available on a web site, or a link to another web site, for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

(6) Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one (1) or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the license and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(7) Joint relationships. If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of Sections 6(1), 7(1), and 10 [9](4) of this administrative regulation, respectively, by providing one (1) notice to those consumers jointly.

Section 12. [44] Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties. (1)(a) Conditions for disclosure. Except as otherwise authorized in this administrative regulation, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

1. The licensee has provided to the consumer an initial notice as required under Section 5 of this administrative regulation;

2. The licensee has provided to the consumer an opt-out notice as required in Section 8 of this administrative regulation;

3. The licensee has given the consumer a reasonable opportunity before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

4. The consumer does not opt out.
(b) Opt-out definition. Opt-out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 14, 15 and 16 of this administrative regulation.

(c) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if it allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the consumer mailed the notices.

2. By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in paragraph (a) of this subsection to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days after the date that the consumer acknowledges receipt of the notices in conjunction with opening the account.

3. Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in paragraph (a) of this subsection and the consumer at the time of the transaction requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(2) Application of opt out to all consumers and all nonpublic personal financial information.

(a) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a custom relationship.

(b) Unless a licensee complies with this section, the licensee shall [may] not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

(3) Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

Section 13. [42.] Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information. (1)(a) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Section 16 or 17 [Sections 15 or 16] of this administrative regulation, the licensee’s disclosure and use of that information shall be [is] limited as follows:

1. The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

2. The licensee may disclose the information to its affiliates, but the affiliate’s affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

3. The licensee may disclose and use the information pursuant to an exception in Section 16 or 17 [Sections 15 or 16] of this administrative regulation, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee shall [may] disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

Section 14. [33.] Limits on Sharing Account Number Information for Marketing Purposes. (1) General prohibition on disclosure of account numbers. A licensee shall not disclose an account number, other than as a consumer reporting agency, a policy number or similar form of access number or access code for a consumer’s policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

(2) Exceptions. Subsection (1) of this section shall [does] not apply if a licensee discloses a policy number or similar form of access number or access code:

(a) To the licensee’s service provider solely in order to perform marketing for the licensee’s own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(b) To a licensee who is a producer solely in order to perform marketing for the licensee’s own products or services; or

(c) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(3) Examples.

(a) Policy number. A policy number, or similar form of access number or access code, shall [does] not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(b) Policy or transaction account. For the purposes of this section, a policy or transaction account shall be any [is an] account
other than a deposit account or a credit card account. A policy or transaction account shall [does] not include an account to which third parties cannot initiate charges.

Section 15. [44] Exception to Opt-out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing. (1) General rule. (a) The opt-out requirements in Sections 9 and 12 [8 and 14] of this administrative regulation shall [do] not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:
1. Provides the initial notice in accordance with Section 6 [5] of this administrative regulation; and
2. Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Section 16 or 17 [Sections 15 or 16] of this administrative regulation in the ordinary course of business to carry out those purposes.

(b) Example. If a licensee discloses nonpublic personal financial information to a financial institution with which the licensee has a joint marketing agreement, the licensee's contractual agreement with that institution shall meet [meet] the requirements of paragraph (a)(2) of this subsection if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in Section 16 or 17 [Sections 15 or 16] of this administrative regulation in the ordinary course of business to carry out that joint marketing.

(2) Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under subsection (1) of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one (1) or more financial institutions.

(2) Definition of "joint agreement." For purposes of this section, "joint agreement" means a written contract pursuant to which a licensee and one (1) or more financial institutions jointly offer, endorse or sponsor a financial product or service.

Section 16. [45] Exceptions to Notice and Opt-out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions. [45] Exceptions for processing transactions at consumer's request. The requirements for initial notice in Section 6 [5](b) of this administrative regulation, the opt out in Sections 9 and 12 [8 and 14] of this administrative regulation, and service providers and joint marketing in Section 15 [44] of this administrative regulation shall [do] not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:
1. [1] [1] Servicing or processing an insurance product or service that a consumer requests or authorizes;
2. [2][b][c] Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;
3. [3][e][f][g][i] A proposed or actual securitization, secondary market sale, including sales of servicing rights, or similar transaction related to a transaction of the consumer; or
4. [4][d] Reinsurance or stop loss or excess loss insurance.

Necessary to effect, administer or enforce a transaction" means that the disclosure is:
(a) Required, or is one (1) of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or
(b) Required, or is a usual, appropriate or acceptable method.

1. To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;
2. To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part.

2. To provide a confirmation statement or other record of the transaction or information on the status or value of the insurance product or service to the consumer at the consumer's agent or broker;
3. To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;
4. To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance account, administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing claims, administering insurance benefits, including utilization review activities, participating in research projects or otherwise required or specifically permitted by federal or state law; or
5. In connection with:
   (a) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number; or by other payment means;
   (b) The transfer of receivables, accounts or interests therein; and
   (c) The audit of debit, credit or other payment information.

Section 17. [46] Other Exceptions to Notice and Opt-out Requirements for Disclosure of Nonpublic Personal Financial Information. (1) Exceptions to opt-out requirements. The requirements for initial notice to consumers in Section 6 [5][1][b] of this administrative regulation, the opt out in Sections 9 and 12 [8 and 14] of this administrative regulation, and service providers and joint marketing in Section 15 [44] of this administrative regulation shall [do] not apply if [when] a licensee discloses nonpublic personal financial information as:
(a) With the consent or at the direction of the consumer, if [provided that] the consumer has not revoked the consent or direction;
(b) To protect the confidentiality or security of the licensee's records pertaining to the consumer, service, product or transaction;
(c) To protect against or prevent actual or potential fraud or unauthorized transactions;
(d) For required institutional risk control or for resolving consumer disputes or inquiries;
(e) To persons holding a legal or beneficial interest relating to the consumer;
(f) To persons acting in a fiduciary or representative capacity on behalf of the consumer;
(g) To provide information to insurance rate advisory organizations, rating agencies, trade associations, financial institutions, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;
(h) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978, 12 USC 3401 to 3422 [et seq.], to law enforcement agencies, including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 USC 5311 to 5330 [et seq.], Records and Reports on Monetary Instruments and Transactions, and 12 USC 1951 to 1959 [et seq.], Financial Recordkeeping, a state insurance authority, and the Federal Trade Commission, self-regulatory organizations or for an investigation on a matter related to public safety;
(i) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act, 15 USC 1681a to 1681u [et seq.]; or
(j) From a consumer report received by a consumer reporting agency;
(k) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;
(l) To comply with federal, state or local laws, rules and other applicable legal requirements; or
2. To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local...
authorities;
3. To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or
4. For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers’ compensation plan.
(2) Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under Section 9.42(6) of this administrative regulation.
(3) Licensees in liquidation or rehabilitation according to KRS Chapter 304.33 shall be [not] exempt from the notice provisions of this administrative regulation.

Section 18, [42] Protection of Fair Credit Reporting Act, [nothing] This administrative regulation shall not be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act, 15 USC 1681 to 1681u [ex-689a], and an [no] inference shall not be drawn on the basis of the provisions of this administrative regulation regarding whether information is transaction or experience information under 15 USC 1681a [Section 602] of the Fair Credit Reporting Act.

Section 19, [43] Nondiscrimination. A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure or has not granted authorization for the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this administrative regulation.

Section 20, [44] Violation. A violation of this administrative regulation shall constitute an unfair trade practice in the business of insurance and shall subject the licensee to a civil penalty authorized by KRS 304.58-020.

Section 21, [45] Severability. If any section or portion of a section of this administrative regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of this administrative regulation or the applicability of the provision to other persons or circumstances shall not be affected.

Section 22, [46] Effective Date. (1) Effective date. This administrative regulation is effective upon approval.
(2) Two (2) year grandfathering of service agreements. Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee’s behalf satisfies the provisions of Section 15 [44]1(1)(a)2 of this administrative regulation of this administrative regulation, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 1, 2000.

Section 23, [47] Incorporation by Reference. (1) The following material is incorporated by reference: PVCY-01, “Sample Clauses and Examples (Edition 11/01).”
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JANIE A. MILLER, Commissioner
RONALD B. MCCLOUD, Secretary
APPROVED BY AGENCY: November 13, 2001
FILED WITH LRC: November 14, 2001 at 9 a.m.
or more of the outstanding shares of any class of voting security of the company[...directly or indirectly] or acting through one (1) or more persons;

(b) Control, in any manner, over the election of a majority of the directors, trustees or general partners, or individuals exercising similar functions, of the company; or

(c) The power to exercise[...directly or indirectly] a controlling influence over the management or policies of the company[...as the commissioner determines].

(7) "Customer" means a consumer who has a customer relationship with a licensee.

(8) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides to the consumer one (1) or more insurance products or services that are to be used primarily for personal, family, or household purposes.

(9) "Health care" means preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:

(a) Relates to the physical, mental, or behavioral condition of an individual;

(b) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs, or any other tissue; or

(c) Prescribing, dispensing, or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

(10) "Health care provider" is defined in KRS 304.17A-005(19).

(11) "Health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

(a) The past, present, or future physical, mental, or behavioral health or condition of an individual;

(b) The provision of health care to an individual; or

(c) Payment for the provision of health care to an individual.

(12) "Insurer" is defined in KRS 304.1-040.

(13) "Licensee" means a licensed insurer, producer, or other person licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to KRS Chapter 304.

(14) "Nonpublic personal health information" means health information:

(a) That identifies an individual who is the subject of the information; or

(b) With respect to which there is a reasonable basis to believe that the information may [could] be used to identify an individual.

(15) "Person" is defined in KRS 304.1-020.

Section 2. Continuing Relationship. A consumer shall not be deemed to have a continuing relationship with the licensee if:

(1) The consumer applies for insurance but does not purchase the insurance;

(2) The licensee sells the consumer airline travel insurance in an isolated transaction;

(3) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(4) The consumer is a beneficiary or claimant under a policy and has submitted a claim under that policy choosing a settlement option involving an ongoing relationship with the licensee;

(5) The consumer is a beneficiary or claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

(6) The customer's policy has lapsed, expired, or is otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or administrative regulation, communication at the direction of a state or federal authority, or promotional materials;

(7) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

(8) The individual's last known address according to the licensee's records is deemed invalid. An address of record shall be deemed invalid if mail sent to that address by the licensee is returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual are unsuccessful.

Section 3. When Authorization Required for Disclosure of Nonpublic Personal Health Information. (1) A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization in compliance with Section 4 [3] of this administrative regulation is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed.

(2) Nothing in this section shall prohibit, restrict, or require an authorization for the disclosure of nonpublic personal health information by a licensee for the performance of the following insurance functions by or on behalf of the licensee:

(a) Claims administration;

(b) Claims adjustment and management;

(c) Detection, investigation, or reporting of actual or potential fraud;

(d) Misrepresentation or criminal activity;

(e) Underwriting;

(f) Policy placement or issuance;

(g) Loss control;

(h) Ratemaking and guaranty fund functions;

(i) Reinsurance and excess loss insurance;

(j) Risk management;

(k) Case management;

(l) Disease management;

(m) Quality assurance;

(n) Quality improvement;

(o) Performance evaluation;

(p) Provider credentialing verification;

(q) Utilization review;

(r) Peer review activities;

(s) Actuarial, scientific, medical or public policy research;

(t) Grievance procedures;

(u) Internal administration of compliance, managerial, and information systems;

(v) Policyholder service functions;

(w) Auditing;

(x) Reporting;

(y) Database security;

(z) Administration of consumer disputes and inquiries;

(aa) External accreditation standards;

(bb) The replacement of a group benefit plan or workers' compensation policy or program;

(cc) Activities in connection with a sale, merger, transfer, or exchange of all or part of a business or operating unit;

(dd) Any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rule which is promulgated by the U.S. Department of Health and Human Services at 45 CFR 160 to 164 [...see...];

(ee) Disclosure that is required, or is one (1) of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and

(ff) Any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process.

(3) Additional functions may be added through administrative regulations [with the approval of the commissioner] to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

Section 4. [3] Authorizations. (1) A valid authorization to disclose nonpublic personal health information pursuant to this administrative regulation shall:

(a) Be in written or electronic form; and

(b) Contain all of the following:

1. The identity of the consumer or customer who is the subject
of the nonpublic personal health information;
2. A general description of the types of nonpublic personal health information to be disclosed;
3. General descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure, and how the information will be used;
4. The name of the customer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed;
5. Notice of the length of time for which the authorization is valid, which in no event shall be for more than twenty-four (24) months; and
6. Advise the consumer or customer that he may revoke the authorization, subject to the rights of an individual who acted in reliance on the authorization prior to notice of revocation at any time, and the procedure for making a revocation.
(2) A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to this administrative regulation at any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.
(3) A licensee shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.

Section 5. [4.] Delivery of Authorization Requests. (1) A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt-out notice pursuant to KRS 304.2-110(10), if [provided that] the request and authorization form are clear and conspicuous.
(2) An authorization request form shall be delivered to the consumer or customer or included in any other notices if the licensee intends to disclose protected health information, except as permitted under Section 3 [3][2] of this administrative regulation.
(3) An authorization form shall be in compliance with Section 4 [3] of this administrative regulation.

Section 6. [5.] Relationship to Federal Rules. Irrespective of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services at 45 CFR 160 to 164 [162-164], if a licensee complies with all requirements of 45 CFR 160 to 164 [162-164], the licensee shall not be subject to the provisions of this administrative regulation.

Section 7. [6.] Relationship to Kentucky Laws. Nothing in this administrative regulation shall preempt or supersede existing Kentucky laws related to medical records, health, or insurance information privacy.

JANIE A. MILLER, Commissioner
RONALD B. MCCLoud, Secretary
APPROVED BY AGENCY: November 13, 2001
FILED WITH LRC: November 14, 2001 at 9 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARRS, January 8, 2002)


RELATES TO: KRS 304.12-020, 304.14-500 to 304.14-550
[331-334]
STATUTORY AUTHORITY: KRS 13A.310, 304.2-110(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 13A.310 requires that an administration regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation repeals 806 KAR 17:066, Medicare supplement insurance policies. 806 KAR 17:066 is no longer required because the Department of Insurance is, in its place, promulgating five (5) separate administrative regulations which will simplify the regulatory process for the consumer.

Section 1. 806 KAR 17:066 is hereby repealed.

JANIE A. MILLER, Commissioner
RONALD B. MCCLoud, Secretary
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PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARRS, January 8, 2002)

806 KAR 17:390. Benefits and disclosures in Medicare supplement insurance policies.

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-510, 304.32-250, 304.38-150
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.14-510 authorizes the Commissioner of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 authorizes the Commissioner of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS 304.12. KRS 304.38-150 authorizes the Commissioner of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS Chapter 304.38. This administrative regulation establishes minimum standards for benefits and disclosures in Medicare supplement insurance policies.

Section 1. Definitions. (1) "Activities of daily living" means activities such as bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.
(2) "Applicant" is defined in KRS 304.14-500(1).
(3) "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four (24) hour period of services provided by a care provider is one (1) visit.
(4) "Care provider" means a duly-qualified or licensed home health aide/homemaker, personal care aid, or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.
(5) "Certificate" is defined in KRS 304.14-500(2).
(6) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the insurer.
(7) "Commissioner" is defined in KRS 304.1-050(1).
(8) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.
(9) "Emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.
(10) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.
(11) "Home" means any place used by the insured as a place of residence, other than a hospital or skilled nursing facility, if the place qualifies as a residence for home health care services covered by Medicare.

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(12) "Insurance policy" means an insurance policy; a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation; and an enrollee contract issued by a health maintenance organization.

(13) "Issuer" means insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

(14) "Medicare" is defined in KRS 304.14-500(4).

(15) "Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

(16) "Medicare Select policy" or "Medicare Select certificate" means, respectively, a Medicare supplement policy or certificate that contains restricted network provisions.

(17) "Medicare supplement policy" is defined in KRS 304.14-500(3).

(18) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

(19) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

(20) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(21) "Secretary" means the Secretary of the United States Department of Health and Human Services.

(22) "Service area" means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare Select policy.

(23) "Structure, language, and format" means style, arrangement, and overall content of a benefit. [4] "Applicant" means:

(a) In the case of an individual Medicare supplement policy, the person to whom the policy or subscriber contract is issued for insurance benefits; and

(b) In the case of a group Medicare supplement policy, the proposed certificate holder.

(2) "Certificate" means any certificate delivered to or issued under a group Medicare supplement policy.

(3) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

(4) "Commissioner" is defined in KRS 304.14-500(1).

(5) "Insurance policy" means an insurance policy; a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation; and an enrollee contract issued by a health maintenance organization.

(6) "Issuer" means insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

(7) "Medicare" means health insurance for the aged and disabled under 42 USC 1395 et seq.

(8) "Medicare Select policy" or "Medicare Select certificate" means respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(9) "Medicare supplement policy" means a group or individual policy of insurance; a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation; or an enrollee contract issued by a health maintenance organization, other than a policy issued pursuant to a contract under 42 USC 1395 et seq. or an issued policy under a demonstration project specified in 42 USC 1395cc(1)(b), which is advertised, marketed, or designed primarily as a supplement to reimbursement under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare.

(10) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

(11) "Secretary" means the Secretary of the United States Department of Health and Human Services.

Section 2. Purpose, Applicability, and Scope. (1) The purpose of this administrative regulation is to provide for the reasonable standardization of coverage and to simplify [simplification of] terms and benefits of Medicare supplement policies, to facilitate public understanding and comparison of the [such] policies, to eliminate provisions contained in these [such] policies which may be misleading or confusing in connection with the purchase of the [such] policies or in connection with the settlement of claims, and to provide for full disclosure in the sale of health insurance coverage to persons eligible for Medicare.

(2) This administrative regulation shall apply to:

(a) A Medicare supplement policy delivered or issued for delivery in this state on or after the effective date of this administrative regulation; and

(b) A certificate issued under a group Medicare supplement policy, which a certificate has been delivered or issued for delivery in this state.

This administrative regulation shall not apply to a policy or contract of one (1) or more employers or labor organizations, or of the trustees of a fund established by one (1) or more employers or labor organizations, or combination thereof; [5] for employees or former employees, or a combination thereof; [6] or for members or former members of labor organizations, or a combination thereof, of labor organizations.

Section 3. Policy Definitions and Terms. A policy or certificate shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless the policy or certificate contains terms or definitions which conform to those in this section.

(1) "Accident", "accidental injury", or "accidental means" shall be defined as employ "resulting, arising, and sustained" and shall not include words which establish an accidental means test or use words such as "external, visible, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is a direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force".

(b) The [such] definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability, or similar law, or motor vehicle no-fault insurance plan, unless the [such-a] definition is prohibited by law.

(2) "Benefit period", or "Medicare benefit period", shall not be defined as [more restrictively] [exclusively] than as [that] defined in the Medicare Program.

(3) "Convalescent nursing home", "extended care facility", or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare Program.

(4) "Health care expenses" shall be defined as [aaaaa] expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

(a) These expenses shall not include:

1. Home office and overhead costs;
2. Advertising costs;
3. Commissions and other costs of acquiring insurance business;
4. Taxes;
5. Capital costs;
6. Administrative costs; and
7. Claims processing costs.

(5) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but shall not be defined more restrictively than as defined in the Medicare Program.

(6) "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "the Health Insurance for the Aged Act. Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended", or "Title I, Part I of PL 89-97, as enacted by the 89th Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.

(7) "Medicare-eligible expenses" shall mean expenses of the kinds covered by Medicare, to the extent recognized as reasonable
and medically necessary by Medicare.

(8) "Physician" shall not be defined more restrictively than as defined in the Medicare Program.

(9) "Sickness" shall not be defined more restrictively than the following: "sickness means illness or disease of an insured person which first manifests itself after the effective date of the insurance and while the insurance is in force". The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, [as employer's liability, or similar law.

Section 4. Policy Provisions. (1) Except for permitted preexisting condition clauses as described in Sections 5(4)(a) and 6(1)(a) of this administrative regulation, a policy or certificate shall not be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(2) A Medicare supplement policy shall not contain a probationary or elimination period.

(3) A Medicare supplement policy or certificate shall not use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(4) A Medicare supplement insurance policy in force in this state shall not contain benefits that duplicate benefits provided by Medicare.

Section 5. Minimum Benefit Standards. (1) A policy or certificate shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate if it does not meet or exceed the following minimum standards. These are minimum standards and shall [do] not preclude the inclusion of other provisions or benefits that are consistent with these standards. This section applies to a Medicare supplement policy issued prior to January 1, 1992.

(2) General standards. The following standards shall apply to Medicare supplement policies and certificates and shall be [as] in addition to all other requirements of this administrative regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with these changes.

(d) A "noncancellable," "guaranteed renewable," or "noncancelable and guaranteed renewable" Medicare supplement policy shall not:

1. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium; or

2. Be cancelled or nonrenewed by the issuer solely on the grounds of deterioration of health.

(e) Except as authorized by the commissioner, an issuer shall neither cancel nor nonrenew a Medicare supplement policy on the ground of material misrepresentation.

2. If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in subparagraph 4 of this paragraph, the issuer shall offer certificate holders an individual Medicare supplement policy. The issuer shall offer the certificate holder at least the following choices:

a. An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Section 6(2) of this administrative regulation.

b. Offer the certificate holder continuation of coverage under the group policy.

3. If membership in the group is terminated, the insurer shall:

a. Offer the certificate holder the conversion opportunities described in subparagraph 2 of this paragraph, but the insurance is in force.

b. Offer the certificate holder continuation of coverage under the group policy.

4. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination or coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.

(3) Minimum benefit standards.

(a) Coverage of Part A Medicare-eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period.

(b) Coverage for either all or none of Medicare Part B inpatient hospital deductible amount.

(c) Coverage of Part A Medicare-eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days.

(d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety (90) percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days.

(e) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood [or equivalent quantities of packed red blood cells, pursuant to 42 CFR 409.87(a)(2), [as defined under federal regulations]] unless replaced in accordance with 42 CFR 409.87(e)(2) [federal regulations] or already paid for under Part B.

(f) Coverage for the coinsurance amount, or if [in the case of] hospital outpatient department services are paid under a prospective payment system, the copayment amount, of Medicare-eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible.

(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood [or equivalent quantities of packed red blood cells, pursuant to 42 CFR 409.87(a)(2), [as defined under federal regulations]] unless replaced in accordance with 42 CFR 409.87(e)(2) [federal regulations] or already paid for under Part A, subject to the Medicare deductible amount.

Section 6. Benefit Standards for Policies or Certificates Issued or Delivered on or after January 1, 1992. The following standards shall apply [as applicable] to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky on or after January 1, 1992. A policy or certificate shall not be advertised, solicited, delivered, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it complies with these benefit standards.

(1) General standards. The following standards shall apply to Medicare supplement policies and certificates and shall be [as] in addition to all other requirements of this administrative regulation:

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.
(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents, and shall not contain a probationary or elimination period.

(c) A Medicare supplement policy or certificate shall provide that benefits designated to cover cost-sharing amounts under Medicare shall be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with these [such] changes.

(d) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(e) Each Medicare supplement policy shall be guaranteed renewable, and: [and]

1. The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual; and
2. The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

3. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under subparagraph 5 of this paragraph, the issuer shall offer certificate holders an individual Medicare supplement policy [which (at the option of the certificate holder)]:

a. Provides for continuation of the benefits contained in the group policy; or
b. Provides for benefits which otherwise meet the requirements of this subsection.

4. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall offer continuation and conversion coverages in accordance with subparagraph 3 of this paragraph.

5. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(g) A Medicare policy supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under 42 USC 1396 to 1396v, but only if the policyholder or certificate holder notifies the issuer of the [such] policy or certificate within ninety (90) days after the date the individual becomes entitled to the [such] assistance.

2. If the suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated (effective as of the date of termination of the entitlement to medical assistance) as of the termination of the entitlement if the policyholder or certificate holder provides notice of loss of the entitlement within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of the entitlement.

3. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under 42 USC 426(b) and is covered under a group health plan as defined in 42 USC 1395Y(b)(1)(A)(v). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the [such] loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

4. Reinstatement of coverage as described in subparagraphs 2 and 3 of this paragraph:

a. Shall not provide for any waiting period with respect to treatment of preexisting conditions;

b. Shall provide for coverage which is substantially equivalent to coverage in effect before the date of suspension; and

c. Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(2) Standards for basic ["core"] benefits common to all benefit plans. Every issuer shall make available a policy or certificate including only the following basic ["core"] package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare supplement insurance benefit plans in addition to the basic ["core"] package. These Medicare supplement insurance benefit plans shall not substitute for the basic ["core"] package:

(a) Coverage of Part A Medicare-eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage of Part A Medicare-eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare inpatient stay.

(c) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the diagnostic related group (DRG) day outlier per diem, pursuant to 42 CFR 412.82, or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of red blood cells or equivalent quantities of packed red blood cells, pursuant to 42 CFR 409.87(a)(2), [as defined under federal regulations] unless replaced in accordance with 42 CFR 409.87(c)(2) [federal regulations]; and

e. Coverage for the coinsurance amount[ ] or in the case of hospital outpatient department services paid under a prospective system, the copayment amount; of Medicare-eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(3) Standards for additional benefits. The following additional benefits shall be included in Medicare supplement benefit Plans "B" through "J" only as provided by Section 7 of this administrative regulation.

(a) Medicare Part A deductible: coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period;

(b) Skilled nursing facility care: coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A;

(c) Medicare Part B deductible: coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(d) Eighty (80) percent of the Medicare Part B excess charges: coverage for eighty (80) percent of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare Program or state law, and the Medicare-approved Part B charge;

(e) 100 percent of the Medicare Part B excess charges: coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare Program or state law, and the Medicare-approved Part B charge;

(f) Basic outpatient prescription drug benefit: coverage for fifty (50) percent of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare;

(g) Extended outpatient prescription drug benefit: coverage for fifty (50) percent of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits.
received by the insured per calendar year, to the extent not covered by Medicare; [4]

(h) Medically-necessary emergency care in a foreign country: coverage to the extent not covered by Medicare for eighty (80) percent of the billed charges for Medicare-eligible expenses for medically-necessary emergency hospital, physician, and medical care rendered in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000; [For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.]

(i) Preventive medical care benefit: coverage for the following preventive health services:

1. An annual clinical preventive medical history and physical examination that may include tests and services from subparagraph 2 of this paragraph and patient education to address preventive health care measures.

2. Any one (1) or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

a. Digital rectal examination;

b. Dipstick urinalysis for hematuria, bacteriuria, and proteinuria;

c. Pure tone (air only) hearing screening test, administered or ordered by a physician;

d. Serum cholesterol screening (every five (5) years);

e. Thyroid function test; or

f. Diabetes screening.

3. Tetanus and diphtheria booster (every ten (10) years).

4. Any other tests or preventive measure determined appropriate by the attending physician. Reimbursement shall be for the actual charges up to 100 percent of the Medicare-allowed amount for each service, as if Medicare were to cover the service as identified in procedure [American Medical Association. Current Procedural Terminology (AMA-CPT) codes, established by the secretary pursuant to 42 USC 1395w-4(c)(5)], to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare; [4]

(j) At-home recovery benefit: coverage for services to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery.

1. [For purposes of this benefit, the following definitions shall apply:

a. "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transfers, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

b. "Care provider" means a duly qualified or licensed home health aide, homemaker, personal care aide, licensed nurse, provided through a licensed home health care agency, a home health care agency affiliated with a licensed home health care agency, a licensed home health care agency or licensed nurses registry.

c. "Home" shall mean any place used by the insured as a place of residence, provided that each such place shall qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

d. "At-home recovery visit" means the period of a visit required to provide home health care services, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four (24) hour period of services provided by a care provider is one (1) visit.

2. [Coverage requirements and limitations:

a. At-home recovery services provided shall be primarily services which assist in activities of daily living.

b. The insured's attending physician shall certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

c. Coverage is limited to:

(i) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare-approved home health care visits under a Medicare-approved home care plan of treatment.

(ii) The actual charges for each visit up to a maximum reimbursement of forty (40) dollars per visit.

(iii) $1,600 per calendar year.

(iv) Seven (7) visits in any one (1) week.

(v) Care furnished on a visiting basis in the insured's home.

(vi) Services provided by a care provider as defined in this section.

(vii) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.

(viii) At-home recovery visits received during the period the insured is receiving Medicare-approved home care services or no more than eight (8) weeks after the service date of the last Medicare-approved home health care visit.

3. [Coverage is excluded for:

a. Home care visits paid for by Medicare or other government programs; and

b. Care provided by family members, unpaid volunteers, or providers who are not care providers; and [4]

(k) New or innovative benefits: an issuer may, with the prior approval of the commissioner, offer polices or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. New or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of a simplification of Medicare supplement policies.

Section 7. Standard Medicare Supplement Benefit Plans. (1) An issuer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic "core" benefits, as defined in Section 6(2) of this administrative regulation.

(2) Groups, packages, or combinations of Medicare supplement benefits other than those listed in this section shall not be offered for sale in this state, except as may be permitted in Sections 6(2)(k) and 8 of this administrative regulation.

(3) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit Plans "A" through "J" listed in this subsection and conformed to the definitions in Section 17, 18, 19, 20, and 22 of this administrative regulation.

Each benefit shall be structured in accordance with the format provided in Section 6(2) and (3) of this administrative regulation. Each benefit plan shall be priced in accordance with the format provided in Section 6(2) and (3) of this administrative regulation.

1. [For purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.

(4) An issuer may use, in addition to the benefit plan designations required in subsection (3) of this section, other designations to the extent permitted by law.

(5) Make-up of benefit plans:

(a) [Standardized Medicare supplement benefit Plan "A" shall be limited to the basic ("core") benefits common to all benefit plans, as defined in Section 6(2) of this administrative regulation.

(b) [Standardized Medicare supplement benefit Plan "B" shall include only the following: the core benefits [benefits] as defined in Section 6(2) of this administrative regulation; and [plus] the Medicare Part A deductible, as defined in Section 6(3)(e) of this administrative regulation.

(c) [Standardized Medicare supplement benefit Plan "C" shall include only the following: the core benefits [benefits] as defined in Section 6(2) of this administrative regulation; [plus] the Medicare Part A deductible; the skilled nursing facility care; Medicare Part B deductible; and medically-necessary emergency care in a foreign country, as defined in Section 6(3)(a), (b), (c), and (h) of this administrative regulation, respectively.

(d) [Standardized Medicare supplement benefit Plan "D" shall include only the following: the core benefits [benefits] as defined in Section 6(2) of this administrative regulation; [plus] the Medicare Part A deductible; the skilled nursing facility care; medically-necessary emergency care in a foreign country; and the at-home recovery benefit, as defined in Section 6(3)(a), (b), (h), and (j) of this administrative regulation, respectively.

(e) [Standardized Medicare supplement benefit Plan "E" shall include only the following: the core benefits [benefits] as defined in Section 6(2) of this administrative regulation; [plus] the Medicare Part A deductible; the skilled nursing facility care; medically-necessary emergency care in a foreign country; and the at-home recovery benefit, as defined in Section 6(3)(a), (b), (h), and (j) of this administrative regulation, respectively.

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Part A deductible; [i] skilled nursing facility care; [j] medically-necessary emergency care in a foreign country; [k] and preventive medical care, as defined in Section 633(a), (b), (h), and (j) of this administrative regulation, respectively.

(f) Standardized Medicare supplement benefit Plan "F" shall include only the following: the core benefits [benefits] as defined in Section 633(a), (b), (c), (e), and (f) of this administrative regulation; [a] the Medicare Part A deductible; [b] the skilled nursing facility care; [c] the Part B deductible; [d] 100 percent of the Medicare Part B excess charges; [e] and medically-necessary emergency care in a foreign country, as defined in Section 633(a), (b), (c), (e), and (f) of this administrative regulation, respectively.

(g) Standardized Medicare supplement benefit high deductible Plan "F" shall include only the following: 100 percent of covered expenses following the payment of the annual high deductible Plan "F" deductible. The covered expenses shall include the core benefits [benefits] as defined in Section 633(2) of this administrative regulation in addition to the following:

1. Medicare Part A deductible;
2. Skilled nursing facility care;
3. Medicare Part B deductible;
4. 100 percent of the Medicare Part B excess charges; and
5. Medically-necessary emergency care in a foreign country, as defined in Section 633(a), (b), (c), (e), and (f) of this administrative regulation, respectively. The annual high deductible plan "F" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "F" policy, and shall be in addition to any other specific benefit deductibles of any other applicable Medicare supplement plan "F" deductible shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars.

(h) Standardized Medicare supplement benefit Plan "G" shall include only the following: the core benefits [benefits] as defined in Section 633(2) of this administrative regulation; [a] the Medicare Part A deductible; [b] the skilled nursing facility care; [c] eighty (80) percent of the Medicare Part B excess charges; [d] medically-necessary emergency care in a foreign country; [e] and the at-home recovery benefit, as defined in Section 633(a), (b), (d), (h), and (j) of this administrative regulation, respectively.

(i) Standardized Medicare supplement benefit Plan "H" shall consist of only the following: the core benefits [benefits] as defined in Section 633(2) of this administrative regulation; [a] the Medicare Part A deductible; [b] skilled nursing facility care; [c] basic prescription drug benefit; [d] and medically-necessary emergency care in a foreign country, as defined in Section 633(a), (b), (f), and (h) of this administrative regulation, respectively.

(j) Standardized Medicare supplement benefit Plan "J" shall consist of only the following: the core benefits [benefits] as defined in Section 633(2) of this administrative regulation; [a] the Medicare Part A deductible; [b] skilled nursing facility care; [c] 100 percent of the Medicare Part B excess charges; [d] basic prescription drug benefit; [e] medically-necessary emergency care in a foreign country; [f] and at-home recovery benefit, as defined in Section 633(a), (b), (c), (e), (h), and (j) of this administrative regulation, respectively.

(k) Standardized Medicare supplement benefit Plan "K" shall consist of only the following: the core benefits [benefits] as defined in Section 633(2) of this administrative regulation; [a] the Medicare Part A deductible; [b] skilled nursing facility care; [c] Medicare Part B deductible; [d] 100 percent of the Medicare Part B excess charges; [e] extended prescription drug benefit; [f] medically-necessary emergency care in a foreign country; [g] preventive medical care; [h] and at-home recovery benefit, as defined in Section 633(a), (b), (c), (e), (g), (h), (i), and (j) of this administrative regulation, respectively.

(l) Standardized Medicare supplement benefit high deductible Plan "J" shall consist of only 100 percent of covered expenses following the payment of the annual high deductible Plan "J" deductible. The covered expenses include the core benefits [benefits] as defined in Section 633(2) of this administrative regulation in addition to the following:

1. The Medicare Part A deductible;
2. Skilled nursing facility care;
3. Medicare Part B deductible;
4. Medicare Part B excess charges;
5. Extended outpatient prescription drug benefit;
6. Medically-necessary emergency care in a foreign country;
7. Preventive medical care benefit; and
8. At-home recovery benefit, as defined in Section 633(a), (b), (c), (e), (g), and (j) of this administrative regulation, respectively. The annual high deductible Plan "J" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by Medicare supplement Plan "K" policy, and shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars.

Section 8. Medicare Select Policies and Certificates. (1) A policy or certificate shall not be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

(2) [For the purposes of this section:

(a) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

(b) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practice, or provision of services concerning a Medicare Select issuer or its network providers.

(c) "Medicare Select issuer" means an issuer offering, or seeking to offer, Medicare Select policies or certificates.

(d) "Medicare Select policy" or "Medicare Select certificate" means, respectively, a Medicare supplement policy or certificate that contains restricted network provisions.

(e) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

(f) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(g) "Service area" means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare Select policy.

(3) The commissioner may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this section and 42 USC 1395cc, if the commissioner finds that the issuer has satisfied all of the requirements of this administrative regulation.

(4) [44] A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner.

(5) [65] A Medicare Select issuer shall file a proposed plan of operation with the commissioner [before the issuer is authorized to offer a Medicare Select policy or certificate]. The plan of operation shall contain at least the following information:

(a) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

1. Covered services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation, and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

2. The number of network providers in the service area is sufficient, with respect to current and expected policyholders, whether either:

a. To deliver adequately all services that are subject to a restricted network provision; or

b. To make appropriate referrals.

3. There are written agreements with network providers describing specific responsibilities.

4. Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

5. In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers
from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This paragraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(b) A statement or map providing a clear description of the service area.

(c) A description of the grievance procedure to be utilized.

(d) A description of the quality assurance program, including:
1. The formal organizational structure;
2. The written criteria for selection, retention, and removal of network providers; and
3. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action if warranted.

(e) A list and description, by specialty, of the network providers.

(f) Copies of the written information proposed to be used by the issuer to comply with subsection (d) of this section.

(g) Any other information requested by the commissioner.

(5) [465](a) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing any changes. Any changes shall be considered approved by the commissioner thirty (30) days after filing unless specifically disapproved by the commissioner.

(b) An updated list of network providers shall be filed with the commissioner at least quarterly.

(6) [72] A Medicare Select policy or certificate shall not restrict payment for covered services provided by nonnetwork providers if:
(a) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury, or a condition;
(b) It is not reasonable to obtain these services through a network provider.

(7) [458] A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(8) [43] A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:
(a) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:
   1. Other Medicare supplement policies or certificates offered by the issuer; and
   2. Other Medicare Select policies or certificates.
(b) A description (including address, phone number, and hours of operation) of the network providers, including primary care physicians, specialists, physician organizations, hospitals, and other providers.
(c) A description of the restricted network provisions, including payments for coinsurance and deductibles if providers other than network providers are utilized.
(d) A description of coverage for emergency and urgent care and other out-of-service area coverage.
(e) A description of limitations on referrals to restricted network providers and to other providers.

(f) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(g) A description of the Medicare Select issuer's quality assurance program and grievance procedure.

(9) [444] Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to subsection (9) of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

(10) [433] A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. These procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(a) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(b) When [the date] the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(c) A grievance shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(d) If a grievance is found to be valid, corrective action shall be taken promptly.

(e) All concerned parties shall be notified about the results of a grievance.

(f) The issuer shall not report any [ago] later than each March 31st to the commissioner regarding its grievance procedure, including [the report shall be in a format prescribed by the commissioner and shall contain] the number of grievances filed in the past year and a summary of the subject, nature, and resolution of such grievances.

(11) When the insured makes the [441] at the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

(12) [433](a) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make these policies or certificates available without requiring evidence of insurability after the Medicare supplement policy or certificate has been in force for six (6) months.

(b) For the purpose of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more of the following significant benefits not included in the Medicare Select policy or certificate being replaced:
   1. For the purposes of this paragraph, a significant benefit means coverage for:
      1. The Medicare Part A deductible;
      2. [Coverage for prescription drugs];
      3. [Coverage for at-home recovery services]; or

(13) [444] Medicare Select policies and certificates shall provide for continuation of coverage if [the event] the secretary determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(a) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make these policies and certificates available without requiring evidence of insurability.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more of the following significant benefits not included in the Medicare Select policy or certificate being replaced:
   1. For the purposes of this paragraph, a significant benefit means coverage for:
      1. The Medicare Part A deductible;
      2. [Coverage for prescription drugs];
      3. [Coverage for at-home recovery services]; or

(14) [455] A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.
2. The provision shall:
   a. Be appropriately captioned;
   b. Appear on the first page of the policy; and
   c. Include any:
      i. Reservation by the issuer of the right to change premiums; and
      ii. Automatic renewal premium increases on the insured's age.
   (b) A rider or endorsement added to a Medicare supplement policy
       after the date of issue or at reinstatement or renewal which
       reduce or eliminate benefits or coverage in the policy shall require a
       signed acceptance by the insured except for a rider or endorsement:
       i. By which an insurer effectuates a written request by an insur-
          eed;
       ii. By which an insurer exercises a specifically-reserved right
           under a Medicare supplement policy; or
   (c) After the date of policy or certificate issue, any rider or en-
       endorsement which increases benefits or coverage with a concomitant
       increase in premium during the policy term shall be agreed to in
       writing signed by the insured, unless:
       i. The benefits are required by the minimum standards for
          Medicare supplement policies;
       ii. The increased benefits or coverage is required by law.
   (d) If [insert] a separate additional premium is charged for
       benefits provided in connection with riders or endorsements, the
       [insert] premium charge shall be set forth in the policy.
   (e) Medicare supplement policies or certificates shall not provide for
       the payment of benefits based on standards described as "usual
       and customary", "reasonable and customary", or words of similar
       import.
   (f) If a Medicare supplement policy or certificate contains any
       limitations with respect to preexisting conditions, these limitations
       shall appear as a separate paragraph of the policy and be labeled as
       "preexisting condition limitations".
   (g) Medicare supplement policies and certificates shall have a
       notice prominently printed on the first page of the policy or certifi-
       cate, or attached thereto, stating in substance that the policyholder
       or certificate holder shall have the right to return the policy or certifi-
       cate within at least thirty (30) days of its delivery and to have the
       premium refunded if, after examination of the policy or certificate,
       the insured is not satisfied for any reason.
   (h)1. Issuers of insurance policies and certificates [insert] covering accident and sickness and hospital or medical expenses on
       an expense incurred or indemnity basis to persons eligible for Medi-
       care shall provide to these applicants a "Guide to Health Insurance
       for People with Medicare" in the language, format, type size, type
       proportional spacing, bold character, and line spacing [insert]
       developed jointly by the National Association of Insurance Commis-
       sioners and the Health Care Financing Administration and in a type
       size no smaller than twelve (12) point type;
   (i) Notice requirements.
   (a) As soon as practicable, but no later than thirty (30) days prior
       to the annual effective date of any Medicare benefit changes, an
       issuer shall notify its insureds of modifications it has made to Medi-
       care supplement policies or certificates. The notice shall be in a
       format acceptable to the commissioner. The notice shall:
       1. Include a description of revisions to the Medicare Program
          and a description of each modification made to the coverage pro-
          vided under the Medicare supplement insurance policy or certificate;
       2. Inform each policyholder or certificate holder as to when any
          premium adjustment is to be made due to changes in Medicare.
       (b) The notice of benefit modifications and any premium adjust-
           ments shall be in outline form and in clear and simple terms [insert]
           to facilitate comprehension.
   (c) The notices shall not contain or be accompanied by any
       solicitation.
   (d) Outline of coverage requirements for Medicare supplement
       policies:
       (a) Issuers shall provide an outline of coverage to all applicants
           when [insert] application is presented to the prospective appli-
           cant and, except for direct response issuers, shall obtain an ac-
           knowledge of receipt of the outline from the applicant.
       (b) If an outline of coverage is provided at the time of application
           and the Medicare supplement policy or certificate is issued on a
           basis which would require revision of the outline, a substitute outline
           of coverage properly describing the policy or certificate shall accom-
           pany such policy or certificate when it is delivered and contain the
           following statement, in no less than twelve (12) point type immedi-
           ately above the issuer's name:
           "NOTICE: READ THIS OUTLINE OF COVERAGE CARE-
           FULLY. IT IS NOT IDENTICAL TO THE OUTLINE OF COVERAGE
           PROVIDED UPON APPLICATION AND THE COVERAGE ORI-
           GINALLY APPLIED FOR HAS NOT BEEN ISSUED."
   (c) The outline of coverage provided to applicants pursuant to
       this subsection consists of four (4) parts: a cover page, premium
       information, disclosure pages, and charts displaying the features
       of each benefit plan offered by the issuer. The outline of coverage
       shall be in the language and format prescribed below in no less than
       twelve (12) point type. All Plans A-J shall be shown on the cover
       page, and any plans [insert] that are offered by the issuer shall be
       prominently identified. Premium information for plans that are
       offered shall be shown on the cover page or immediately following
       the cover page and shall be prominently displayed. The premium
       and mode shall be stated for all plans that are offered to the pro-
       spective applicant. All possible premiums for the prospective appli-
       cant shall be illustrated.
   (d) The following items shall be included in the outline of cover-
       age in the order prescribed below:

       (COMPANY NAME)
       Outline of Medicare Supplement Coverage - Cover Page:
       Benefit Plan(s) [insert letter(s) of plan(s) being offered]
       Medicare supplement insurance shall [insert] be sold [insert] only in ten
       (10) standard plans and two (2) high deductible plans. This chart
       shows the benefits included in each plan. Every company must make
       available Plan "A". Some plans may not be available in your state.
       BASIC BENEFITS: Included in all plans.
       Hospitalization: Part A coinsurance plus coverage for 365 additional
       days after Medicare benefits end.
       Medical expenses: Part B coinsurance (twenty [20] percent of Medi-
       care-approved expenses), or, in the case of hospital outpatient de-
       partment services under a prospective payment system, applicable
       copayments.
       Blood: First three (3) pints of blood each year.

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Benefits</td>
<td>Basic Benefits</td>
</tr>
<tr>
<td>Skilled Nursing Care</td>
<td>Skilled Nursing Care</td>
</tr>
<tr>
<td>Part A</td>
<td>Part A</td>
</tr>
<tr>
<td>Deductible</td>
<td>Deductible</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>C</th>
<th>D</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Benefits</td>
<td>Basic Benefits</td>
</tr>
<tr>
<td>Skilled Nursing Care</td>
<td>Skilled Nursing Care</td>
</tr>
<tr>
<td>Part A</td>
<td>Part A</td>
</tr>
<tr>
<td>Deductible</td>
<td>Deductible</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>E</th>
<th>F</th>
<th>G</th>
<th>H</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Benefits</td>
<td>Basic Benefits</td>
<td>Basic Benefits</td>
<td>Basic Benefits</td>
</tr>
<tr>
<td>Skilled Nursing Care</td>
<td>Skilled Nursing Care</td>
<td>Skilled Nursing Care</td>
<td>Skilled Nursing Care</td>
</tr>
<tr>
<td>Part A</td>
<td>Part A</td>
<td>Part A</td>
<td>Part A</td>
</tr>
<tr>
<td>Deductible</td>
<td>Deductible</td>
<td>Deductible</td>
<td>Deductible</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>I</th>
<th>J</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Benefits</td>
<td>Basic Benefits</td>
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<tr>
<td>Skilled Nursing Care</td>
<td>Skilled Nursing Care</td>
</tr>
<tr>
<td>Part A</td>
<td>Part A</td>
</tr>
<tr>
<td>Deductible</td>
<td>Deductible</td>
</tr>
</tbody>
</table>
VOLUME 28, NUMBER 8 – FEBRUARY 1, 2002

<table>
<thead>
<tr>
<th>Deductible</th>
<th>Deductible</th>
<th>Deductible</th>
<th>Deductible</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part B</td>
<td>Part B</td>
<td>Part B</td>
<td>Part B</td>
</tr>
<tr>
<td>Excess</td>
<td>Excess</td>
<td>Excess</td>
<td>Excess</td>
</tr>
<tr>
<td>(100%)</td>
<td>(80%)</td>
<td>(100%)</td>
<td>(100%)</td>
</tr>
<tr>
<td>Foreign</td>
<td>Foreign</td>
<td>Foreign</td>
<td>Foreign</td>
</tr>
<tr>
<td>Travel</td>
<td>Travel</td>
<td>Travel</td>
<td>Travel</td>
</tr>
<tr>
<td>Emergency</td>
<td>Emergency</td>
<td>Emergency</td>
<td>Emergency</td>
</tr>
<tr>
<td>At-home</td>
<td>At-home</td>
<td>At-home</td>
<td>At-home</td>
</tr>
<tr>
<td>Recovery</td>
<td>Recovery</td>
<td>Recovery</td>
<td>Recovery</td>
</tr>
</tbody>
</table>

Plans F and J also have an option called a high deductible Plan F and a high deductible Plan J. These high deductible plans pay the same or offer the same benefits as Plans F and J after one has paid a calendar year $1530 deductible. Benefits from high deductible Plans F and J will not begin until out-of-pocket expenses are $1530. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but does not include, in Plan J, the plan’s separate prescription drug deductible or, in Plans F and J, the plan’s separate foreign travel emergency deductible.

1. PREMIUM INFORMATION (Boldface Type)

We (insert issuer’s name) can only raise your premium if we raise the premium for all policies like yours in this state. (If the premium is based on the increasing age of the insured, include information specifying when premiums will change).

2. DISCLOSURES (Boldface Type)

Use this outline to compare benefits and premiums among policies.

3. READ YOUR POLICY VERY CAREFULLY (Boldface Type)

This is only an outline describing your policy’s most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

4. RIGHT TO RETURN POLICY (Boldface Type)

If you find that you are not satisfied with your policy, you may return it to (insert issuer’s address). If you send the policy back to us within thirty (30) days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

5. POLICY REPLACEMENT (Boldface Type)

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

6. NOTICE (Boldface Type)

This policy may not fully cover all of your medical costs.

a. (for agents)
Neither (insert insurer’s name) nor its agents are connected with Medicare.

b. (for direct response insurers:)
(insert insurer’s name) is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security office or consult “Medicare & You” for more details.

7. COMPLETE ANSWERS ARE VERY IMPORTANT (Boldface Type)

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. (If the policy or certificate is guaranteed issue, this paragraph need not appear.)

Review the application carefully before you sign it. Be certain that all information has been recorded properly.

(Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments, and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. More than four (4) plans shall not be shown on one (1) chart. For purposes of illustration, charts for each plan are included in this administrative regulation. An issuer may use additional benefit plan designations on these charts pursuant to Section 7(4) of this administrative regulation.)

(Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the commissioner.)

<table>
<thead>
<tr>
<th>PLAN A MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD</th>
</tr>
</thead>
<tbody>
<tr>
<td>SERVICES</td>
</tr>
<tr>
<td>----------</td>
</tr>
<tr>
<td>HOSPITALIZATION*</td>
</tr>
<tr>
<td>Semiprivate room and board, general nursing and miscellaneous services and supplies</td>
</tr>
<tr>
<td>First 60 days</td>
</tr>
<tr>
<td>61st thru 90th day</td>
</tr>
<tr>
<td>91st day and after</td>
</tr>
<tr>
<td>While using 60 lifetime reserve days</td>
</tr>
<tr>
<td>Once lifetime reserve days are used:</td>
</tr>
<tr>
<td>Additional 365 days</td>
</tr>
<tr>
<td>Beyond the additional 365 days</td>
</tr>
</tbody>
</table>
**SKILLED NURSING FACILITY CARE***

You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital.

| First 20 days | All approved amounts | $0 | $0 |
| 21st thru 100th day | All but $99 a day | $0 | Up to $99 a day |
| 101st day and after | $0 | $0 | All costs |

**HOSPICE CARE**

Available as long as your doctor certifies you are terminally ill and you elect to receive these services.

| First 3 pints | $0 | 3 pints | $0 |
| Additional amounts | 100% | $0 | $0 |

**MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR**

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>Generally 80%</td>
<td>Generally 20%</td>
<td>$0</td>
</tr>
<tr>
<td>Part B excess charges (above Medicare approved amounts)</td>
<td>$0</td>
<td>$0</td>
<td>All costs</td>
</tr>
</tbody>
</table>

**BLOOD**

| First 3 pints | $0 | All costs | $0 |
| Next $100 of Medicare-approved amounts* | $0 | $0 | $100 (Part B deductible) |
| Remainder of Medicare-approved amounts | 80% | 20% | $0 |
| CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES | 100% | | $0 |

**HOME HEALTH CARE**

**MEDICARE APPROVED SERVICES**

Medically-necessary skilled care services and medical supplies

| Durable medical equipment | 100% | | $0 |
| First $100 of Medicare-approved amounts* | $0 | $0 | $100 (Part B deductible) |
| Remainder of Medicare-approved amounts | 80% | 20% | $0 |

**MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD**

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
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</tr>
</thead>
<tbody>
<tr>
<td>HOSPITALIZATION</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Semiprivate room and board, general nursing and miscellaneous services and supplies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First 60 days</td>
<td>All but $792</td>
<td>$792 (Part A deductible)</td>
<td>$0</td>
</tr>
<tr>
<td>61st thru 90th day</td>
<td>All but $198 a day</td>
<td>$198 a day</td>
<td>$0</td>
</tr>
<tr>
<td>91st day and after</td>
<td>All but $398 a day</td>
<td>$398 a day</td>
<td>$0</td>
</tr>
<tr>
<td>While using 60 lifetime reserve days</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Additional 365 days</td>
<td>$0</td>
<td>100% of Medicare-eligible expenses</td>
<td>$0</td>
</tr>
<tr>
<td>- Beyond the additional 365 days</td>
<td>$0</td>
<td>$0</td>
<td>All costs</td>
</tr>
</tbody>
</table>

**SKILLED NURSING FACILITY CARE***

You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital.

| First 20 days | All approved amount | $0 | $0 |
| 21st thru 100th day | All but $99 a day | $0 | Up to $99 a day |
| 101st day and after | $0 | $0 | All costs |

**BLOOD**

| First 3 pints | $0 | 3 pints | $0 |
| Additional amounts | 100% | $0 | $0 |

**MEDICARE (PART A) - MEDICAL SERVICES - PER CALENDAR YEAR**

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>Generally 80%</td>
<td>Generally 20%</td>
<td>$0</td>
</tr>
<tr>
<td>Part B excess charges (above Medicare-approved amounts)</td>
<td>$0</td>
<td>$0</td>
<td>All costs</td>
</tr>
</tbody>
</table>

**BLOOD**

<p>| First 3 pints | $0 | All costs | $0 |
| Next $100 of Medicare-approved amounts* | $0 | $0 | $100 (Part B deductible) |</p>
<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES</td>
<td>PARTS A &amp; B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>80%</td>
<td>20%</td>
<td>$0</td>
</tr>
<tr>
<td>Durable medical equipment</td>
<td>$100</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>HOME HEALTH CARE MEDICARE APPROVED SERVICES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medically-necessary skilled care services and medical supplies</td>
</tr>
<tr>
<td>Durable medical equipment</td>
</tr>
<tr>
<td>First $100 of Medicare-approved amounts*</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PLAN C</th>
</tr>
</thead>
<tbody>
<tr>
<td>MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD</td>
</tr>
<tr>
<td>*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>HOSPITALIZATION*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Semiprivate room and board, general nursing and miscellaneous services and supplies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First 60 days</td>
<td>All but $782</td>
<td>$762 (Part A deductible)</td>
<td>$0</td>
</tr>
<tr>
<td>61st thru 90th day</td>
<td>All but $198 a day</td>
<td>$188 a day</td>
<td>$0</td>
</tr>
<tr>
<td>91st day and after</td>
<td>All but $398 a day</td>
<td>$396 a day</td>
<td>$0</td>
</tr>
<tr>
<td>Once lifetime reserve days are used</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Additional 365 days</td>
<td>$0</td>
<td>100% of Medicare-eligible expenses</td>
<td>$0</td>
</tr>
<tr>
<td>- Beyond the additional 365 days</td>
<td>$0</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| SKILLED NURSING FACILITY CARE* |
| You must meet Medicare’s requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital |
| First 20 days | All approved amounts | | $0 |
| 21st thru 100th day | All but $99 a day | Up to $99 a day | $0 |
| 101st day and after | $0 | $0 | All costs |

| BLOOD |
| First 3 pints | $0 | 3 pints | $0 |
| Additional amounts | 100% | | $0 |

| HOSPICE CARE |
| Available as long as your doctor certifies you are terminally ill and you elect to receive these services. | | | |
| | | | $0 |

| MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR |
| *Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year. |

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician’s services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
<td>$0</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>Generally 80%</td>
<td>generally 20%</td>
<td></td>
</tr>
<tr>
<td>Part B excess charges (above Medicare approved amounts)</td>
<td>$0</td>
<td>$0</td>
<td>All costs</td>
</tr>
</tbody>
</table>

| BLOOD |
| First 3 pints | $0 | All costs | $0 |
| Next $100 of Medicare-approved amounts* | $0 | $100 (Part B deductible) | $0 |
| Remainder of Medicare-approved amounts | 80% | 20% | |

| CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES |
| PARTS A & B |
| Medically-necessary skilled care services and medical supplies | 100% | | $0 |
| Durable medical equipment | | | |
| First $100 of Medicare-approved amounts* | $0 | $100 (Part B deductible) | $0 |
| Remainder of Medicare-approved amounts | 80% | 20% | $0 |

| PLAN C |
| OTHER BENEFITS - NOT COVERED BY MEDICARE |

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>FOREIGN TRAVEL - NOT COVERED BY MEDICARE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medically-necessary emergency care services beginning during the first 60 days of each trip outside the USA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First $250 each calendar year</td>
<td>$0</td>
<td>$0</td>
<td>$250</td>
</tr>
<tr>
<td>Remainder of charges</td>
<td>$0</td>
<td>80% to a lifetime maximum benefit of $50,000</td>
<td>$0</td>
</tr>
</tbody>
</table>

| PLAN D |
| MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD |
| *A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row. |

<table>
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<tr>
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<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
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<tbody>
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<td>HOSPITALIZATION*</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Semiprivate room and board, general nursing and miscellaneous services and supplies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First 60 days</td>
<td>All but $782</td>
<td>$762 (Part A deductible)</td>
<td>$0</td>
</tr>
<tr>
<td>61st thru 90th day</td>
<td>All but $198 a day</td>
<td>$188 a day</td>
<td>$0</td>
</tr>
</tbody>
</table>
# VOLUME 28, NUMBER 8 – FEBRUARY 1, 2002

**91st day and after:**

<table>
<thead>
<tr>
<th>While using 60 lifetime reserve days</th>
<th>All but $366 a day</th>
<th>$366 a day</th>
<th>$0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Once lifetime reserve days are used:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Additional 365 days</td>
<td>$0</td>
<td>100% of Medicare-eligible expenses</td>
<td>$0</td>
</tr>
<tr>
<td>- Beyond the additional 365 days</td>
<td>$0</td>
<td>$0</td>
<td>All costs</td>
</tr>
</tbody>
</table>

**SKILLED NURSING FACILITY CARE**

You must meet Medicare’s requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital.

<table>
<thead>
<tr>
<th>First 20 days</th>
<th>All approved amounts</th>
<th>$0</th>
</tr>
</thead>
<tbody>
<tr>
<td>21st thru 100th day</td>
<td>All but $99 a day</td>
<td>Up to $99 a day</td>
</tr>
<tr>
<td>101st day and after</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

**BLOOD**

<table>
<thead>
<tr>
<th>First 3 pints</th>
<th>$0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional amounts</td>
<td>3 pints</td>
</tr>
</tbody>
</table>

**HOSPICE CARE**

Available as long as your doctor certifies you are terminally ill and you elect to receive these services.

<table>
<thead>
<tr>
<th>All but very limited coinsurance for outpatient drugs and inpatient respite care</th>
<th>$0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance</td>
<td></td>
</tr>
</tbody>
</table>

**MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR**

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.*

**MEDICAL EXPENSES IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician’s services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,**

| First $100 of Medicare-approved amounts* | $0      | $0              |
| Remainder of Medicare-approved amounts  | generally 80% | generally 20% |
| Part B excess charges (above Medicare-approved amounts) | $0 | $0 | All costs |

**BLOOD**

<table>
<thead>
<tr>
<th>First 3 pints</th>
<th>$0</th>
<th>All costs</th>
<th>$0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Next $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>80%</td>
<td>20%</td>
<td>$0</td>
</tr>
</tbody>
</table>

**CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES**

| 100% | $0 | $0 |

**HOME HEALTH CARE MEDICARE APPROVED SERVICES**

Medically-necessary skilled care services and medical supplies

| 100% | $0 |

<table>
<thead>
<tr>
<th>Durable medical equipment</th>
<th>$0</th>
</tr>
</thead>
<tbody>
<tr>
<td>First $100 of Medicare-approved amounts*</td>
<td>$0</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>80%</td>
</tr>
</tbody>
</table>

**AT-HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE**

Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan

<table>
<thead>
<tr>
<th>Benefit for each visit</th>
<th>$0</th>
<th>Actual charges to $40 a visit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of visits covered (must be received within 8 weeks of last Medicare-approved visit)</td>
<td>$0</td>
<td>Up to the # of Medicare-approved visits, not to exceed 7 each week</td>
</tr>
<tr>
<td>Calendar year maximum</td>
<td>$0</td>
<td>$1,600</td>
</tr>
</tbody>
</table>

**FOREIGN TRAVEL - NOT COVERED BY MEDICARE**

Medically-necessary emergency care services beginning during the first 60 days of each trip outside the USA

| First $250 each calendar year | $0 | $0 |
| Remainder of charges | $0 | 80% to a lifetime maximum benefit of $50,000 |
| 20% and amounts over the $50,000 lifetime maximum | $250 |

**MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD**

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.*

**HOSPITALIZATION**

Semi-private room and board, general nursing and miscellaneous services and supplies

<table>
<thead>
<tr>
<th>First 60 days</th>
<th>All but $762</th>
<th>$762 (Part A deductible)</th>
<th>$0</th>
</tr>
</thead>
<tbody>
<tr>
<td>61st thru 90th day</td>
<td>All but $198 a day</td>
<td>$198 a day</td>
<td>$0</td>
</tr>
<tr>
<td>91st day and after:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>While using 60 lifetime reserve days</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Once lifetime reserve days are used:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Additional 365 days</td>
<td>$0</td>
<td>100% of Medicare-eligible expenses</td>
<td>$0</td>
</tr>
<tr>
<td>- Beyond the additional 365 days</td>
<td>$0</td>
<td>$0</td>
<td>All costs</td>
</tr>
<tr>
<td>SKILLED NURSING FACILITY CARE**</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

You must meet Medicare’s requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital.

<table>
<thead>
<tr>
<th>First 20 days</th>
<th>All approved amounts</th>
<th>$0</th>
</tr>
</thead>
<tbody>
<tr>
<td>21st thru 100th day</td>
<td>All but $99 a day</td>
<td>Up to $99 a day</td>
</tr>
<tr>
<td>101st day and after</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

**BLOOD**

<table>
<thead>
<tr>
<th>First 3 pints</th>
<th>$0</th>
<th>3 pints</th>
<th>$0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional amounts</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>SERVICES</td>
<td>MEDICARE PAYS</td>
<td>PLAN PAYS</td>
<td>YOU PAY</td>
</tr>
<tr>
<td>----------</td>
<td>---------------</td>
<td>------------</td>
<td>---------</td>
</tr>
<tr>
<td>MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, SUCH AS PHYSICIAN'S SERVICES, INPATIENT AND OUTPATIENT MEDICAL AND SURGICAL SERVICES AND SUPPLIES, PHYSICAL AND SPEECH THERAPY, DIAGNOSTIC TESTS, DURABLE MEDICAL EQUIPMENT</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>Generally 80%</td>
<td>Generally 20%</td>
<td>$0</td>
</tr>
<tr>
<td>Part B excess charges (above Medicare approved amounts)</td>
<td>$0</td>
<td>$0</td>
<td>All costs</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>BLOOD</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>First 3 pints</td>
<td>$0</td>
<td>All costs</td>
<td>$0</td>
</tr>
<tr>
<td>Next $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>80%</td>
<td>20%</td>
<td>$0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>PARTS A &amp; B</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>HOME HEALTH CARE MEDICARE APPROVED SERVICES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medically-necessary skilled care services and medical supplies</td>
<td>100%</td>
<td></td>
<td>$0</td>
</tr>
<tr>
<td>Durable medical equipment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>80%</td>
<td>20%</td>
<td>$0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FOREIGN TRAVEL-NOT COVERED BY MEDICARE</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Medically-necessary emergency care services beginning during the first 60 days of each trip outside the USA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First $250 each calendar year</td>
<td>$0</td>
<td>$0</td>
<td>$250</td>
</tr>
<tr>
<td>Remainder of charges</td>
<td>$0</td>
<td>60% to a lifetime maximum benefit of $50,000</td>
<td>20% and amounts over $50,000 lifetime maximum</td>
</tr>
</tbody>
</table>

| PREVENTIVE MEDICAL CARE-BENEFIT NOT COVERED BY MEDICARE | | | |
| Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare | | | |
| First $120 each calendar year | $0 | $120 | $0 |
| Additional charges | $0 | $0 | All costs |

<table>
<thead>
<tr>
<th>MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year $1500 deductible. Benefits from the high deductible Plan F will not begin until after out-of-pocket expenses are $1500. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductible for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>AFTER YOU PAY $1530 DEDUCTIBLE**</th>
<th>IN ADDITION TO $1530 DEDUCTIBLE**</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Semiprivate room and board, general nursing and miscellaneous services and supplies</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First 50 days</td>
<td>All but $792</td>
<td>$792 (Part A deductible)</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>61st thru 90th day</td>
<td>All but $198 a day</td>
<td>$198 a day</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>91st day and after:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>While using 60 lifetime reserve days</td>
<td>All but $396 a day</td>
<td>$396 a day</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Once lifetime reserve days are used:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Additional 365 days</td>
<td>$0</td>
<td>100% of Medicare-eligible expenses</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>- Beyond the additional 365 days</td>
<td>$0</td>
<td>$0</td>
<td>All costs</td>
<td></td>
</tr>
</tbody>
</table>

| SKILLED NURSING FACILITY CARE* | | | |
| You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital | | | |
| First 20 days | All approved amounts | $0 | $0 |
| 21st thru 100th day | All but $99 a day | Up to $99 a day | $0 |
| 101st day and after | $0 | $0 | All costs |

<table>
<thead>
<tr>
<th>BLOOD</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>First 3 pints</td>
<td>$0</td>
<td>3 pints</td>
<td>$0</td>
</tr>
<tr>
<td>Additional amounts</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

| HOSPICE CARE | | | |
| Available as long as your doctor certifies you are terminally ill and you elect to receive these services | All but very limited coinsurance for outpatient drugs and inpatient respite care | $0 | Balance |

| MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR | | | |

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*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

**This deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year $1500 deductible. Benefits from the high deductible Plan F will not begin until out-of-pocket expenses are $1500. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy.

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>AFTER YOU PAY $1500 DEDUCTIBLE**</th>
<th>IN ADDITION TO $1500 DEDUCTIBLE**</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment.</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>First $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>Generally 80%</td>
<td>Generally 20%</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Part B excess charges (above Medicare-approved amounts)</td>
<td>$0</td>
<td>100%</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>BLOOD</td>
<td>First 3 pints</td>
<td>$0</td>
<td>All costs</td>
<td>$0</td>
</tr>
<tr>
<td>Next $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>80%</td>
<td>20%</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
</tbody>
</table>

PARTS A & B

<table>
<thead>
<tr>
<th>HOME HEALTH CARE MEDICARE APPROVED SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medically-necessary skilled care Services and medical supplies</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Durable medical equipment</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
<td>$0</td>
</tr>
<tr>
<td>First $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
<td>$0</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>80%</td>
<td>20%</td>
<td>$0</td>
</tr>
</tbody>
</table>

PLAN F

| OTHER BENEFITS - NOT COVERED BY MEDICARE | MEDICARE PAYS | PLAN PAYS | YOU PAY |

FOREIGN TRAVEL - NOT COVERED BY MEDICARE

Medically-necessary emergency care services beginning during the first 60 days of each trip outside the USA

| First $250 each calendar year | $0 | $0 | 250 | |
| Remainder of charges | $0 | 60% to a lifetime maximum benefit of $50,000 | 20% and amounts over the $50,000 lifetime maximum |

PLAN G

| MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD |

HOSPITALIZATION*

Semiprivate room and board, general nursing and miscellaneous services and supplies

| First 60 days | All but $792 | $792 (Part A deductible) | $0 |
| 61st thru 90th day | All but $198 a day | $198 a day | $0 |
| 91st day and after: | | | |
| While using 60 lifetime reserve days | All but $396 a day | $396 a day | $0 |
| Once lifetime reserve days are used: | | | |
| - Additional 365 days | $0 | 100% of Medicare-eligible expenses | $0 |
| - Beyond the additional 365 days | $0 | All costs | |

SKILLED NURSING FACILITY CARE*

You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital.

| First 20 days | All approved amounts | $0 | $0 |
| 21st thru 100th day | All but $99 a day | Up to $99 a day | $0 |
| 101st day and after | $0 | $0 | All costs |
| BLOOD | First 3 pints | $0 | 3 pints | $0 |
| Additional amounts | 100% | $0 | $0 |

HOSPICE CARE

Available as long as your doctor certifies you are terminally ill and you elect to receive these services.

| All but very limited coinsurance for outpatient drugs and inpatient respite care | $0 | Balance |

PLAN G

| MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR |

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

<table>
<thead>
<tr>
<th>MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment.</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>First $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>generically 80%</td>
<td>generically 20%</td>
<td>$0</td>
</tr>
<tr>
<td>Part B excess charges (above Medicare approved amounts)</td>
<td>$0</td>
<td>80%</td>
<td>$0</td>
</tr>
<tr>
<td>BLOOD</td>
<td>First 3 pints</td>
<td>$0</td>
<td>All costs</td>
</tr>
<tr>
<td>Next $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>80%</td>
<td>20%</td>
<td>$0</td>
</tr>
<tr>
<td>CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

PARTS A & B
VOLUME 28, NUMBER 8 – FEBRUARY 1, 2002

**HOME HEALTH CARE**

**MEDICARE APPROVED SERVICES**

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Percentage</th>
<th>Medicare Pays</th>
<th>Plan Pays</th>
<th>You Pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medically-necessary skilled care services and medical supplies</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Durable medical equipment</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- First $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$0</td>
<td>$100</td>
<td>(Part B deductible)</td>
</tr>
<tr>
<td>- Remainder of Medicare-approved amounts</td>
<td>60%</td>
<td>$0</td>
<td>$100</td>
<td>(Part B deductible)</td>
</tr>
<tr>
<td></td>
<td>20%</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
</tbody>
</table>

**AT-HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE**

Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan

<table>
<thead>
<tr>
<th>Benefit for each visit</th>
<th>Actual charges to $40 a visit</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of visits covered (must be received within 8 weeks of last Medicare-approved visit)</td>
<td>Up to the # of Medicare-approved visits, not to exceed 7 each week</td>
<td></td>
</tr>
<tr>
<td>Calendar year maximum</td>
<td></td>
<td>$1,000</td>
</tr>
</tbody>
</table>

**OTHER BENEFITS - NOT COVERED BY MEDICARE**

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>FOREIGN TRAVEL - NOT COVERED BY MEDICARE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medically-necessary emergency care services beginning during the first 60 days of each trip outside the USA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First $250 each calendar year</td>
<td>$0</td>
<td>$0</td>
<td>$250</td>
</tr>
<tr>
<td>Remainder of charges</td>
<td>$0</td>
<td>60% to a lifetime maximum benefit of $50,000</td>
<td>20% and amounts over the $50,000 lifetime maximum</td>
</tr>
</tbody>
</table>

**PLAN H - MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD**

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>HOSPITALIZATION*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Semiprivate room and board, general nursing and miscellaneous services and supplies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First 60 days</td>
<td>All but $792</td>
<td>$792 (Part A deductible)</td>
<td>$0</td>
</tr>
<tr>
<td>61st thru 90th day</td>
<td>All but $198 a day</td>
<td>$198 a day</td>
<td>$0</td>
</tr>
<tr>
<td>91st day and after</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- While using 60 lifetime reserve days</td>
<td>All but $396 a day</td>
<td>$396 a day</td>
<td>$0</td>
</tr>
<tr>
<td>- Once lifetime reserve days are used:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Additional 365 days</td>
<td>$0</td>
<td>100% of Medicare-eligible expenses</td>
<td>$99</td>
</tr>
<tr>
<td>- Beyond the additional 365 days</td>
<td>$0</td>
<td>All costs</td>
<td>$0</td>
</tr>
</tbody>
</table>

**SKILLED NURSING FACILITY CARE* | | | |
| You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital | | | |
| First 20 days | All approved amounts | $0 | $0 |
| 21st thru 100th day | All but $99 a day | Up to $99 a day | $0 |
| 101st day and after | | | |
| - HOSPICE CARE | Available as long as your doctor certifies you are terminally ill and you elect to receive these services. | | |
| - BLOOD | All but very limited coinsurance for outpatient drugs and inpatient respite care | $0 | Balance |

**PLAN H - MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR**

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>Generally 80%</td>
<td>Generally 20%</td>
<td>$0</td>
</tr>
<tr>
<td>Part B excess charges (above Medicare approved amounts)</td>
<td>0%</td>
<td>All costs</td>
<td>$0</td>
</tr>
<tr>
<td>BLOOD</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First 3 pints</td>
<td>$0</td>
<td>All costs</td>
<td>$0</td>
</tr>
<tr>
<td>Next $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>60%</td>
<td>20%</td>
<td>$0</td>
</tr>
<tr>
<td>CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

**PARTS A & B**

**HOME HEALTH CARE MEDICARE APPROVED SERVICES**

| Medically-necessary skilled care services and medical supplies | 100% | $0 | $0 |
| Durable medical equipment | | | |
| First $100 of Medicare-approved amounts* | $0 | $0 | $100 (Part B deductible) |
| Remainder of Medicare-approved amounts | 80% | 20% | $0 |

**AT-HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE**

Medically-necessary emergency care services beginning during the first 60 days of each trip outside the USA

| First $250 each calendar year | $0 | | $250 |
### VOLUME 28, NUMBER 8 – FEBRUARY 1, 2002

**BASIC OUTPATIENT PRESCRIPTION DRUGS NOT COVERED BY MEDICARE**

<table>
<thead>
<tr>
<th>Drug Category</th>
<th>Medicare Pays</th>
<th>Plan Pays</th>
<th>You Pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>First $250 each calendar year</td>
<td>$0</td>
<td>$0</td>
<td>$250</td>
</tr>
<tr>
<td>Next $2,500 each calendar year</td>
<td>$0</td>
<td>50% - $1,250 calendar year maximum benefit</td>
<td>$0</td>
</tr>
<tr>
<td>Over $2,500 each calendar year</td>
<td>$0</td>
<td>$0</td>
<td>All costs</td>
</tr>
</tbody>
</table>

**PLAN I**

**MEDICARE (PART A) – HOSPITAL SERVICES - PER BENEFIT PERIOD**

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.*

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>HOSPITALIZATION*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Semi-private room and board, general nursing and miscellaneous services and supplies</td>
<td>All approved amounts</td>
<td>All costs</td>
<td>$0</td>
</tr>
<tr>
<td>61st thru 90th day</td>
<td>All but $792</td>
<td>$792 (Part A deductible)</td>
<td>$0</td>
</tr>
<tr>
<td>91st day and after:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>While using 60 lifetime reserve days</td>
<td>All but $396 a day</td>
<td>$396 a day</td>
<td>$0</td>
</tr>
<tr>
<td>- Once lifetime reserve days are used:</td>
<td>$0</td>
<td>100% of Medicare-eligible expenses</td>
<td>$0</td>
</tr>
<tr>
<td>- Additional 365 days</td>
<td>$0</td>
<td></td>
<td>$0</td>
</tr>
<tr>
<td>- Beyond the additional 365 days</td>
<td>$0</td>
<td></td>
<td>$0</td>
</tr>
</tbody>
</table>

**SKILLED NURSING FACILITY CARE**

*You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital.*

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>BLOOD</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First 3 pints</td>
<td>$0</td>
<td>3 pints</td>
<td>$0</td>
</tr>
<tr>
<td>Additional amounts</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

**HOSPICE CARE**

*Available as long as your doctor certifies you are terminally ill and you elect to receive these services.*

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment.</td>
<td></td>
<td></td>
<td>Balance</td>
</tr>
<tr>
<td>First $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>generally 80%</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Part B excess charges (above Medicare approved amounts)</td>
<td>generally 20%</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>BLOOD</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First 3 pints</td>
<td>$0</td>
<td>All costs</td>
<td>$0</td>
</tr>
<tr>
<td>Next $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>80%</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

**HOME HEALTH CARE MEDICARE APPROVED SERVICES**

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medically-necessary skilled care services and medical supplies</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Durable medical equipment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>80%</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

**AT-HOME RECOVERY SERVICES NOT COVERED BY MEDICARE**

Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan.

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefit for each visit</td>
<td>$0</td>
<td>Actual charges to $40 a visit</td>
<td>Balance</td>
</tr>
<tr>
<td>Number of visits covered (must be received within 8 weeks of last Medicare-approved visit)</td>
<td>$0</td>
<td>Up to the # of Medicare-approved visits, not to exceed 7 each week</td>
<td>$1,600</td>
</tr>
<tr>
<td>Calendar year maximum</td>
<td>$0</td>
<td>$1,600</td>
<td>$0</td>
</tr>
</tbody>
</table>

**OTHER BENEFITS - NOT COVERED BY MEDICARE**

**FOREIGN TRAVEL-NOT COVERED BY MEDICARE**

Medically-necessary emergency care services beginning during the first 60 days of each trip outside the USA.

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>First $250 each calendar year</td>
<td>$0</td>
<td>$0</td>
<td>$250</td>
</tr>
<tr>
<td>Remainder of charges</td>
<td>$0</td>
<td>80% to a lifetime maximum benefit of $50,000</td>
<td>$0</td>
</tr>
</tbody>
</table>

**PLAN J**

**MEDICARE (PART A) – HOSPITAL SERVICES - PER BENEFIT PERIOD**

<table>
<thead>
<tr>
<th>BASIC OUTPATIENT PRESCRIPTION DRUGS NOT COVERED BY MEDICARE</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>First $250 each calendar year</td>
<td>$0</td>
<td>$0</td>
<td>$250</td>
</tr>
<tr>
<td>Next $2,500 each calendar year</td>
<td>$0</td>
<td>50% - $1,250 calendar year maximum benefit</td>
<td>$0</td>
</tr>
<tr>
<td>Over $2,500 each calendar year</td>
<td>$0</td>
<td>$0</td>
<td>All costs</td>
</tr>
</tbody>
</table>
**VOLUME 28, NUMBER 8 – FEBRUARY 1, 2002**

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.**

**This deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year $1500 deductible. Benefits from the high deductible Plan J will not begin until out-of-pocket expenses are $1500. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan’s separate prescription drug deductible or the plan’s separate foreign travel emergency deductible.**

### HOSPITALIZATION*

<table>
<thead>
<tr>
<th>Description</th>
<th>MFH/CARE PAYS</th>
<th>AFTER YOU PAY $1500 DEDUCTIBLE*</th>
<th>AFTER YOU PAY $1530 DEDUCTIBLE*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Separate room and board, general nursing and miscellaneous services and supplies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First 60 days</td>
<td>All but $792</td>
<td>$792 (Part A deductible)</td>
<td>$0</td>
</tr>
<tr>
<td>61st thru 59th day</td>
<td>All but $198 a day</td>
<td>$198 a day</td>
<td>$0</td>
</tr>
<tr>
<td>91st day and after</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>While using 60 lifetime reserve days</td>
<td>All but $396 a day</td>
<td>$396 a day</td>
<td>$0</td>
</tr>
<tr>
<td>- Additional 365 days</td>
<td>$0</td>
<td>100% of Medicare-eligible expenses</td>
<td>$0</td>
</tr>
<tr>
<td>- Beyond the additional 365 days</td>
<td>$0</td>
<td></td>
<td>All costs</td>
</tr>
</tbody>
</table>

### SKILLED NURSING FACILITY CARE*

You must meet Medicare’s requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital.

<table>
<thead>
<tr>
<th>Description</th>
<th>MFH/CARE PAYS</th>
<th>AFTER YOU PAY $1500 DEDUCTIBLE*</th>
<th>AFTER YOU PAY $1530 DEDUCTIBLE*</th>
</tr>
</thead>
<tbody>
<tr>
<td>First 20 days</td>
<td>All approved amounts</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>21st thru 100th day</td>
<td>All but $99 a day</td>
<td>Up to $99 a day</td>
<td>$0</td>
</tr>
<tr>
<td>101st day and after</td>
<td>$0</td>
<td></td>
<td>All costs</td>
</tr>
</tbody>
</table>

### BLOOD

<table>
<thead>
<tr>
<th>Description</th>
<th>MFH/CARE PAYS</th>
<th>AFTER YOU PAY $1500 DEDUCTIBLE*</th>
<th>AFTER YOU PAY $1530 DEDUCTIBLE*</th>
</tr>
</thead>
<tbody>
<tr>
<td>First 3 pints</td>
<td>$0</td>
<td>3 pints</td>
<td>$0</td>
</tr>
<tr>
<td>Additional amounts</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

### HOSPICE CARE

Available as long as your doctor certifies you are terminally ill and you elect to receive these services.

All very limited coinsurance for outpatient drugs and inpatient respite care

### PLAN J – MEDICARE (PART B) – MEDICAL SERVICES – PER CALENDAR YEAR

**Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.**

**This deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year $1500 deductible. Benefits from the high deductible Plan J will not begin until out-of-pocket expenses are $1500. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan’s separate prescription drug deductible or the plan’s separate foreign travel emergency deductible.**

### MEDICAL EXPENSES – IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician’s services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment

<table>
<thead>
<tr>
<th>Description</th>
<th>MFH/CARE PAYS</th>
<th>AFTER YOU PAY $1500 DEDUCTIBLE*</th>
<th>AFTER YOU PAY $1530 DEDUCTIBLE*</th>
</tr>
</thead>
<tbody>
<tr>
<td>First $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
<td>$0</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts generally</td>
<td>generally 80%</td>
<td>generally 20%</td>
<td></td>
</tr>
<tr>
<td>Part B excess charges (above Medicare approved amounts)</td>
<td>$0</td>
<td>100%</td>
<td>$0</td>
</tr>
</tbody>
</table>

### BLOOD

<table>
<thead>
<tr>
<th>Description</th>
<th>MFH/CARE PAYS</th>
<th>AFTER YOU PAY $1500 DEDUCTIBLE*</th>
<th>AFTER YOU PAY $1530 DEDUCTIBLE*</th>
</tr>
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<tbody>
<tr>
<td>First 3 pints</td>
<td>$0</td>
<td>All costs</td>
<td>$0</td>
</tr>
<tr>
<td>Next $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
<td>$0</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts 80%</td>
<td>20%</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

### HOME HEALTH CARE MEDICARE APPROVED SERVICES

<table>
<thead>
<tr>
<th>Description</th>
<th>MFH/CARE PAYS</th>
<th>AFTER YOU PAY $1500 DEDUCTIBLE*</th>
<th>AFTER YOU PAY $1530 DEDUCTIBLE*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medically-necessary skilled care services and</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>medical supplies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Durable medical equipment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First $100 of Medicare-approved amounts*</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
<td>$0</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts 80%</td>
<td>20%</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

### AT-HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE

Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan.

<table>
<thead>
<tr>
<th>Description</th>
<th>MFH/CARE PAYS</th>
<th>AFTER YOU PAY $1500 DEDUCIBLE*</th>
<th>AFTER YOU PAY $1530 DEDUCTIBLE*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefit for each visit</td>
<td>$0</td>
<td>Actual charges to $40 a visit</td>
<td>Balance</td>
</tr>
<tr>
<td>Number of visits covered (must be received within 8 weeks of last Medicare-approved visit)</td>
<td>$0</td>
<td>Up to the # of Medicare-approved visits, not to exceed 7 each week</td>
<td></td>
</tr>
<tr>
<td>Calendar year maximum</td>
<td>$0</td>
<td>$1,600</td>
<td></td>
</tr>
</tbody>
</table>

### OTHER BENEFITS - NOT COVERED BY MEDICARE

<table>
<thead>
<tr>
<th>Description</th>
<th>MFH/CARE PAYS</th>
<th>AFTER YOU PAY $1500 DEDUCTIBLE*</th>
<th>AFTER YOU PAY $1530 DEDUCTIBLE*</th>
</tr>
</thead>
<tbody>
<tr>
<td>SERVICES</td>
<td>MEDICARE PAYS</td>
<td>IN ADDITION TO $1530 DEDUCTIBLE*</td>
<td></td>
</tr>
</tbody>
</table>

### FOREIGN TRAVEL - NOT COVERED BY MEDICARE

Medically-necessary emergency care services beginning during the first 60 days of each trip outside the USA.

<table>
<thead>
<tr>
<th>Description</th>
<th>MFH/CARE PAYS</th>
<th>AFTER YOU PAY $1500 DEDUCTIBLE*</th>
<th>AFTER YOU PAY $1530 DEDUCTIBLE*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st $250 each calendar year</td>
<td>$0</td>
<td>$0</td>
<td>$250</td>
</tr>
<tr>
<td>Remainder of charges 80% to a lifetime maximum benefit</td>
<td>$0</td>
<td>20% and amounts over the $50,000 lifetime maximum</td>
<td></td>
</tr>
</tbody>
</table>

### EXTENDED OUTPATIENT PRESCRIPTION DRUGS NOT COVERED BY MEDICARE

<table>
<thead>
<tr>
<th>Description</th>
<th>MFH/CARE PAYS</th>
<th>AFTER YOU PAY $1500 DEDUCTIBLE*</th>
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</thead>
<tbody>
<tr>
<td>1st $250 each calendar year</td>
<td>$0</td>
<td>$0</td>
<td>$250</td>
</tr>
<tr>
<td>Next $8,000 each calendar year maximum benefit</td>
<td>$0</td>
<td>50% - $3,000 calendar year</td>
<td>50%</td>
</tr>
<tr>
<td>Over $8,000 each calendar year maximum benefit</td>
<td>$0</td>
<td>All costs</td>
<td></td>
</tr>
</tbody>
</table>

- 1857 -
(4) Notice regarding policies or certificates which are not Medicare supplement policies.
(a) Any accident or sickness insurance policy or certificate (other than a Medicare supplement policy), a policy issued pursuant to a contract under 42 USC 1395 et. seq., disability income policy, or other policy identified in Section 2(3) of this administrative regulation issued for delivery in Kentucky to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate.
(b) The notice shall:
1. Either be printed on or attached to the first page of the outline of coverage delivered to insureds under the policy; or
2. If no outline of coverage is delivered, printed on or attached to the first page of the policy or certificate delivered to insureds.
(c) The notice shall be in no less than twelve (12) point type and shall contain the following language:
"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the Insurance commissioner."
(d) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in paragraph (a) of this subsection shall disclose, using the applicable statement in Section 10 of this administrative regulation, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

Section 10. Disclosure Statements. (1) 42 USC 1395ss(d)(3)A prohibits the sale of a health insurance policy (the term policy or policies includes certificates) that duplicate Medicare benefits unless it will pay benefits without regard to other health coverage and it includes the prescribed disclosure statement on or together with the application.
(2) A health insurance policy that duplicates Medicare shall include one (1) of the following disclosure statements [incorporated by reference in this administrative regulation], according to the particular policy type involved, on the application or together with the application:
(a) HIPMC-MS-4 (3/01) shall be the original disclosure statement for a policy that provides benefits for expenses incurred for an accidental injury only;
(b) HIPMC-MS-5 (3/01) shall be the original disclosure statement for a policy that provides benefits for specified limited services;
(c) HIPMC-MS-6 (3/01) shall be the original disclosure statement for a policy that reimburses expenses incurred for a specified disease or other specified impairment. This includes expense incurred cancer, specified disease, and other type of health insurance policy that reimburses reimbursement to named medical conditions;
(d) HIPMC-MS-7 (3/01) shall be the original disclosure statement for a policy that pays fixed dollar amounts for a specified disease or other specified impairment. This includes cancer, specified disease, and other health insurance policy that pays a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy;
(e) HIPMC-MS-8 (3/01) shall be the original disclosure statement for an indemnity policy and other policy that pays a fixed dollar amount per day, excluding a long-term care policy;
(f) HIPMC-MS-9 (3/01) shall be the original disclosure statement for a policy that provides benefits upon both an expense-incurred and fixed indemnity basis;
(g) HIPMC-MS-10 (3/01) shall be the original disclosure statement for other health insurance policies not specifically identified in paragraphs (a) through (f) of this subsection;
(h) HIPMC-MS-11 (3/01) shall be the alternative disclosure statement for a policy that provides benefits for expenses incurred for an accidental injury only;
(i) HIPMC-MS-12 (3/01) shall be the alternative disclosure statement for a policy that provides benefits for specified limited services;
(j) HIPMC-MS-13 (3/01) shall be the alternative disclosure statement for a policy that reimburses expenses incurred for a specified disease or other specified impairment. This includes expense incurred cancer, specified disease, and other type of health insurance policy that limits reimbursement to named medical conditions;
(k) HIPMC-MS-14 (3/01) shall be the alternative disclosure statement for a policy that pays fixed dollar amounts for a specified disease or other specified impairment. This includes cancer, specified disease, and other health insurance policy that pays a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy;
(l) HIPMC-MS-15 (3/01) shall be the alternative disclosure statement for a policy that provides benefits upon both an expense-incurred and fixed indemnity basis;
(m) HIPMC-MS-16 (3/01), and
(n) HIPMC-MS-17 (3/01).

(3) [22] A disclosure statement shall [may] not vary from the incorporated statements in terms of language or format (type size, type proportional spacing, bold type character, line spacing, and usage of boxes around text). [23]
(4) [23] In accordance with 42 USC 1395 ss (d)(3)(A), an insurer is prohibited from selling a Medicare supplement policy to a person who already has a Medicare supplement policy, except as a replacement.
(5) [44] Property/casualty and life insurance policies are not considered health insurance.
(6) [54] Disability income policies are not considered to provide benefits that duplicate Medicare.
(7) [64] The federal law does not preempt state laws that are more stringent than the federal requirements.
(8) [74] The federal law does not preempt existing state form filing requirements.

Section 11. Material Incorporated by Reference. (1) The following material is incorporated by reference:
(a) "HIPMC-MS-4 (3/01)"
(b) "HIPMC-MS-5 (3/01)"
(c) "HIPMC-MS-6 (3/01)"
(d) "HIPMC-MS-7 (3/01)"
(e) "HIPMC-MS-8 (3/01)"
(f) "HIPMC-MS-9 (3/01)"
(g) "HIPMC-MS-10 (3/01)"
(h) "HIPMC-MS-11 (3/01)"
(i) "HIPMC-MS-12 (3/01)"
(j) "HIPMC-MS-13 (3/01)"
(k) "HIPMC-MS-14 (3/01)"
(l) "HIPMC-MS-15 (3/01)"
(m) "HIPMC-MS-16 (3/01)"; and
(n) "HIPMC-MS-17 (3/01).
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department's internet website at www.doi.state.ky.us.

JANIE A. MILLER, Commissioner
RONALD B. MCCLOUD, Secretary
APPROVED BY AGENCY: August 16, 2001
FILED WITH LRC: August 20, 2001 at 1 p.m.
PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at AFRS, January 8, 2002)

806 KAR 17:400. Marketing and sales practices in Medicare supplement insurance policies.


STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-510, 304.32-250, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.14-510 authorizes the Commissioner of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 authorizes the Commissioner of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS 304.32. KRS 304.38-150 authorizes the Commissioner of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS Chapter 304.38. This administrative regulation establishes minimum standards for marketing and sales practices in Medicare supplement insurance policies.

Section 1. Definitions. (1) "Applicant" is defined in KRS 304.14-500(1); [means:

(a) in the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits; and

(b) in the case of a group Medicare supplement policy, the proposed certificate holder.]

(2) "Bankruptcy" means [when] a Medicare + Choice organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in this state.

(3) "Certificate" is defined in KRS 304.14-500(2); [means any certificate delivered to or issued under a group Medicare supplement policy.]

(4) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the insurer.

(5) "Commissioner" is defined in KRS 304.1-050(1).

(6) "Compensation" means [that] any remuneration of any kind relating to the sale or renewal of the policy or certificate such as bonuses, gifts, prizes, awards, and finders' fees.

(7) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days.

(8) "Creditable coverage" is defined in KRS 304.17A-005(7); [means:

(a) Coverage only for accident and disability income insurance, or any combination thereof;

(b) Coverage issued as a supplement to liability insurance;

(c) Liability insurance, including general liability insurance and automobile liability insurance;

(d) Medical compensation or similar insurance;

(e) Automobile medical payment insurance;

(f) Credit-only insurance;

(g) Coverage for on-site medical clinics;

(h) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits; and

(i) Benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

1. Limited scope dental or vision benefits;

2. Benefits for long-term care, nursing home health care, home health care, community-based care, or any combination thereof; and

3. Such other similar, limited benefits as are specified in federal regulations.]

(9) The following benefits if offered as independent, noncoordinated benefits:

1. Coverage only for a specified disease or illness;

2. Hospital indemnity or other indemnity insurance.

(d) The following if offered as a separate policy, certificate or contract of insurance:

1. Medicare supplement health insurance benefits as defined under 18 USC 1395dd(g)(2);

2. Coverage supplemental to the coverage provided under 10 USC 55; and

3. Similar supplemental coverage provided to coverage under a group health plan.]

(9) "Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 USC 1002.

(10) "Insolvency" means [when] an insurer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

(11) "Insurance policy" means an insurance policy; a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation; and an enrollee contract issued by a health maintenance organization.

(12) "Issuer" means [includes] insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

(13) "Medicare" is defined in KRS 304.14-500(4); [means health insurance for the aged and disabled under 42 USC 1395 et seq.]

(14) "Medicare + Choice plan" means a plan of coverage for health benefits under Medicare Part C as defined in 42 USC 1395w-28(b)(1), and includes the following:

(a) A coordinated care plan which provides health care services, including the following:

1. A health maintenance organization plan with or without a point-of-service option;

2. A plan offered by a provider-sponsored organization; and

3. A preferred provider organization plan;

(b) A medical savings account plan coupled with a contribution into a Medicare + Choice medical savings account; and

(c) A Medicare + Choice private fee-for-service plan.

(15) "Medicare Select policy" or "Medicare Select certificate" means respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(16) "Medicare supplement policy" is defined in KRS 304.14-500(8); [means a group or individual policy of insurance, a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation, or an enrollee contract issued by a health maintenance organization, other than a policy issued pursuant to a contract under 42 USC 1395 et seq., or an issuing policy under a demonstration project specified in 18 USC 1396d(44)]

(17) "PACE" means a program for all-inclusive care for the elderly under 42 USC 1396.

(18) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

(19) "Secretary" means the Secretary of the United States Department of Health and Human Services.

Section 2. Open Enrollment. (1) An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in Kentucky, nor discriminate in the pricing of a Medicare supplement policy or certificate, because of the health status, claims experience, receipt of health care, or medical condition of an applicant if:

(a) [in the case of] An application for a policy or certificate [is not] submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is sixty-five (65) years of age or older and

(b) [The] The applicant is enrolled for benefits under Medicare Part B.

B. (2) Each Medicare supplement policy and certificate currently
available from an insurer shall be made available to all applicants who qualify under [this] subsection (1) of this section without regard to age.

(3) [23](a) If an applicant qualifies under subsection (1) of this section and submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the issuer shall not exclude benefits based on a preexisting condition.

(b) If the applicant qualifies under subsection (1) of this section and submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. Pursuant to 42 USC 1395m(a)(3)(A)(i)(I), the secretary shall specify the manner of the reduction under this subsection.

(d) [33] Except as provided in Section 12(1)(1) of this administrative regulation, this administrative regulation shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective.


(a) Eligible persons shall be those individuals described in subsection (2) of this section who seek to enroll under the policy during the period specified in subsection (3) of this section, and who submit evidence of the date of termination or enrollment with the application for a Medicare supplement policy.

(b) With respect to eligible persons, an issuer shall not:

1. Deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection (5) of this section that is offered and is available for issuance to new enrollees by the issuer; or

2. [shall not] Discriminate in the pricing of [such] a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition; and

3. [shall not] Impose an exclusion of benefits based on a preexisting condition under [such] a Medicare supplement policy.

(2) An eligible person shall include the following:

(a) An individual that is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare and the plan terminates, [or] the plan ceases to provide all the [such] benefits under Medicare [and the plan terminates], or the plan ceases to provide all the [such] supplemental health benefits to the individual;

(b) An individual that is enrolled with a Medicare + Choice organization under a Medicare + Choice plan under Part C of Medicare and:

1. [and any of the following circumstances apply]: The individual is sixty-five (65) years of age or older, [and] is enrolled with a program of all-inclusive care for the elderly (PACE) provider under 42 USC 1396, and there are circumstances similar to those described in subparagraph 2 of this paragraph [below] that would permit discontinuance of the individual's enrollment with the [such] provider if the [such] individual were enrolled in a Medicare + Choice plan; or

2. Any of the following circumstances apply:

(a) [4] The certification of the organization or plan under this part has been terminated;

(b) [2] The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(c) [2] The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary, pursuant to 42 USC 1395w-21[e](4)(B), but not including termination of the individual's enrollment on the basis described in 42 USC 1395w-21[g](3)(B) [if] the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under 42 USC 1395w-26), or termination of the plan [is terminated] for all individuals within a residence area;

(d) [4] The individual demonstrates, in accordance with the guidelines established by the secretary, that:

(i) [a] The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards;

(ii) [b] The organization, [or] agent, or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(e) [5] The individual meets [such] other exceptional conditions as the secretary may provide.

(c)1. An individual that is enrolled with any of the following:

a. An eligible organization under a contract under 42 USC 1395mm regarding Medicare risk or cost;

b. A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

c. An organization under an agreement under 42 USC 1395(a)(1)(A) regarding the health care prepayment plan; or

d. An organization under a Medicare Select policy; and

2. The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage pursuant to paragraph (b) of this subsection; [4]

(c)2. An individual that is enrolled under a Medicare supplement policy and the enrollment ceases due to any of the following reasons:

1. a. The insolvency of the issuer or bankruptcy of the nonissuer organization; or

b. The involuntary termination of coverage or enrollment under the policy;

c. The issuer of the policy substantially violated a material provision of the policy; or

2. The issuer, [or] an agent, or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(e)1. An individual that was enrolled under a Medicare supplement policy who [and] terminates enrollment and subsequently enrolls, for the first time, with any of the following:

a. A Medicare + Choice organization under a Medicare + Choice plan under Part C of Medicare;

b. An eligible organization under a contract under 42 USC 1395mm regarding Medicare risk or cost;

c. Any similar organization operating under demonstration project authority;

d. Any PACE Program under 42 USC 1396;

e. Any organization under agreement under 42 USC 1395(a)(1)(A) regarding health care prepayment plan; or

f. A Medicare Select policy; and

2. The subsequent enrollment paragraph (e)1 of this subsection is terminated by the enrollee during any period within the first twelve (12) months of [such] subsequent enrollment during which the enrollee is permitted to terminate the [such] subsequent enrollment under 42 USC 1395w-21(e) of the federal Social Security Act; or

(f) An [the] individual who, upon first becoming eligible for benefits under Part A of Medicare at age sixty-five (65), enrolls in:

1. A Medicare + Choice plan under Part C of Medicare[ or] with a PACE provider under 42 USC 1396; and

2. [and] Disenrolls from the plan or program no [by no] later than twelve (12) months after the effective date of enrollment.

(3) Guaranteed issue time periods.

(a) For [in the case of] an individual described in subsection (2)(a) of this section, the guaranteed issue period shall begin on the date the individual receives a notice of termination or cessation of all supplemental health benefits [or, if a notice is not received, notice that a claim has been denied because of [such] a termination or cessation] and end sixty-three (63) days after the date of the applicable notice;

(b) For [in the case of] an individual described in subsection (2)(b), (c), (e), and (f) of this section whose enrollment is terminated involuntarily, the guaranteed issue period shall begin on the date that the individual receives a notice of termination and end sixty-three (63) days after the date the applicable coverage is terminated;
(c) For [in the case of] an individual described in subsection (2)(a) of this section, the guaranteed issue period shall end on the date that is sixty-three (63) days after the date the coverage is terminated and shall begin on the earlier of:

1. The date that the individual receives a notice of termination, a notice of the issuer’s bankruptcy or insolvency, or other [such] similar notice, if any; or

2. The date the applicable coverage is terminated;

(d) For [in the case of] an individual described in subsection (2)(b), (d)(2), 3, (e) or (f) of this section who disenrolls voluntarily, the guaranteed issue period shall begin on the date that is sixty (60) days before the effective date of the disenrollment and end on the date that is sixty-three (63) days after the effective date; and

(e) For [in the case of] an individual described in subsection (2) of this section but not described in the preceding provisions of this subsection, the guaranteed issue period shall begin on the effective date of disenrollment and end on the date that is sixty-three (63) days after the effective date.

(4) Extended Medigap access for Interrupted trial periods

(a) For [in the case of] an individual described in subsection (2)(a) of this section [for deemed to be so described, pursuant to this paragraph] whose enrollment with an organization or provider described in subsection (2)(a) of this section is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls with another [such] organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in subsection (2)(e) of this section;

(b) For [in the case of] an individual described in subsection (2)(f) of this section [for deemed to be so described, pursuant to this paragraph] whose enrollment with a plan or in a program described in subsection (2)(f) of this section is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in subsection (2)(e) of this section; and

(c) For purposes of subsection (2)(e) and (f) of this section, [an] enrollment of an individual with an organization or provider described in subsection (2)(e) of this section or with a plan or in a program described in subsection (2)(f) of this section, shall not [may] be deemed to be an initial enrollment under this paragraph after the two (2) year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program.

(5) The Medicare supplement policy to which eligible persons are entitled shall be the following:

(a) A person eligible pursuant to subsection (2)(a), (b), (c), or (d) of this section shall be entitled to a Medicare supplement policy which has a benefit package classified in 805 KAR 17:390, Section 7(5) as Plan A, B, C, or D offered by an issuer.

(b) A person eligible pursuant to subsection (2)(e) of this section shall be eligible to the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not [so] available, a policy described in subsection (3)(a) of this section.

(c) A person eligible pursuant to subsection (2)(f) of this section shall be entitled to any Medicare supplement policy offered by any issuer.

(6) Notification provisions.

(a) When [At the time of] an event as described in subsection (2) of this section occurs, resulting in loss of [because of which an individual loses] coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his rights under this section, and of the obligations of issuers of Medicare supplement policies under subsection (1)(b) of this section. This [such] notice shall be communicated contemporaneously with the notification of termination.

(b) When [At the time of] an event as described in subsection (2) of this section occurs, resulting in cessation of [because of which an individual ceases] enrollment under a contract, agreement, policy, or plan, the organization that offers the contract or agree-
ment, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his rights under this section, and of the obligations of issuers of Medicare supplement policies under subsection (1)(b) of this section. This [such] notice shall be communicated within ten (10) working days of the issuer receiving notification of enrollment.

Section 4. Filing and Approval of Policies and Certificates and Premium Rates. (1) An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by KRS 304.14-120 [the filing requirements and procedures prescribed by the commissioner].

(2) An issuer shall not file or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the commissioner in accordance with KRS 304.14-120 [the filing requirements and procedures prescribed by the commissioner].

(a) Except as provided in paragraph (b) of this subsection, an issuer shall not file for approval more than one (1) form of a policy or certificate which may be an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy, [of each type] for each standard Medicare supplement benefit plan.

(b) An issuer may offer, with the approval of the commissioner, up to four (4) additional policy forms or certificate forms which may be an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy, [of the same type] for the same standard Medicare supplement benefit plan, one (1) for each of the following cases:

1. The inclusion of new or innovative benefits;

2. The addition of either direct response or agent marketing methods;

3. The addition of either guaranteed issue or underwritten coverage;

4. The offering of coverage to individuals eligible for Medicare by reason of disability.

(c) [For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.]

(d) Policies issued as a result of solicitations of individuals through the mails or by mass media advertising (excluding both print and broadcast advertising) shall be deemed to be individual policies.

(a) Except as provided in subparagraph 1 of this paragraph, an issuer shall continue to make available for purchase any policy form or certificate form issued after January 1, 1992, that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

1. An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer shall not [no longer] offer for sale the policy form or certificate form in the state.

An issuer that discontinues the availability of a policy form or certificate form pursuant to subparagraph 1 of this paragraph shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(b) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(c) A change in the rating structure or methodology shall be considered a discontinuance under paragraph (a) of this subsection unless the issuer complies with the following requirements:

1. The issuer provides a written memorandum [in a form and manner prescribed by the commissioner] describing the manner in
which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates; and
2. The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential which is in the public interest.

(5)(a) Except as provided in paragraph (b) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in 806 KAR 17:420, Section 2(2).

(b) Forms assumed under an assumption reinsurance arrangement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

Section 5. Permitted Compensation Arrangements. (1) An issuer or other entity may provide a commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(2) The commission or other compensation provided in subsequent (renewal) years shall be the same as that provided in the second year or period and shall be provided for not less than five (5) years.

(3) An issuer or other entity shall not provide compensation to its agents or other producers, and an agent or producer shall not receive compensation greater than the renewal compensation payable by the replacing issuer or renewal policies or certificates if an existing policy or certificate is replaced.

(4) For purposes of this section, "compensation" includes pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including, but not limited to, bonuses, gifts, prizes, awards, and finder's fees.


Section 7. Requirements for Application Forms and Replacement Coverage. (1) Comparison statement. If [whereas a Medicare supplement policy or certificate is to replace another health insurance policy or certificate, there shall be presented to the applicant, no later than at the time of taking the application, HIPMCMS-1 (3/01)][incorporated by reference in this administrative regulation].

Direct response issuers shall present the comparison statement to the applicant not later than when the policy is delivered [at the time of delivery of the policy]. Agents shall:

(a) Obtain the signature of the applicant on the comparison statement;
(b) [and shall] Sign the comparison statement; and
(c) Send the comparison statement to the issuer. A copy of the comparison statement shall be attached to the replacement policy.

(2) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application:

(a) [the applicant has another Medicare supplement or other health insurance policy or certificate in force; or
(b) A Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and the agent containing these questions and statements may be used:

(d) [a] You do not need more than one (1) Medicare supplement policy.
(b) [c] If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.
(c) [d] You may be eligible for benefits under Medicaid and may not need a Medicare supplemental policy.
(d) [e] The benefits and premiums under your Medicare supplement policy can be suspended for twenty-four (24) months, if requested during your entitlement to benefits under Medicaid [for twenty-four (24) months]. You must request this suspension within ninety (90) days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstated if requested within ninety (90) days of losing Medicaid eligibility.
(e) [f] Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and providing medical assistance through the state Medicaid Program, including benefits as a qualified Medicare beneficiary (QMB) and a specified low-income Medicare beneficiary (SLMB).

(f) [g] Questions. To the best of your knowledge:

(a) [h] Do you have another Medicare supplement policy or certificate in force?
(i) [i] If so, with which company?
(ii) [j] If so, do you intend to replace your current Medicare supplement policy or certificate in the second year or period?
(b) [k] Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?
(i) [l] If so, with which company?
(ii) [m] What kind of policy?
(c) [n] Are you covered for medical assistance through the state Medicaid Program?
(i) [o] As a specified low-income Medicare beneficiary (SLMB)?
(ii) [p] As a qualified Medicare beneficiary (QMB)?
(iii) [q] For other Medicaid medical benefits?
(d) [r] Agents shall list any other health insurance policies they have sold to the applicant.

(a) List policies sold which are still in force.
(b) List policies sold in the last five (5) years which are no longer in force.

(4) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

(5) Upon determining that a sale will involve replacement of Medicare supplement coverage, an issuer (other than a direct response issuer), or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One (1) copy of the notice signed by the applicant and the agent, except if [whereas] coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant, when the policy is issued [at the time of issuance of the policy]

The notice required by subsection (5) of this section for an issuer shall be provided in substantially the following form in no less than twelve (12) point type:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE

(Insurer Name and Address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to your (application or information you have furnished), you intend to terminate existing health insurance and replace it with a policy to be issued by (insurer name). Your new policy provides (insert here an amount of time not less than thirty (30) days) within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all health insurance you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement coverage. You should evaluate the need for other health coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER OR AGENT (OR OTHER REPRESENTATIVE):

I have reviewed your current health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement coverage because you intend to terminate your existing Medicare supplement coverage. The replacement policy is being purchased for the following rea-
son(s) (check one):

___ Additional benefits.

___ No change in benefits, but lower premiums.

___ Fewer benefits and lower premiums.

___ Other (please specify).

(a) Health conditions which you may presently have (so-called preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy (this paragraph may be modified if preexisting conditions are, in fact, covered under the new policy).

(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, limitations, or periods of time in the new policy (or coverage) for similar benefits to the extent that such time was spent (depleted) under the original policy.

(c) If you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on your application concerning your medical and health history. Failure to include all material medical information on your application may provide a basis for the insurer to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been recorded properly. If the policy or certificate is guaranteed issue, this paragraph need not appear.

(d) Do not cancel your present policy until you have your new policy and are sure that you want to keep it.

Signature of Agent or Other Representative:

Typed Name and Address of Agent:
The above "Notice to Applicant" was delivered to me on:

Date:

Applicant's Signature:

(7) Subsection (6)(a) and (b) of this section may be omitted from the replacement notice if the replacement policy or certificate does not involve application of a new preexisting condition limitation.

Section 8. Filing Requirements for Advertising of Medicare Supplement Policies. (1) An issuer shall provide a copy of any Medicare supplement policy advertisement intended for use in Kentucky under a written publication, radio, or television announcement to the commissioner prior to such use. Advertisements shall [need] not require approval [be approved] prior to use, but an advertisement shall not be used if it has been disapproved by the commissioner and notice of the disapproval has been given to the issuer.

(2) Issuers and agents shall not use the names and addresses of persons purchased as "leads" unless the solicitation material used to obtain such names and addresses is filed as advertisements as required by this section. Issuers and agents shall not use such "leads" if the solicitation materials have been disapproved by the commissioner.

Section 9. Policy Delivery. If a Medicare supplement policy is not delivered by mail, the agent or issuer shall obtain a signed and dated delivery receipt from the individual. If the delivery receipt is obtained by an agent, the agent shall forward the delivery receipt to the issuer.

Section 10. Standards for Marketing. (1) An issuer, directly or through its agents or other representatives, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other representatives will be fair and accurate.

(b) Establish marketing procedures to assure excess insurance is not sold or issued.

(c) Display prominently by type, stamp, or other appropriate means, on the first page of the policy the following disclosure: "Notice to buyer: This policy may not cover all of your medical expenses."

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.

(e) Establish auditable procedures for verifying compliance with this subsection.

(2) In addition to the practices prohibited in KRS 304.12 and 806 KAR 12:092, the following acts and practices shall be [are] prohibited:

(a) Twisting. Making any unfair or deceptive representation or incomplete or fraudulent comparison of any insurance policies or insures for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use [directly or indirectly] of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(3) The terms "Medicare supplement", "Medigap", "Medicare Wrap-Around", and words of similar import shall not be used unless the policy is issued in compliance with this administrative regulation.

Section 11. Appropriateness of Recommended Purchase and Excessive Insurance. (1) In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of recommended purchase or replacement.

(2) Any sale of Medicare supplement coverage that will provide an individual more than one (1) Medicare supplement policy or certificate shall be [is] prohibited.

Section 12. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods, and Probationary Periods in Replacement Policies or Certificates. (1) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy or certificate for similar benefits, to the extent this [such] time was spent under the original policy.

(2) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods.

Section 13. Incorporation by Reference. (1) "HIPMCMS-1 (3/01)" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 9 a.m. to 4:30 p.m. Forms may also be obtained at the department's Internet web site at www.dot.state.ky.us.

JANIE A. MILLER, Commissioner
RONALD B. MCCLOUD, Secretary
APPROVED BY AGENCY: August 16, 2001
FILED WITH LRC: August 20, 2001 at 1 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARRS, January 8, 2002)

806 KAR 17:410. Claims payment practices in Medicare supplement insurance policies.

RELATES TO: KRS 304.3-240, 304.14-500 to 304.14-550, 304.17-311, 304.18-034, 304.32-275, 304.38-205, 42 USC 1395 to
VOLUME 28, NUMBER 8 – FEBRUARY 1, 2002

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARRS, January 8, 2002)

806 KAR 17:420. Rates, premiums and loss ratio requirements in Medicare supplement insurance policies.


STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-510, 304.32-250, 304.38-150
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.14-510 authorizes the Commissioner of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 authorizes the Commissioner of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS 304.32. KRS 304.38-150 authorizes the Commissioner of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS 304.38. This administrative regulation establishes minimum standards for claims payment practices in Medicare supplement insurance policies.

Section 1. Definitions. (1) ["Certificate" means any certificate delivered to or issued under a group Medicare supplement policy.]
(2) "Commissioner" is defined in KRS 304.1-050(1).
(3) "Insurance policy" means an insurance policy, a subscriber contract issued by a nonprofit hospital, medical surgical, dental, and health service corporation, and an enrollee contract issued by a health maintenance organization.
(4) ["Issuer" means includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.]
(5) ["Medicare" is defined in KRS 304.14-500(4). [means health insurance for the aged and disabled under 42 USC 1395 et seq.]]
(6) ["Medicare supplement policy" means a group or individual policy of insurance, a subscriber contract issued by a nonprofit hospital, medical surgical, dental, and health service corporation, or an enrollee contract issued by a health maintenance organization, other than a policy issued pursuant to a contract under 42 USC 1395 et seq. or an issued policy under a demonstration project specified in 42 USC 1395gg(a)(1), which is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare.]
(7) ["Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.]
(8) "Secretary" means the Secretary of the United States Department of Health and Human Services.

Section 2. Standards for Claims Payment. (1) An issuer shall comply with 42 USC 1395ss by:
(a) Accepting a notice from a Medicare carrier on dually-assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;
(b) Notifying the participating physician or supplier and the beneficiary of the payment determination;
(c) Paying the participating physician or supplier directly;
(d) Furnishing each enrollee, at the time of enrollment, [each enrollee] with a card listing the policy name, number, and a central mailing address to which notices from a Medicare carrier may be sent;
(e) Paying user fees for claim notices that are transmitted electronically or otherwise; and
(f) Providing to the secretary, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.
(2) Compliance with the requirements established [as follows] in subsection (1) of this section shall be reported as part of an issuer's annual filing with the commissioner required by KRS 304.3-249.

JANIE A. MILLER, Commissioner
RONALD B. MCCLOUD, Secretary
APPROVED BY AGENCY: August 16, 2001
FILED WITH LRC: August 20, 2001 at 1 p.m.
a. Based on:
(i) Calculated on the basis of incurred claims experience or incurred health care expenses if [when] coverage is provided by a health maintenance organization on a service rather than reimbursement basis; and
(ii) Earned premiums for such period; and
b. In accordance with accepted actuarial principles and practices.

(b) A filing of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filing of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage is [can be] expected to meet the applicable loss ratio standards.

(c) For purposes of applying paragraph (a) of this subsection, policies issued as a result of solicitations of individuals through the mail or mass media advertising (including both print and broadcast advertising) shall be deemed to be independent policies.

(d) For policies issued prior to October 14, 1990, expected claims in relation to premiums shall meet:
1. The originally filed anticipated loss ratio when combined with the actual experience since inception;
2. The appropriate loss ratio requirement from paragraph (a)1a and b of this subsection when combined with actual experience beginning with the effective date of this administrative regulation [insert effective date of this revision] to date; and
3. The appropriate loss ratio requirement from paragraph (a)1a and b of this subsection over the entire future period for which the rates are computed to provide coverage.

(2) Refund or credit calculation.

(a) An issuer shall file and file with the commissioner by May 31 of each year the data contained in the following applicable reporting forms [form] for each type in a standard Medicare supplement benefit plan:
1. A Medicare Supplement Refund Calculation Form, HPMC-MS-18 (3/01), [incorporated by reference in this administrative regulation] shall be used to calculate the amount of refund or credit against premiums.
2. A Reporting Form for the Calculation of Benchmark Ratio Since Inception for Individual Policies, HPMC-MS-19 (3/01), [incorporated by reference in this administrative regulation] shall be used to calculate the benchmark ratio used to determine the refund or credit against premiums for individual policies.

3. A Reporting Form for the Calculation of Benchmark Ratio Since Inception for Group Policies, HPMC-MS-20 (3/01), [incorporated by reference in this administrative regulation] shall be used to calculate the benchmark ratio used to determine the refund or credit against premiums for group policies.

(b) When completing a Medicare Supplement Refund Calculation Form, as required by paragraph (a)1 of this subsection, the following requirements apply:
1. If on the basis of the experience as reported, the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund of credit calculation shall be required.
2. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan.
3. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.
4. For policies or certificates issued prior to October 14, 1990, the issuer shall make the refund or credit calculation separately for:
   (i) All individual policies combined, [including all group policies subject to an individual loss ratio standard when issued; combined and]
   (ii) All other group policies combined for experience.
5. A refund or credit shall be made only if [when] the benchmark loss ratio exceeds the adjusted experience loss ratio, and the amount to be refunded or credited exceeds a minimal [minimum] level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the secretary, but shall not be less than the average rate of interest for thirteen (13) week treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.
6. (3) Annual filing of premium rates.

(a) An issuer of Medicare supplement policies and certificates issued before or after January 1, 1992, in this state shall file annually [file, ratable schedule, and supporting documentation, including ratios of incurred losses to earned premiums by policy duration] for approval by the commissioner, in accordance with the filing requirements and procedures prescribed by KRS 304.14-120, the following:
1. Rates;
2. Rating schedule; and
3. Supporting documentation, including ratios or incurred losses to earned premiums by policy duration.

(b) The supporting documentation shall demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be met over the entire period for which rates are computed.

(c) The demonstration shall exclude active life reserves.

(d) An issuer shall file and file with the commissioner, in accordance with KRS 304.14-120 [applicable filing procedures], the following:
1. Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable Medicare supplement policies or certificates. Supporting documents necessary to justify the section shall accompany the filing.
2. Appropriate [An issuer shall make] premium adjustments [as are necessary] to produce an expected loss ratio under the policies and certificates that will conform to the minimum loss ratio standards for Medicare supplement policies, and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for Medicare supplement policies or certificates. A premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described in this subsection, shall not be made with respect to a policy at any time other than upon its renewal date or anniversary date.
3. If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds, or premium credit deemed necessary to achieve the loss ratios required by this section. If the required premium adjustments, refunds, or premium credits are not made within a reasonable time, the commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after January 1, 1992 if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance shall be made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in accordance with KRS 304.2.

Section 3. Material Incorporated by Reference. (1) The following material is incorporated by reference:
(a) HPMC-MS-18 (3/01);
(b) HPMC-MS-19 (3/01); and
(c) HPMC-MS-20 (3/01).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department's Internet web site at www.doi.state.ky.us.

JANIE A. MILLER, Commissioner
PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARRS, January 8, 2002)

806 KAR 17:430. Reporting requirements in Medicare supplement insurance policies.

RELATES TO: KRS 304.14-500 to 304.14-550, 304.17-311, 304.18-034, 304.32-275, 304.38-205, 42 USC 1395 to 1395ggg [et seq.]

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-510, 304.32-250, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.14-510 authorizes the Commissioner of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 authorizes the Commissioner of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS 304.32. KRS 304.38-150 authorizes the Commissioner of Insurance to promote administrative regulations which he deems necessary for the proper administration of KRS 304.38. This administrative regulation establishes minimum standards for reporting requirements in Medicare supplement insurance policies.

Section 1. Definition. (Definitions. (1) "Certificate" means any certificate delivered to or issued under a group Medicare supplement policy.

(2) "Insurance policy" means an insurance policy, a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation, and an enrollee contract issued by a health maintenance organization.

(4) "Medicare" means health insurance for the aged and disabled under 42 USC 1395 et seq.

(8) Medicare supplement policy is defined in KRS 304.14-500(3).

(9) Medicare supplement policy is defined in KRS 304.14-500(3).

(11) "Medicare supplemental policy" is defined in KRS 304.14-500(3).

(2) "Medicare supplemental policy" is defined in KRS 304.14-500(3).

(1) "Medicare supplemental policy" is defined in KRS 304.14-500(3).

Section 2. Reporting of Multiple Policies. (1) An insurer shall submit to the department a Form for Reporting Medicare Supplement Policies, HIPMC-MS-2 (3/01), [incorporated by reference in the administrative regulations] on or before March 1 of each year.

Section 3. Material Incorporated by Reference. (1) "Form for Reporting Medicare Supplement Policies, HIPMC-MS-2 (3/01)" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department’s internet web site at www.doi.state.ky.us.

JANIE A. MILLER, Commissioner
RONALD B. MCCLOUD, Secretary
APPROVED BY AGENCY: August 16, 2001
FILED WITH LRC: August 20, 2001 at 1 p.m.

VOLUME 28, NUMBER 8 – FEBRUARY 1, 2002

CABINET FOR HEALTH SERVICES
Office of Certificate of Need
(As Amended at ARRS, January 8, 2002)


RELATES TO: KRS 216B.010 to 216B.130, 216B.455, 216B.590(2)

STATUTORY AUTHORITY: KRS [394A.030(1), 394A.050(1), 216B.040(3)(a), 216B.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(a) authorizes the Cabinet for Health Services to promulgate administrative regulations. KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided 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 January 1, 2002 [July 15, 2000] and ending December 31, 2002 [July 14, 2004] to reflect the changes in the preceding year.

(2) The U.S. Department of Commerce, Bureau of Census implicit price deflator for construction shall be used in making these adjustments. [The change in the deflator for the twelve (12) month period ending January, 1999 represents a 3.23 percent increase.] The change in the deflator for the twelve (12) month period ending December 31, 2001 [January, 2002] represents a 3.35 [3.60] percent increase.

Section 1. (1) Expenditure minimums or limits provided in KRS Chapter 216B and administrative regulations promulgated pursuant thereto shall be adjusted for the twelve (12) month period beginning January 1, 2002 [July 15, 2000] and ending December 31, 2002 [July 14, 2004] to reflect the changes in the preceding year.

(2) The U.S. Department of Commerce, Bureau of Census implicit price deflator for construction shall be used in making these adjustments. [The change in the deflator for the twelve (12) month period ending January, 1999 represents a 3.23 percent increase.] The change in the deflator for the twelve (12) month period ending December 31, 2001 [January, 2002] represents a 3.35 [3.60] percent increase.

Section 2. The expenditure minimums provided in KRS Chapter 216B shall be increased for the twelve (12) month period from January 1, 2002 [July 15, 2000] to December 31, 2002 [July 14, 2004] as follows:

(1) The expenditure minimum of $1,772,224 [4,656,678] for capital expenditure shall be increased to $1,831,594 [4,722,224]

(2) The expenditure minimum of $1,772,224 [4,656,678] for major medical equipment shall be increased to $1,831,594 [4,722,224].

JOHN H. GRAY, Executive Director
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: November 6, 2001
FILED WITH LRC: November 7, 2001 at 2 p.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, January 8, 2002)


RELATES TO: KRS 211.180, 211.900-211.905, 211.9061 to 211.9079, 211.994, 217.801, 40 CFR Part 745, 15 USC 2601, sec. 408(6)

STATUTORY AUTHORITY: KRS 211.090(3), 211.9065(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.9065(4) and 211.9067 authorize [authorizes] the Department for Public Health to promulgate administrative regulations relating to the training, certification of persons, and standards and procedures for activities related to conducting lead-hazard assessment and abatement activities in target housing or child-occupied facilities. This administrative regulation establishes definitions for [wording used in] 902 KAR Chapter 48 [48:020, 902 KAR 48:030 and 902 KAR 48:040].

Section 1. Definitions. (1) "Abatement permit" means a permit issued by the department to a person [an abatement permit holder] who plans to conduct lead-hazard abatement in target housing or
child-occupied facilities.

(2) "Abatement permit holder" means a person who (where):
(a) Is certified by the department to conduct lead abatement activities; and
(b) Has been issued a permit by the department to conduct specific lead abatement activities.

(3) "Abatement plan" means a plan prepared either by a department-certified supervisor or project designer, that is a detailed, written description of the proposed planned abatement activities for the lead-hazard assessment, environmental lead-hazard control, cleanup, and clearance.

(4) "Accredited training program" means a program that a training provider has been accredited by the department to provide courses for training individuals engaged in lead-hazard detection and abatement activities, conducted by a training provider accredited by the department.

(5) "Adequate quality control" means a plan or design that:
(a) Ensures the authenticity, integrity, and accuracy of samples including:
  1. Dust;
  2. Soil; and
  3. Paint chips; and
(b) Provides for representative sampling.

(6) "Applicable work experience" means experience in a profession related to lead, asbestos, environmental remediation work, building renovation-remodeling, or building construction.

(7) "Approved course" means a training course (that):
(a) The training course was approved under the initial accreditation requirement of a training program; and
(b) Conducted by a provider who has met the notification and reporting requirements of 902 KAR 48:040, Section 13. The training provider followed the departmental training course notification and reporting requirements as identified in 902 KAR 48:030, Section 13.

(8) "Certificate of accreditation" means the document issued by the department to a training provider certifying that the training provider has been approved by the department to provide training courses for individuals who perform lead-hazard detection and abatement activities.

(9) "Chewable surface" means an interior- or exterior-painted surface that is accessible to children for chewing or chewing.

(10) "Child" (or children) means a person (or persons) six (6) years of age or younger.

(11) "Child-occupied facility" is defined by KRS 211.9061(1).

(12) "Clearance dust level" means the lead level permitted in dust on a surface following completion of an abatement or other activity which may have caused or potentially has caused a lead paint hazard, as established in 902 KAR 48:040, Section 13. As identified in 902 KAR 47:040, Section 13.

(13) "Common area" means a portion of a building that is generally accessible to the occupants of multiresidential units.

(14) "Composite dust sample" means a sample of dust:
(a) Consisting of two (2) or more subsamples; and
(b) Representing each component being tested; and
(c) Containing a subsample from only one (1) type of component. A composite dust sample consists of dust samples that shall:
(a) Consist of at least two (2) subsamples; and
(b) Represent each component that is being tested and shall be included in the sampling and analysis.

(15) "Containment" means a process to protect workers and the environment by controlling exposures to lead-contaminated dust and debris created during a lead abatement project or activity.

(16) "Course test blueprint" means written documentation identifying the percentage of course test questions devoted to each major topic in a course curriculum.

(17) "Department" is defined at KRS 211.9061(2) [means the Department for Public Health].

(18) "Deteriorated paint" means an [any] interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or is otherwise damaged or separated from the substrate.

(19) "Discipline" means a category of work performed by one (1) of the following persons: [type of lead hazard assessment and abatement activities]:
(a) Lead-hazard inspector;
(b) Lead-hazard risk assessor;
(c) Lead-hazard dust sampling technician;
(d) Lead-hazard abatement worker;
(e) Lead-hazard abatement supervisor;
(f) Lead-hazard project designer; or
(g) Lead-hazard abatement company.

(20) "Distinct painting history" means the application history of paint or other surface coatings to a component or building component as indicated by:
(a) Its visual appearance; or
(b) A record of paint application over time.

(21) "Documented methodologies" means methods or protocols used to sample for the presence of lead in paint, dust, and soil, which are silicas that:
(a) Established by administrative regulation [rule]; or
(b) Recognized, as indicated in 902 KAR 48:040, Section 1, for acceptable use as identified in department administrative rules or regulations.

(22) "Drip line" means the area within three (3) feet surrounding the perimeter of a building.

(23) "Dust-lead hazard" means surface dust in a residential dwelling or child-occupied facility that contains a specific area or mass concentration of lead exceeding the levels established [as identified in] 902 KAR 48:040, Section 13.

(24) "Encapsulant" means a liquid-applied coating, or an adhesively-bonded covering material, that forms a barrier between lead-containing paint and the environment.

(25) "Encapsulation" means the application of an encapsulant.

(26) "Enclosure" means a [the use of] rigid, durable construction material [materials that are] mechanically fastened to the substrate[es] in order to act as a barrier between the underlying lead-containing paint and the environment.

(27) "Equivalent method" means a method [that has been] demonstrated to the department by a certified person that [to the department's] method:
(a) Is equally protective as documented methodologies; and
(b) Enables adequate quality control; and
(c) Protects the environment.

(28) "EPA" means the U.S. Environmental Protection Agency.

(29) "Hands-on skills assessment" means an evaluation of a trainee's ability to perform activities that test the trainee's performance of practice standards and procedures established in 902 KAR 48:040, Section 13.

(30) "Hazardous levels of lead in paint" or "lead-based paint" means a level of lead in paint or similar coating as identified in 902 KAR 48:040, Section 13.

(31) "Impact surface [surfaces]" means an interior or exterior surface [that is] subject to abrasion or friction, including [but not limited to certain] window, floor, and stair surfaces.

(32) "Interior window sill" means the portion of the horizontal window ledge that protrudes into the interior of the room.

(33) "Guest instructor" means a person designated by training manager to provide:
(a) Instructions specific to the lecture;
(b) Hands-on activities; or
(c) Work practice standards and procedures [components of a course].

(34) "Interim control" means a measure [controls: a set of measures] designed to temporarily reduce human exposure, actual or potential, to a lead-hazard, including [as a potential exposure to lead hazards, including]
(a) Specialized cleaning; 
(b) Repairs; 
(c) Maintenance; 
(d) Painting; 
(e) Temporary containment; 
(f) Ongoing monitoring of lead-hazards or potential hazards; or 
(g) The establishment and operation of management and resident educational programs.

(35) (366) "Large scale" means an abatement project with ten (10) or more residential dwellings.

(36) (424) "Lead-hazard" means a hazard due to excessive amounts of lead in: 
(a) Paint; 
(b) Dust; or 
(c) Soil.

[or "lead-based paint hazard" means hazardous lead-based paint, dust, lead hazards, or soil lead hazards.]

(37) (387) "Lead-hazard abatement" is defined by KRS 211.9061(4).

(38) (396) "Lead-hazard abatement worker" means a person [who is] certified by the department to perform physical lead-hazard abatement activities.

(39) (405) "Lead-hazard [abatement] company" means a firm [that is] certified by the department to perform lead-hazard assessment and abatement activities in target housing and child-occupied facilities.

(40) (414) "Lead-hazard detection" is defined by KRS 211.9061(3).

(41) (423) "Lead-hazard dust sampling technician" means person who performs clearance evaluation and sampling for nonabatement activities that may create a potentially create lead dust hazard.

(42) (432) "Lead-hazard inspection" means a examination of painted surfaces within the interior or exterior of a residential structure or child-occupied facility, to determine if hazardous levels of lead are present.

(43) (441) "Lead-hazard inspector" means a person [who is] certified by the department to conduct: 
(a) Conduct Lead-hazard inspections; 
(b) Sample collection [Collect samples]; and 
(c) Conduct Lead-hazard dust clearance.

(44) (450) "Lead-hazard project designer" means a person [who is] certified by the department to prepare the following items for a lead-hazard abatement project, [project] in accordance with [requirements pursuant to] 902 KAR 48:040, Section 7: 
(a) Abatement project plans; 
(b) Abatement reports; and 
(c) Occupant protection plans.

(45) (468) "Lead-hazard risk assessment" means an on-site investigation to determine the existence, nature, severity, location of lead hazards.

(46) (477) "Lead-hazard risk assessor" means a person [who is] certified by the department to conduct: 
(a) Conduct Lead-hazard inspections; 
(b) Conduct Risk assessments; 
(c) Conduct Lead-hazard screens; 
(d) Sample collection [Collect samples]; and 
(e) Conduct Lead-hazard dust clearance.

(47) (486) "Lead-hazard screen" means a risk-assessment activity requiring reduced sampling that involves reduced paint and dust or other potential lead-hazard sampling.

(48) (495) "Lead-hazard supervisor" means a person [who is] certified by the department to: 
(a) Supervise lead-hazard abatement activities; and 
(b) Prepare, in accordance with [requirements pursuant to] 902 KAR 48:040, Section 7: 
1. Abatement plans; 
2. Abatement reports; and 
3. Occupant protection plans [for small scale lead-hazard abatement projects].

(49) (504) "Lead paint hazard" means: 
(a) Any lead-based paint on a friction surface with [that is subject to abrasion and where the] dust levels on the nearest horizontal surface beneath [that is measured] the friction surface [are] equal to or greater than [as identified] dust-lead-hazard levels;

(b) Any] Damaged or [otherwise] deteriorated lead-based paint on an impact surface; 
(c) Any] Chewable lead-based painted surface on which there is evidence of teeth marks; or 
(d) Any other] Deteriorated lead-based paint within a [the interior or exterior of any] residential dwelling or child-occupied facility.

(50) (513) "Living area" means an area of a residential dwelling used by one (1) or more child.

(51) (522) "Mid yard" means an area of a residential yard approximately midway between the drip line of a residential building and; 
(a) The nearest property boundary; or 
(b) Between the drip lines of a residential building and] Another building on the same property.

(52) (531) "Multifamily dwelling" means a structure that contains more than one (1) separate residential unit, that is used or occupied, or intended to be used or occupied, as the home or residence of one (1) or more persons.

(53) (540) "Permanently covered soil" means soil [that]: 
(a) Soil that has been separated from human contact by the placement of a barrier consisting of a solid, impermeable material [materials], such as pavement or concrete, not including [and] 
(b) Does not consider as permanent grass, mulch, or [and] other landscaping material [materials].

(54) (559) "Person" is defined at KRS 217.660(3), [means an individual, Corporation, partnership, association, or any other group or organization.]

(55) (568) "Play area" means an area where children contact soil frequently, [of frequent soil-contact by children] as indicated by the following: 
(a) Presence of: 
1. Play equipment; 
2. Toys; or 
3. Other activities used by children; [children's possessions, or] 
(b) Observations of play patterns; or 
(c) Information provided by [the]: 
1. Parent [Parents]; or 
2. Resident [Residents]; or 
3. Care giver [givers]; or 
4. Property owner [owners].

(56) (577) "Postabatement report" means a report [that is] prepared at the conclusion of an [the] abatement project, after clearance has been achieved, in accordance with 902 KAR 48:040, Section 16, [which indicates any changes in the activities that were conducted and other information as indicated in 902 KAR 48:040, Section 16.]

(57) (586) "Quality assurance inspection" means an inspection conducted by the department to determine whether a lead abatement activity complies with: 
(a) Certification requirements; 
(b) Work practices; and 
(c) Performance standards.

(58) (595) "Quality control plan" means a written plan prepared by the training manager describing [program that explains] in-house controls to assure that the program meets the requirements [as identified] in 902 KAR 48:030, Section 5.

(59) (604) "Recognized laboratory" means an environmental laboratory [recognized by EPA] accredited pursuant to Section 409(b) of the Toxic Substance Control Act, 15 USC 2601, as being capable of performing an analysis for lead compounds in paint, soil, dust, and water.

(60) (613) "Reduction" means measures designed to reduce or eliminate human exposure to lead hazards.

(61) (622) "Residential dwelling" means a building containing one (1) or more residential dwellings.

(62) (631) "Room" means a separate part of the inside of building, that is separated from adjoining rooms by build-in walls or archways that extend at least six (6) inches from the intersecting wall.

(63) (640) "Soil-lead hazard" means bare soil, on residential property or the property of a child-occupied facility, containing lead at or greater than the levels specified at 902 KAR 48:040, Section 13, [on residential real property or on the property of a child-occupied facility that contains lead at or in excess of levels specified in 902 KAR 48:040, Section 11.]

- 1868 -
"Soil sample" means a sample collected in a representative location using:
(a) ASTM E 1727 "Standards Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectroscopy Techniques";
(b) A documented methodology [methodologies]; or
(c) An [alternative] equivalent method [methods].
[65] Pay means an abatement project with less than ten (10) residential dwellings.
[65] [623] "Target housing" is defined by KRS 211.9061(5) [211.905(5)].
[66] [668] "Training day" means a period of time which includes eight (8) training hours.
[67] [669] "Training hour" means at least fifty (50) minutes of actual teaching, including:
(a) [Hands-on exercise];
(b) Lecture;
(c) Learning activities;
(d) Small group activities;
(e) Demonstrations;
(f) Evaluations; and
(g) Hands-on experience.
[68] [720] "Third-party examination" means a written test approved [designated] and administered by the department or its [designated] agent.
[69] [724] "Training manager" means the individual responsible for administering a training program and monitoring the performance of [principal and] guest instructors.
(22) "Visual inspection for clearance testing" means the visual examination of a residential dwelling or a child-occupied facility, followed by the activity that disturbs lead-based paint, to inspect for visible residue, dust, and debris.
(23) "Visual inspection for risk assessment" means the visual examination of a residential dwelling or child-occupied facility to determine the existence of deteriorated lead-containing paint or other potential sources of lead hazards.
(70) [724] "Window trough" or "window well" means:
(a) For a typical double-hung window, the proportion of the exterior window sill between the interior window sill and the frame of the storm window; or
(b) If there is no storm window, the area upon which the upper and lower sashes rest which is received, the upper and lower sash when they are both lowered to the lower sash.
(71) [749] "Wipe sample" means a sample collected by wiping, with an approved wipe-sampling material, a representative surface of a known area, as determined by:
(a) ASTM E 1728: "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrograph Technique";
(b) A documented methodology described in [methodologies];
(c) An equivalent method.
(72) [749] "Wipe sampling material [materials]" means that the material used for wiping complies within ASTM E 1792 "Standards specifications for wipe sampling material for lead in surface dust."
(73) [722] "XRF" means an x-ray fluorescence device that indicates the lead levels on a painted surface.

Section 1. Application Procedures. An applicant for certification shall submit to the department:
(1) An application fee:
(a) In the amount established in Section 8 of this administrative regulation;
(b) By check or money order; and
(c) Made payable to the Kentucky State Treasurer;
(2) A document containing the following information:
(a) Name of applicant;
(b) Company;
(c) Address;
(d) Phone number;
(e) The discipline for which the applicant is requesting certification;
(3) The following documents:
(a) A color portrait at least two (2) by two (2) inches in size;
(b) A copy of a course completion certificate received from a course approved by the department; and
(c) Documentation demonstrating that the applicant has met the initial requirements established for the indicated discipline, as described in Section 4 of this administrative regulation.

Section 2. Departmental Review and Certification. (1) The department shall:
(a) Review and approve or disapprove the application for initial certification or recertification; and
(b) Notify the applicant, within ten (10) working days of receipt of the application, of the results of the review.
(2) An applicant whose application for a discipline requiring a third-party examination is approved shall:
(a) Pay to the department, an examination fee in an amount established in Section 8 of this administrative regulation;
(b) Schedule with the department a date and time to take the examination;
(c) Be permitted to take the examination three (3) times within a twelve (12) period of time;
(d) If the applicant fails the third examination, complete another approved course before reapplying for certification; and
(e) If the applicant passes or is not required to take an ex-
amination, shall pay a discipline fee in an amount established in Section 8 of this administrative regulation.

(3) If an application is found to be deficient:
(a) The department shall notify the applicant that:
1. Specified supplemental documentation is required;
2. Additional education or training is required; or
3. Other specified information is necessary to determine the applicant's qualifications;
(b) The applicant shall:
1. Submit the requested information before qualifying to take the required examination or otherwise complete the application process; and
2. Within twelve (12) months, become certified by the department; or
3. Reapply for certification and pay additional specified fees.

(4) The department shall:
(a) Grant individual certification upon:
1. Satisfaction of the requirements for application approval and education or training; and
2. Payment of the discipline fee;
(b) Issue a certification certificate and identification card valid for a period of two (2) years from the date of completion of the required course of training. (Application for Certification). Individual certification for the discipline applied for shall be for a period of two (2) years and begin at the date of completion of the required course(s).
(c) The department shall have ten (10) working days to review and approve or disapprove of the initial certification or recertification applications.
(d) The person applying for certification shall submit the application fee for the discipline established by Section 9 of this administrative regulation, which is to be:
(a) Submitted in the form of check or money order; and
(b) Made payable to the Kentucky State Treasurer.
(e) In addition, a person seeking certification by the department shall submit the following information to the department:
(a) Name;
(b) Company;
(c) Address;
(d) Phone number;
(e) Discipline for which the applicant is requesting certification;
(f) Color photograph no smaller than two (2) by two (2) inches;
(g) A copy of course completion certificate(s) received from a department-approved course(s); and
(h) Documentation that indicates that the applicant has met the established requirements for the applicable discipline identified in Section 5 of this administrative regulation.

Section 3. Initial Application Review. (1) When the application is approved for a discipline requiring a third party examination individual shall do the following:
(a) Pay the third party examination fee as identified in Section 9 of this administrative regulation; and
(b) Schedule a time and date to take the examination with the department.
(2) The applicant shall be:
(a) Allowed to take the third party examination up to three (3) times within the twelve (12) month time period; and
(b) Required to fail after the third time to complete another approved course before reapplying for certification.
(3) When the applicant passes or is not required to take the examination, the department shall pay the appropriate discipline fee as identified in Section 9 of this administrative regulation.
(4) When the applicable discipline fee is received the department shall issue a certification certificate and identification card.
(5) If the application is found to be deficient the department shall:
(a) Provide the applicant with a listing of additional documentation required;
(b) Indicate the need for additional educational or training; or
(c) Request other information necessary to determine applicant qualifications;
(d) The applicant shall provide the additional information to the department before the applicant is allowed to take the required third party examination and complete the application process.

Section 4. [4.] Certification Through Reciprocity. An applicant shall be considered (person shall be given consideration) for certification by the department under an equivalency certification agreement (agreements) established at KRS 211.0909.

Section 4. [5.] Initial Requirements for Each Discipline. (1) Lead-hazard abatement worker shall successfully complete a department-approved lead abatement worker course.
(2) Lead-hazard inspector shall:
(a) Successfully complete an approved training course for inspectors;
(b) Have a high school diploma or equivalent; and
(c) Have at least one (1) year's related (applicable) work experience.
(3) Lead-hazard risk assessor [discipline] shall:
(a) Successfully complete an approved inspector course prior to the completion of an approved risk assessor course; and
(b) Have at least one (1) year of the following [qualification requirements]:
1. Certification as an industrial hygienist, professional engineer, registered architect, or registered sanitarian;
2. A bachelor's degree, and one (1) year related (applicable) work experience;
3. An associate degree, and two (2) years related (applicable) work experience; or
4. A high school diploma or equivalent, and at least one (1) year of (3) years related (applicable) work experience.
(4) Lead-hazard supervisor [discipline] shall have:
(a) Successfully completed an accredited training course for supervisors;
(b) A high school diploma or equivalent; and
(c) At least two (2) years related (applicable) work experience.
(5) Lead-hazard project designer [discipline] shall have:
(a) Successfully completed an approved training course for supervisor prior to successfully (taking and completing) an approved project designer course; and
(b) One (1) of the following [qualification requirements]:
1. A bachelor's degree in engineering, architecture, or a related profession, and one (1) year related (applicable) work experience; or
2. Four (4) years related (applicable) work experience.
(6) Lead dust sampling technician shall have:
(a) Successfully completed an approved training course for a project designer; and
(b) Successfully completed department proficiency requirements.

Section 5. [6.] Certification of Lead-Hazard Company. (1) A company shall be certified by the department prior to conducting lead-hazard assessment and abatement activities and shall qualify as follows.
(2) The company applying for certification shall:
(a) Pay an application fee as identified in Section 8 of this administrative regulation; and
(b) Submit the following information:
1. A list of department certified employees; and
2. Notarized affidavit stating that the company is knowledgeable of and will follow the work practice standards established by 902 KAR 46:040.

Section 6. [7.] Individual Recertification. [1][a] An applicant [application] for recertification shall, at least be made at a minimum of thirty (30) days before [prior to] the expiration date indicated on the certificate, submit to the department:
(a) A completed application;
(b) A fee established at Section 8 of this administrative regulation; and [department issued certificate; and]
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(c) (b) An applicant for recertification shall submit:
1.) The fee established by Section 9 of this administrative regulation for the applicable discipline, and
2.) Documentation of successful completion of an approved refresher course, for the appropriate discipline, which was taken within the last twelve (12) months of the certification period.
(2) An applicant who fails an individual applies for recertification after the time specified in subsection (paragraph) (1) of this section, but within six (6) months after the certification has lapsed, shall be required to:
(a) Pass a department-approved refresher course; and
(b) Retake and pass the applicable third-party examination under the process identified in Section 2 of this administrative regulation.
(3) [Blank] An applicant who fails to reapply for certification after six (6) months from the date that the certification has lapsed shall:
(a) Pass an initial course; and
(b) Reapply through the certification process as identified in Section 2 of this administrative regulation.

Section 7. [Blank] Company Recertification. A lead-hazard company shall apply for recertification by submitting:
(1) The fee established by Section 9 of this administrative regulation;
(2) A current listing, as of the date of recertification, of certification numbers identifying the employees engaged in lead-hazard activities; and
(3) A notarized affidavit certifying that the company:
(a) Has continued to use the work practice standards established by 902 KAR 48:040; and
(b) Uses only departmental-certified employees to conduct lead-hazard activities in target housing and child-occupied facilities in the Commonwealth.

Section 8. [Blank] Fee Schedule. The fee for application for certification and recertification shall be as follows:

<table>
<thead>
<tr>
<th>Type or discipline</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application</td>
<td>$50</td>
</tr>
<tr>
<td>Third-party exam</td>
<td>$50</td>
</tr>
<tr>
<td>Lead dust sampling technician</td>
<td>$100</td>
</tr>
<tr>
<td>Lead-hazard project designer</td>
<td>$300</td>
</tr>
<tr>
<td>Lead-hazard risk assessor</td>
<td>$250</td>
</tr>
<tr>
<td>Lead-hazard inspector</td>
<td>$200</td>
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<tr>
<td>Lead-hazard supervisor</td>
<td>$150</td>
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<tr>
<td>Lead-hazard abatement worker</td>
<td>$75</td>
</tr>
<tr>
<td>Lead-hazard company</td>
<td>$200</td>
</tr>
<tr>
<td>Reissue of lost certificate or identification card</td>
<td>$25</td>
</tr>
</tbody>
</table>

Section 9. [Blank] Suspension, Revocation, Denial and Modification of Certificates. If the department suspends, revokes, denies, or modifies the certificate of a person or firm, it shall notify the certificate holder, in writing, (person or firm in writing) of the following:
(1) The legal and factual basis for the suspension, revocation, denial, or modification;
(2) The commencement date and duration of the suspension, revocation, or modification;
(3) Action, if any, which the certified person may take to avoid suspension, revocation, or modification, or to receive certification in the future;
(4) The opportunity and method for requesting a hearing prior to final department action; and
(5) Other information the department deems appropriate.

Section 10. Administrative Hearings. An administrative hearing shall be conducted in accordance with 902 KAR 1:400.

NICHOLAS Z. KAFOGLOS, M.D., Chairman
RICE C. LEACH, M.D., Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: September 24, 2001

FILED WITH LRC: September 25, 2001 at 10 a.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, January 9, 2005)

902 KAR 48:030. Accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection and abatement.

RELATES TO: KRS 211.180, 211.900 to 211.905, 211.990, 211.995, 217.801
STATUTORY AUTHORITY: KRS 211.900(3), (214-185A) 211.9061 to 211.9075 (214-809)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.9065(3) requires and 211.9067 authorizes the Department for Public Health to promulgate administrative regulations relating to the accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection or lead-hazard abatement activities in target housing or child-occupied facilities. KRS 211.9067 requires the department to promulgate administrative regulations to establish a schedule of fees for certification and accreditation programs. KRS 211.9065(4) requires the department to promulgate administrative regulations to provide for enforcement of the programs. This administrative regulation establishes requirements for accreditation, curriculum content, training experience, competency and proficiency qualifications, and establishes fees for functions performed by the department.

Section 1. [Applicability. The provisions of this administrative regulation shall govern the accreditation of all training programs, which provide training for persons who conduct lead-hazard detection activities in target housing or child-occupied facilities in the Commonwealth of Kentucky under the certification procedures identified in 902 KAR 48:030.

Section 2. [Blank] Initial Application Requirements for Training Programs. A training provider shall submit the following:
(1) An application review fee of $200 in the form of a check or money order payable to the Kentucky State Treasurer, unless exempted by federal or state law or regulation;
(2) Management and administrative information as follows:
(a) Training provider name;
(b) Address; and
(c) Telephone number;
(3) The name of the training manager;
(4) A list of training courses proposed for accreditation;
(5) Documentation of the training manager qualifications as identified in Section 6 of this administrative regulation;
(6) Documentation of principal instructor’s qualifications as identified in Section 6 of this administrative regulation;
(7) Copies of student and instructor manuals for each course;
(8) Course outlines;
(9) Copies of course agendas;
(10) The description of the activities and procedures that will be used for conducting the hands-on skills assessment for each course;
(11) Copies of hands-on skills assessment forms;
(12) Copies of course test blueprints;
(13) Copies of course tests;
(14) A copy of the quality control plan; and
(15) The location and description of the facilities and equipment to be used for providing lecture and hands-on training.

Section 3. [Blank] Review of Accreditation Documentation. (1) The department shall, within thirty (30) calendar days after the receipt of an application for accreditation, approve or disapprove the application to:
(a) Approve or disapprove the application for accreditation; and
(b) Notify the applicant of its action.
(2) During the thirty (30) day period established by subsection...
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(1) of this section, the department may request clarification or additional information from the applicant.

(3) If [Blank] the department approves an application for a training program, it shall:
(a) Notify the applicant of its approval in writing; and
(b) Indicate the appropriate course fees that are to be paid to the department.

(4) On receipt of the required fee of $200 for each initial and refresher course the department shall issue a certificate of accreditation to the training provider.

(5) If [Blank] the department denies an application [the approval of a training course] it shall:
(a) Notify the applicant of its denial in writing; and
(b) List the necessary additions or corrections to the application.

(6) The training provider shall have six (6) months to:
(a) Make the corrections specified in the notice of denial; and
(b) Reapply for accreditation.

(7) The provider shall be required to pay another application review fee of $200 to the department before the accreditation review process will be undertaken, if the training provider does not:
(a) Correct the deficiencies; and
(b) Resubmit the application within six (6) months of the initial application date.

Section 3. [4.] Amending Training Program Accreditation. (1) The accreditation of a training program shall be for two (2) years.

(2) After the training provider has applied for and received program accreditation, the provider may add a course discipline [new course disciplines at any time] by:
(a) Amending the original accredited training program application in writing; and
(b) Paying the application and course fee.

(3) A course [Courses] added to the training program during the two (2) year accreditation [this time] period shall be included with, and applied for under, the application for reaccreditation of the training program.

Section 4. [5.] Training Provider Facilities and General Course Requirements. (1) A training provider shall provide [the following]:
(a) Adequate facilities for the delivery of:
  1. Lecture;
  2. Course test;
  3. Hands-on training; and
  4. Assessment activities; and
(b) [Provide] One (1) instructor per ten (10) students when conducting hands-on skills activities and assessments;
(c) Adequate hands-on skills training equipment consistent with current technology; [Ensure that there is adequate training equipment for the hands-on skills activities that reflect current technologies];
(d) [Ensure that there is] Adequate audiovisual equipment to provide effective instruction and lecture to students; and
(e) Appropriate [Ensure that] lighting and space [is appropriate] for effective student learning.

(2) A training provider shall:
(a) Give a course test at the completion of each course;
(b) Confirm the identity of each [identity of the] student by examining a photographic [picture] identification; and
(c) If applicable, conduct a hands-on skill assessment.

(3) A training provider shall not issue [grant an individual] a course completion certificate unless the student [has]:
(a) Successfully completed the hands-on skills assessment;
(b) Received a score of seventy (70) percent [percentile] on the course test; and
(c) Has attended a least ninety (90) percent of each training day for the length of the course.

(4) If necessary, the training provider may allow the student up to two (2) weeks following the course to:
(a) Retake and pass the course examination; and
(b) Complete the hands-on skills assessment requirements.

(5) [Issue] A course completion certificate [is issued the certificate shall] include the following information:
(a) The name of the student [individual];
(b) The name of the course;
(b) Contains, at least, the procedures for the:
1. Periodic revision of training materials and the course test to reflect innovations in the field; and
2. Training manager’s annual review of principal instructor competency; and
(7) Ensure (Ensure) that the training program complies with the requirements of this administrative regulation.

Section 7. [7.3] Knowledge of Work Practice Standards. (1) The training provider shall offer courses that teach the work practice standards established by:
(a) The work practice standards established in this administrative regulation, for conducting lead-hazard activities; and
(b) Other related standards developed by:
1. The EPA; and
2. Other federal and state agencies.
(2) Work practice standards shall be taught in the appropriate courses to provide trainees with knowledge needed to perform safe, effective lead-hazard assessment and abatement activities in target housing and child-occupied facilities.

Section 8. [8.1] Requirements for Initial Courses. (1) The lead-hazard inspector course shall:
(a) Consist of at least [last a minimum of] twenty-four (24) training hours;
(b) Include at least [a minimum of] eight (8) hours of [devoted to] hands-on training activities; and
(c) Include the following minimum curriculum requirements for inspector course topics:
1. Role and responsibilities of an inspector;
2. Background information on lead and its adverse health effects;
3. Background information on federal, state and local regulations that pertain to lead hazards and lead-hazard assessment and abatement activities;
4. Lead-hazard inspection methods, including selection of rooms and components for sampling or testing, with hands-on activities;
5. Paint, dust, water and soil sampling methodologies, with hands-on activities;
6. Clearance standards and testing, including random sampling, with hands-on activities;
7. Preparation of an inspection report, with hands-on activities; and
8. Recordkeeping.
(2) The lead-hazard risk assessor course shall:
(a) Consist of at least [last a minimum of] sixteen (16) training hours;
(b) Include at least [a minimum of] four (4) hours of [devoted to] hands-on training activities; and
(c) Include the following minimum curriculum requirements for the risk assessor course topics:
1. Role and responsibilities of the risk assessor;
2. Collection of background information to perform a risk assessment;
3. Sources of environmental lead contamination found in paint, surface dust, soil, water and air, packaging and food;
4. Visual inspection for the purpose of identifying potential sources of lead hazards, with [that includes] hands-on activities;
5. Lead-hazard screening protocol;
6. Sampling for other sources of lead exposure, with hands-on activities;
7. Interpretation of lead-sampling results, including applicable federal or state regulations pertaining to lead hazards, with hands-on activities;
8. Development of hazard control options, the role of interim controls, and operation and maintenance activities to reduce lead hazards; and
(3) The lead-hazard supervisor course shall:
(a) Consist of at least [last a minimum of] thirty-two (32) training hours;
(b) Include at least [a minimum of] eight (8) hours of [devoted to] hands-on activities; and
(c) Include the following minimum curriculum requirements for the supervisor course topics:
1. Role and responsibilities of a supervisor;
2. Background information on lead and its adverse health effects;
3. Background information on federal, state, and local regulations that pertain to lead hazards and lead-hazard assessment and abatement activities;
4. Liability and insurance issues relating to lead-hazard abatement;
5. Risk assessment and inspection report interpretation, with hands-on activities;
6. Development and implementation of an abatement and occupant protection plan;
7. Lead-hazard recognition and control, with hands-on activities;
8. Lead-hazard abatement and lead-hazard reduction methods, including restricted practices, with hands-on activities;
9. Interior dust abatement, cleanup, or lead-hazard control and reduction methods, with hands-on activities;
10. Soil and exterior lead dust abatement or lead-hazard control and reduction methods, with hands-on activities;
11. Clearance standards and testing;
12. Cleanup and waste disposal; and
13. Recordkeeping.
(4) The lead-hazard project designer course shall:
(a) Consist of at least [last a minimum of] eight (8) training hours; and
(b) Include the following minimum requirements for the project designer course:
1. Role and responsibilities of a project designer;
2. Development and implementation of an occupant protection plan for large-scale abatement projects;
3. Lead-hazard abatement and lead-hazard reduction methods, including restricted practices for large-scale abatement projects;
4. Interior dust abatement, cleanup, or lead-hazard control and reduction methods for abatement projects;
5. Clearance standards and testing for large-scale abatement projects; and
6. Integration of lead-hazard abatement methods with modernization and rehabilitation projects for large-scale abatement projects.
(5) The lead-hazard abatement worker course shall:
(a) Consist of at least [last a minimum of] sixteen (16) training hours;
(b) Include at least [a minimum of] eight (8) hours of [devoted to] hands-on training activities; and
(c) Include the following minimum requirements for the worker course:
1. Role and responsibilities of an abatement worker;
2. Background information on lead and its adverse health effects;
3. Background information on federal, state, and local regulations and guidance to lead-hazard abatement;
4. Lead-hazard recognition and control, with hands-on activities;
5. Lead-hazard abatement and lead-hazard reduction methods, including restricted practices, with hands-on activities;
6. Interior dust abatement methods, cleanup, or lead-hazard reduction, with hands-on activities; and
7. Soil and exterior dust abatement methods of lead-hazard reduction, with hands-on activities.
(6) Lead-hazard dust sampling [clearance] technician course shall:
(a) Consist of [last] eight (8) training hours;
(b) Include at least [a minimum of] two (2) hours hands-on training; and
(c) Include the following minimum curriculum for lead technician course:
1. Role and responsibilities of a lead technician;
2. Background information on lead and its adverse health effects;
3. Background information on federal, state and local law pertaining to lead-hazard evaluation and sampling (regulation that pertains to the lead hazards and lead hazardous technician activities); and
4. Lead-hazard dust sampling methodologies, with hands-on activities;
5. Lead-hazards clearance techniques; 
6. Preparation of a clearance report with hand-on activities; and 
7. Recordkeeping.

Section 9. [40.] Requirements for Refresher Courses. (1) To obtain accreditation to offer a refresher-training course, the provider shall meet the following minimum requirements: 
(a) The training provider shall have been accredited by the department to teach the related initial course; and 
(b) The refresher course shall teach the same topics as the initial course and shall include: 
1. An overview of current safety practices relating to lead-hazard activities in general, including specific information pertaining to the applicable discipline; 
2. Current law and regulations relating to lead-hazard abatement, inspection, assessment activities in general, including specific information pertaining to the applicable discipline; and 
3. Current technologies relating to lead-hazard activities in general, including specific information pertaining to the applicable discipline.

(2) The training hour requirements for a refresher course shall be: 
(a) Eight (8) hours if the initial course was more than eight (8) hours, or 
(b) Four (4) hours if the initial course was eight (8) hours or less.

(3) For each training course offered, the training provider shall: 
(a) Provide relevant hands-on skills assessments; and 
(b) Give a test at the completion of the course.

Section 10. [44.] Renewal of Accreditation of Training Program. 
(1) Accreditation for a training program shall be for a two (2) year period following issuance. 
(2) At least thirty (30) days prior to the expiration date of accreditation a training provider shall: 
(a) Apply for renewal of accreditation; and 
(b) Submit the following fees: 
1. Reappraisal review fee of $100; and 
2. Course fees of $150 per course.

(3) A training provider shall also submit the following information: 
(a) The training provider's name, address, and telephone number; 
(b) A list of courses for which the training provider is applying for renewal of accreditation; and 
(c) Updated material [mala]s and other information identified in Section 2 of this [44] administrative regulation.

(4) The application shall be reviewed and approved or denied pursuant to provisions identified in Section 3 of this administrative regulation.

(5) If a training provider fails to apply for renewal of accreditation in accordance with this [44] administrative regulation, the training provider shall apply for initial accreditation, as established [under all of the requirements of initial accreditation as indicated] in Section 2 of this administrative regulation.

Section 11. [42.] Recordkeeping Requirements. (1) An accredited training provider shall maintain, update, and make available to the department upon request the following records: 
(a) Current curriculum, course materials, and documents reflecting changes made to those materials; and 
(b) Information regarding how the hands-on assessment is conducted, including: 
1. Who conducts the assessment; 
2. How the skills are graded; 
3. What facilitators are used; and 
4. The pass or fail rate.

(c) The quality control plan; and 
(d) Results of: 
1. Student [The student's] hands-on skills assessments and course tests; and 
2. A copy of each student's course completion certificate.

(2) The training provider shall retain the documentation for a minimum of three (3) years and six (6) months.

Section 12. [43.] Notification Requirements. (1) The training provider shall notify the department in writing within fourteen (14) calendar days of a change in the following information [the following changes]: 
(a) Management; 
(b) Organizational; 
(c) Address; and 
(d) The transfer of records to the new training provider's address.

(2) The training provider shall provide written notification to the department at least [a minimum of] fourteen (14) calendar days prior to the course start date, indicating the following information: 
(a) Training provider name; 
(b) Telephone number; 
(c) Course name; 
(d) Course location; 
(e) Course date(s); 
(f) Name of the principal instructor; 
(g) Qualifications of the instructor if not currently approved under the program accreditation by the department; 
(h) Updated course materials including changes in the course agenda; and 
(i) Indication if guest instructors are to be used.

(3) The training provider shall provide written notification of course correction or cancellation at a minimum of two (2) days prior to the course start date.

(4) Within fourteen (14) calendar days after the completion of a course, the provider shall provide to the department a student attendance listing [ roster] containing the following information: 
(a) The name of the initial, or refresher course; 
(b) Student information as follows: 
1. Name; 
2. Address; 
3. Company affiliation if any; and 
4. Test scores.

(5) A course shall not be considered approved if the provider fails to provide notice required by [notification requirements identified in this] section.

(6) The department may revoke a training program's accreditation, as authorized by KRS 211.9095(4), if a deficiency in compliance with this section is of such severity as to warrant revocation. Failure to comply with the requirements indicated in this section may result in the loss of the training program's departmental accreditation.

(7) The department may allow the training provider a variance in the notification period as identified in subsection (2) of this section if the provider: 
(a) Submits a variance request in writing; and 
(b) Indicates the reasons for a reduced notification time.

Section 13. [44.] Course and Training Provider Audits. (1) The training provider shall permit access to representatives of the department in order to conduct on-site [40]: 
(a) [Conduct on-site] Audits at the provider location; and 
(b) Monitoring of the training courses.

(2) The department shall, if needed, use other methods to verify the documentation and continued requirements for accreditation.

Section 14. [45.] Notice to Suspend, Revoke, Deny Accreditation. (1) The department shall suspend or revoke the accreditation of a training program if the department determines that the training provider has failed to comply with the requirements established by this administrative regulation.

(2) If the department suspends, revokes or denies the accreditation of the training program, it shall notify the affected entity in writing of the following: 
(a) The legal and factual basis for the suspension, revocation, or denial; 
(b) The commencement date and duration of the suspension, or revocation; 
(c) The opportunity and method for requesting a hearing prior to final department action.

Section 15. [46.] Administrative Hearings. Administrative hear-
ings shall be conducted in accordance with 902 KAR 1:400.

NICHOLAS Z. KAFOGLIS, M.D., Chairman
RICE C. LEACH, M.D., Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: September 24, 2001
FILED WITH LRC: September 25, 2001 at 10 a.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, January 8, 2002)

902 KAR 48:040. Permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement.

RELATES TO: KRS 211.180 [211.190, 211.900, 211.905, 211.902, 217.801, 40 CFR Part 745.227
STATUTORY AUTHORITY: KRS 211.090(3), [211.190,]
211.9061 to 211.9075 [211.9029]
NECESSITY, FUNCTION, AND CONFORMITY: [KRS 211.9067 and 211.9027 authorized] The Department for Public Health is required by statute to promulgate administrative regulations relating to lead-hazard detection and abatement. This administrative regulation establishes the establishment of permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement activities in target housing or child-occupied facilities.

Section 1. Work Practice Requirements and Methodologies. Lead-hazard detection and abatement activities shall comply with:

1. The work practice standards and procedures established by [the provisions of] this administrative regulation;
2. Documented methodologies recognized in federal EPA rules identified in 40 CFR Part 745.227, "Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities"; or
3. Equivalent methodologies.

Section 2. Lead-hazard Inspections. A lead-hazard inspection shall comply with the following work practice standards and procedures:

1. An inspection shall be conducted by a certified lead-hazard inspector or lead-hazard risk assessor.
2. The sites and components specified in subsection (3) of this section shall be:
   a. Selected according to [as provided by] the technical methodologies specified [indicated] in Section 1 of this administrative regulation; and
   b. Tested for the presence of lead in paint; and
   c. Excluded from testing if [Unless] the inspector or risk assessor determines that the components were [had] been replaced after 1978; or
   d. Not been coated with lead-containing paint or similar coating [paints];
3. The sampling scheme shall be as follows:
   a. For [a] a single residential dwelling or child-occupied facility, interior and exterior components with a distinct painting history [shall be tested for lead levels]; and
   b. For [a] multifamily dwelling or child-occupied facility, additional components with a distinct painting history in common areas [shall be tested for lead levels].
4. Paint shall:
   a. Be sampled under the technical methodologies specified in Section 1 of this administrative regulation; and
   b. The analysis of paint to determine the presence of lead shall be conducted using documented methodologies that incorporate quality control procedures; and
   1. The analysis of paint to determine the presence of lead shall be conducted using documented methodologies that incorporate quality control procedures; and
   2. Paint chip samples that have been collected shall be analyzed by an EPA-recognized laboratory to determine if they contain hazardous levels of lead.
5. A certified lead-hazard inspector or risk assessor shall prepare an inspection report that shall include the following:
   a. Date of each inspection;
   b. Address of building;
   c. Date of construction;
   d. Apartment numbers, if applicable;
   e. Name, address, and telephone number of the owner of each residential dwelling or child-occupied facility;
   f. Name, signature, and certification number of the certified inspector or risk assessor who conducted the inspection;
   g. Name, address, and telephone number of the firm or individual employing each inspector or risk assessor, if applicable;
   h. Name, address, and telephone number of the laboratory that conducted an analysis of collected samples, if applicable;
   i. The testing method, testing device, or sampling procedure employed for paint analysis, including:
      1. Quality control data; and
     2. If used, the serial number and radioactive materials license number of the XRF device;
   j. Specific locations of each painted component tested [for the presence of lead in paint]; and
   k. The results of the inspection expressed in terms appropriate to the sampling method used; and
6. A copy of the lead-hazard inspection report shall be submitted to the department within thirty (30) days after the completion of the inspection.

Section 3. Lead-hazard Screens. A lead-hazard screen shall comply with the following [43] work practice standards and procedures: [for lead-hazard screening shall comply with the provisions of this section]

1. A lead-hazard screen shall be conducted by a certified lead-hazard risk assessor.
2. For [43] in a residential dwelling or child-occupied facility, the lead-hazard risk assessor shall:
   a. Collect background information regarding the physical characteristics and occupant use patterns of the residential dwelling or child-occupied facility that may cause lead exposure to a child;
   b. Conduct a visual inspection to determine if deteriorated paint is present;
   c. Test for the presence of lead on each surface with deteriorated paint that has determined to have a distinct painting history;
3. Collect paint chip and dust samples using [the] the technical methodologies specified [indicated] in Section 1 of this administrative regulation when collecting paint chip and dust samples,
4. Collect at least a [minimum of] two (2) composite dust samples from each room where children are most likely to come in contact with dust, as follows:
   1. One (1) from the floors; and
   2. One (1) from the window sills or sills;
   f. For [Collect in] a multifamily dwelling, collect one (1) additional sample from each common area where the common areas where the common areas where young children are most likely to come in contact with lead dust;
5. Submit paint chip or dust samples to an EPA-approved laboratory for analysis; and
6. Prepare a lead-hazard screening report that shall include:
   a. The applicable component information required for a complete lead-hazard risk assessment identified in subsection (4) of this section [Section 4(4) of this administrative regulation]; and
   b. If warranted, recommendations for a follow-up risk assessment and other appropriate action; and
   c. Submit to the department, within thirty (30) days from the completion of the assessment, a copy of the lead-hazard screening report.
   d. A copy of a lead-hazard screening report shall be submitted to the department within thirty (30) days after the completion of the lead-hazard screening assessment.

Section 4. Lead-hazard Risk Assessments. [44] Risk assessment shall comply with the following work practice standards and procedures:

1. A risk assessment shall be conducted by a certified risk
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assessor.

(2) [(c)] A risk assessor shall:
   (a) Collect samples using a methodology specified [(Use the
        methodologies identified in Section 1 of this administrative
        regulation to conduct samples)];
   (b) Conduct a visual inspection of a residential dwelling or child-
        occupied facility to:
      1. Locate deteriorated paint;
      2. Assess the extent and causes of the deterioration of paint;
      and
      3. Inspect for other potential sources of lead hazard;
      (c) Collect information regarding the physical characteristics and
        occupant use patterns of the residential dwelling or child-occupied
        facility that may cause lead exposure to children;
      (d) Test every surface coated with visibly-deteriorated paint
        (the following surfaces) for the presence of lead; [(by using technical
        methodologies identified in Section 1 of this administrative
        regulation:]
      1. Each friction or impact surface with visibly-deteriorated paint;
      and
      2. All other surfaces with visibly-deteriorated paint
        [(for a residential dwelling, collect dust samples, [in residential
        dwellings—either composite or single surface, [samples]] from the interior window sill(s) and floor, where children are likely
to come into contact with dust;]
        (f) For a multifamily dwelling, collect additional dust samples
        in the following locations [(in multifamily dwellings]
        1. Each common area [Common areas that are adjacent to the
        residential dwelling or child-occupied facility from which samples
        have been taken or]
        2. Each common area [Other common areas] in the building;
        (g) For a child-occupied facility, collect dust samples in the
        following locations [(in child-occupied facilities that are utilized by
        children]:
        1. Each room, hallway or stairwell; and
        2. Other common areas;
        (h) Collected soil samples [(shall be collected] at the following
        locations:
        1. Exterior play areas where bare soil is present;
        2. Driveline or foundation areas where bare soil is present; and
        3. The rest of the yard where bare soil is present;
        (i) Submit collected paint chip, dust, or soil samples to an EPA-
        recognized laboratory; and
        (j) Prepare a lead-hazard risk assessment report.
      (3) [(d)] The information provided in a report shall include:
      (a) Date of assessment;
      (b) Address of each building;
      (c) Date of construction of buildings;
      (d) Apartment numbers, if applicable [(when applicable)];
      (e) Name, address, and telephone number of each owner of
        each building;
      (f) Name, signature, and certification number of the certified risk
        assessor conducting the assessment;
      (g) Name, address, and telephone number of the firm or individual
        employing each certified risk assessor, [if applicable];
        (h) Name, address, and telephone number of each recognized
        laboratory conducting an analysis of collected samples;
      (i) Results of the visual inspection;
      (j) Testing method and sampling procedure for paint analysis
        employed;
      (k) Specific locations of each painted component tested for the
        presence of lead;
      (l) Diagram or floor plan showing testing locations;
      (m) Data collected from on-site testing, including:
        1. Quality control data; and
        2. If used, the serial number of the XRF device;
      (n) Results of laboratory analysis on:
        1. Collected paint;
        2. Soil; and
        3. Dust samples;
        (o) Other sampling results;
        (p) Background information collected described at subsection
        (2)(e) [(pursuant to subsection (b)(2)(i) of this section;]
        (q) The history of any previous inspection or analysis for the
        presence of lead, lead assessments, or other lead hazards found in
        the residence, that have been given consideration, as a part of the
        present hazard determination;
      (r) A description of:
        1. The location, type, and severity of identified lead hazards
        associated with paint; and
        2. Other potential lead hazards;
      (s) A description of interim controls or abatement for each
        identified lead hazard, including:
        1. Description of interim controls or abatement options; and
        2. Recommendations for addressing the lead hazard; and
        (t) If the use of an encapsulant or enclosure is recommended, a
        suggested maintenance and monitoring schedule is required.
      (5) A copy of the lead-hazard risk assessment report shall be
        submitted to the department within thirty (30) days after the comple-
        tion of the assessment.

Section 5 . Application and Permit Fee Schedule. (1) The fee for
a lead-hazard abatement permit shall be:
(a) For each single family dwelling or child-occupied facility,
$225; [(a) $225;]
(b) For a multifamily dwelling, [(c) $100 per residence;]
(c) Exterior abatement, [(d) $125 per building;]
(d) Soil abatement, [(g) fifty (50) dollars per project.]
(2) Other fees required are:
(a) Application review fee, [(f) fifty (50) dollars;]
(b) Amended permit, [(g) twenty-five (25) dollars; and]
(c) Reinspection fee, [(h) $100.]

Section 7. Lead-hazard Abatement and Occupant Protection
Plans. [(g)] Standards and requirements for abatement and occupant
protection plans are as follows:
(f) [(j) Abatement and occupant protection plans shall be pre-
pared by:]
4. A certified project designer [if [when].]
(a) [six] The project is a large-scale project; and
(b) [six] The planned abatement activity creates additional lead waste material not considered low waste, such as:
1. Filtered personal or commercial water;
2. Disposal personal protective clothing; and
3. Plastic sheeting. [activities create more than low lead waste material that is defined in the administrative regulation 0210 KRS 18:010:1; or]
4. Either a certified project designer or a certified supervisor on all other projects.

(2) [six] An abatement plan shall include [be a detailed, written description of the abatement, and include the:] (a) [four] Name and certification number of the individual who prepared the plan;
(b) [five] Name and certification numbers of all individuals working at the site;
(c) [six] Anticipated start and finish dates;
(d) [seven] Daily work hours at the project;
(e) [six] Copy of job specifications relating to the project;
(f) [six] Location of the site;
(g) [six] Type of structure;
(h) [seven] Sequence of work activity;
(i) [six] Abatement methods to be used;
(j) [ten] Diagram or floor plan showing abatement locations;
(k) [eleven] Enclosure and containment methods and locations;
(l) [twelve] Locations of rooms and components where abatement will occur;
(m) [six] Reason for the selection of particular abatement methods for each component;
(o) [six] If encapsulants are to be used, product usage information;
(o) [six] Cleanup measures; and
(p) [six] Name and address of individual conducting clearance testing.

(3) [six] An occupant protection plan shall:
(a) [five] Be unique to the residential dwelling or child-occupied facility;
(b) [six] Developed prior to the abatement; and
(c) Be [six] a detailed, written description of the measures and management procedures that will be taken during the abatement to protect the occupants of the building from exposure to lead hazards.

Section 8. Lead-hazard Abatement On-site Project Requirements. (1) In compliance with KRS 211.906(6), a lead-hazard abatement activity shall not be conducted until the department issues a permit. (An abatement permit must be issued by the department before any lead hazard abatement activity is conducted.)

(2) The abatement permit shall be kept at the abatement site until:
(a) Project is complete;
(b) Clearance is achieved; and
(c) The department has conducted the quality assurance inspection required by the response activities as identified in KRS 211.906(6).

(3) Only a certified person [certified individual] shall be allowed on the abatement site during the time that abatement activities are being conducted.

(4) A certified person shall keep the department-issued identification card in possession while on site. [Certified individuals shall have on their possession departmental-issued identification cards.]

(5) The certified supervisor or certified project designer who prepared the abatement plan shall be:
(a) Available, within two (2) hours [hour-distance], to the lead-abatement workers while lead-abatement activities are conducted; and
(b) On site during:
1. Work site preparation;
2. The postlead-abatement cleanup of work areas; and
3. At the time of the departmental quality assurance inspection.

(6) The lead-abatement permit holder shall ensure that a lead abatement and postlead-abatement activity complies with applicable federal, state, and local law and requirements. [comply with the provisions of:
(a) This administrative regulation; and
(b) Applicable federal, state, and local requirements.]

Section 9. Specific Lead-Hazard Abatement Practices. (1) Soil abatement shall be conducted as follows:
(a) If soil containing a hazardous lead level of lead is removed, the permit holder will provide analytical information to the department that the replacement soil does not contain amounts over the established soil lead-hazard levels or
(b) If soil containing a hazardous lead level is not removed, the lead hazard in the soil shall be considered as abated when permanently covered by a method identified [methods identified in technical methodologies] in Section 1 of this administrative regulation.

(2) The following work practices used for paint removal shall be prohibited:
(a) Open-flame burning or torching; or
(b) Machine sanding or grinding, or abrasive blasting or sandblasting unless conducted using a high efficiency particle air exhaust control that removes particles of three-tenths (0.3) microns or larger from the air at 59.97 percent or greater efficiency.
(c) Dry scraping or sanding;
(d) In conjunction with heat guns; or
2. Around electrical outlets; or
3. In the treatment of defective paint spots that total no more than:
a. Two (2) square feet on [on all] surfaces within a room; or
b. Twenty (20) square feet on [on all] exterior surfaces.
(e) Use of a heat gun at temperatures that exceed 1,100 degrees Fahrenheit.

Section 10. Postabatement Clearance Procedures. (1) Postabatement clearance procedures shall be performed according to a method [documented methodologies] identified in Section 1 of this administrative regulation.

(2) Postlead-hazard abatement clearance shall be performed by a certified inspector or certified risk assessor.

(3) Postlead-hazard clearance after a nonabatement activity, such as renovation or remodeling, shall be performed by a certified inspector, risk assessor, or sampling technician.

(4) A visual inspection shall be conducted before sampling to examine for deteriorated paint, dust, or debris.

(5) Clearance sampling shall not take place if deteriorated painted surfaces or visible amounts of dust or debris are found during the visual inspection.

(6) Sampling shall be conducted [either] using single or composite dust sampling as [using the documented methodologies] identified in Section 1 of this administrative regulation.

(7) The certified person [individual] who conducted the clearance shall compare the residual lead levels, as determined by the laboratory analysis from each dust sample, with applicable clearance levels for lead in dust established by Section 13 of this administrative regulation. [and]

(b) If the residual lead levels in the dust sample exceed accepted [the specified] clearance levels, each component [all the components] represented by the failed sample shall be reclined and retested until clearance levels have been met.

(8) In a multifamily dwelling with similarly-constructed and maintained residential units, a random sampling for clearance shall be conducted in accordance with documented methodologies. [and]

(9) The person who conducted the lead-hazard abatement and postabatement cleanup in the residential dwelling [dwaling] shall not be provided knowledge of the [dwalings] units selected for the random sample.

Section 11. Clearance Report. (1) After clearance [when clearance is conducted], the certified person [individual] shall prepare a report containing the following information:
(a) Name of the individual conducting the clearance;
(b) Departmental certification number;
(c) Address of the property;
(d) Specified units and areas affected;
(e) Dates of clearance examination;
(f) Results of visual assessment;
(g) Results of dust sample analysis;
(h) Name and address of laboratory used;
(i) Project activity information; and
(j) Lead-hazard reduction or abatement methods used.
(2) A copy of the lead-hazard clearance report shall be submitted to the department within thirty (30) days after the completion of the clearance.

Section 12. Levels of Lead in Paint [Levels]. The following lead levels shall be used to determine if paint or similar coatings are considered as lead-based paint:
(1) Equal to or in excess of one (1.0) milligrams per square centimeter; or
(2) More than five-tenths (0.5) percent by weight.

Section 13. Dust Lead Hazards. The maximum acceptable levels used for clearance or other evaluation after the disturbance of lead paint, or for determination of potential lead dust hazards in a residential structure or of a child-occupied facility, are as follows:

<table>
<thead>
<tr>
<th>Floors</th>
<th>40</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interior Window Sills</td>
<td>250</td>
</tr>
<tr>
<td>Window Troughs</td>
<td>400</td>
</tr>
<tr>
<td>Exterior Components</td>
<td>800</td>
</tr>
</tbody>
</table>

Section 14. Soil Lead Hazards. Soil is considered to be a lead hazard if the lead level exceeds [when the lead level:]
(1) [Exceeds] 400 parts per million in a play area; or
(2) [Exceeds] 1,200 parts per million of bare soil in the rest of the yard.

Section 15. Quality Assurance Inspection. (A) A permit holder shall notify the department of the completion of the abatement services and clearance testing.

(2) The department shall proceed in accordance with quality assurance inspection provisions of KRS 211.9060(6), [conduct activities pursuant to KRS 211.9060(6)].

(3) An abatement permit holder shall provide the department with access to the project unit to conduct a quality assurance inspection.

(4) If a department inspector discovers visual dust or paint chips, or violative work practices and standards, the inspector shall:[when, during, the inspection, the department discovers,]
(a) Violative work practices and standards; or
(b) Visual dust or paint chips - the department representative shall:
[ ] Not conduct sampling; and
(b) [2.] Notify the permit holder that another inspection shall [will be conducted after [when]:
1. (a) Cleanup has been completed; and
2. (b) Another clearance is conducted.

(5) If a dust sample exceeds clearance levels:
(a) The components making up the failed sample shall be:
1. Recleaned; or
2. Otherwise lead-hazard abated; and
(b) Another clearance shall be conducted. [When collected dust samples exceed clearance levels, the components making up the failed sample shall be:
(e) Recleaned; or
(b) Otherwise lead-hazard abated; and
(c) Another clearance is conducted.]

(6) For each failed inspection a permit holder shall pay a reinspection fee as established by Section 6 of this administrative regulation.

Section 16. Postabatement Report. (1)(a) A postabatement report shall be prepared by either the certified lead-hazard supervisor or lead-hazard project designer who prepared the abatement plan.

(b) The postabatement report shall include the:
1. Start and completion dates of abatement;
2. Name and addresses of the certified individual preparing the report;
3. Changes made to the occupant protection plan and the abatement plan;
4. Name, address, and signature of each certified risk assessor or certified inspector conducting clearance sampling and the date of clearance testing;
5. The name of each recognized laboratory that conducted the analysis;
6. Results or:
   a. Clearance testing; and
   b. Soil analysis, if [when] applicable; and
7. Suggested monitoring of encapsulation or enclosure plan according to a methodology [as per methodologies] identified in Section 1 of this administrative regulation.

(2) The postabatement report [required by this section of this administrative regulation] shall be submitted to the department within thirty (30) days after the completion of the abatement project.

Section 17. Recordkeeping. A report required by [All reports required by the provisions of this administrative regulation shall be retained by the permit holder, or other certified individual who prepared the report, for three (3) years.

Section 18. Administrative Hearings. An administrative hearing relating to the subject matter of this administrative regulation shall be conducted in accordance with 902 KAR 1:400.

NICHOLAS Z. KAFQOLS, M.D., Chairman
RICE C. LEACH, M.D., Commissioner
MARIA R. MORGAN, Secretary
APPROVED BY AGENCY: September 24, 2001
FILED WITH LRC: September 26, 2001 at 10 a.m.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Long Term Care
(As Amended at ARR S, January 8, 2002)


RELATES TO: KRS 205.8451, 205.8477, 42 CFR 441 Subpart G, 455 Subpart B, 42 USC '369a, b, d, n, 1989 Ky. Acts ch. 619, Part IX, Sec 73.54

STATUTORY AUTHORITY: KRS 194A.030(1), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizen. This administrative regulation establishes the coverage provisions relating to home- and community-based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services. The purpose of acquired brain injury waiver services is to rehabilitate and retrain an individual with an acquired brain injury to reenter and function independently within a community, given the community's existing resources. For the purpose of rehabilitation and retraining for reentry into the community with existing resources.

Section 1. Definitions. (1) "Acquired brain injury (ABI) waiver services" means home and community-based waiver services provided to a Medicaid eligible person aged twenty-one (21) to sixty-five (65) who has acquired a brain injury to his or her central nervous system of the following nature:
(a) Injury from a physical trauma;
(b) Damage from anoxia or a hypoxic episode; or
(c) Damage from an allergic condition, toxic substance or another acute medical incident.

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

Section 2. Exclusions of the Acquired Brain Injury Waiver Program. A condition included in the following list shall not be consider-
erred an acquired brain injury [injuries] requiring specialized rehabilitation:

(1) A stroke treatable in a nursing facility providing routine rehabilitation services;
(2) A spinal cord injury in which there is no known or obvious injury to the intracranial central nervous system;
(3) Progressive dementia or another mentally impairing condition of a chronic degenerative nature such as, senile dementia, organic brain disorder, Alzheimer's Disease, alcoholism or another addiction;
(4) A depression or a psychiatric disorder in which there is no known or obvious central nervous system damage;
(5) A birth defect;
(6) Mental retardation without an etiology to an [the] acquired brain injury; or
(7) A condition which causes an individual to pose a level of danger or an aggression which is unable to be managed and treated in a [the] community.

Section 3. General Coverage Provisions [Provision]. (1) The aggregate cost of an individual receiving ABI waiver services [the ABI Waiver Program] shall not exceed the aggregate cost of [corresponding] care for the individual that would otherwise be provided in a nursing facility [cost of care in a nursing facility as established in the 1984 Hy. Acts ch. 615, Part IV, V, etc.]

(2) ABI waiver services shall be provided to an individual eligible for Medicaid who:
(a) is twenty-one (21) to sixty-five (65) years of age with an impairment that involves cognition, behavior, or a physical function which necessitates supervised and supportive services;
(b) Meets the level of care criteria established in 907 KAR 1:022 for nursing facility services, including nursing facility services for brain injuries; and
(c) Meets the following conditions:
1. Has a primary diagnosis that indicates an acquired brain injury with structural, nondegenerative brain damage;
2. Is medically stable;
3. Exhibits cognitive, behavioral, motor or sensory damage with indications for rehabilitation and retraining potential; and
4. Has a rating of at least four (4) on the Rancho Los Amigos Level of Cognitive Function Scale, which is included as Appendix III to the Acquired Brain Injury Services and Reimbursement Program Manual.

(3) An individual shall not remain in the ABI Waiver Program for an indefinite period of time. [Upon discharge from the program, an individual shall:
(a) Remain in a community setting with existing community resources; and
(b) Not remain in the Acquired Brain Injury Waiver Program for an indefinite period of time.]

(4) The basis of an eligibility determination for participating [the determination for eligibility] in the ABI Waiver Program shall be:
(a) The presenting problem;
(b) The plan of care goals;
(c) The expected benefits of the admission;
(d) The expected outcome;
(e) The initial estimated time frames for achieving the plan of care goals;
(f) The services required; and
(g) The cost-effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.
(5) ABI waiver services shall not be furnished to an individual if he or she is:
(a) An inpatient of a hospital, nursing facility, or an intermediate care facility for persons with mental retardation or a developmental disability; or
(b) Receiving services in another home and community based waiver service program.

(6) The department shall make:
(a) An initial evaluation whether an individual meets the nursing facility level of care criteria established in 907 KAR 1:022; [for level of care]
(b) A periodic nursing facility level of care reevaluation at least once every six (6) months and more frequently if necessary de-

pending upon an [level of care determination, which shall be made at least once every six (6) months, and may be more frequent depending on the individual's progress; and
(c) A determination of whether to admit an individual into [admission] to the ABI Waiver Program.

Section 4. Recipient Participation Termination. (1) An individual with an approved plan of care who receives ABI waiver services may withdraw from the ABI Waiver Program at any time without cause.
(2) Continued coverage for an ABI waiver service [Program] recipient shall be terminated if the department determines that the individual does not have the potential for reentry into the community [in accordance with Section (3) of this administrative regulation] without the continued availability of [continued] ABI waiver services.

Section 5. Conditions for Agency and Service Provider Participation. (1) An ABI waiver service provider shall: [A participating provider agency shall meet the following requirements:]
(a) Be enrolled as a Medicaid provider in accordance with 907 KAR 1:672;
(b) [A "case management provider" shall: Be a legally-constituted entity in the Commonwealth of Kentucky and have documented evidence of its operating authority, including:
1. If it is a governmental entity, the administrative framework of the governmental department of which it is a component;
2. If it is a private agency [shall have]:
   a. A charter or articles of incorporation;
   b. A constitution; and
   c. By-laws;
   (c) Have an executive director who shall:
   1. Manage the agency and its affairs in accordance with written policies and procedures;
   2. Be responsible for the overall operation of the agency, including the recruitment and direction of staff and the control, utilization, and conservation of the agency's physical and financial assets; and
3. Possess at least a bachelor's degree in administration or human services and at least one (1) year of experience working in an organization serving individuals with disabilities;
(d) Be subject to the financial sanctions as established in 907 KAR 1:672;
(e) Have a crisis prevention and response plan which shall:
1. Address any potential crisis situation which may affect the health, welfare, or safety of an ABI waiver service recipient;
2. Be developed by a case manager in cooperation with other relevant service providers within thirty (30) days of an ABI waiver service recipient's admission;
3. Be disseminated by a case manager to all sites at which an ABI waiver service recipient will receive services; and
4. Be readily accessible to all staff working with an ABI waiver service recipient;
(f) Comply with the following medication requirements:
1. Staff administering medication shall possess appropriate training regarding the administration, storage, and cause and effect of medications;
2. All medication administered shall be documented on a medication log and medication administration form, and properly disposed of if discontinued;
3. All medication shall be stored in a locked container; and
4. If necessary, medication shall accompany and be administered to an ABI waiver service recipient at a program site other than his or her residence;
(g) Establish and comply with written guidelines requiring the maintenance of sanitary conditions for an ABI waiver service recipient;
(h) Ensure that a residence operated by an ABI provider is
equipped with the following:
1. Operational smoke detectors strategically located; and
2. A minimum of two (2) correctly charged, strategically-located fire extinguishers in each service site, one (1) of which shall have a rating of 1A10BC and be capable of extinguishing a grease fire;
(i) Ensure that the nutritional needs of an ABI waiver service recipient are met in accordance with the current recommended daily allowance of the Food and Nutrition Board of the National Research Council or as otherwise specified by a physician;
(j) [A] Have written policies and procedures that comply with the conditions for participation established in the Acquired Brain Injury Services and Reimbursement Program Manual; and
(k) [A] Comply with applicable federal and state statutes and regulations relating to the provision of services under the Kentucky Medicaid Program; [and]
(l) [A] A participating ABI waiver service provider shall Meet the applicable certification requirements for providing ABI waiver services in accordance with 507 KAR 1:672, KRS 205.8477 and 42 CFR 455 Subpart B; [and]
(m) [A] An ABI waiver provider agency or service provider shall Comply with the conditions for participation established in the Acquired Brain Injury Services and Reimbursement Program Manual; and
(a) [44] Prior to employing an individual to provide ABI waiver services, an ABI waiver provider agency shall verify that all requirements of subsections (2) and (3) [45] and (5) of this section have been met.
(b) [45] Professional direct service and paraprofessional staff shall:
(a) Have a high school diploma or GED;
(b) Be CPR certified;
(c) Not have a criminal record as defined in Section IV of the Acquired Brain Injury Services and Reimbursement Program Manual;
(d) Not have a history of perpetrating fraud, abuse, neglect, or exploitation;
(e) Unless the individual has at least [having] 2000 hours of experience in serving individuals with a primary diagnosis of brain injury within the prior five (5) years, complete a sixteen (16) hour ABI orientation and training program;
(f) Complete six (6) hours of continuing education in brain injury annually; [and]
(g) Be free of a communicable disease; and
(h) [45] Meet other requirements pertinent to the service they shall provide as specified in the Acquired Brain Injury Services and Reimbursement Program Manual;
(3) [46] All professional direct service staff shall meet:
(a) The requirements established in subsection (2) [45] of this section; and
(b) Appropriate licensing, certification, and degree requirements necessary to practice in the Commonwealth of Kentucky.
4. [For an individual whom the following provider types are considering hiring.] The following provider types shall check the nurse aid abuse and neglect registry, maintained by the Kentucky Board of Nursing, and any other applicable registry to determine if the individual the provider is considering hiring has a history of perpetrating abuse or neglect:
(a) Personal care services;
(b) Respite care services;
(c) Companion services;
(d) Structured day program services; and
(e) Community residential services.
5. [44] A provider terminated from another Medicaid Program shall not be eligible for participation in the ABI Waiver Program in accordance with 507 KAR 1:672.
Section 6. Provider Incident Reporting Procedures. (1) An incident shall be documented on an incident report form.
(2) Following are incident classifications and reporting requirements:
(a) A Class I incident shall:
1. Be minor in nature;
2. Not require an investigation by the provider agency;
3. Be reported to the case manager within twenty-four (24) hours; and
4. Be retained on file at the provider, as well as case management agency;
(b) A Class II incident shall:
1. Be serious in nature including:
   a. Personal injury or illness of an ABI waiver service recipient or ABI service provider staff person which requires emergency treatment or admission to a hospital or other treatment facility;
   b. A medication error requiring medical attention;
   c. A criminal act; or
   d. Significant property damage;
2. Require an investigation initiated by the provider agency within twenty-four (24) hours of discovery and shall involve the case manager; and
3. Be reported to the following by the provider agency:
   a. The case manager within twenty-four (24) hours of discovery;
   b. The guardian within twenty-four (24) hours of discovery following a complete written report of the incident investigation and follow-up within ten (10) calendar days of discovery; and
   c. The Department for Mental Health and Mental Retardation's (DMHMR's), Division of Mental Health, Brain Injury Services Unit, within twenty-four (24) hours of discovery following a complete written report of the incident investigation and follow-up within ten (10) calendar days of discovery; and
   c. The guardian within eight (8) hours of discovery, followed by a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery; and
   d. The Department for Mental Health and Mental Retardation's (DMHMR's), Division of Mental Health, Brain Injury Services Unit within eight (8) hours of discovery, followed by a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery.
Section 7. Provider Participation Termination. A provider's participation shall be terminated by the provider or the department in accordance with 507 KAR 1:671.
Section 8. [2] Covered Services. (1) Except as limited in Section 9 [4] of this administrative regulation, the following shall be considered Medicaid covered services:
(a) Case management services;
(b) Personal care services [service];
(c) Respite care;
(d) Companion services;
(e) Structured day program services [service];
(f) [50] Vocational services;
(g) [49] Supported employment services [service];
(h) [49] Behavioral programming services;
(i) [49] Counseling services [and training];
(j) [49] Occupational therapy, speech, hearing, and language services [service];
(i) [49] Specialized medical equipment and supplies;
(k) [49] Environmental modification; and
(l) [49] Community residential services [service].
2. [44] ABI Waiver Program services and services established in 42 USC 1396a, b, d, and n shall be available to an ABI waiver service recipient to prepare him or her to reside in the community without the need for continued ABI waiver services.
3. The ABI waiver services listed in subsection (1) of this section are described in the Acquired Brain Injury Services and Reimbursement Program Manual, which is incorporated by reference.
Section 9, Case Management Services. (1) A case management provider agency shall be supervised by an individual who is:
(a) A certified case manager (CCM), certified disability management specialist (CDMS), certified rehabilitation registered nurse (CRNN), or a certified life care planner; and
(b) Employed by or under contract with the case management provider agency.
(2) Case management services shall be provided by:
(a) A registered nurse;
(b) A licensed practical nurse; or
(c) An individual with a bachelor’s or master’s degree in a human services field who meets all applicable requirements of his or her particular field including an individual with a degree in:
1. Psychology;
2. Sociology;
3. Social work;
4. Special education;
5. Rehabilitation counseling;
6. Occupational therapy;
7. Physical therapy; or
8. Speech language pathology.
(3) Case management services shall include:
(a) Coordinating the assessment and reassessment process of an individual’s condition to determine his or her eligibility, including continued eligibility, to receive ABI waiver services. An assessment or reassessment shall include the development of a transition plan which shall include:
1. An indication of an estimated discharge date, from the ABI Waiver Service Program, of the individual;
2. Estimated skills and supports the individual, upon discharge from the ABI Waiver Service Program, will possess as a result of receiving ABI waiver services;
3. A listing of ongoing formal and informal community supports anticipated to be available to the individual upon discharge from the ABI Waiver Service Program; and
4. A listing of additional resources necessary for the individual to function independently upon discharge from the ABI Waiver Service Program;
(b) Ensuring a potential ABI waiver service recipient exercises his or her freedom of choice regarding receiving services in an institution or via a home and community based waiver program;
(c) Furnishing a potential ABI waiver service recipient and his or her legal representative written information describing services of all available providers within the individual’s service area and ensuring that all questions related to his or her service options are addressed;
(d) Maintaining written documentation, signed by an ABI waiver service recipient or his or her legal representative, of a provider change including the reason for the change;
(e) Being responsible for the overall development of an ABI waiver service recipient’s plan of care developed in conjunction with:
1. An interdisciplinary team; and
2. The ABI waiver service recipient and his or her family members, legal representative, or another individual chosen by the ABI waiver service recipient;
(f) Maintaining proper documentation related to an ABI waiver service recipient and ensuring that interdisciplinary team members receive copies of that documentation;
(g) Meeting with an ABI waiver service recipient in person every two (2) weeks with at least one (1) visit per quarter occurring in the ABI waiver service recipient’s home or place of residence;
(h) Reviewing the provision of services to an ABI waiver service recipient and ensuring that services are delivered to the ABI waiver service recipient in accordance with his or her plan of care;
(i) Ongoing monitoring of an ABI waiver service recipient’s progress; [and]
1. Submitting an ABI waiver service recipient’s updated plan of care to the department every six (6) months; and
2. Submitting monthly caseload reports to the department.
(4) A case manager’s caseload, including all cases (not just ABI cases), shall not exceed forty (40) individuals.
(5) A case manager shall not be a provider of other direct services.
(6) A case manager provider agency shall supervise a case manager, ensure twenty-four (24) hour availability of necessary ABI waiver services for an ABI waiver service recipient, and ensure that an ABI waiver service recipient’s health, welfare, and safety needs are met.

Section 10, Personal Care Services. (1) Personal care services shall consist of the retaining of an ABI waiver service recipient in the performance of his or her activities of daily living by using repetitive, consistent, and ongoing instruction and guidance.
(2) Personal care services shall include the following activities of daily living: [Activities of daily living included in personal care services are]
(a) Eating, bathing, dressing, or personal hygiene;
(b) Meal preparation (excluding meal cost); or [and]
(c) Housekeeping chores such as bed-making, dusting, and vacuuming.

Section 11, Respite Care. Respite care shall be short-term care provided to an ABI waiver service recipient:
(1) Unable to care for himself or herself;
(2) Whose normal care giver is absent or needs relief from providing care, and
(3) In his or her home, residence, setting approved by the provider agency, or a nursing facility.

Section 12, Companion Services. (1) Companion services shall include:
(a) Nonmedical services, supervision, or socialization;
(b) Assisting with but not performing meal preparation, laundry, or shopping; or
(c) Light housekeeping tasks which are incidental to the care and supervision of an ABI waiver service recipient.
(2) Companion services shall be therapeutic, part of an ABI waiver service recipient’s plan of care, and not diversional in nature.
(3) A provider of companion services shall, if necessary, accompany and assist an ABI waiver service recipient while the recipient utilizes assisted transportation services.

Section 13, Structured Day Program Services. (1) A structured day program service provider agency shall be:
(a) Licensed as an adult day health care center in accordance with 902 KAR 20:066;
(b) Licensed as an outpatient rehabilitation facility; or
(c) Enrolled as a Medicaid provider in accordance with 907 KAR 1:872.1.
(2) A structured day program service provider’s staffing ratio shall not exceed five (5) individuals per one (1) staff person.
(3) Structured day program services shall include:
(a) Social skills training;
(b) Sensory or motor development;
(c) Reduction or elimination of a maladaptive behavior; or
(d) Teaching concepts and skills to promote independence including:
1. Following instructions;
2. Attendance and punctuality;
3. Task completion;
4. Problem-solving;
5. Safety;
6. Appropriate social behavior; or
7. Money management.
(4) Structured day program services shall be provided in a nonresidential setting.
(5) A structured day program shall:
(a) Be developed in accordance with an ABI waiver service recipient’s overall plan of care;
(b) Reflect the recommendations of an ABI waiver service recipient’s interdisciplinary team;
(c) Be appropriate given an ABI waiver service recipient’s:
1. Age, level of cognitive and behavioral function and interest; and
2. Interests and aptitudes prior to and since his or her injury;
(d) Be coordinated with physical, occupational, speech, or other rehabilitation therapy included in an ABI waiver service recipient’s plan of care; and
(e) Provide an ABI waiver service recipient with an organized
framework within which to function in his or her daily activities.

(6) An ABI waiver service recipient’s structured day program shall entail frequent assessments of his or her progress and be appropriately revised as necessary.

Section 14. Supported Employment Services. (1) A supported employment service provider agency shall be:
(a) Licensed as an adult day health care center in accordance with 902 KAR 20:066;
(b) Licensed as an outpatient rehabilitation facility; or
(c) Enrolled as a Medicaid provider in accordance with 907 KAR 1:672.
(2) Supported employment services shall be provided by an individual meeting the direct service requirements established in Section 5(2) of this administrative regulation or an individual with a bachelor’s or master’s degree in rehabilitation counseling.
(3) Supported employment services:
(a) Shall be paid employment for an ABI waiver service recipient who:
   1. Is unlikely to obtain employment at or above the federal minimum wage; and
   2. Needs intensive, ongoing support in order to perform in a work setting;
(b) May be provided in a variety of settings, but preferably in a work setting in which individuals without disabilities are employed;
(c) Shall be necessary in order for an ABI waiver service recipient to sustain paid work, including supervision and training; and
(d) Shall be reimbursed if unavailable to an ABI waiver service recipient by either the Rehabilitation Act of 1973 (29 USC Chapter 16) or PL 94-142 (34 CFR Subtitle B, Chapter III).
(4) Documentation that a supported employment service is unavailable, via the Rehabilitation Act of 1973 or PL 94-142, shall be maintained in an ABI waiver service recipient’s record.

Section 15. Behavior Programming Services. (1) A behavior specialist who provides a behavior programming service shall:
(a) Be a licensed psychologist;
(b) Be a certified psychologist with autonomous functioning;
(c) Be a psychological associate or certified psychologist;
(d) Be a psychiatrist;
(e) Be a licensed clinical social worker;
(f) Be a clinical nurse specialist with a master’s degree in psychiatric nursing or rehabilitation nursing;
(g) Be an advanced registered nurse practitioner (ARNP); and
(h) Have at least one (1) year of behavior specialist experience; or
2. Provide documentation of completed coursework regarding learning and behavior principles and techniques.
(2) Behavior programming services shall focus on decreasing an individual’s maladaptive behaviors which jeopardize his or her ability to function independently within a community.
(3) Behavior programming services may be provided in an individual’s residence, in a community setting, or as well as in an ABI service provider’s facility.
(4) Behavior programming services shall include:
(a) Implementing planned systematic techniques and methods to:
   1. Alter or influence a behavior in a desired way; or
   2. Increase acceptable behavior and decrease maladaptive behavior;
(b) Monitoring an ABI waiver service recipient’s progress;
(c) Revising, as necessary, an individual’s behavior programming based on data analysis regarding the frequency, intensity, and duration of the individual’s behaviors as well as based on observations of
(d) Ongoing training and supervision of direct service staff and care givers;
(e) A functional analysis, by a qualified behavioral specialist, which addresses:
   1. A target behavior;
   2. Frequency, intensity, and severity of a maladaptive behavior;
   3. Antecedents and consequences of a maladaptive behavior;
   4. Analysis of the possible communicative intent of a maladaptive behavior;
   5. Reinforcement history regarding a maladaptive behavior;
   6. Environments and social context in which a maladaptive behavior occurs;
   7. Hypotheses regarding the motivation, purpose, and factors that maintain a maladaptive behavior;
   8. An ABI waiver service recipient’s medical, physical, cognitive, and emotional condition;
   9. Knowledge and reaction of significant others involved;
   10. Day-to-day changes in personal functioning;
   11. A history of unsuccessful approaches to alter a maladaptive behavior; and
   12. A justification for altering a target behavior;
(f) Developing a cooperation with an ABI waiver service recipient, implementing, and periodically reassessing a behavioral intervention plan, if necessary, which includes:
   1. Identifying behavior that needs to be altered;
   2. Establishing a justification for behavioral intervention;
   3. Establishing procedures to help the ABI waiver service recipient attain goals while in the community;
   4. Identifying past unsuccessful approaches utilized to try to alter the ABI waiver service recipient’s behavior;
   5. A justification for altering a target behavior;
   6. Identifying methods to be used to alter a target behavior;
   7. Identifying the frequency, intensity, or duration of a target behavior;
   8. Establishing a positive behavior to replace a maladaptive behavior, as well as establishing specific methods for teaching a positive behavior;
   9. Establishing data collection methods used to evaluate a behavioral intervention plan’s effectiveness;
   10. Evaluating the behavior intervention plan’s effectiveness;
   11. Establishing specific reinforcements to be used;
   12. Identifying an individual’s rights, if appropriate, that need to be restricted;
   13. Identifying risks of the behavior intervention plan, particularly in comparison to the risks of the maladaptive behavior;
   14. Documenting an individual’s, and his or her legal representative’s, informed consent to the behavior intervention plan;
   15. If restricted procedures are to be utilized, documenting approval from a behavior intervention committee (BIC) and a human rights committee (HRC) of the behavior intervention plan.
(g) A behavior intervention plan shall incorporate the least restrictive, least aversive, and least intrusive procedures, as well as protect the dignity and rights of the individual receiving services.
(h) A behavior intervention plan shall be monitored on an ongoing basis by a behavioral specialist.

Section 16. Counseling Services. (1) A provider of counseling services shall be:
(a) A psychiatrist;
(b) A licensed psychologist;
(c) A certified psychologist with autonomous functioning;
(d) A psychological associate or certified psychologist;
(e) A licensed social worker;
(f) A clinical nurse specialist with a master’s degree in psychiatric nursing;
(g) An advanced registered nurse practitioner (ARNP); or
(h) A certified alcohol and drug counselor;
(2) Counseling services shall be designed to help an ABI waiver service recipient resolve personal issues or interpersonal problems resulting from his or her acquired brain injury.
(3) To assist family members in implementing an ABI waiver service recipient’s plan of care, counseling services may be provided to members of the ABI waiver service recipient’s family.
(4) Group therapy may be a counseling service if included in an ABI waiver service recipient’s plan of care.
(5) Counseling services may:
   (a) Include substance abuse counseling; or
   (b) In a severe case, be provided as an adjunct to behavioral programming.

Section 17. Occupational Therapy, Speech, Hearing, and Language Services. (1) A provider of occupational therapy or speech, hearing, and language services shall:
Section 18. Specialized Medical Equipment and Supplies. (1) Specialized medical equipment and supplies shall be provided to an ABI waiver service recipient if:
(a) Prior authorized by the department;
(b) Obtained from a Medicaid-certified pharmacy or Medicare and Medicaid-certified medical equipment supplier; and
(c) Not covered via the Medicaid durable medical equipment program established in 907 KAR 1:479.
(2) Prior authorization of specialized medical equipment and supplies shall be based on:
(a) Medical necessity in accordance with 907 KAR 3:130 and the equipment’s and supplies’ necessity in regards to an ABI waiver service recipient’s plan of care.
(b) A case manager shall be responsible for:
(i) Requesting prior authorization, using a MAP-95 form, for specialized medical equipment and supplies;
(ii) Arranging for and obtaining specialized medical equipment and supplies;
(iii) All specialized medical equipment and supplies shall meet applicable standards of manufacture, design, and installation;
(iv) Life support equipment, ancillary supplies, and related equipment shall not be covered by the ABI Waiver Program.
Section 19. Environmental Modifications. (1) An environmental modification shall be provided in accordance with applicable state and local building codes.
(2) An environmental modification shall be provided to an ABI waiver service recipient if:
(a) Prior authorized by the department;
(b) Specified in the ABI waiver service recipient’s plan of care;
(c) Obtained from a qualified contractor; and
(d) Necessary to ensure the ABI waiver service recipient’s health, welfare, and safety;
2. It enables the ABI waiver service recipient to function with greater independence within his or her home and without which he or she would require institutionalization; or
3. It is necessary to accommodate medical equipment and supplies necessary for the ABI waiver service recipient’s welfare.
(3) A case manager shall be responsible for:
(a) Requesting prior authorization, using a MAP-95 form, for an environmental modification;
(b) Arranging for an environmental modification.
(4) Vehicle modifications and electronic monitoring systems shall be excluded from environmental modification coverage in the ABI Waiver Program.
Section 20. Community Residential Services. (1) Community residential services:
(a) Shall focus on retraining an ABI waiver service recipient in the performance of home care and home management tasks in accordance with the ABI waiver service recipient’s plan of care;
(b) Shall be provided in a staffed residence or group home;
(c) [4] shall include:
1. Supervision and oversight;
2. [Shall include] Supportive services including:
a. Socialization as a part of an ABI waiver service recipient’s plan of care;
b. Assistance with arranging meetings and appointments; or
(c) Providing transportation;
3. [Shall include] Activities of daily living training;
4. [Shall include] Social skills training;
5. [Shall include] Home care tasks training; or
6. [Shall include] Home management skills training; and
(d) May be provided up to twenty-four (24) hours per day.
(2) An ABI waiver service recipient shall be eligible for community residential services if he or she:
(a) Is not living with a caregiver;
(b) Is living with a caregiver but is exhibiting maladaptive behavior that places himself or herself or the caregiver at significant risk of injury or jeopardy; or
(c) Is exhibiting behavior which may result in legal problems if not ameliorated.
(3) For a staffed residence, a community residential service staffing ratio shall not exceed three (3) individuals per one (1) staff person.
Section 21. [5] Limits or Coverage. (1) Respite services shall be limited to no more than 365 units in a six (6) month period. An exception to this period shall be granted by the department if the individual’s primary caregivers’ ability to provide care for the individual is compromised by:
(a) A death in the family;
(b) A serious illness; or
(c) Hospitalization.
(2) An environmental modification shall be limited to being provided to the individual’s home.
Section 22. Prior Authorization of [6] Prior Approval for an ABI waiver service. (1) The department shall prior authorize all of an individual’s ABI services to ensure that:
(a) Nursing facility level of care criteria and ABI service eligibility requirements are met;
(b) Services are adequately specified in the ABI recipient’s plan of care;
(c) Services are medically necessary in accordance with 907 KAR 3:130, appropriate, and necessary to:
1. Prepare the ABI recipient for reentry into a community where he or she can function without continued ABI services; and
2. Prevent institutionalization;
(d) Cost of the services shall not reasonably be expected to exceed the cost of the correspondingly appropriate level of institutional care; and
(e) Services are adequate to meet the ABI recipient’s needs.
(2) Prior authorization factors shall include an individual’s home situation, caregiver support availability, and type and amount of services requested.
(3) Prior authorization procedures shall be as follows:
(a) A case management agency shall request and obtain from the department, by telephone, a nursing facility level of care determination;
(b) Upon receiving a written nursing facility level of care determination, a case manager shall submit to the department the following information in order to request a determination regarding an individual’s medical eligibility for ABI services:
1. A copy of an ABI Plan of Care Form (MAP-4097);
2. A completed and dated ABI Physician Certification Form (MAP-4099) signed by an individual’s attending physician recommending the individual for ABI services;
3. A Medicaid Certification Form (MAP-350); and
4. The department’s nursing facility level of care written determination;
(c) If the department’s registered nurse or nurses reviewing an individual’s documentation regarding ABI eligibility determine that an individual qualifies for ABI services, the department shall submit that determination to a case manager who shall then submit the following information to the department:
1. A completed ABI Plan of Care Form (MAP-4097);
2. A copy of the department’s nursing facility level of care approval;
3. A copy of the department’s determination that an individual qualifies for ABI services;
4. A completed MAP-4099 form signed and dated by the individual’s attending physician recommending the ABI Waiver Program;
5. The Kentucky Medicaid Certification Form (MAP-350); and
6. A completed “Acquired Brain Injury Waiver Services Program
VOLUME 28, NUMBER 8 – FEBRUARY 1, 2002

(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.

ELLEN M. HESSEN, Interim Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: September 27, 2001
FILED WITH LRC: October 5, 2001 at noon

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, January 8, 2002)


STATUTORY AUTHORITY: KRS 620.045

NECESSITY, FUNCTION, AND CONFORMITY: To be eligible for grants from state government entities, KRS 620.045(2) requires children's advocacy centers to comply with their statutory definition established in KRS 620.020(4) and administrative regulations promulgated by the cabinet. This administrative regulation establishes staff qualifications and program standards for children's advocacy centers. KRS 620.020(4) defines children's advocacy centers including a list of minimum services that shall be provided by those agencies. The administrative regulation is being promulgated to specify staff qualifications and program standards to effect compliance with the statutory definition. KRS 620.045 authorizes the Cabinets for Families and Children, Health Services and Justice to allocate funds to children's advocacy centers in a manner consistent with the administrative regulation that establishes eligibility criteria.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 600.020(6), [means the Cabinet for Families and Children or contract agent]

(2) "Children's advocacy center" or "center" means an agency as defined at KRS 620.020(4) and designated by the cabinet to serve as the regional children's advocacy center.

(3) "Governing board" or "board" means the board of directors vested with the legal responsibility for management of the children's advocacy center.

(4) "Mental health discipline" means:

(a) Psychology in accordance with KRS Chapter 319;
(b) Social work in accordance with KRS 335.010 to 335.170;
(c) Psychiatric nursing in accordance with KRS 202A.011(12)(d);
(d) Marriage and family therapy in accordance with KRS 335.300 to 335.399;
(e) Professional counseling in accordance with KRS 335.500 to 335.599; and
(f) Art therapy in accordance with KRS 309.130 to 309.139; and

(g) Psychiatry in accordance with KRS 202A.011(12)(b).

Section 2. Governing Board of Directors. (1) A center shall be managed by a governing board in order to allow community involvement in the planning, development, and evaluation of services.

(2) A governing board shall adopt written bylaws. The bylaws shall include:

(a) Purpose of the agency
(b) Minimum and maximum number of board member positions;
(c) Qualifications for board members;
(d) Method of selecting board members;
(e) Terms of board members;
(f) Officers and duties;


Section 26. [42] Effective date. This section is effective November 1, 2002.

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(g) Method of election of officers and chairpersons; and
(h) Quorum requirements for meetings of the board; and
(i) Method for removal of directors.
(3) The duties of the board shall be to:
(a) Schedule meetings of the board to be held at least six (6) times per state fiscal year;
(b) Maintain minutes of each meeting of the board containing:
1. The date and place of the meeting;
2. Names of board members present;
3. The subject matter discussed and actions taken; and
4. The name of the reporter;
(c) Establish standing committees of the board to include executive, nominating, finance, and personnel committees;
(d) Establish restrictions on reimbursement of board members including the prohibition against a member contracting with the board to perform personal or professional services; and
(e) Ensure that the facility housing the center is a clean, maintained, private, and child-friendly setting.

Section 3. Personnel Management. (1) A personnel file shall be maintained by the center for each employee.
(2) The minimum contents of the personnel file shall include:
(a) Current professional credentials to reflect training and experience adequate for qualification for the position for which the employee is hired;
(b) Conditions or terms of employment that shall include a confidentiality statement signed by the employee;
(c) A personnel action document reflecting a change in status of an employee, such as salary change, promotion, resignation, or termination;
(d) A position description document including title of the position, description of duties, and requirements of training and experience necessary to qualify for the position; and
(e) Results from a criminal records background check conducted in accordance with KRS 17.165 on the employee during the application process.
(3) Personnel policies shall be established by the center and shall include:
(a) Attendance and leave policies;
(b) Compensation plan;
(c) Hiring, disciplinary, and firing practices;
(d) Staff development and continuing education provisions;
(e) Employee grievance procedures;
(f) Employee performance evaluations; and
(g) Equal opportunity employment statements.
(4) The governing board shall employ one (1) staff person as executive director of the children’s advocacy center. The executive director shall:
(a) Be responsible for financial management of the center, including budgets and grant writing;
(b) Supervise the duties and activities of center staff and volunteers;
(c) Coordinate the design and delivery of services;
(d) Fulfill duties as required by the governing board;
(e) Report directly to the board on all center activities;
(f) Have a master’s [master’s] degree from an accredited college or university and three (3) years of experience in a human services, management, or criminal justice field; and
(g) Affirm a commitment to the welfare and protection of children.
(5) A governing board may establish the staff positions specified in this subsection.
(a) Child advocate. A child advocate shall have a bachelor degree from an accredited college or university and two (2) years of experience in a human services or criminal justice field.
(b) Therapist. A therapist shall:
1. Have a doctorate or master’s [master’s] degree from an accredited college or university in a mental health discipline and two (2) years postdegree counseling or clinical experience; and
2. Possess a certificate or license to practice under the laws of the Commonwealth of Kentucky in a mental health discipline.
(c) Forensic interviewer. A forensic interviewer, if employed by the center, shall meet the qualifications of the therapist position specified in paragraph (b) of this subsection and shall have three (3) years of experience interviewing children.
(d) Multidisciplinary team facilitator. A multidisciplinary team facilitator shall have a bachelor’s [bachelor’s] degree from an accredited college or university and two (2) years of experience in a human services or criminal justice field.
(e) Other staff necessary to support the administration or service delivery of the agency.
(f) The qualifications established in paragraphs (a) through (d) of this subsection shall not apply to center staff hired prior to the effective date of this administrative regulation.
(g) Within three (3) months of employment, staff providing direct services to a child shall have received twenty-four (24) hours of training on issues related to child abuse.
(h) An employee of a center shall receive at least eight (8) hours of the training required by paragraph (g) of this subsection before providing services to a child.
(i) A center contracting for direct services to a child by a professional not on the staff of the center shall document that the professional meets the qualifications outlined in this section. An agreement for provision of service shall be on file at the center, and shall specify the qualifications of the staff.
(j) An employee of a children’s advocacy center shall be at least eighteen (18) years of age.
(k) An applicant for employment shall submit to a criminal records check in accordance with KRS 17.165.
(l) An employee of a center under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with a child in the center until the employee is cleared of the charge.

Section 4. Services. (1) A center shall provide the services specified in subsections (2) through (5) of this section or develop a referral mechanism to refer clients to a provider of these services.
(2) Advocacy services assist child victims and their nonoffending caregivers and may include:
(a) Accompaniment to court or court-related meetings;
(b) Case management services; and [ea]
(c) Information and referral services.
(3) Counseling services may include:
(a) A crisis telephone line;
(b) Crisis counseling services; and [ea]
(c) Support group services.
(4) [a] Clinical services may include:
1. [ea] Mental health screening; [a]
2. [ea] Mental health evaluation; [a]
3. [ea] Individual therapy services for a child and nonoffending caretaker and family; and [ea]
4. [ea] Group therapy services for a child and nonoffending caretaker; [ea]
(b) [ea] Clinical services shall be provided by a professional who meets the requirements in accordance with Section 3(5)(b) of this administrative regulation.
(5) Forensic interviewing includes structured interviews with a child for the purpose of facilitating a criminal investigation and may be provided on site at the center by:
(a) The center staff forensic interviewer in accordance with Section 3(5)(c) of this administrative regulation; or
(b) A law enforcement officer and a family service worker who is employed by the cabinet.
(6) Multidisciplinary team facilitation may include:
(a) Scheduling of meetings;
(b) Case tracking;
(c) Case review; and [ea]
(d) Data collection.
(7) Except as provided by subsection (8) of this section, medical examination services shall be provided in accordance with 907 KAR 3:160 by a licensed physician with pediatric experience and expertise in the evaluation and treatment of child abuse.
(8) Medical examination services may be provided by a sexual assault nurse examiner certified in accordance with KRS 314.011(14) and 314.142 if the child is fourteen (14) years of age or older.
(9) Consultation and education services may include:
(a) School-based prevention programs;
(b) Community education programs;
(c) Media presentations;
(d) In-service training; and [se]
(e) Case consultation services.

(10) In addition to providing services to children in the county in which the center is located, regional center staff may serve:
(a) Children in other counties in the area development district, including medical examinations or forensic interviewing services as available; and
(b) As a technical assistant and consultation resource to criminal justice and human service professionals in the area development district in which the center is located.

(11) No known or alleged adult offender shall be allowed to visit or otherwise remain on the property of a center.

(12) Services provided by a center shall be coordinated with multidisciplinary teams as defined in KRS 431.600 and 620.020.

Section 5. Client Files. (1) A center shall open a client file for a child who is provided a service, excluding service that is limited to a telephone conversation.
(2) A client file shall include information sufficient to document the services provided by the agency.
(3) A center shall:
(a) Develop and maintain written confidentiality policies and procedures to ensure client privacy as provided in Kentucky Rules of Evidence 506 and 507; and
(b) Allow for the legitimate sharing of necessary information as established in KRS 620.050.

Section 6. Funding. (1) The cabinet shall designate one (1) regional children's advocacy center in each area development district.
(2) The requirements of this administrative regulation shall not prohibit the center from applying for nongovernment grants or fundraising to support efforts consistent with the mission of the center.
(3) The secretary of the cabinet may rescind the designation of a center if [when] a determination is made that the center failed to:
(a) Submit a budget and plan for services which evidences the capacity to provide services specified in this administrative regulation;
(b) Operate in accordance with a budget and plan for services approved by the cabinet; or
(c) Operate in accordance with the requirements of this administrative regulation.
(4) All cabinet funding for a center shall be contracted through the regional center.
(5) A center may contract or establish referral agreements with other agencies or professionals to provide services as defined within Section 4 of this administrative regulation.
(6) Any dispute shall be processed in accordance with KRS Chapter 45A.

Section 7. Audit and Monitoring. (1) The cabinet or its agent shall randomly, or upon receipt of a complaint, audit, monitor, or conduct program reviews of a center.
(2) A center shall allow the cabinet or its agent access to its property and records as required by subsection (1) of this section.

Section 8. Grievance and Appeals Process. (1) Client grievances. A center shall establish a written grievance procedure that shall:
(a) Be given to the parent or guardian of each child that comes to the center for services; and
(b) Contain a description of the services provided by the center and the procedure for filing a client grievance.
(2) A center shall inform the parent or guardian in writing of the child’s appeal process described in 922 KAR 1:320.

DIETRA PARIS, Commissioner  
HIREN DESAI, Attorney  
VIOLA P. MILLER, Secretary  
APPROVED BY AGENCY: October 5, 2001  
FILED WITH LRC: November 1, 2001 at noon
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division of Water  
(Amended After Hearing)  

401 KAR 8:022. Sanitary surveys. 

RELATES TO: KRS 224.10-100, 224.10-110, 40 CFR 142.10(b2), 142.16(b)  
STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR 142.10(b2), 42 USC 300f, 300g, 300h, 300j  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(30) and 224.10-110 authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. This administrative regulation contains the requirements of a systematic program for conducting sanitary surveys by the cabinet and requirements on the public water system subject to a sanitary survey.  

Section 1. Applicability. (1)(a) The cabinet shall conduct a sanitary survey of a public water system that uses as its source surface water or groundwater under the direct influence of surface water and prepare a report of the sanitary survey, according to the requirements of this administrative regulation.  
(b) The sanitary survey and report of the survey shall be consistent with the guidelines of "Guidance Manual for Conducting Sanitary Surveys of Public Water Systems; Surface Water and Ground Water Under the Direct Influence (GWUDI)," incorporated by reference in Section 5 of this administrative regulation.  
(c) The priority for conducting the surveys shall be given to public water systems that are not in compliance with 401 KAR Chapter 8 and according to the frequency in Section 3 of this administrative regulation.  

(2) A public water system that receives a sanitary survey report prepared by the cabinet shall comply with the requirements of this administrative regulation.  

Section 2. Sanitary Survey Contents. (1) The survey shall contain an evaluation of the adequacy of the system, its sources and operations, and the distribution of safe drinking water. The survey shall include an on-site review of a public water system's:  
(a) Water source, identifying sources of contamination using results of a source water assessment if available;  
(b) Facilities;  
(c) Equipment;  
(d) Operation;  
(e) Maintenance; and  
(f) Monitoring compliance.  
(2) The sanitary survey and the resultant report shall address the following components:  
(a) Source;  
(b) Treatment;  
(c) Distribution system;  
(d) Finished water storage;  
(e) Pumps, pump facilities, and controls;  
(f) Monitoring, reporting, and data verification including a disinfection profile, if the system is required to have a disinfection profile pursuant to 401 KAR 8:180;  
(g) System management and operation; and  
(h) Operator certification compliance with requirements of 401 KAR 8:030.  

Section 3. Frequency. (1) The cabinet shall conduct a sanitary survey and prepare a report on the survey at the following frequencies:  
(a) [43] Community water system that uses as its source surface water or groundwater under the direct influence of surface water: no less frequently than every three (3) years.  
(b) [42] Noncommunity water system that uses as its source surface water or groundwater under the direct influence of surface water: no less frequently than every five (5) years.  
(2) A community water system may be determined by the cabinet to have outstanding performance based on previous sanitary surveys. Systems judged to have outstanding performance may have sanitary surveys performed by the cabinet after no more than five (5) years.  

Section 4. System Requirements. (1) If the cabinet identifies a significant deficiency of a public water system in a sanitary survey report, the public water system shall:  
(a) Correct or otherwise address the significant deficiency within forty-five (45) days of receiving the report or within a time frame otherwise set by the cabinet; and  
(b) Submit to the cabinet within forty-five (45) days of receipt of the report an approvable written plan that describes how and on what schedule the significant deficiency shall be corrected or otherwise addressed. If the cabinet approves the plan, the system shall implement the provisions of the approved plan to the extent it is able to correct the significant deficiency.  
(2) If the cabinet identifies a deficiency of a public water system in a sanitary survey report that is not significant, the public water system shall correct or otherwise address the deficiency.  
(3) A deficiency shall be a significant deficiency if:  
(a) It is part of a recurring pattern of noncompliance with the administrative regulations in 401 KAR Chapter 8;  
(b) It poses a potential threat to public health or safety;  
(c) The system fails to implement the items identified in a compliance correction program; or  
(d) It meets other criteria for significant deficiencies identified by the cabinet.  

(2) This material may be inspected, copied, or obtained, subject to copyright law, at Division of Water, Drinking Water Branch, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.  

JAMES E. BICKFORD, Secretary  
APPROVED BY AGENCY: January 9, 2002  
FILED WITH LRC: January 9, 2002 at 3 p.m.  

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT  

Contact person: Jeffrey W. Pratt, Director  
(1) Provide a brief summary of:  
(a) What this administrative regulation does: This administrative regulation requires the cabinet to perform a sanitary survey on most public water systems that use as their source surface water or groundwater under the direct influence of surface water (GWUDI) every three to five years, depending on the system type. The administrative regulation identifies the items that a sanitary survey shall address. This administrative regulation also requires the public water system to correct or otherwise address the deficiencies identified in the sanitary survey report. The system shall submit a plan to the cabinet within 45 days of receipt of the report as to how it will address significant deficiencies identified in the report.  
(b) The necessity of this administrative regulation: This administrative regulation is required by federal regulations in 40 CFR Part 142(40 CFR 142.10(b)(2), 142.16(b)). The cabinet must promulgate this administrative regulation in order to receive immunity for the enforcement of the federal regulations for the Interim Enhanced Sur-
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation will become part of the cabinet’s comprehensive program for the purification of water for public and semipublic use, and is consistent with the federal regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow the cabinet to continue to have an approvable program for the purification of water for public and semipublic use.

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

(a) How the amendment will change this administrative regulation: Not applicable since this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable since this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable since this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable since this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, local and state agencies, and local governments affected by this administrative regulation:

(a) Local and state governments affected by this administrative regulation: This administrative regulation will apply to all community and noncommunity water systems that use as their source surface water or groundwater under the direct influence of surface water. There are about 190 such systems in Kentucky, some of which are controlled or owned by local governments. Those public water systems provide drinking water to citizens of the Commonwealth.

(b) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Most of the impact of this administrative regulation will be on the cabinet to perform the sanitary surveys, and prepare a report of the sanitary surveys. If the sanitary survey report identifies a deficiency in the system, then the system will need to correct or otherwise address the deficiency. If the deficiency is a significant deficiency, the system must provide a report as to how it will correct the significant deficiency. The system must then correct the significant deficiency, if it is within the ability of the system to do so.

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

(a) Initial: The first year, the cabinet will be required to begin performing sanitary surveys and the resultant reports on about one-third of the systems. Existing staff will be used to implement this administrative regulation. The cost on the public water system will be dependent upon what deficiencies are identified in the sanitary survey report.

(b) On a continuing basis: The costs would be the same as the first-year costs noted above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Monies allocated by the Kentucky General Assembly in its biennial budget will be used to implement and enforce the administrative regulations throughout 401 KAR Chapter 8, including this administrative regulation. In addition, the cabinet receives grants from the U.S. EPA to implement the provisions of the federal Safe Drinking Water Act, as amended. If the cabinet’s program is no less stringent than the federal program, and the cabinet maintains “primacy” for the enforcement and implementation of the federal program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation. However, the cabinet has received an increase in funding from the U.S. EPA to implement the new provisions of the Safe Drinking Water Act.

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

(9) TIERING: Is tiering applied? Yes. The federal regulation does not allow tiering as to the size of the water system. However, it does require the cabinet to perform sanitary surveys on specific types of systems at a specified frequency, so a form of tiering is used. Only community water systems that use surface water or groundwater under the direct influence of surface water will have sanitary surveys performed at least every three years. Noncommunity water systems that use as their source surface water or groundwater under the direct influence of surface water will have sanitary surveys performed at least every five years.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 40 CFR 142.10(b)(2), 142.16(b).
3. Minimum or uniform standards contained in the federal mandate: The cabinet must perform sanitary surveys on specified public water systems every three to five years. The public water system must correct or otherwise address significant deficiencies identified in the report of the survey.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? Yes, this administrative regulation requires a public water system to correct or otherwise address all deficiencies that are identified in the sanitary survey report. The federal regulation requires that only significant deficiencies be addressed as to how they will be corrected.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Customers of a public water system should be able to receive clean, safe water from their public water system.

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: This administrative regulation will affect many community and noncommunity public water systems, many of which are owned or controlled by local governments.
3. State the aspect or service of local government to which this administrative regulation relates: This administrative regulation relates to those affected public water systems that provide drinking water to their customers.
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 anticipated effect on current revenues.

Expenditures (+/-): The only expenditures that would be imposed on a local government would be if the sanitary survey report identified any significant deficiencies in the water system. If so, the system would have to respond within 45 days of how it would address the significant deficiencies. Additional costs may be required for the system to correct the significant deficiency, or correct or otherwise address other deficiencies identified in the report. This administrative regulation further stipulates, however, that the system shall implement the provisions of the approved plan, to the extent that correction of significant deficiencies is within the authority of the water system.

Other Explanation: None
RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.01 to 61.139, 61.160 to 61.358, 42 USC 7401, 7412, 7414, 7416, 7601
STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.01 to 61.139, 61.160 to 61.358, 42 USC 7401, 7412, 7414, 7416, 7601
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 National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 CFR 61.01 to 61.139 and 61.160 to 61.358. Delegation of implementation and enforce-
ment authority for the federal NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 USC 7412(ii).

Section 1. (1) For purposes of 40 CFR Part 61, "Part 61 NE-
SHAP" shall be the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF). (2) For purposes of 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), the "administrator" shall be the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF). These sources shall comply with the following: (1) The applicable provisions in 40 CFR 61.01 to 61.19 (Subpart A), "General Provisions", which is incorporated by reference in Section 3 of this administrative regulation; (2) The applicable methods, procedures, and reporting requirements contained in 40 CFR Part 61, Appendices A through E, which are incorporated by reference in Section 3 of this administrative regulation; and (3) The applicable Part 61 NESHAP incorporated by reference in Section 3 of this administrative regulation.

62, July 1, 2001 [2000] [1999];
(2) "Appendix D to Part 61, Methods for Estimating Radionuclide Emissions", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 2001 [2000] [1999]; and
(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 Thirteen 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 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;
(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.

JAMES E. BICKFORD, Secretary
APPROVED BY AGENCY: January 11, 2002
FILED WITH LRC: January 12, 2002 at noon

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Millie Ellis

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation incorporates by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 2001.

(b) The necessity of this administrative regulation: This administrative regulation allows Kentucky to have the delegated authority to implement and enforce the federal Part 61 NESHAP program.

(c) How this administrative regulation conforms to the content of the authorizing statutes. The Commonwealth is required to adopt the federal Part 61 NESHAP in order to retain implementation and enforcement authority. This administrative regulation is the state’s adoption of NESHAP pursuant to 42 USC 7412.

(d) How this administrative regulation currently assists or will assist in the effective implementation of the statutory: Sources that are subject to the Part 61 NESHAP program are able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will update the material incorporated by reference in 40 CFR Part 61 to include revisions made after July 1, 2000 through July 1, 2001.

(b) The necessity of the amendment to this administrative regulation: This amendment will allow Kentucky to continue to have the delegated authority to implement and enforce the federal Part 61 NESHAP program.

(c) How the amendment conforms to the content of the authorizing statutes: The Commonwealth is required to adopt the federal Part 61 NESHAP in order to retain implementation and enforcement authority. This amendment will update the administrative regulation to be consistent with the July 1, 2001 version of 40 CFR Part 61.

(d) How the amendment will assist in the effective administration of the statutes: Sources that are subject to the Part 61 NESHAP program will continue to be able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are no individuals, businesses, organizations, or state and local governments affected by this administrative regulation beyond those affected in the federal Part 61 NESHAP.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Groups affected by the federal Part 61 NESHAP program will continue to be able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are no new initial costs for the implementation of this amendment to the administrative regulation.
(b) On a continuing basis: There are no known continuing costs for the implementation of this amendment to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division will absorb all costs for the implementation and enforcement of this amendment to the administrative regulation in its operating budget.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This amendment to the administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. The cabinet is incorporating by reference 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), July 1, 2001 without change. There is no tiering of requirements beyond that contained in the federal Part 61 NESHAP.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found in 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), July 1, 2001. The United States Environmental Protection Agency (U.S. EPA) may grant states implementation and enforcement authority for the federal Part 61 NESHAP program pursuant to 42 USC 7412.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), July 1, 2001, contain National Emission Standards for Hazardous Air Pollutants that the U.S. EPA is required to promulgate pursuant to 42 USC 7412.

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 imposes no stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

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
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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. State 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.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 60:005. 40 CFR Part 60 standards of performance for new stationary sources.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.1 to 60.19, 60.40 to 60.54, 60.60 to 60.506, 60.540 to 60.668, 60.680 to 60.759, 60.1000 to 60.2875, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.1 to 60.19, 60.40 to 60.54, 60.60 to 60.506, 60.540 to 60.668, 60.680 to 60.759, 60.1000 to 60.2875, 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 Standards of Performance for New Stationary Sources (NSPS) codified in 40 CFR 60.1 to 60.19, 60.40 to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.1000 to 60.2875. 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(o)(1).

Section 1. (1) For purposes of 40 CFR Part 60, "Part 60 NSPS" shall be the Standards of Performance for New Stationary Sources codified in 40 CFR 60.1 to 60.19, 60.40 to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.1000 to 60.2875 (Subparts A, D to E, F) to XX, BBB to NNN, and PPP to WWW, and AAAA to DDDD.

(2) For purposes of 40 CFR 60.1 to 60.19, 60.40 to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.1000 to 60.2875 (Subparts A, D to E, F) to XX, BBB to NNN, and PPP to WWW, and AAAA to DDDD, the "administrator" shall be the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of a Part 60 NSPS states that the United States Environmental Protection Agency shall retain enforcement authority.

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 CFR 60.1 to 60.19, 60.40 to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.1000 to 60.2875 (Subparts A, D to E, F) to XX, BBB to NNN, and PPP to WWW, and AAAA to DDDD. These sources shall comply with the following:

(1) The applicable provisions in 40 CFR 60.1 to 60.19 (Subpart A), "General Provisions", which is incorporated by reference in Section 3 of this administrative regulation;

(2) The applicable methods, procedures, and reporting requirements contained in 40 CFR Part 60, Appendices A through F, which are incorporated by reference in Section 3 of this administrative regulation; and

(3) The applicable Part 60 NSPS incorporated by reference in Section 3 of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 40 CFR 60.1 to 60.19 (Subpart A), "General Provisions", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 (2001) [4008];

(b) 40 CFR 60.40 to 60.46 (Subpart D), "Standards of Performance for Fossil-Fuel Fired Steam Generators for Which Construction is Commenced After August 17, 1971", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000];

(c) 40 CFR 60.40a to 60.49a (Subpart Da), "Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000];

(d) 40 CFR 60.40b to 60.49b (Subpart Db), "Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000];

(e) 40 CFR 60.40c to 60.48c (Subpart Dc), "Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000];

(f) 40 CFR 60.50 to 60.54 (Subpart E), "Standards of Performance for Incinerators", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000];

(g) 40 CFR 60.50a to 60.59a (Subpart Ea), "Standards of Performance for Municipal Waste Combustors For Which Construction is Commenced After December 20, 1989 and On or Before September 20, 1994", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000];

(h) 40 CFR 60.50b to 60.59b (Subpart Eb), "Standards of Performance for Large Municipal Waste Combustors For Which Construction is Commenced After September 20, 1994 or For Which Modification or Reconstruction is Commenced After June 19, 1996", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000];

(i) 40 CFR 60.50c to 60.58c (Subpart Ec), "Standards of Performance for Hospital/Medical/Infectious Waste Incinerators For Which Construction is Commenced After June 20, 1996", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000];

(j) 40 CFR 60.60 to 60.66 (Subpart F), "Standards of Performance for Portland Cement Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000];

(k) 40 CFR 60.70 to 60.74 (Subpart G), "Standards of Performance for Nitric Acid Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000];

(l) 40 CFR 60.80 to 60.85 (Subpart H), "Standards of Performance for Sulfuric Acid Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000];

(m) 40 CFR 60.90 to 60.93 (Subpart I), "Standards of Performance for Hot Mix Asphalt Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000];

(n) 40 CFR 60.100 to 60.109 (Subpart J), "Standards of Performance for Petroleum Refineries", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000];


(q) 40 CFR 60.107b to 60.117b (Subpart Kb), "Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) For Which Construction, Reconstruction, or Modification Commenced After July 23, 1984", as pub-


(eee) [4484] 40 CFR 60.580 to 60.585 (Subpart FFF), "Standards of Performance for Flexible Vinyl and Urethane Coating and Printing", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000] [4488];

(fgg) [4484] 40 CFR 60.590 to 60.593 (Subpart GGG), "Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000] [4488];

(hhh) [4484] 40 CFR 60.660 to 60.670 (Subpart HHH), "Standards of Performance for Synthetic Fiber Production Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000] [4488];


(III) [4484] 40 CFR 60.620 to 60.625 (Subpart JJJ), "Standards of Performance for Petroleum Dry Cleaners", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000] [4488];

(l) [4484] 40 CFR 60.630 to 60.636 (Subpart KKK), "Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000] [4488];

(mmm) [4484] 40 CFR 60.680 to 60.685 (Subpart PPP), "Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000] [4488];


(qqq) [4484] 40 CFR 60.720 to 60.726 (Subpart TTT), "Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000] [4488];

(rrr) [4484] 40 CFR 60.730 to 60.737 (Subpart UUU), "Standards of Performance for Calculators and Dryers in Mineral Industries", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000] [4488];

(sss) [4484] 40 CFR 60.740 to 60.748 (Subpart VVV), "Standards of Performance for Polyurethane Coating of Supporting Substrates Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000] [4488];

(ttt) [4484] 40 CFR 60.750 to 60.759 (Subpart WVV), "Standards of Performance for Municipal Solid Waste Landfills", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000] [4488];


(www) 40 CFR 60.2000 to 60.2265 (Subpart CCCC), "Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced On or After June 1, 2001", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001.


(yyy) [4484] "Appendix A to Part 60, Test Methods", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000] [4488];


(aaa) [4484] "Appendix C to Part 60, Determination Of Emission Rate Change", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000] [4488];

(bbb) [4484] "Appendix D to Part 60, Required Emission Inventory Information", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2001 [2000] [4488];


(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 Schenkell Lane, Frankfort, Kentucky 40601, (502) 573-1382; (b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 216-2007; (c) Bowling Green Regional Office, 1508 West Avenue, Bowling Green, Kentucky 42104, (270) 746-7475; (d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923; (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) 978-0157; (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) 858-8456.


JAMES E. BICKFORD, Secretary
APPROVED BY AGENCY: January 11, 2002
FILED WITH LRC: January 12, 2002 at noon

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Millie Ellis
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation incorporates by reference the federal New Source Performance Standards, 40 CFR 60.1 to 60.18, 60.40 to 60.56, 60.540 to 60.546, and 60.690 to 60.2975 (Subparts A, D to XX, BBB to
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FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 60.1 to 60.19, 60.40 to 60.506, 60.540 to 60.668, and 60.680 to 60.2875 (Subparts A, D to XX, BBB to NNN, and PPP to DDDD), July 1, 2001. 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 in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 60.1 to 60.19, 60.40 to 60.506, 60.540 to 60.668, and 60.680 to 60.2875 (Subparts A, D to XX, BBB to NNN, and PPP to DDDD), July 1, 2001 contain New Source Performance Standards that 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? No. This administrative regulation imposes no stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate.

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

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.

Other Explanation: There is no further explanation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)


RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to 63.2872 [63.1661] [63.1333], 42 USC 7401, 7412, 7414, 7416, 7601

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to 63.2872 [63.1661] [63.1333], 42 USC 7401, 7412, 7414, 7416, 7601

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations to implement the provisions for prevention, abatement, and control of air pollution. This administrative regulation incorporates by reference the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.2872 [63.1661] [63.1333]. Delegation of implementation and enforcement authority for the federal
NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. (1) For purposes of 40 CFR Part 63, "Part 63 NESHAP" shall be the National Emission Standard for Hazardous Air Pollutants codified in 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.2872 [83.1664] [63.1235] (Subparts A, D, and F to GGGG [xxxx] [xxxx]).

(2) For purposes of 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.2872 [83.1664] [63.1235] (Subparts A, D, and F to GGGG [xxxx] [xxxx]), the "administrator" shall be the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of the Part 63 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.2872 [83.1664] [63.1235] (Subparts A, D, and F to GGGG [xxxx] [xxxx]). These sources shall comply with the following:

(1) The applicable provisions in 40 CFR 63.1 to 63.15 (Subpart A), "General Provisions", which is incorporated by reference in Section 3 of this administrative regulation;

(2) For sources that apply for early credit approval and wish to extend the deadline for compliance demonstration, the applicable provisions in 40 CFR 63.70 to 63.81 (Subpart D), "Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants", which is incorporated by reference in Section 3 of this administrative regulation;

(3) The applicable test methods, procedures, and other provisions contained in 40 CFR Part 63, Appendices A through E [2], which are incorporated by reference in Section 3 of this administrative regulation; and

(4) The applicable Part 63 NESHAP incorporated by reference in Section 3 of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 40 CFR 63.1 to 63.15 (Subpart A), "General Provisions", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 2001 [2000] [1999];

(b) 40 CFR 63.70 to 63.81 (Subpart D), "Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 2001 [2000] [1999];

(c) 40 CFR 63.100 to 63.106 (Subpart F), "National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 2001 [2000] [1999];


(g) 40 CFR 63.300 to 63.313 (Subpart L), "National Emission Standards for Coke Oven Batteries", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 2001 [2000] [1999];

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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 Western Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;
(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;
(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) 878-8017;
(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and
(h) Paducah Regional Office, 4500 Clark's River Road, Paducah, Kentucky 42003, (270) 898-8468.

JAMES E. BICKFORD, Secretary
APPROVED BY AGENCY: January 11, 2002
FILED WITH LRC: January 12, 2002 at noon

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Millie Ellis

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation incorporates by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.2872 (Subparts A, D, and F to GGGG) as published in the Code of Federal Regulations, Part 63, July 1, 2001.
(b) The necessity of this administrative regulation: This administrative regulation allows Kentucky to have the delegated authority to implement and enforce the federal Part 63 NESHAP program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Commonwealth is required to adopt the federal Part 63 NESHAP in order to retain implementation and enforcement authority. This administrative regulation is the state's adoption of NESHAP pursuant to 42 USC 7412.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Sources that are subject to the Part 63 NESHAP program are able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will update the material incorporated by reference in 40 CFR Part 63 to include revisions made and subparts added after July 1, 2000 through July 1, 2001.
(b) The necessity of the amendment to this administrative regulation: This amendment will allow Kentucky to continue to have the delegated authority to implement and enforce the federal Part 63 NESHAP program.
(c) How the amendment conforms to the content of the authorizing statutes: The Commonwealth is required to adopt the federal Part 63 NESHAP in order to retain implementation and enforcement authority. This amendment will update the administrative regulation to comply with the July 1, 2001 version of 40 CFR Part 63.
(d) How this amendment will assist in the effective administration of the statutes: Sources that are subject to the Part 63 NESHAP program will continue to be able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are no individuals, businesses, organizations, or state and local governments affected by this administrative regulation beyond those affected in the federal Part 63 NESHAP.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Groups affected by the federal Part 63 NESHAP program will continue to be able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are no new initial costs for the implementation of this amendment to the administrative regulation.
(b) Continuing basis: There are no known continuing costs related to this amendment to the administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division will absorb all costs for the implementation and enforcement of this amendment to the administrative regulation in its operating budget.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement the amendment.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This amendment to the administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

TIERING: Is tiering applied? Tiering is not applied. The cabinet is incorporating by reference 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.2872 (Subparts A, D, and F to GGGG), July 1, 2001, without change. There is no tiering by the state beyond that contained in the federal Part 63 NESHAP.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.2872 (Subparts A, D, and F to GGGG), July 1, 2001. The United States Environmental Protection Agency (U.S. EPA) may grant states implementation and enforcement authority for the federal Part 63 NESHAP program pursuant to 42 USC 7412.
2. State compliance standards. The state compliance standards are found in KRS 224.10-10C, 224.20-100, 224.20-110, 224.20-120.
3. Minimum or uniform standards contained in the federal mandate. 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.2872 (Subparts A, D, and F to GGGG), July 1, 2001, contain National Emission Standards for Hazardous Air Pollutants that the U.S. EPA is required to promulgate and are incorporated by reference to 42 USC 7412.
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 imposes no stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

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.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Charitable Gaming
(Amended After Hearing)

820 KAR 1:027. Quarterly report of a licensed distributor regarding card-minding devices.

RELATES TO: KRS 238.530, 238.545(1)(b)
STATUTORY AUTHORITY: KRS 238.515(4), (9), 238.530(5), 238.545(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.545(1)(b) permits licensed charitable organizations to offer card-minding devices, as defined in KRS 238.505(26), for use by bingo players. KRS 238.540(6) requires that a licensed charitable organization obtain charitable gaming supplies and equipment, if of which card-minding devices are a type, only from a licensed distributor. KRS 238.530(5) permits the department to require a licensed distributor to report on its activities regarding the furnishing of charitable gaming supplies and equipment, with the content and frequency of these reports to be prescribed by administrative regulation. This administrative regulation establishes the method and time of filing for reports concerning card-minding devices.

Section 1. Reports concerning card-minding devices shall be completed in accordance with the following:

1. A licensed distributor shall submit the report required by this administrative regulation [and 820 KAR 1:040, Section 8] on a Form CG-DIS/CMO Usage Report;
2. The report shall include, as attachments, copies of contracts, leases or purchase agreements between the licensed distributor and each licensed charitable organization to which card-minding devices were furnished during each calendar year; and
3. The report shall be signed by the chief executive and chief financial officers of the licensed distributor; and
4. If prepared by an individual other than the chief executive or financial officers, the report shall be signed by the preparer.

Section 2. Reporting Period Defined. A completed Form CG-DIS/CMO Usage Report shall be submitted by a licensed distributor within thirty (30) days following the close of each calendar year quarter. The report shall be considered submitted when due if it has been mailed to the department by first class mail, postage prepaid, to the correct address and postmarked by the due date. If the 30th day following the close of the calendar quarter is on a Saturday, Sunday or legal holiday, then the report shall be due on the first business day thereafter. The report may also be hand-delivered to the department and shall be considered submitted when due if received in the department by hand-delivery on or before the due date.

Section 3. Late Fine. (1) If the Form CG-DIS/CMO Usage Report required by Section 1 of this administrative regulation is not submitted when due, a fine of twenty-five (25) dollars per day, not to exceed $250 per quarter, shall be imposed on the licensed distributor until the report has been received by the department.
2. The report shall be considered submitted when due if:
   (a) It has been mailed:
      1. To the department by first class mail;
      2. Postage prepaid; and
   (b) To the correct address; and
   (c) It has been received by hand-delivery to the department on or before the due date.
3. The fine imposed in subsection (1) of this section shall be paid:
   (a) Within ten (10) days of receipt of an invoice from the department; and
   (b) By check made payable to "Kentucky State Treasurer".

Section 4. A licensed distributor's failure to file the reports required by this administrative regulation, or to pay late fines assessed for failure to timely file reports required by this administrative regulation, shall constitute grounds for revocation or denial of licensure.

Section 5. Incorporation by Reference. (1) Form CG-DIS/CMO Usage Report, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection and Regulation Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RAY FRANKLIN, Commissioner
APPROVED BY AGENCY: January 11, 2002
FILED WITH LRC: January 12, 2002 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Scott Jones, General Counsel

(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes a reporting form for distributor license holders to submit quarterly to the department regarding their furnishing of card-minding devices to licensed charitable organizations; establishes the timing for submission of that report; establishes penalties for failure to submit the report,
(b) The necessity of this administrative regulation: KRS 238.545(1)(b) authorizes licensed charitable organizations to provide card-minding devices for use by bingo players. Card-minding devices are electronic devices that allow players to display, store and mark bingo card faces. The term is defined at KRS 238.505(26), and KRS 238.545(1) requires the department to promulgate regulations on the use of card-minding devices. KRS 238.530(5) authorizes the department to require licensed distributors to report on their activities, with the content and frequency of these reports to be prescribed by regulation. This regulation is necessary to the capture of accurate information regarding the use of card-minding devices.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 238.530(6) authorizes the department to promulgate regulations concerning the content and frequency of reports to be submitted by licensed distributors. The reporting obligations imposed in this regulation conform to that section and to KRS 238.515, which requires the department to establish standards relative to the conduct of charitable gaming and to the reporting and accounting of moneys generated in charitable gaming.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will establish reporting requirements for licensed distributors relative to their furnishing of card-minding devices to licensed charitable organizations. The information contained in these reports will allow the department to monitor the use of these devices, and to capture information with respect to their use.
(2) If this is an amendment to an existing regulation, provide a brief summary of:
(a) How the amendment will change this existing regulation: This is a new administrative regulation.
(b) Necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How this amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
(d) How this amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only those licensed distributors that furnish card-minding devices to charitable organizations will be required to file the quarterly report. The department currently licenses 43 distributors, of which 11 actually provide card-minding devices.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The Form CG-DIS/CMO will be completed on a quarterly basis only by li-
enced distributors that supply card-minding devices during a particular quarter. The impact of the reporting obligation on these licensees will be negligible since they already submit similar reports to the department regarding these devices.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No significant initial costs are expected through implementation of this regulation. The department's accounting staff will be responsible for receiving and filing the reports. This function can be absorbed into the section's current responsibilities.
(b) On a continuing basis: The department's accounting section currently processes approximately 800 quarterly reports each quarter for licensed charitable organizations. The impact of an additional 11 distributor quarterly reports will be negligible, so no continuing costs are expected.
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None.

(9) TIERING: Is tiering applied? Tiering does not apply. KRS 238.530(5) authorizes the department to establish reporting standards for distributors. This regulation applies only to those distributors that supply card-minding devices, and each distributor doing so will be required to report the same information.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Charitable Gaming
(Rev.) 
(2)

820 KAR 1:030. Charity game ticket standards.

RELATES TO: KRS 238.545(1), (2)
STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.545(1).

(2)

NECESSITY, FUNCTION, AND CONFORMITY: The Department of Charitable Gaming is authorized to establish reasonable standards for the conduct of charitable gaming and to establish certain standards for charity game ticket construction, distribution and rules of play. This administrative regulation establishes standards for the construction and distribution of charity game tickets and for the conduct of play of charity game tickets.

Section 1. A licensed distributor of charitable gaming supplies and equipment shall distribute in Kentucky charity game tickets conforming to the requirements of this administrative regulation. A licensed charitable organization shall sell to the public only those charity game tickets conforming to the requirements of this administrative regulation.

Section 2. Charity Game Ticket Construction Standards. The following standards shall govern the construction of charity game tickets:

(1) Charity game tickets shall be constructed so that concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of the charity game ticket using a high intensity lamp of 500 watts, with or without utilizing a focusing lens.

(2) The deal shall be designed, constructed, glued and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.

(3) Each charity game ticket in a deal shall bear the same serial number. If a seal card is used with a charity game ticket deal, then the seal card shall bear the same serial number as each charity game ticket. Only one (1) serial number shall be used in a deal. No serial number used in a deal of charity game tickets shall be repeated by the same manufacturer on that same manufacturer's form within a three (3) year period.

(4) If the charity game ticket utilizes a window, then the numbers or symbols on the charity game ticket shall be fully visible in the window and shall be placed so that no part of a symbol or number remains covered when the tab is removed. Displacement of the symbol to the left or right in a window may be used for increased game security. Additionally, any devices or methods, including a laminate underneath a window, may be used by a manufacturer.

(5) If the charity game ticket utilizes a window, then the window slits on each charity game ticket shall be perforated on the three (3) cut sides. All charity game tickets shall be glued on all four (4) edges and between each window. The glue shall be of sufficient strength and type to prevent the undetectable separation or delamination of the charity game ticket.

(6) The following information shall be printed on a charity game ticket measuring one and one-fourth (1 1/4) inches by two and one-fourth (2 1/4) inches or larger unopened:
(a) The name of the manufacturer, or its distinctive logo;
(b) The name of the game;
(c) The manufacturer's form number;
(d) The price per individual charity game ticket, unless accompanied by a flare or seal card with that information;
(e) The unique minimum five (5) digit game serial number, printed on the game information side of the charity game ticket; and

(f) The number of winners and respective winning numbers or symbols, and specific prize amounts, unless accompanied by a flare with that information.

(7) If the ticket relates to a seat card game with a cumulative or carryover prize, the amount of prize money dedicated to the cumulative or carryover prize.

(7) The following information shall be printed on a charity game ticket measuring less than one and one-fourth (1 1/4) inches by two and one-fourth (2 1/4) inches unopened:
(a) The name of the manufacturer, or its distinctive logo; and

(b) The unique minimum five (5) digit game serial number, printed on the game information side of the charity game ticket.

(c) If the ticket relates to a seat card game with a cumulative or carryover prize, the manufacturer's form number for the specific game and the amount of prize money dedicated to the cumulative or carryover prize pool.

Section 3. [2] Randomization. The following randomization standards shall govern the manufacture of charity game tickets:

(1) The dealer shall be assembled so that winning tickets are placed throughout the deal.

(2) The deal shall be assembled and packaged in a manner which prevents isolation of winning tickets from variations in size, the appearance of a cut edge, or other markings of the tickets. The deal shall be assembled and packaged in a manner which prevents detection of winning tickets through variations in printing graphics or colors.

(4) Winning charity game tickets shall be distributed and mixed among all other charity game tickets in a deal so as to eliminate any pattern between deals, or portions of deals, from which the location or approximate location of any winning charity game ticket may be determined.

(5) The charity game ticket deal shall be assembled so that no placement of winning or losing charity game tickets exists that allows the possibility of prize manipulation.

Section 4. [3] Packaging and Distribution. (1) Each dealer's package, box, or other container shall be sealed at the manufacturer's factory with a seal which includes a warning to the purchaser that the deal may have been tampered with if the package, box or other container was received by the purchaser with the seal broken.

(2) A deal's serial number shall be clearly and legibly placed on:
(a) The outside of the deal's package, box or other container; or
(b) On the inside of the deal's package, box or other container if it is clearly visible from the outside.

(3) Manufacturers shall seal the ovals, with a tamper-resistant seal or tape, every entry point into a container of charity game tickets prior to shipment. The seal or tape shall be constructed to guarantee that should the container be opened or tampered with, such tampering or opening would be easily discernible.
Section 5. [4] Flares or Seal Cards. Every deal of charity game tickets shall contain a flare or a seal card that has printed or affixed on it, by the manufacturer, the following information:
(1) The name of the game;
(2) The manufacturer's name or logo;
(3) The manufacturer's form number;
(4) The ticket count;
(5) The prize structure that includes the number of winning charity game tickets by denomination, with their respective winning symbols or number combinations, including amounts dedicated to the prize pool in a seal card game with a cumulative or carryover prize;
(6) The cost per play; and
(7) The game serial number.

Section 6. [5] Tracking by Manufacturer. Every manufacturer of charity game tickets shall maintain records sufficient to track each deal of charity game tickets, by serial number, from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

Section 7. [6] Tracking by Distributor. Every distributor of charity game tickets shall maintain records sufficient to track each deal of charity game tickets, by serial number, from purchase by the distributor to the next point of sale for thirty-six (36) months. Records required under this section shall be deemed sufficient if the distributor records at least the name, address, and telephone number of the purchaser of the next point of sale.

Section 8. [7] Defects. (1) If a defect in packaging or in the construction of a charity game ticket game is discovered by, or reported to the department, the department shall take immediate steps to notify the manufacturer of the game containing the alleged defect.
(2) If the department, in consultation with the manufacturer, determines that a defect actually exists, and if the department determines that the defect affects game security or otherwise threatens public confidence in the game, the department may, with respect to deals for use still located within the Commonwealth of Kentucky, require the manufacturer to:
(a) Recall the deals affected that have not been sold at retail to licensed organizations;
(b) Recall the deals, by form number, from the distributor level; or
(c) issue a total recall of all affected deals.

In choosing and directing a particular recall from subsection (2) of this section, the department shall be guided in each circumstance by any combination of the following factors:
(a) The nature of the defect;
(b) Whether the defect affected game security; or
(c) Whether the defect affected game playability;
(d) Whether the defect was limited to a specific number of tickets of a particular form number;
(e) Whether the defect was easily detectable by a charitable gaming organization;
(f) Whether the defect was easily detectable by members of the general public;
(g) Whether the defect threatens public confidence in the game; or
(h) Whether the defect is capable of being used to adversely affect the fair play of the game.

Section 9. [8] Rules of Play. The following rules of play govern the conduct and sale of charity game tickets:
(1) The flare or seal card described in Section 5 [4] of this administrative regulation, including a seal card relating to a game with a cumulative or carryover prize, shall be posted by the licensed charitable organization in the vicinity of the deal and in full and complete view of the players while the deal is in play.
(2) Charity game tickets shall not be sold to the public from the original packaging box or container.
(3) If a deal of charity game tickets is received in two (2) or more boxes, packages or containers, all of the charity game tickets from the boxes, packages or containers shall be placed out for play at the same time.
(4) Charity game tickets which have been marked, defaced, altered, tampered with, received in packaging that is not tamper-resistant, or otherwise constructed in a manner which tends to deceive the public or affect the chances of winning or losing shall not be placed into play.
(5) All winning charity game tickets shall have the winning symbol or number defaced or punched by an authorized representative of the charitable organization immediately after redemption.
(6) All winning charity game tickets with a prize value of fifty (50) dollars and above, all seal card winners with a prize value of fifty (50) dollars and above, and all unsold charity game tickets shall be retained by the licensed charitable organization for a period of twelve (12) months to allow the charitable organization an opportunity to be aware of any portion thereof.
(7) All used nonwinning charity game tickets and seal cards, and all winning and unsold charity game tickets and seal cards which have been retained for the required twelve (12) month period, shall be disposed of by burning, shredding, destroying or defacing in some manner to prevent reuse of any charity game ticket or seal card or any portion thereof.
(8) An authorized representative of the charitable organization conducting the event at which charity game tickets are sold shall verify the serial numbers or winner protections for all winning charity game tickets redeemed.
(9) If a deal is not played to completion and there remain unsold winning charity game tickets, the licensed charitable organization conducting the gaming shall sell the remaining charity game tickets on the next appointed date for charitable gaming activities. If no future date is anticipated, the licensed charitable organization shall, after making every effort to sell the entire deal, consider the deal closed or completed, and shall retain all unsold charity game tickets as required in subsection (6) of this section. If no winning charity game tickets remain in the deal, the licensed charitable organization shall consider the deal closed or completed and retain unsold charity game tickets as required in subsection (6) of this section. A licensed charitable organization, other than the one that initiated the deal, shall not complete play of a deal.
(10) If a deal from a deal is not played to completion, the licensed charitable organization shall sell the remaining charity game tickets necessary to play out the seal card on the next appointed date for charitable gaming activities. If no future date is anticipated, the licensed charitable organization shall, after making every effort to sell the entire deal, consider the deal closed or completed, and shall retain all unsold charity game tickets as required in subsection (6) of this section. A licensed charitable organization, other than the one that initiated the seal card from the deal, shall not complete play of the deal or seal card.
(11) An individual involved in any capacity in the conduct of a charitable gaming event at which charity game tickets are sold shall not be permitted to purchase or play charity game tickets.
(12) A charity game ticket shall not be sold to the public at a price different than that printed on the charity game ticket or upon the flare or seal card which accompanies the charity game ticket.
(13) A holder of a winning charity game ticket shall have sixty (60) days to redeem the winning ticket. If the prize is not claimed within sixty (60) days, then the prize shall be considered unclaimed and be retained as property of the organization.
(14) Before placing a deal into play, the charitable organization shall verify that the total number on the charity game tickets within each deal match the serial number on the flare or seal card by conducting a random sampling of charity game tickets within each deal. If the charitable organization determines that serial numbers on tickets within a deal do not match the serial number on the seal card accompanying the deal, the organization shall not place the deal into play.
(15) When playing charity game tickets that utilize a seal card, a charitable organization shall not award a prize to the holder of a winning charity game ticket unless the serial number on the ticket presented for redemption matches the serial number on the seal card accompanying the ticket.
(16) A charitable organization shall award prizes to winners of charity game tickets only in accordance with the prize structure indi-
Section 10. Seal Card Games with Cumulative or Carryover Prizes. The following provisions govern the play of seal card games with cumulative or carryover prizes, in addition to the provisions set forth in Section 3 through 5 of this administrative regulation:

(1) Each cumulative or carryover prize pool shall be established only through play of deals of a specific game where those deals bear a manufacturer's form number identical to the form number of any previously played deals contributing to the prize pool. If a licensed charitable organization awards a cumulative or carryover prize pool by any means that differ from the method described in the game manufacturer, as indicated on the seal card accompanying the game, the organization shall conspicuously post house rules in complete view of the players describing the means by which specific cumulative or carryover prize pools will be awarded. [A licensed charitable organization shall not establish a cumulative or carryover prize pool by any means that differ from the method by which the game manufacturer has established the pool on the seal card accompanying the game.]

(2) A licensed charitable organization shall display the seal card on which a cumulative or carryover prize may be awarded in full and complete view of the players at all times when the cumulative or carryover prize remains unpaid. The seal card shall remain displayed for a period of fifteen (15) days after the organization awards the prize. If a specific cumulative or carryover prize is not awarded, the organization shall continue to display the seal card for at least fifteen (15) days after the date the organization considers the game closed and retains the prize as its property.

(3) In addition to the seal cards described in subsection (2) of this section, a licensed charitable organization shall display, in full and complete view of the players and at all times when a specific cumulative or carryover prize remains unpaid, a legible poster identifying by game name and deal serial number each deal of charity game tickets contributing a dedicated amount to a specific prize pool. At its option, an organization may display each seal card contributing to the prize pool in lieu of the poster described above. The poster or seal cards shall remain displayed until the expiration of fifteen (15) days after the organization awards the prize. If a cumulative or carryover prize is not awarded, the organization shall continue to display the poster or seal cards for at least fifteen (15) days after the date the organization considers the game closed and retains the prize as its property. [In addition to the seal cards described in subsection (2) of this section, a licensed charitable organization shall display, in full and complete view of the players and at all times when a specific cumulative or carryover prize remains unpaid, each seal card relating to each deal of tickets that contributed a dedicated amount to a specific prize pool. At its option, an organization may display each deal of tickets that contributed a dedicated amount to a specific cumulative or carryover prize pool for at least fifteen (15) days after the organization awards the prize. If a cumulative or carryover prize is not awarded, the organization shall continue to display the seal cards for at least fifteen (15) days after the date the organization considers the game closed and retains the prize as its property.]

(4) When playing seal card games with a cumulative or carryover prize, a charitable organization shall not award a prize to the holder of a winning charity game ticket unless the serial number on the ticket presented for redemption matches the serial number on a seal card relating to a deal of tickets that contributed a dedicated amount to the specific cumulative or carryover prize pool.

(5) A licensed charitable organization shall retain seal cards described in this section for a period of one (1) year from the date at which the organization either awards the prize or considers the game closed and retains the prize as its property.

Section 11. (2) Certified Automated Charity Game Ticket Dispensers. (1) Approval of a automated charity game ticket dispensers. An automated charity game ticket dispenser shall not be sold, leased or otherwise furnished to any person in the state unless a dispenser which is identical to the dispenser intended to be sold, leased or otherwise furnished has been first presented to the department by its manufacturer, at the manufacturer's expense, for review by the department or has been certified by an independent testing laboratory that the dispenser satisfies the manufacturing requirements set forth in subsection (2) of this section, and the dispenser has been approved by the department. If granted, approval extends only to the specific dispenser model approved, and any modification shall first be approved by the department. The department may keep the dispenser for further testing and evaluation for as long as the department deems necessary.

(2) Manufacturing requirements. Each automated charity game ticket dispenser shall:

(a) Contain a three (3) prong ground and surge protector, and shall be capable of withstanding static electricity;

(b) Contain columns which accommodates different sized charity game tickets;

(c) Be constructed so that customers can see how many charity game tickets remain within the dispenser or have retabletable counts visible to the customer indicating the number of charity game tickets left in each column of the dispenser;

(d) Have an outlet or tray to catch dispensed charity game tickets;

(e) Accurately dispense the correct number of charity game tickets;

(f) Contain one (1) or more player buttons on the front of the dispenser to dispense charity game tickets when pressed;

(g) Have a minimum of two (2) and a maximum of eight (8) columns in a separate locking compartment;

(h) Contain a luminescent electronic display to display the value of the currency;

(i) Be capable, in the event a malfunction occurs or the electrical power is interrupted after currency has been validated, of accurately redisplaying the value of the currency after the malfunction or power is restored;

(j) Not dispense any credits or redeem a winning charity game ticket;

(k) If using bill acceptors or similar devices that do not return change, clearly disclose that fact to the customer;

(l) Not have a video screen or produce audio sounds except for security alarms;

(m) Not resemble a slot machine or other gambling device;

(n) Contain the manufacturer's name, dispenser's serial number and model number, and date of manufacture, all of which shall be permanently affixed to the side of the dispenser;

(o) Have an on/off switch in an inconspicuous location on the exterior of the dispenser;

(p) Not record test sales of charity game tickets or currency acceptance on the dispenser's accounting meters;

(q) Contain a nonreseatable accounting meter for total currency validated and for total of charity game tickets dispensed and shall be capable of retaining this information for six (6) months after power has been disconnected;

(r) Contain an EPROM microchip which holds the dispenser's programming code and which is identical in all respects to the manufacturer's EPROM microchip approved by the department;

(s) Contain a RAM or EPROM microchip equipped with a RAM microchip which shall maintain the same information as required in paragraph (q) of this subsection for six (6) months after power has been disconnected and which is installed with a tamper-proof seal inside the dispenser;

(t) Automatically discontinue operation when any non-reseatable accounting meter, RAM microchip, or EPROM microchip is disconnected;

(u) Contain at least one (1) electronic currency validator which shall:

1. Only validate United States currency;

2. Not validate currency in denominations in excess of twenty (20) dollars;

3. Transmit the value of validated currency to the charity game ticket dispenser;

4. Be equipped with mechanisms to ensure that charity game tickets will not be dispensed unless the currency was validated and retained;
5. Be capable of preventing acceptance of known counterfeit currency;
6. Return any invalid currency to the payer;
7. Have at least one (1) removable stacker box capable of stacking bills or a removable drop box contained in a separate locked compartment; and
8. Automatically discontinue accepting or validating currency if a malfunction occurs or if electrical power to the dispenser or currency validator is interrupted.

(3) Automated charity game ticket dispensing limitations. The following limitations apply to the use of automated charity game ticket dispensers:

(a) A charitable gaming organization shall not use the dispenser until a previous user has removed its charity game tickets and money from the dispenser;

(b) Each charitable organization operating the dispenser shall place upon the dispenser an identification label which displays the organization's name and license number;

(c) The keys to open the locked doors to the dispenser's ticket dispensing area and cash box shall be solely in the possession and control of the designated chairperson of the charitable organization conducting the charitable gaming session;

(d) A person shall not put out a charity game ticket deal in a dispenser unless the entire deal shall be sold solely from the dispenser. All charity game tickets in any one column shall have the same serial number. Each charity game ticket deal shall be placed in a minimum of two (2) columns to ensure randomization;

(e) A licensee shall not display, use or otherwise furnish a dispenser which has in any manner been tampered with or which otherwise may deceive the public or affect a person's chances of winning;

(f) A charity game ticket deal shall not be placed in the dispenser until the entire deal of charity game tickets previously in the dispenser has been played out or permanently removed; and

(g) After placement in the dispenser, a charity game ticket shall not be removed from the dispenser, except for those charity game tickets actually played by consumers, removed by department representatives or law enforcement agencies, temporarily removed during necessary repair and maintenance or removed at the end of the gaming session.

(4) Inspection. The department or its authorized representatives may examine and inspect any automated charity game ticket dispenser. The examination and inspection shall include immediate access to the dispenser and unlimited inspection of all parts of the dispenser.

(5) Recordkeeping.

(a) Each licensed charitable organization shall maintain the following information in connection with its use of an automated charity game ticket dispenser:

1. Date of purchase or lease of each dispenser;
2. Model and serial number of each dispenser;
3. Purchase or lease price of each dispenser;
4. Name, address and license number of the distributor from whom the dispenser was purchased, leased or otherwise furnished; and
5. A record of all maintenance and repairs relating to the dispenser.

(b) Manufacturers and distributors shall maintain the following information in connection with each sale or lease of a dispenser:

1. Date of sale or lease;
2. Quantity sold or leased;
3. Cost per dispenser;
4. Model and serial number of each dispenser; and
5. Name, address and license number of the purchaser or lessee;

(c) All records, reports and receipts relating to dispenser sales, maintenance and repairs required to be maintained shall be retained for a period of three (3) years for examination by the department.

(6) Defects. If the department detects or discovers any defect or malfunction with the dispenser, which is not temporary in nature, that affects the integrity or security of the charity game ticket game, the department may direct the manufacturer, distributor or organization to cease the sale, lease or use of the dispenser, as applicable, and may require the manufacturer to correct the defect, malfunction or problem or recall the dispenser immediately upon notification by the department to the manufacturer. If the manufacturer, distributor or organization detects or discovers any defect or malfunction with the dispenser, which is not temporary in nature, the entity shall immediately remove the dispenser from use and notify the department of such action.

RAY FRANKLIN, Commissioner
APPROVED BY AGENCY: January 11, 2002
FILED WITH LRC: January 12, 2002 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Scott Jones, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes standards for the construction, distribution and play of charity game tickets.

(b) The necessity of this administrative regulation: KRS Chapter 238 requires the department to establish standards regarding charity game tickets, including seal card games with a cumulative or carryover prize, that insure the integrity, and accurate reporting and recordkeeping concerning manufacture, distribution and play of these charitable games. Amendments to this administrative regulation will establish effective standards regarding the use of seal card games with a cumulative or carryover prize and will also establish construction and distribution standards that will contribute to game security and integrity.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 238.500 and 238.515 authorize the department to establish standards with respect to recordkeeping and reporting that insure accurate accounting of charitable gaming funds. The standards proposed in amendments to this regulation are consistent with that statutory mandate. Amendments regarding ticket construction and distribution are consistent with regulatory provisions already in effect.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Amendments to this regulation will do two things primarily:

1. Clarify that distributors and organizations may use in Kentucky only those charity game tickets conforming to the provisions of the regulation; and
2. Establish standards relative to the use of and reporting concerning seal card games with a cumulative or carryover prize that will promote security and integrity in the games, thereby increasing public confidence in them.

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

(a) How the amendment will change this existing regulation: By adding several provisions specific to seal card games with a cumulative or carryover prize; by adding provisions regarding ticket construction standards for such games; and by adding a provision clarifying that organizations and distributors may use in Kentucky only those charity game tickets conforming to this regulation.

(b) Necessity of the amendment to this administrative regulation: Currently there exist no special reporting requirements for the types of games referred to above in paragraph (2)(a). The new reporting provisions will provide a mechanism for organizations to report accurately concerning them and for the department to capture data concerning them that currently is not being captured.

(c) How this amendment conforms to the content of the authorizing statutes: The amendments are entirely consistent with the statutory authorization and mandate imposed upon the department in KRS 238.500 and 238.515. The amendments will provide needed game security and assist in accurate reporting and capturing of data.

(d) How this amendment will assist in the effective administration of the statutes: The new reporting provisions, implemented in tandem with 820 KAR 1:025 and a new attachment to the CG-FORM QR, will provide licensed charitable organizations a mechanism to accurately report to the department concerning their use of seal card games with a cumulative or carryover prize. The amendments concerning rules of play for these games will promote public confidence in the security and integrity of the games.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed manufacturers (currently 20), licensed distributors (currently 43), and licensed charitable organizations (currently 778).

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Licensed organizations will be required to spend minimal additional time completing the new attachment to CG-FORM QR regarding their use of seal card games with a cumulative or carryover prize. However, these organizations currently report this information in aggregate form on an attachment relative to all charity game ticket sales; thus they already are compiling the data. The new attachment will allow them to record this data on an attachment specifically designed for that purpose; reporting on these games therefore will be accurate and specific to the types of games played. The department therefore will capture information that currently it does not capture specifically. The new requirement to post seal cards relative to these games is "new" only in the sense that the amendment will require the organizations to post the seal cards for a certain period of time after they have awarded a cumulative or carryover prize. These organizations already are required to post these seal cards in view of the playing public until they pay out the prize; continuing the posting of the cards for a specified time afterward is designed to place the public on notice as to when a particular prize was awarded, and the impact to the licensed organizations will be negligible.

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

(a) Initially: Department compliance officers will insure that organization and distributor licensees comply with the charity game ticket standards. The department’s compliance monitoring and inspection functions are ongoing and will occur whether or not the amendments to this regulation are enacted; thus there are no initial costs expected.

(b) On a continuing basis: The department’s compliance monitoring and inspection functions are ongoing and will occur whether or not the amendments to this regulation are enacted; thus there are no continuing costs expected.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? Tiering does not apply. The standards for charity game ticket construction, distribution and use must apply uniformly to all licensees to insure fair compliance and to maintain the integrity of the games.
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services
(Proposed Amendment)

11 KAR 5:130. Student application.

RELATES TO: KRS 164.744(2) to 164.753(4), 164.7535, 164.780, 164.785
STATUTORY AUTHORITY: KRS 164.746(6), 164.748(4), 164.7535
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. This administrative regulation prescribes the form to be used by a student to apply for and establish financial need for KHEAA grant programs.

Section 1. (1) In order to receive a KHEAA grant, the 2002-2003 Free Application for Federal Student Aid (FAFSA) shall be completed and submitted in accordance with the instructions provided on the FAFSA.
(2) An applicant shall indicate the choice of an educational institution on the application to be considered for the KHEAA grant. The educational institution listed first shall be used in the determination of a KHEAA grant program award.
(3) A person who submits a completed FAFSA shall not be eligible for a KHEAA grant for an academic year in which the person:
(a) Did not select on the application an educational institution that participates in a KHEAA grant program;
(b) Is not [a]:
1. A United States citizen or eligible noncitizen;
2. A resident of Kentucky;
3. A graduate student;
4. Will obtain a first baccalaureate degree before July 1 of the academic year for which he is seeking financial assistance.

Section 2. Change of Educational Institution Choice. (1) KHEAA grant eligibility shall be reetermined and award determination shall be recomputed by the authority based upon the new choice of educational institution, if the student provides written notification of a change of the first choice educational institution, on or before:
(a) The latter of August 1 or ten (10) workdays following the date on which the authority notifies the student of the award for the fall academic term for which a KHEAA grant is sought; or
(b) The latter of December 1 or ten (10) workdays following the date on which the authority notifies the student of the award for the spring academic term for which a KHEAA grant is sought.
(2) If the student changes his choice of educational institution after August 1 and more than ten (10) workdays following the date the authority notifies the student of the award:
(a) A KHEAA grant awarded for the fall academic term shall be revoked; and
(b) Except as provided in subsection (3) of this section, the KHEAA grant amount awarded for the spring academic term shall be recomputed, based upon the new choice of educational institution.
(3) If the student changes his choice of educational institution after December 1 and more than ten (10) workdays following the date the authority notifies the student of the award, the KHEAA grant awarded for the spring academic term shall be revoked.

Section 3. Incorporation by Reference. (1) The 2002-2003 Free Application for Federal Student Aid (FAFSA) and its instructions are incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARY JO YOUNG, Chairman
APPROVED BY AGENCY: October 25, 2001
FILED WITH LRC: January 3, 2002 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, February 21, 2002, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Thursday, February 14, 2002, 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: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 696-7200, Fax (502) 696-7283.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard F. Casey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation governs the process by which a student may apply for a Kentucky Higher Education Assistance Authority (KHEAA) Grant.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process by which students may apply for KHEAA Grants.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: The administrative regulation will assist in the effective administration of the statute by providing a single application for KHEAA grants and institutional and federal programs of student financial assistance.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation will be amended to require the submission of the 2002-2003 academic year Free Application for Federal Student Aid (FAFSA).
(b) The necessity of the amendment to this administrative regulation: The proposed amendment is necessary to update the version of the FAFSA that is used for the KHEAA grant programs, consistent with its use for other programs of student financial assistance at no processing cost to the student.
(c) How the amendment conforms to the content of the authorizing statutes: The administrative regulation will require that a student complete and submit in accordance with the instructions provided in the 2002-2003 FAFSA in order to be considered for a KHEAA Grant.
(d) How the amendment will assist in the effective administration of the statute: The student can use a single application for KHEAA grants and institutional and federal programs of student financial assistance at no processing cost to the student.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A total of 72 Kentucky postsecondary institutions are eligible for educational institutions by recipients of KHEAA grants. In the academic year ending June 30, 2001, there were 123,043 applicants and 38,876 students received KHEAA grants.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The FAFSA is processed by KHEAA for consideration of the student for KHEAA grants at no cost to the student or the postsecondary institution.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no significant direct or indirect costs. The application for KHEAA grants is not changed. This proposed amendment to this administrative regulation merely updates the reference to the version of the form used as an application because of the new academic year. The application is processed free of charge for the student, and the information is provided to the promulgating administrative body free of charge, electronically from the central processor.

(b) On a continuing basis: Same as (5)(a) above.

(c) An increase in fees or funding will be necessary to implement this administrative regulation, if new or, by the change. As an amendment: No increase in fees or funding will be necessary to implement this administrative regulation. The proposed amendment to this administrative regulation merely updates the reference to the version of the form used as an application because of the new academic year. The application is processed free of charge for the student, and the information is provided to the promulgating administrative body free of charge, electronically from the central processor.

(6) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the U.S. Constitution may be implicated as well as Section 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)


RELATES TO: KRS Chapter 45A STATUTORY AUTHORITY: KRS 45A.045(2)
NECESSITY: This amendment is necessary to develop a consistent administrative system and improve coordination of financial activities for all units of the state government.
CONFORMITY: The Finance and Administration Cabinet is required by KRS 45A.045(2) to promulgate administrative regulations to govern purchasing by various state agencies, and to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This amendment updates the Finance and Administration Cabinet Manual of Policies and Procedures to reflect (essential statutory) changes required due to transition to the Management and Administrative Reporting System (MARS).

Section 1. The "Finance and Administration Cabinet Manual of Policies and Procedures (Revised 1/14/02 [2/12/08])", is hereby adopted and incorporated by reference, the same as if set forth at length, in and as a part of the administrative regulations of the Finance and Administration Cabinet pursuant to KRS Chapter 45A. The "Finance and Administration Cabinet Manual of Policies and Procedures (Revised 1/14/02 [2/12/08])" shall be available for public inspection and copying Monday through Friday, excluding state holidays, from 8 a.m. to 4:30 p.m. at the Office of Management and Budget, Finance and Administration Cabinet, Room 388A, Capitol Annex, Frankfort, Kentucky 40601.

T. KEVIN FLANERY, Secretary
APPROVED BY AGENCY: January 15, 2002
FILED WITH LRC: January 15, 2002 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment to the administrative regulation shall be held on February 26, 2002, at 10 a.m. in Room 353, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 19, 2002, 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: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-6660, FAX (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela C. Robinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates policies and procedures that are incorporated by reference in the Finance and Administration Cabinet Manual of Policies and Procedures. The necessity of this amendment 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 U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

(b) The necessity of this administrative regulation: This administrative regulation sets out the requirements and procedures for bidders to state contracts, state agencies making purchases, and vendors selling to the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Finance and Administration Cabinet is required by KRS 45A.045 to promulgate administrative regulations to govern purchasing by state agencies and to publish a manual of policies and procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all parties regulated by the Finance and Administration Cabinet of the policies and procedures for awarding contracts and selling to the Commonwealth, and informs state agencies of procurement and accounting requirements.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment updates the policies and procedures incorporated by reference that support and conform to the Management and Administrative Reporting System (MARS).

(b) The necessity of this amendment to this administrative regulation: Updated policies and procedures are needed to provide guidance for users of the MARS system and parties regulated by the policies.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation shall apply to all state agencies and all individuals, businesses, organizations, and local governments doing business with the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will have little or no impact. The amended policies support the process changes brought about my MARS implementation.

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

(a) $0

- 1905 -
(b) $0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Yes. State agencies have been delegated different small purchase limits in order to facilitate procurements.

KENTUCKY BOARD OF PHARMACY
(Adjustment)

201 KAR 2:015. Continuing education.

RELATES TO: KRS Chapter 315
STATUTORY AUTHORITY: KRS 315.110(1), 315.191(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.110(1) authorizes the board to promulgate administrative regulations to insure the continuing pharmacy education of registered pharmacists. This administrative regulation requires all registered pharmacists holding a license issued by this board to participate in continuing pharmacy education as a means of renewal of their licenses.

Section 1. (1) A "continuing education unit (CEU)" is defined as ten (10) contact hours of participation in a board accredited continuing pharmacy education program under responsible sponsorship, capable direction, and qualified instruction. The annual course of study year shall be from January 1 through December 31. Each licensee shall be required to complete a minimum of one and five-tenths (1.5) CEU (fifteen (15) contact hours) for the year 1981 and each subsequent year thereafter. Continuing pharmacy education hours or units in excess of the number required at the time of renewal of license may not be transferred or applied to future requirements.

(2) A "unit" is defined as a measurement of value applied to a particular continuing pharmacy education activity and is the estimate of the board of the benefit it may contribute to competence in the practice of pharmacy.

Section 2. (1) Continuing education hours for credit may be compiled in the following areas if the sponsor grants the participant a certificate of completion:

(a) Cassette and audiostream presentation;
(b) In-company professional seminars;
(c) Accredited school of pharmacy continuing education programs;
(d) Postgraduate courses in pharmaceutical sciences;
(e) Correspondence courses;
(f) Programs granted continuing education credit by other states;
(g) The American Council on Pharmaceutical Education;
(h) Continuing education television series;
(i) Programs sponsored by allied professional groups; and
(j) Professional society and association sponsored programs.

(2) The board approval of each program shall expire at the end of three (3) years.

Section 3. Continuing education sponsors are responsible for submitting to the board for final accreditation continuing education programs for participants.

(1) A sponsor shall be any person, school, association, company, corporation or group who wishes to develop a continuing education program.

(2) Programs should be submitted to the board at least sixty (60) days prior to planned participation so the participants can know the value of such an experience prior to actual participation.

(3) Program changes must be made to and accredited by the board, or the evaluation and accreditation of the program becomes void.

(4) Continuing education credit will be given only once for each program per participant.

(5) Sponsors shall retain a file of participant's program completion for three (3) years.

Section 4. (1) Sponsors and pharmacists requesting approval of continuing pharmacy education shall submit an application containing such information as the board may require on forms provided by the board. Pharmacists must keep valid records, receipts, and certificances of continuing pharmacy education programs completed for three (3) years and submit such certification to the board on request.

(2) Submission of fraudulent statements or certificates concerning continuing pharmacy education will subject the pharmacist to revocation or suspension of license as provided in KRS 315.121(1).

Section 5. Pharmacists are responsible to submit on forms provided by the board a list of accredited continuing pharmacy education programs with their annual renewal as scheduled in Section 1 of this administrative regulation. If any licensee fails to submit a list of continuing education programs by the first day of February, the executive director of the board shall notify such licensee at his last known address that his license may be suspended. A pharmacist may be granted a deferral on a year-to-year basis at the discretion of the board for such reasons as illness, incapacity, or other extenuating circumstances. A pharmacist first licensed by the board within twelve (12) months immediately preceding the annual renewal date is exempt from the continuing pharmacy education provisions.

Section 6. All pharmacists shall keep the board informed of their correct addresses.

Section 7. CEU may be transferred from another state to Kentucky if the transferee state recognizes Kentucky CEU.

Section 8. If a pharmacist fails to renew his license to practice pharmacy, for any reason, for one (1) to five (5) years, the license may be renewed upon proper application and upon demonstrating to the board that the applicant has completed an acceptable continuing education program. The board may require such an applicant to demonstrate that he has completed a maximum of seventy-five (75) hours of continuing education. However, under no circumstances, shall such an applicant be required to complete more than fifteen (15) hours of continuing education for each year the applicant failed to renew his license. The board, in the alternative, may renew a license of a pharmacist who has failed to renew his license upon proper application and upon successful completion of an acceptable examination.

Section 9. (1) A pharmacist who files an application for license renewal for 2010 and every ten (10) years thereafter shall have obtained a continuing education course of not less than one (1) contact hour (0.1 CEU) concerning HIV/AIDS.

(2) The continuing education course shall be:

(a) Approved by the Cabinet for Health Services HIV/AIDS Branch;
(b) Conducted by a provider approved by the American Council on Pharmaceutical Education (ACPE).

THOMAS S. FOSTER, PharmD, President
APPROVED BY AGENCY*: January 14, 2002
FILED WITH LRC: January 15, 2002 at 10 a.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held at 9:20 a.m. on February 25, 2001, at 23 Mill Creek Park, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 18, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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, please do not submit a written request.
hearing, you may submit written comments on the proposed admin-
istrative regulation. Send written notification of intent to be heard at
the public hearing or written comments on the proposed administra-
tive regulation to: Mr. Michael A. Mond, Executive Director, Ken-
tucky Board of Pharmacy, 23 Millcreek Park, Frankfort, Kentucky
40601-9230, Phone: (502) 573-1580; Fax: (502) 573-1582.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Michael A. Mond

(a) What this administrative regulation does: This administrat-
ive regulation simplifies the requirements for HIV/AIDS continuing
education and provides for a ten year renewal period.

(b) The necessity of this administrative regulation: This admin-
istrative regulation is necessary to implement the changes made to
the HIV/AIDS continuing education requirement passes by the leg-

(c) How the administrative regulation conforms to the content
of the authorizing statutes: This administrative regulation provides
consistency with the statute that requires the board to adopt admin-
istrative regulations to set standards for the approval of providers of
continuing education for HIV/AIDS.

(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This administra-
tive regulation provides for regulatory flexibility and category uni-
formity.

(2)(a) How the amendment will change this existing administra-
tive regulation: This amendment will change the administrative
regulation by adding the renewal time within which a pharmacist
must obtain the HIV/AIDS continuing education and it provides for
the education to be provided by ACPE providers as well as CHS.

(b) The necessity of the amendment to this administrative regu-
lation: This amendment is important to provide regulatory flexibility
and to conform to the statutory change.

(c) How the amendment conforms to the content of the author-
izing statutes: There is no inconsistency between the authorizing
statutes and the proposed language of the amendment.

(d) How the amendment will assist in the effective administration
of the statutes: This amendment will provide for consistency with the
statutory mandate.

(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this administra-
tive regulation: All pharmacists.

(4) Provide an assessment of how the above group or groups
will be impacted by either the implementation of this administrative
regulation, if new, or by the change if it is an amendment: The
pharmacists will be impacted only when they renew their licenses
every ten years.

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

(a) Initially: Nothing

(b) On a continuing basis: Nothing

(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: Approp-
riated budget from the Kentucky Board of Pharmacy Trust Fund.

(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: There will be no
increase in fees or funding as a result of this administrative regula-
tion.

(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: It does
neither.

(9) TIERING: Is tiering applied? No. All pharmacists are treated
identically by this administrative regulation.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife

(Amendment)

301 KAR 2:221. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1),
150.330, 150.340(1), 150.600(1), 150.990, 50 CFR Parts 20, 21

STATUTORY AUTHORITY: KRS 150.025(1), 150.600(1), 50
CFR Parts 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS
150.025(1) and 150.600(1) authorize the department to establish
waterfowl season dates and limits. This administrative regulation
establishes the limits and dates within federal waterfowl hunting
frameworks established by 50 CFR Part 20.

Section 1. Definitions.

(1) "Dark goose" means a Canada goose, white-fronted goose, or brant.

(2) "Snow goose" means a snow goose or Ross' goose.

(3) "Waterfowl" is defined in KAS 150.010(40).

Section 2. (1) Except as authorized by 301 KAR 2:222, 301 KAR
2:225, or 301 KAR 2:226, a person shall not take waterfowl except
on the dates and within the limits prescribed by this administrative
regulation.

(2) Hunting zones, special hunt areas and reporting areas are
established in 301 KAR 2:224.

Section 3. Gun and Archery Season Dates and Bag Limits for
Duck. Except for Canvassback, Coot, and Merganser. (1) Season
dates. Statewide, Thanksgiving Day until the [Sunday closest to]
January 20.

(2) Canvassback season dates. Statewide, January 1 through
January 20.

(3) The gun and archery daily bag limit shall be:

(a) Six (6) ducks, which shall not include more than:

  1. Four (4) mallards, which shall not include more than two (2)
     hen mallards;
  2. Two (2) wood ducks;
  3. One (1) black duck;
  4. Two (2) redheads;
  5. One (1) pintail;
  6. One (1) canvassback:
     a. A canvassback may be included as part of the six (6) duck bag
        limit from January 1-20; and
     b. During January 1-20 the bag limit may include one (1) can-
        vassback and two (2) in possession after January 1; [and]

     7. Three (3) scaup; and
     8. Three (3) mottled ducks.

(b) Fifteen (15) coots.

(c) Five (5) mergansers, which shall not include more than one
    (1) hooded merganser.

(4) [9] The possession limits shall be double the daily bag limit.

Section 4. Gun and Archery Seasons Dates and Bag Limits for
Geese. (1) White-fronted goose and [brant] season dates: Thanks-
giving Day through January 31, except that hunting for dark geese
in the Western Goose Zone shall cease if a quota is specified in Section
7 of this administrative regulation is reached.

(2) Snow goose season dates.

(a) Regular season: Thanksgiving Day through February 3 [4];
    except for the part of Fulton County in the Western Goose Zone,
    which shall have an ending date of February 15.

(b) Conservation snow goose season:

  1. Monday following the youth waterfowl weekend in the West-
     ern Duck Zone [February 5] through March 31 except in the part of
     Fulton County in the Western Goose Zone, where the Conservation
     Snow Goose season shall be February 16 through March 31.

  2. If the Canada Goose season closes on or after February 3 [4] in
     the part of Fulton County in the Western Goose Zone, then the Conser-
     vation Snow Goose season will open one-half (1/2) hour
     before sunrise on the day following the Canada Goose season.

  3. Canada goose season dates shall be from the starting date
     listed below through January 31, except the last day of hunting shall be
     February 15 in the part of Fulton County which is in the Western
     Goose Zone.

(a) The season shall not open until:

  1. December 13 [2] in the Western Goose Zone, including the
     portion of Fulton County which is in the Western Goose Zone;
  2. December 13 [46] in the Ballard Reporting Area;
  3. December 13 in the Eastern Goose Zone;
  4. December 13 [26] in the Penroyal-Coalfield Goose Zone;
5. December 13 [23] in the West-Central Kentucky Hunt Zone; and
(b) Hunting for dark geese in the Western Goose Zone shall cease if a quota specified in Section 7 of this administrative regulation is reached.

(4) A person shall not goose hunt in:
(a) Breathitt, Knott, and Perry counties;
(b) The areas of Laurel River Lake as posted by sign;
(c) McCreary County east of US 27;
(d) Cave Run Lake and the public land inside a boundary formed by Highways 801, 1274, 36, 211, US 60 and Highway 826; and
(e) Martin County.
(5) The gun and archery daily bag limit shall be:
(a) Six (6) dark geese, to include no more than:
   1. Two (2) Canada geese;
   2. Two (2) white-fronted geese; and
   3. Two (2) brant.
(b) Twenty (20) snow geese; except there shall be no daily limit on snow geese during the Conservation Snow Goose season.
(6) The possession limit shall be double the daily bag limit, except that there shall not be a possession limit on snow geese.

Section 5. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:
(1) 2 p.m. in the Northeast Kentucky Hunt Zone during a Canada goose season;
(2) Sunset in the remainder of the state, except as specified in 301 KAR 2:222; or
(3) One-half (1/2) hour after sunset while hunting snow geese during the Conservation Snow Goose season.

Section 6. Falconry Waterfowl Season and Limits. (1) Season dates:
(a) Snow geese: November 5 through February 3, [January 31] except in the part of Fulton County which is in the Western Goose Zone which shall have an ending date of February 15;
(b) Conservation Snow Goose season, February 4 [4] through March 31 except in the part of Fulton County which is in the Western Goose Zone, where the Conservation Snow Goose season shall be from February 16 through March 31;
(c) Canada Goose season, November 5 through January 31, except for that part of Fulton County in the Western Goose Zone where the Canada Goose season shall be November 6 through February 15;
(d) Other waterfowl: November 5 through January 31.
(2) Daily limit: three (3) waterfowl; except that there shall be no limit on snow geese during the Conservation Snow Goose season.
(3) Possession limit: six (6) waterfowl; except that there shall be no limit on snow geese during the Conservation Snow Goose season.

Section 7. Quotas and Early Goose Season Closings. (1) If hunters reach a quota of 7,490 [4,000] Canada geese in the Ballard Reporting Area before January 31, dark goose hunting shall cease in the Ballard Reporting Area.
(2) If hunters reach a quota of 2,680 (3,200) Canada geese in the Henderson-Union Reporting Area before January 31 dark goose hunting shall cease in the Henderson-Union Reporting Area.
(3) In a county associated with the Ballard Reporting Area and the Henderson-Union Reporting Area, dark goose hunting shall cease;
(a) Seven (7) days after the reporting area closes; or
(b) On the scheduled closing date, whichever occurs first.

(4) The department shall provide at least a twenty-four (24) hour notice of the time and date of an early closure.

Section 8. Permit for Conservation Snow Goose Season. (1) A person hunting snow geese during the Conservation Snow Goose season shall first obtain a free permit from the department by contacting the Ballard WMA office at (270) 224-2244.
(2) A hunter during the Conservation Snow Goose season shall submit a Conservation Snow Goose season report by April 10.

C. THOMAS BENNETT, Commissioner
DR. JAMES RICH, Chairman
ANN R. LATTA, Secretary
APPROVED BY AGENCY: January 10, 2002
FILED WITH LRC: January 10, 2002 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 2001 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: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3400, FAX (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing
(1) Provide a brief summary of: This administrative regulation establishes the limits and dates within federal waterfowl hunting frameworks established in 50 CFR Part 20.
(a) What the administrative regulation does: establishes the season dates and bag limits according to the United States Fish and Wildlife Service (USFWS). The season on canvasbacks is scheduled to be the last 20 days of the regular waterfowl season. Quotas are established for the goose zones and the falconry season was shortened by two days.
(b) The necessity of the administrative regulation: To establish the 2001 and 2002 waterfowl season in accordance with the USFWS.
(c) How does this administrative regulation conform with the authorizing statute: KRS 150.025(1) and 150.600(1) authorizes the department to establish waterfowl dates and limits.
(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will provide for the conservation of migratory birds and a
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is an amendment to an existing regulation. Each fall the USFWS issues a federal mandate establishing the migratory bird season. This amendment reflects the federal mandate.
(a) How the amendment will change the existing administrative regulation: The falconry season will be shortened by two days and canvasbacks will be able to be taken January 1-20.
(b) The necessity of the amendment to this administrative regulation: To implement the federal mandate from the USFWS.
(c) How does the amendment conform to the authorizing statutes: The amendment establishes season dates as KRS 150.025(1) and 150.600(1) provide.
(d) How the amendment will assist in the effective administration of the statutes: See (d) above.
(e) List the type and number of individuals, businesses, organizations, or state and local governments that will be affected: Waterfowl hunters of Kentucky will be affected by this administrative regulation.
(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be little impact on the waterfowl hunters from last year's administrative regulation. There will be two less days for falconry and some minor bag and possession limit differences.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.
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(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.
(b) On a continuing basis: There will be no additional cost to the agency.
(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation. The administrative services budget of the Department of Fish and Wildlife Resources already oversees law enforcement and will not draw upon another budget or source of funding for implementation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.
(9) TIERING: Is tiering applied? Tiering was not used. There was not a need to apply tiering because there are not different groups of waterfowl hunters. This same guidelines and limits apply to all waterfowl hunters.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or administrative regulation constituting the federal mandate. 50 CFR Part 20.
2. State compliance standards. State seasons and bag limits are within federal frameworks.
3. Minimum or uniform standards contained in the federal mandate. The 2001-2002 waterfowl season. This waterfowl season is the same as the last year's with the exception of canvasback, which is Statewide, January 1-January 20; the bag limit of 3 mojibled ducks; snow goose season is November 5-February 2; Canada Goose season is November 5 through January 31, except for that part of Fulton county in the Western Goose Zone where Canada Goose season shall be November 5-February 15.
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 standard, or additional or different responsibilities or requirements. Not applicable

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources (Amendment)

301 KAR 2.222. Waterfowl hunting requirements.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (q), 150.600(1), 150.990, 50 CFR Parts 20, 21
STATUTORY AUTHORITY: KRS 150.025(1)(a), (b), 150.340(1), (2), (3), 150.600(1), 50 CFR Parts 20, 21
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to establish statewide waterfowl hunting requirements and to specify seasons and other requirements on wildlife management areas. Waterfowl seasons in the Ballard Wildlife Management Area, Cane Creek Wildlife Management Area, Cumberland Lake Wildlife Management Area, Adington Enterprises Wildlife Management Area, Land between the Lakes, Ohio River Waterfowl Refuge, Robinson Forest Wildlife Management Area, and Yellowbank Wildlife Management Area differ from and are shorter than federal regulations to optimize public use within sound waterfowl conservation practices.

Section 1. Definitions. (1) "Blind" means:
(a) A concealing enclosure;
(b) A pit; or
(c) A boat.
(2) "Party" means:
(a) A person hunting alone; or
(b) From two (2) to four (4) persons who share a blind.
(3) "Permanent blind" means a blind left in place more than twenty-four (24) hours.
(4) "Statewide waterfowl seasons" means the provisions of this administrative regulation and of 301 KAR 2:221.
(5) "Waterfowl" is defined in [by] KRS 150.010(40).

Section 2. A waterfowl hunter shall not use or carry a shotgun shell:
(1) Longer than three and one-half (3 1/2) inches; or
(2) Containing shot:
(a) Made of lead;
(b) Not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
(c) Larger than size "T."

Section 3. In the Ballard Reporting Area, as described in 301 KAR 2:224:
(1) A waterfowl hunter shall:
(a) Hunt from a blind unless hunting in flooded, standing timber;
(b) Not hunt from or establish a blind:
1. Within 100 yards of another blind; or
2. Within fifty (50) yards of a property line; and
(c) Not possess more than one (1) shotgun while in a blind.
(2) More than five (5) persons shall not occupy a blind.
(3) The requirements of subsection (1) of this section shall not apply when the snow goose season is the only waterfowl season open, excluding falconry sessions [after Canada Goose season closes].

Section 4. (1) Except as specified in this section or in Section 5 of this administrative regulation, on a wildlife management area:
(a) A waterfowl hunter shall not establish or hunt from:
1. A permanent blind; or
2. A blind within 200 yards of:
   a. Another blind; or
   b. A waterfowl refuge;
   (b) A person shall not hunt in a designated recreation area or access point; and
   (c) More than four (4) persons shall not occupy a blind; and
   (d) A hunter shall remove decoys and personal effects from the wildlife management area daily, except that a hunter drawn for a midday hunt may leave decoys in place for the duration of his hunt.
(2) A person wishing to establish a permanent blind on Barkley Lake, Barren River Lake, Budhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake or Taylorsville Lake Wildlife Management Areas:
(a) Shall first obtain a permit from the U.S. Army Corps of Engineers;
(b) May designate one (1) other person as a partner;
(c) Shall not hold more than one (1) permit per area; and
(d) Shall participate in a drawing for a blind permit on the Barkley, Barren, Green, Paintsville, or Taylorsville areas:
1. At the time of the drawing, the hunter shall possess a valid hunting license, a Kentucky waterfowl permit and a federal waterfowl permit; and
2. Shall be eighteen (18) years of age or older; and
(d) Present a valid hunting license at the time of the drawing; and
(a) Shall not hold more than one (1) permit per area.
(3) The holder of a blind permit shall:
(a) Construct his blind before November 20 or forfeit the permit;
(b) Not lock a blind; and
(c) Unless an extension of time is granted, remove his blind within thirty (30) days of the close of waterfowl season or be ineligible for a permit the following year.
(4) A blind not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-serve basis.
(5) A blind restriction specified in this section shall not apply to a falconer if a gun or archery season is not open.

Section 5. On a wildlife management area:
(1)(a) Statewide waterfowl seasons shall apply unless otherwise stated in this section.
(b) If specific hunting dates are given in this section, a person shall not hunt waterfowl except on those dates.
(c) Paragraph (b) of this subsection shall not apply to a water-
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fowl hunting season opening before October 15.
(2) A person shall not:
(a) Hunt on an area or portion of an area marked by a sign as closed to hunting;
(b) Enter an area or a portion of an area marked by signs as closed to public access; or
(c) Hunt a species on an area or a portion of an area marked by signs as closed to hunting for that species.

(3) Wildlife management areas in Ballard County.
(a) A person shall not:
1. Have more than fifteen (15) shotgun shells in one (1) day while waterfowl hunting; or
(b) At least one (1) person in a blind shall be eighteen (18) years of age or older while hunting from a department blind at Ballard WMA or Boatwright WMA formerly known as Barlow Bottoms WMA.
(c) At Ballard Wildlife Management Area:
1. Waterfowl hunting shall be permitted during an open waterfowl season occurring before October 15.
   2. The duck, coot, and merganser season shall be:
      a. December 13 [220] through January 20 [24]; or
      b. Until the Ballard Reporting Area Canada Goose quota is reached.
3. The goose season shall be:
   a. December 13 [220] through January 31; or
   b. Until the Ballard Reporting Area Canada Goose quota is reached.
4. A waterfowl hunter shall not hunt on a Monday, Tuesday, Christmas Day, or New Year’s Day.
5. A waterfowl hunter shall:
   a. Apply in advance in accordance with Section 6 of this administrative regulation;
   b. Case his gun while using department-supplied transportation to and from a blind; and
   c. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15.
(d) At Boatwright [Barlow Bottoms] Wildlife Management Area, including the Olmsted, Peal and Swan Lake units:
1. A person shall:
   a. Not hunt on a Monday or Tuesday; and
   b. Check in and out daily at the designated check station during duck and Canada Goose season.
2. A department blind assignment shall be made in accordance with Section 6 of this administrative regulation.
3. A blind shall be made offered to another hunter on a first-come, first-served basis, if the original assignee has not checked in by 5 a.m.
4. A person shall not, on Olmsted unit:
   a. Hunt waterfowl except from a permanent department blind;
   b. Be on the area after 1 p.m. during a waterfowl season, except as authorized by the department; and
   c. Hunt waterfowl except from a blind assigned by the department during Canada Goose season.
5. On the Peal unit:
   a. More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;
   b. More than four (4) parties shall not hunt at the same time on Fish Lake;
   c. More than three (3) parties shall not hunt at the same time on First Lake or Second Lake;
6. On the Swan Lake Unit, a person shall not hunt duck, coot, merganser, or goose other than a Canada Goose except from a blind assigned by the department and unless:
   a. The season for these species is open; and
   b. The season for Canada Goose is also open.

(4) Barkley Lake Wildlife Management Area.
(a) A permanent blind may be used as specified in Section 4 of this administrative regulation.
(b) A person shall establish a permanent blind within ten (10) yards of his assigned and numbered blind mark with:
   1. An area bounded by the mouth of Donaldson Creek, the east side of the Cumberland River Channel and the boat ramp at Linton.
2. An area bounded by the Pryor's Creek Light, the west side of the Cumberland River Channel, Land Between the Lake Road 204 and river mile 73.5.
(c) The following refuge areas are closed to the public:
   1. From November 1 through February 15 within an area west of the main river channel between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light);
      a. Including the row of islands on the west side of the main river channel; and
      b. Not including Taylor Bay and Jake Fork Bay.
   2. From November 1 through March 15 within Honker Bay and Fulton Bay as marked by buoys and signs.
(d) From October 15 through March 15, a person shall not hunt:
   1. Within 200 yards of; or
   2. Within the area defined by the levee between river mile 68.4 and river mile 70.4.
(5) Barren River Lake Wildlife Management Area.
(a) A permanent blind may be used as specified in Section 4 of this administrative regulation.
(b) A waterfowl hunter:
   1. May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and
   2. Shall not use a breech-loading firearm elsewhere on the area.
(6) Buckhorn Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.
(7) Cane Creek Wildlife Management Area shall be closed to goose hunting.
(8) Central Kentucky Wildlife Management Area. A person shall not hunt waterfowl from October 15 through January 14.
(9) Cumberland Lake Wildlife Management Area. The following sections shall be closed to the public from October 15 through March 15:
   a. Wesley Bend, the area bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road.
   b. Yellowehole, the area bounded by Fishing Creek Road and Hickory Nut Road.
(10) addition Enterprises Wildlife Management Area shall be closed to waterfowl hunting.
(11) Grayson Lake Wildlife Management Area. A person shall not hunt waterfowl:
   a. Within the no wake zone at the dam site marina;
   b. From the shore of Carp Webb;
   c. From the shore of the state park; [as
   d. (Deer Creek Fork); and
   e. Within three-quarters (3/4) of a mile from the dam.
(12) Green River Lake Wildlife Management Area.
   a) A permanent blind may be used as specified in Section 4 of this administrative regulation.
   b) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
(13) Kali Bottoms Wildlife Management Area. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
(14) Land Between the Lakes.
   a) The following portions shall be closed to the public from November 1 through March 15:
      1. Long Creek Pond;
      2. The eastern one-third (1/3) of Smith Bay; and
      3. The eastern two-thirds (2/3) of Duncan Bay.
   b) The following portions shall be closed to waterfowl hunting:
      1. The Environmental Education Center; and
      2. Energy Lake.
   c) A person shall possess an annual Land Between the Lakes Hunting Permit when hunting waterfowl:
      1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or
      2. From a boat over a flooded portion of Land Between the Lakes when the lake level is above elevation 359.
   d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.
   e) A person shall not establish or use a permanent blind:
      1. On an inland area; or
      2. Along the Kentucky Lake shoreline of Land Between the
Lakes.  

(i) A waterfowl hunter shall remove decoys and personal effects daily.  

(15) Nolin River Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.  

(16) Obion Creek Wildlife Management Area. Shooting hours are one-half (1/2) hour before sunrise until 2 p.m.  

(17) Ohio River Waterfowl Refuge.  

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing at approximately river mile 911.5.  

(b) Stewart Island shall be closed to the public from October 15 through March 15, except for quota deer hunting.  

(18) Peabody Wildlife Management Area.  

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.  

(b) The following portions, as posted by signs, are closed to the public from October 15 through March 15:  

1. Gibraltar Mine, as bounded by Rockport Road, the Western Kentucky Parkway, Pond Creek and the P&M Haul Road;  
2. Sinclair Mine, as bounded by railroad tracks, the haul road and posted signs; and  
3. Homestead, as bounded by the haul road and the Green River.  

(19) Daniel Boone National Forest Pioneer Weapons Wildlife Management Area. A waterfowl hunter:  

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and  

(b) Shall not use a breech-loading firearm elsewhere on the area.  

(20) The main block of Robinson Forest Wildlife Management Area shall be closed to waterfowl hunting.  

(21) Sloughs Wildlife Management Area.  

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.  

(b) On the Grassy-Pond Powell's Lake Unit, a waterfowl hunter:  

1. Shall use a permanent blind provided by the department; and  
2. Shall remove decoys and personal effects from a blind or the vicinity of a blind daily.  

(c) On the Jenny Hole-Highlands Creek Unit, a waterfowl hunter:  

1. Shall not establish or hunt from a blind closer than 200 yards from another hunting party; and  
2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.  

(d) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:  

1. May hunt from a boat without regard to department blinds; and  
2. Shall not hunt closer than 200 yards from another boat.  

(e) A waterfowl hunter on the Crenshaw and Duncan Tracts of the Sauerheber Unit:  

1. Shall hunt from the blind assigned by the department through a drawing as stipulated in Section 6 of this administrative regulation;  
2. May occupy a blind not claimed by the permittee one (1) hour before sunrise;  
3. Shall not have more than fifteen (15) shotgun shells in one (1) day; and  
4. Shall be accompanied by an adult if under eighteen (18) years of age; and  
5. The waterfowl blind for mobility-impaired persons will be open to the public only if the permit holder or another mobility-impaired person has not shown up to hunt on that day by one (1) hour before sunrise.  

(f) The Crenshaw and Duncan II tracts of the Sauerheber Unit shall be closed to hunting except waterfowl from November 1 through March 15.  

(g) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.  

(22) Taylorsville Lake Wildlife Management Area.  

(a) A permanent blind may be used as specified in Section 4 of this administrative regulation.  

(b) The portion east of Van Buren Boat Ramp as marked by a sign shall be closed to the public from November 1 through the last day of February, except for quota deer hunting.  

(23) Westvaco Wildlife Management Area.  

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.  

(b) The portion south of the Westvaco Road as posted by a sign shall be closed to the public from November 1 through March 15.  

(c) A person shall obtain a Westvaco Permit before hunting.  

(24) White City Wildlife Management Area. Shooting hours shall be from one-half (1/2) hour before sunrise until 2 p.m.  

(25) Yatesville Lake Wildlife Management Area. A person shall not hunt north of the mouth of the Greenbriar Creek Branch.  

(26) Yellowbank Wildlife Management Area. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.  

Section 6. (1) A person wishing to apply to hunt waterfowl on Ballard, Bourbon [Bourbon Bottlers] or the Sauerheber Unit of Sloughs Wildlife Management Areas shall:  

(a) Apply on a form provided by the department; and  
(b) Submit a completed application form before the deadline date on the form.  

(2) A form which is not completed according to the instructions on the form shall be disqualified from the drawing.  

(3) A person shall not apply more than one (1) time for each hunt.  

(4) Each hunter drawn may bring up to three (3) additional hunters.  

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:  

(a) "Sloughs Wildlife Management Area Waterfowl Hunting Application", (August, 1997 edition), Department of Fish and Wildlife Resources;  
(b) "Ballard Wildlife Management Area Goose Hunt Application", (August, 1997 edition), Department of Fish and Wildlife Resources;  
(c) "Application for Lower Bottoms/Swan Lake Waterfowl Blind Drawings in Ballard County", (August, 1997 edition), Department of Fish and Wildlife Resources.  

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday from 8 a.m. through 4:30 p.m.  

C. THOMAS BENNETT, Commissioner  
DR. JAMES RICH, Chairman  
ANN R. LATTA, Secretary  
APPROVED BY AGENCY: January 10, 2002  
FILED WITH LRC: January 10, 2002 at 2 p.m.  
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 2001 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 to: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 594-3400, FAX (502) 594-0506.  
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT  
Contact Person: Ellen F. Benzing  
(1) Provide a brief summary of: This administrative regulation
establishes the waterfowl hunting requirements on WMAs.

(a) What the administrative regulation does: establishes the waterfowl hunting requirements on WMA including the use of hunting equipment, requirements for blinds and requirements for applying for a permit to hunt on a WMA.

(b) The necessity of the administrative regulation: To establish the waterfowl hunting requirements on WMAs.

(c) How does this administrative regulation conform with the authorizing statute: KRS 150.025(1) and 150.600(1) authorizes the department to establish waterfowl hunting requirements. KRS 150.340(1) authorizes the department to establish hunting requirements on WMAs.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will provide for the conservation and management of migratory birds on WMAs and ensure fair hunting opportunities for those desiring to hunt on WMAs.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: The amendment adds the requirements of possessing a valid hunting license, a Kentucky waterfowl permit and a federal permit at the time of a WMA waterfowl permit drawing and being at least 18 years old.

(a) How the amendment will change the existing administrative regulation: The two requirements listed above were not required before the promulgation of this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: To ensure a just and fair process for drawing WMA waterfowl permits.

(c) How does the amendment conform to the authorizing statute: The amendment establishes procedures in accordance with KRS 150.340(1) on WMAs and establishes waterfowl hunting requirements as KRS 150.025(1) and 150.600(1) provide.

(d) How the amendment will assist in the effective administration of the statutes: See (d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Waterfowl hunters of Kentucky will be affected by this administrative regulation.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be little impact on the waterfowl hunters from last year’s administrative regulation. Hunters are already required to possess a valid hunting license, a Kentucky waterfowl permit and a federal waterfowl permit. These requirements at the time of the WMA waterfowl permit drawing will not impact the hunter because he should already have the license and permits.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The administrative services budget of the Department of Fish and Wildlife Resources already oversees law enforcement and will not draw upon another budget or source of funding for implementation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.

TIERING: Is tiering applied? Tiering was not used. There was not a need to apply tiering because there are not different groups of waterfowl hunters. This same guidelines and limits apply to all waterfowl hunters.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or administrative regulation constituting the federal mandate. 50 CFR Part 20.

2. State compliance standards. State seasons and bag limits are within federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. The 2001-2002 waterfowl season. This waterfowl season is the same as the last year’s with the exception of canvassback, which is statewide, January 1-January 20; the bag limit of 3 mottled ducks; snow goose season is November 5-February 3; Canada Goose season is November 5 through January 31, except for that part of Fulton County in the Western Goose Zone where Canada Goose season shall be November 6-February 15. This administrative regulation has to be updated to be consistent with 301 KAR 2:221.

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 standard, or additional or different responsibilities or requirements. Not applicable.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources

(301) KAR 3:026. Access to wildlife management areas for mobility-impaired individuals.

RELATES TO: KRS 150.025(1), 150.170, 150.175, 150.620
STATUTORY AUTHORITY: KRS 150.025(1), 150.620
NECESSITY, CONFORMANCE, AND CONSISTENCY: KRS 150.025(1) authorizes the department to establish hunting seasons and to regulate bag and possession limits for, and the methods of taking and the devices used [used] to take, wildlife. In addition, KRS 150.620 authorizes [allows] the department to regulate the use of its wildlife management areas. This administrative regulation simplifies [will simplify] the process for obtaining [having] method exemptions and special use permits for mobility-impaired individuals and promotes nature-related recreational access to department-managed lands [will also increase access and hunting opportunities for mobility-impaired individuals].

Section 1. Definitions. (1) "ATV" is [means all terrain vehicle as defined in KRS 189.010(24)].

(2) "Department" is defined in KRS 150.010(8). [means the Kentucky Department of Fish and Wildlife Resources].

(3) "Mobility-impaired individual" means an individual who meets the requirements of Section 2(1) of this administrative regulation with a permanent physical impairment as follows:

(a) Has permanent paralysis of at least one (1) leg;

(b) Has at least one (1) foot amputated;

(c) Is permanently confined to a wheelchair or must use a cane, a walker, or a means of support to pursue daily activities;

(d) Is restricted by a lung disease to such an extent that the person's forced (respiratory) expiratory volume for one (1) second, when measured by spirometry, is less than one (1) liter, or the arterial oxygen tension is less than sixty (60) mmHg on room air at rest;

(e) Requires portable oxygen;

(f) Has a cardiac condition to the extent that the person's functional limitations are classified as severity at Class 3 or Class 4 according to standards set by the American Heart Association; or

(g) Has a diagnosed disease which creates a severe mobility impairment.

(4) "Motor vehicle" is [means any vehicle as defined in KRS 189.010(19)(b)].

(5) "Qualified assistant" means an individual who is [legally] participating in the activity with the mobility-impaired individual and designated by the mobility-impaired individual.

(6) "Watercraft" means any vessel as defined by KRS 235.010.

(7) "WMA" means a wildlife management area [Wildlife Management Areas] owned or operated by the department.

Section 2. Mobility-impaired Access Permit. (1) If a person meets one (1) of the following requirements, he shall qualify for a mobility-impaired access permit application from the department:
Section 4. All method exemption cards and letters issued prior to the effective date of this administrative regulation are void.

Section 5. Incorporation by Reference. (1) "Mobility-impaired Access Permit", revised August 2001, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

C. THOMAS BENNETT, Commissioner
DR. JAMES RICH, Chairman
ANN R. LATTA, Secretary
APPROVED BY AGENCY January 10, 2002
FILED WITH LRC: January 10, 2002 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 2001 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: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3400, FAX (502) 564-0006.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing
(1) Provide a brief summary of: This administrative regulation simplifies the process for obtaining method exemptions and special use permits for mobility-impaired individuals and promotes nature-related recreational access to department managed lands.

(a) What the administrative regulation does: This administrative regulation allows mobility-impaired individuals to use ATVs on WMAs.

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to provide equal access and recreational use to those with a mobility-impairment.

(c) How does this administrative regulation conform with the authorizing statute: KRS 150.925 authorizes the department to establish the methods of taking and the devices used to take wildlife.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will promote more equal nature related recreational access to department managed lands.

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

(a) How the amendment will change the existing administrative regulation: The amendment allows the use of ATVs on department WMAs. Previously ATVs were not allowed on WMAs.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to promote more equal access to department WMAs.

(c) How does the amendment conform to the authorizing statute: KRS 150.620 authorizes the department to regulate the use of its WMAs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute by providing more equal access and use for mobility-impaired individuals.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Disabled individual will be affected in that they may now use ATVs for access and mobility on WMAs.
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(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Mobility-impaired individuals will be impacted in a positive way in that they may now access WMAs for recreational purposes by the use of an ATV which will assist their mobility.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: There will be no cost.
   (b) On a continuing basis: There will be no continuing cost.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: Current Division of Law Enforcement funds already fund the enforcement of administrative regulations and statutes on the WMAs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: There are no fees established directly or indirectly. The use of WMAs is free.

(9) TIERING: Is tiering applied? Tiering was not used because there is only one group of people this administrative regulation applies to, the mobility-impaired.

JUSTICE CABINET
Department of Corrections
Division of Adult Institutions
(AMENDMENT)


RELATES TO: KRS Chapters 195, 197, 439
NECESSITY, FUNCTION, AND CONFORMITY: KRS 195.035, 197.020, 439.470, 439.590, and 439.640 authorizes 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 Roederer Correctional Complex.

Section 1. Incorporation by Reference. (1)(a) Roederer Correctional Complex policies and procedures, January 15, 2002 [August 14, 2004], are incorporated by reference. Roederer Correctional Complex policies and procedures include:

RCC 01-06-01 Inmate Access to and Communication with Staff
RCC 01-08-01 Public Information and News Media Access
RCC 01-10-01 Cooperation with Outside Bodies; Including Courts, ACA, Governmental Legislative, Executive, and Community Agencies
RCC 02-01-01 Fiscal Management: Organization
RCC 02-01-02 Fiscal Management: Accounting Procedures
RCC 02-01-03 Fiscal Management: Agency Funds
RCC 02-01-04 Fiscal Management: Insurance
RCC 02-02-01 Fiscal Management: Budget
RCC 02-02-02 Inmate Control of Personal Funds
RCC 02-02-03 Storage and Disposition of Monies received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
RCC 02-02-05 Inmate Canteen Services
RCC 02-03-01 Fiscal Management: Audits
RCC 02-04-01 Purchase Orders
RCC 02-04-02 Processing of Invoices
RCC 02-06-01 Property Inventory
RCC 03-02-01 Institutional Smoking Areas [Added 8/14/04]
RCC 04-01-01 Employee Training and Development
RCC 04-01-02 First Aid and CPR Training
RCC 05-01-01 Offender Records [Added 8/14/04]
RCC 06-03-01 Records Release of Information
RCC 06-03-02 Storage of Expunged Records
RCC 06-04-01 Court Trips (Amended 1/15/02)
RCC 06-04-02 Receipt of Order of Appearance [Amended 8/14/04]
RCC 07-02-01 Permit Required Confined Space (Added 1/15/02)
RCC 08-01-01 Fire Prevention [Amended 8/14/04]
RCC 09-04-03 Duties and Responsibilities of the Fire and Safety Officer
RCC 11-01-01 Food Service: General Guidelines [Amended 8/14/04]
RCC 11-02-01 Food Service: Security [Amended 8/14/04]
RCC 11-03-01 Dining Room Guidelines (Amended 1/15/02)
RCC 11-04-01 Food Service: Menu, Nutrition and Alternative Items [Amended 8/14/04]
RCC 11-05-02 Health Requirements of Food Handlers
RCC 11-06-01 Food Service: Inspections and Sanitation [Amended 8/14/04]
RCC 11-07-01 Food Service: Purchasing and Storage
RCC 12-01-01 Sanitation, Living Conditions and Clothing Issuances
RCC 12-01-02 Bed Areas [Amended 8/14/04]
RCC 12-01-03 General Guidelines for Living Units [Amended 8/14/04]
RCC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry [Amended 8/14/04]
RCC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule
RCC 12-03-02 Barber Shop Services and Equipment Control [Amended 8/14/04]
RCC 12-04-01 Institutional Inspections (Amended 1/15/02)
RCC 12-05-02 Use of Noncombustible Receptacle
RCC 12-06-01 Insect and Vermin Control
RCC 13-01-01 Organization of Health Services
RCC 13-02-01 Health Maintenance Services: Sick Call and Pill Call (Amended 1/15/02)
RCC 13-03-01 Dental Procedures and Sick Call
RCC 13-04-01 Preliminary Health Evaluation and Establishment of Inmate Medical Records (Amended 1/15/02)
RCC 13-04-02 Medical Intake Processing for Inmates in Hold Status
RCC 13-05-02 Licensure and Training Standards for Medical Department
RCC 13-06-01 Suicide Prevention and Intervention Program [Amended 8/14/04]
RCC 13-06-03 Emergency Medical and Dental Care Services (Amended 1/15/02)
RCC 13-07-01 Health Records (Amended 1/15/02)
RCC 13-07-03 Use of Pharmaceutical Products (Amended 1/15/02)
RCC 13-07-04 Self-administered Medication Program (Amended 1/15/02)
RCC 13-09-01 Notification of Inmate Family in the Event of Serious Illness, Surgery, or Inmate Death
RCC 13-10-01 Health Education and Special Health Programs (Amended 1/15/02)
RCC 13-11-01 Informed Consent
RCC 13-12-01 Mental Health/Provision of Psychiatric Services by KCPC
RCC 13-12-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center [Amended 8/14/04]
RCC 13-13-01 Identification of [Special Needs] Inmates with Psychological or Severe Medical Disabilities and Transfer Guidelines [Amended 1/15/02]
RCC 13-15-01 Medical Restraints
RCC 13-16-01 Specialized Health Services (Amended 1/15/02)
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jack Damron, Deputy General Council
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation
incorporates by reference the amended policies and procedures
governing the operation of the Roedderer Correctional Complex,
which directs employees in the safe and approved control of the
inmate population and the security of the institution.
(b) The necessity of this administrative regulation: To conform to
the requirements of KRS 196.035 and 197.020.
(c) How this administrative regulation conforms to the content of
the authorizing statutes: The regulation governs every aspect of the
operations of the Roedderer Correctional Complex.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: By providing
clear and concise direction and information to institutional employees,
as to duties and responsibilities that ensure the safe and secure
administration of the institution.
(2) If this is an amendment to an existing administrative regulation,
provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: The amendments shall bring the Roedderer Correctional
Complex policies and procedures up to date and bring policies into
cline with Corrections policies and procedures.
(b) The necessity of the amendment to this administrative regulation:
To conform to the requirement of KRS 196.035 and 197.020.
(c) How the amendment conforms to the content of the authorizing
statutes: It permits the commissioner or his authorized representa-
tive to implement or amend practices or procedures to ensure the
safe and efficient operation of Corrections and its divisions and
institutions.
(d) How the amendment will assist in the effective administration
of the statutes: It will make minor changes to conform to KRS
Chapter 13A, to allow a clearer understanding of the policies by
institutional employees, thereby impacting the safety and security of
the institution and the public.
(3) Type and number of individuals, businesses, organizations,
or state and local governments affected by this administrative regu-
lation: 252 employees of the Roedderer Correctional Complex, 866
inmates, and all visitors to Roedderer Correctional Complex.
(4) Provide an assessment of how the above group or groups
will be impacted by either the implementation of this administrative
regulation, if new, or by the change if it is an amendment: To ensure
a clearer understanding of the policies by employees, thereby im-
pacting the security and safety of the institution and the public.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(5) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: Funds
bunded from Roedderer Correctional Complex budget.
(7) Provide an assessment of whether an increase in fees or
funding shall be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: None
(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: None
(9) TIERING: Is tiering applied? No. Tiering was not appropriate
in this administrative regulation because the administrative regula-
tion applies equally to all those individuals or entities regulated by it.
Disparate treatment of any person or entity subject to this adminis-
terative 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 implic-
ated as well as Sections 2 and 3 of the Kentucky Constitution.
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JUSTICE CABINET
Department of Corrections
Division of Adult Institutions
(Amendment)

501 KAR 6:999. Corrections secured policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.580, 439.600
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.580, 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: "Department of Corrections Secured Policies and Procedures, January 15, 2002 [October 15, 2004]."

BCC 08-04-02 Immediate Release of Inmates from Locked Areas (Added 1/15/02)
BCC 09-01-01 Inclement Weather/Emergency Condition Operation (Deleted 1/15/02)
BCC 09-02-01 Restricted Areas (Deleted 1/15/02)
BCC 09-02-02 Inmate Pass System to Restricted Areas (Deleted 1/15/02)
BCC 09-02-03 Regulation of Inmate Movement (Deleted 1/15/02)
BCC 09-04-01 Construction Crew Entry, Exit and Regulations
BCC 09-04-02 Complex Entry and Exit (Amended 1/15/02)
BCC 09-05-01 Key Control (Amended 1/15/02)
BCC 09-06-02 Transportation to Courts (Amended 1/15/02)
BCC 09-07-01 Drug Abuse and Intoxicants Testing (Amended 1/15/02)
BCC 09-08-01 Weapons and Related Security Device Control (Added 1/15/02)
BCC 09-08-02 Use of Restraints (Added 1/15/02)
BCC 09-09-01 Population Counts and Count Documentation (Deleted 1/15/02)
BCC 09-15-01 Search Policy and Disposition of Contraband (Amended 1/15/02)
BCC 09-16-04 Security Activity Logs (Deleted 1/15/02)
BCC 09-17-01 Institutional Supervisor Inspections (Amended 1/15/02)
BCC 09-20-01 Inmate Death (Amended 1/15/02)
BCC 09-21-01 Tool Control (Amended 1/15/02)
BCC 09-22-01 Emergency Power and Communication System (Amended 1/15/02)
BCFC 08-01-01 Bell County Forestry Camp's Institutional Emergency Plan [Added 10/14/04]
BCFC 08-09-02 OSHA Federal Hazard Communication Program [Added 10/14/04]
BCFC 08-10-01 Bell County Forestry Camp Emergency Response Team [Added 10/14/04]
BCFC 09-07-01 Key Control [Added 10/14/04]
BCFC 09-11-01 Guidelines for Contractors [Added 10/14/04]
BCFC 09-15-01 Count Procedure and Regulation of Inmate Movement [Added 10/14/04]
BCFC 09-16-01 Inmate Death [Added 10/14/04]
BCFC 09-19-01 Tool Control [Added 10/14/04]
BCFC 09-20-01 Weapons, Chemical Agents, and Related Security Device Control [Added 10/14/04]
BCFC 09-21-01 Count Procedure and Regulation of Inmate Movement [Added 10/14/04]
CPP 8.3 Emergency Planning
CPP 8.4 Emergency Preparedness
CPP 8.5 Emergency Squads
CPP 9.1 Use of Force
CPP 9.3 Security Threat Groups
CPP 9.7 Storage, Issue, and Use of Weapons Including Chemical Agents
CPP 9.9 Transportation of Inmates
CPP 9.10 Security Inspections
CPP 9.11 Tool Control
FCDC 09-01-02 Institutional Entry and Exit Surveillance and Perimeter Security Procedures
FCDC 09-01-03 Firearms, Mechanical Restraints, and Emergency Equipment
FCDC 09-03-01 Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials
FCDC 09-07-01 Guidelines for Contract and Construction Personnel
FCDC 09-09-01 Tool Control
FCDC 09-12-01 Key Control
FCDC 09-14-01 Count Procedures
FCDC 09-20-01 Collection, Preservation, and Identification of Physical Evidence
GRCC 08-03-01 Escape Pan
GRCC 08-05-01 Emergency Squad: Selection, Training and Evaluation
GRCC 08-07-01 Natural Disaster or Earthquake
GRCC 09-03-01 Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power
GRCC 09-04-01 Inmate Death
GRCC 09-05-01 Construction Crew Entry and Exit Guidelines
GRCC 09-06-01 Entry and Exit Procedures
GRCC 09-07-01 Institutional Inspections
GRCC 09-08-01 Issuance of Weapons, Ammunition and Chemical Agents
GRCC 09-10-01 Emergency Release from Locked Areas
GRCC 09-11-01 Tool and Equipment Control
GRCC 09-12-01 Key Control
KSP 08-02-06 Storage of Flammables and Dangerous Chemicals and Their Use (Added 1/15/02)
KSP 08-03-01 Emergency Plans and General Policy (Added 1/15/02)
KSP 08-03-02 General Procedures and Plans for Riots and Disturbances (Added 1/15/02)
KSP 08-03-03 Master Riot Control Plan (Added 1/15/02)
KSP 08-03-04 Hostage Plans (Added 1/15/02)
KSP 08-03-05 Work Slowdown, Work Stoppage, Work Strikes, by Correctional Employees (Added 1/15/02)
KSP 08-03-06 Escape Procedure (Added 1/15/02)
KSP 08-03-08 Bomb Plans (Added 1/15/02)
KSP 08-05-01 Emergency Squad (Added 1/15/02)
KSP 09-01-01 Use of Force (Added 1/15/02)
KSP 09-07-01 Weapons Control (Added 1/15/02)
KSP 09-08-01 Searches and Preservation of Evidence (Amended 1/15/02)
KSP 09-09-01 Transportation of Inmates (Added 1/15/02)
KSP 09-10-01 Institutional Security Inspections (Added 1/15/02)
KSP 09-10-02 Security Inspection Guidelines for Cellhouse Officers (Added 1/15/02)
KSP 09-11-01 Tool Control (Added 1/15/02)
KSP 09-12-01 Key Control (Added 1/15/02)
KSP 09-13-05 Outside Hospital Duty, Inpatient and Outpatient Care for Inmates (Added 1/15/02)
KSP 09-14-01 Count Procedures (Added 1/15/02)
KSP 09-15-01 Entry and Exit Procedures (Added 1/15/02)
KSP 09-15-04 Institutional Limited Access (Added 1/15/02)
KSP 09-24-01 Western Kentucky Correctional Complex (Added 1/15/02)
KSR 08-01-01 Control of Flammable, Hazardous, Toxic and Caustic Chemicals and Materials [Added 10/14/04]
KSR 08-01-02 Corrections Emergency Response Team [Added 10/14/04]
KSR 08-01-03 Emergency Medical Transportation [Added 10/14/04]
KSR 08-01-04 Escape Response Procedure [Added 10/14/04]
KSR 09-00-04 Box 1 Entry and Exit Procedure [Amended 10/14/04]
KSR 09-00-09 Contraband, Dangerous Contraband and Search

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Policy [(Amended 10/14/01)]
KSR 09-00-27 Construction Crew Entry and Exit [(Amended 10/14/01)]
KSR 09-01-01 Count Procedures [(Amended 10/14/01)]
KSR 09-01-02 Gate 1 Entrance and Exit Procedure [(Amended 10/14/01)]
KSR 09-01-03 Tunnel Gate Entrance and Exit Procedure [(Amended 10/14/01)]
KSR 09-01-04 Outside Stockade Gate (Box 01) [(Amended 10/14/01)]
KSR 09-01-05 Tool Control [(Amended 10/14/01)]
KSR 09-01-06 Security Inspection Plan [(Amended 10/14/01)]
KSR 09-01-07 Key Control [(Amended 10/14/01)]
KSR 09-01-08 Use of Firearms and Chemical Weapons From Arms Vault [(Amended 10/14/01)]
KSR 09-01-09 Officers Daily Housing Security and Safety Log, Security Index, Correctional Security Guide and Post Orders [(Amended 10/14/01)]
KSR 09-01-10 Issuance of Institutional Portable Radios [(Amended 10/14/01)]
KSR 09-01-11 Transportation of Inmates [(Amended 10/14/01)]
KSR 09-01-12 Collection, Preservation and Identification of Physical Evidence [(Amended 10/14/01)]
KSR 09-01-13 Forced Cell Move in Minimum or Maximum Area [(Amended 10/14/01)]
KSR 10-01-01 Special Management – Behavior Problem Control
LLCC 06-01-02 Priority Posts Assignments for Daily Operation
LLCC 06-01-03 Emergency Security Posts Coverage
LLCC 06-06-01 Central Control Center Operating Procedure
LLCC 09-06-02 Central Control Count Documentation
LLCC 09-07-01 Count Procedure
LLCC 09-07-02 Count Documentation
LLCC 09-08-01 Regulation of Inmate Movement
LLCC 09-08-02 Unit Security and Emergency Procedure
LLCC 09-09-01 Transportation of Inmates
LLCC 09-09-02 Entry Exit Control
LLCC 09-11-01 Standards for Maintaining Perimeter Security
LLCC 09-11-02 Perimeter Towers and Box #1
LLCC 09-11-03 Perimeter Patrol Officer
LLCC 09-11-04 Outside Detail
LLCC 09-12-02 Monitoring Staff and Visitors With the Computer System
LLCC 09-13-01 Outside Hospitals and University of Louisville Hospital Security
LLCC 09-14-01 Security Procedures for Print Shop
LLCC 09-15-01 Emergency Redlight Response
LLCC 09-15-02 Response Units
LLCC 09-16-02 Escape Plan
LLCC 09-17-01 Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power
LLCC 09-18-02 Radio Transmission Signal 10 Code Listing
LLCC 09-18-04 Procedure for Monitoring of Inmate Telephone Calls
LLCC 09-20-01 Weapons and Related Security Device Control
LLCC 09-20-02 Key Control
LLCC 09-20-07 Use of Protectojet Model #1
LLCC 09-21-02 Use of Immobilization Control Unit or Electronic (ICE) Shield, Electronic Belt and Taser Gun
LLCC 09-21-03 Forced Cell Entry in a Housing Unit or Special Management Unit (SMU)
LLCC 09-22-01 Use of Restraints
NTC 08-05-04 Storage of Flammables and Dangerous Chemicals and Their Use
NTC 09-01-02 Escape By Air
NTC 09-02-01 Regulation of Inmate Movement
NTC 09-04-01 Construction Crew Entry and Exit
NTC 09-05-01 Count Procedure and Documentation
NTC 09-08-01 Issuance and Use of Institution Portable Radios
NTC 09-09-01 Transportation of Inmates
NTC 09-10-01 Use of Force; Prohibiting Personal Abuse and Corporal Punishment
NTC 09-10-02 Use of Physical Restraints
NTC 09-11-01 Tool Control
NTC 09-13-01 Procedure for Operation in the event of Dense Fog and Loss of Power
NTC 09-17-01 Standards for Maintaining Perimeter Security
NTC 09-17-02 Perimeter Security Check
NTC 09-18-01 Key Control
NTC 09-19-01 Electrical Disabling Devices
NTC 09-20-01 Security Inspection Plan
NTC 09-21-01 Inclement Weather Operations
NTC 09-25-01 Weapons and Related Security Device Control
NTC 09-25-02 Use of Chemical Agents
NTC 09-28-01 Personal Firearms Owned by Employees Residing on Institutional Property
NTC 09-30-01 Security Check-in List Procedures
RCC 08-08-01 Escape Procedures
RCC 08-08-01 Control and Use of Flammable, Toxic, and Caustic Materials
RCC 08-09-01 Institutional Emergency Plan
RCC 09-01-01 Establishment of Security Posts
RCC 09-01-02 Mandatory Security Post Coverage (Amended 1/15/02)
RCC 09-02-01 Security Activity Logs
RCC 09-03-01 Institutional Security Inspections
RCC 09-05-01 Entry and Exit to Institution
RCC 09-06-01 Search Policy/Disposition of Contraband
RCC 09-06-02 Collection, Preservation, and Identification of Physical Evidence
RCC 09-06-04 Disposition of Contraband from Outside Institutional Perimeter
RCC 09-07-01 Key Control
RCC 09-11-01 Guidelines for Contractors
RCC 09-12-01 Outside Hospital Security
RCC 09-13-01 Outside Details and Farm Details
RCC 09-14-01 Restricted Areas
RCC 09-14-02 Count Documentation
RCC 09-15-01 Count Procedure
RCC 09-15-02 Security and Records Office Documentation for Placement and Movement of Inmates
RCC 09-15-03 Regulation of Inmate Movement
RCC 09-16-01 Inmate Death
RCC 09-17-01 Recreational Area Security and Recreation Field
RCC 09-19-01 Tool Control
RCC 09-20-01 Weapons and Related Security Device Control
RCC 09-20-03 Issuance of Firearms and Chemical Weapons from the Armory
RCC 09-21-01 Transportation of Inmates
RCC 09-22-02 Use of Electronic Riot Shield
RCC 09-23-01 Use of Restraints
RCC 09-25-01 Procedure for Operation in Inclement Weather
RCC 09-26-01 Use of State Vehicles and Staff Owned Vehicles
(2) There shall not be a public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025(6) which states that these policies shall not be accessible to the public or inmates.

VERONIC L. TAYLOR, Commissioner
APPROVED BY AGENCY: January 9, 2002
FILED WITH LITC: January 15, 2002 at 8 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jack Damron, Deputy General Council
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the secured policies and procedures of the Department of Corrections governing the operation of Kentucky State Reformatory, which directs institutional employees and inmates in the safe and appropriate control of the inmate population and security of the institution.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the security operations of these institutions.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing
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clear and concise direction and information to institutional employ-
ees as to their duties and responsibilities to insure the safe and
secure operation of the institution.

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

(a) How the amendment will change this existing administrative regu-
lation: The amendments to the Kentucky State Reformatory
policies update and bring the policies into line with Corrections sec-
cured policies and procedures.

(b) The necessity of the amendment to this administrative regu-
l:ation: To conform to the requirement of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the author-
ing statutes: It permits the commissioner or his authorized repre-
resentative to implement or amend practices or procedures to ensure
the safety and efficient operation of Corrections and its divisions and
institutions.

(d) How the amendment will assist in the effective administration
of the statutes: It will make minor changes to conform to KRS
Chapter 13A, to allow a clearer understanding of the policies by
institutional employees, thereby impacting the safety and security
of the institution and the public.

(3) TIERING: Is number of individuals, businesses, organizations,
or state and local governments affected by this administrative regul-
ation: 2,948 employees of the correctional institutions, 8,729 in-
mates, 14,211 parolees and probationers, and all visitors to state
correctional institutions.

(4) Provide an assessment of how the above group or groups
will be impacted by either the implementation of this administrative regu-
lation, if new, or by the change if it is an amendment: To ensure
a clearer understanding and enforcement of this administrative regulation: Funds
budgeted for this 2000 - 2002 biennium.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: Funds
budgeted for this 2000 - 2002 biennium.

(7) Provide an assessment of whether an increase in fees or
funding shall be necessary to implement this administrative regu-
lation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate
in this administrative regulation because the administrative regu-
lation applies equally to all those individuals or entities regulated by it.
Disparate treatment of any person or entity subject to this adminis-
trative 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 implic-
ted as well as Sections 2 and 3 of the Kentucky Constitution.

WORKFORCE DEVELOPMENT CABINET
Department for Employment Services
Division of Unemployment Insurance
(Amendment)

RELATES TO: KRS 341.070, 341.272
STATUTORY AUTHORITY: KRS 151B.020, 341.115
NECESSITY, FUNCTION, AND CONFORMITY: This adminis-
trative regulation defines contract construction for the purposes of
rate assignment under KRS 341.272.

Section 1. Definition. For the purpose of rate assignment, those
types of service to be considered as contract construction shall be
those listed in the United States North American Industry Classifica-
tion System Manual, 2002, under Major Section 23, Subsections
236, 237, and 238 [Federal Standard Industrial Classification Man-
ual, 1987, under Major Groups 15, 16, and 17, and those listed un-
der Major Group 41 engaged in management of construction carried
out by others], which are adopted by reference. Copies of these
chapters shall be available for public inspection and copying in the
office of the Tax Status and Accounting Branch, 275 East Main
Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. to
4:30 p.m. Monday through Friday, or may be obtained by writing to the
above address or by telephone at (502) 564-2272.

Section 2. To be considered a contract construction employer,
one-half (1/2) or more of the service upon which liability is estab-
lished under KRS 341.070 shall be in contract construction.

JAMES F. THOMPSON, Commissioner
APPROVED BY AGENCY: January 15, 2002
FILED WITH LRC: January 15, 2002 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regu-
lation shall be held on February 26, 2002, at 9 a.m. in Confer-
ence Room A, 2nd Floor, 275 East Main Street, Frankfort, Kentucky
40621. Individuals interested in being heard at this hearing shall
notify this agency in writing by February 19, 2002, 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 pro-
posed administrative regulation. A transcript of the public hearing
shall 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. Sent
written notification of intent to be heard at the public hearing or writ-
ten comments on the proposed administrative regulation to the contact
person.

CONTACT PERSON: James F. Thompson, Commissioner,
Cabinet for Workforce Development, Department for Employment
Services, 275 East Main Street, 2nd Floor West, Frankfort, Kentucky
40621, phone (502) 564-5331, fax (502) 564-7452.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: James F. Thompson

(1) Provide a brief summary of N/A:

(a) What this administrative regulation does:
(b) The necessity of this administrative regulation:
(c) How this administrative regulation conforms to the content of
the authorizing statutes:

(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes:

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

(a) How the amendment will change this existing administrative regu-
lation: This administrative regulation is being amended to re-
place the reference to the Standard Industrial Code with the North
American Industry Classification for purposes of assigning specific
employment classification codes for unemployment insurance tax
rate assignments. This change will correspond with the Bureau for
Labor Statistics transition from SIC to NAICS.

(b) The necessity of the amendment to this administrative regu-
lation: This administrative regulation defines contract construction for the purposes of
rate assignment under KRS 341.272.

(c) How the amendment conforms to the content of the author-
zizing statutes: This regulation will not change the effect of the
authorizing statute.

(d) How the amendment will assist in the effective administration of
the statutes: It will replace the reference to the Standard Industrial
Code with the North American Industry Classification for purposes of
assigning specific employment classification codes for unemployment
insurance tax rate assignments.

(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this adminis-
trative regulation: This regulation will affect a very small number
of employers who previously have been considered a part of the con-
struction trade; and, will also remove some employers currently
classified as part of the construction trade under the NAICS.

(4) Provide an assessment of how the above group or groups
will be impacted by either the implementation of this administrative regu-
lation, if new, or by the change if it is an amendment: Employers
will be notified of the change in tax rate when the tax rate notices
are mailed at the beginning of the calendar year following codification of this regulation. Due to the extremely few number of affected employment classifications, there will be little or no impact on the Trust Fund.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: None
   (b) On a continuing basis: None

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or increases thereof.

(9) TIERING: Is tiering applied? Yes, only to the extent that it applies to employers who previously have been considered as part of the construction trade and therefore subject to a higher unemployment insurance tax rate.

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 338.081, 338.161
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) "Occupational Safety and Health Act" means the Kentucky Occupational Safety and Health Act of 1972 (KRS Chapter 338).

(2) "OSHA" means the Occupational Safety and Health Administration or the Kentucky Occupational Safety and Health Program.

(3) "OCT Act" means the Kentucky Occupational Safety and Health Act of 1972.

(4) "Secretary of Labor" means the Secretary of the United States Department of Labor or the Secretary of the Kentucky Labor Cabinet.

(5) "Section 11(c) of the Act" means KRS 338.121(3).

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR Part 1904, "Recording and Reporting Occupational Injuries and Illnesses", revised as of July 1, 2000, published by the Office of the Federal Register, National Archives and Record Services, General Services Administration.

(b) The revisions to 29 CFR 1904, "Recordkeeping and Reporting Occupational Injuries and Illnesses", as published in the Federal Register, Volume 66, Number 13, January 19, 2001 are incorporated by reference.

(c) The revisions to 29 CFR 1904, "Recordkeeping and Reporting Occupational Injuries and Illnesses", as published in the Federal Register, Volume 66, Number 198, October 12, 2001 are incorporated by reference.

(2) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: a factory, 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.

(3) "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. The one (1) time treatment and any follow-up visit for the purpose of observation, shall be considered first aid even if provided by a physician or registered professional personnel.

(4) "Lost workday" means the number of days (consecutive or not so) after 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.

(5) "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.

(6) "Recordable occupational injuries or illnesses" means any occupational injuries or illnesses which result in:

(a) Fatality, regardless of the time between the injury and death, or the length of the illness;

(b) Lost workday cases, other than fatalities, that result in lost workdays;

(c) Nonfatal cases without lost workdays which result in transfer to another job or termination of employment, require medical treatment (other than first aid), or involve loss of consciousness or restrictions of work or motion. This category shall also include any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

Section 2. Standard Industrial Classification Code. (1) Establishments classified in standard industrial classification codes (SIC) 52-59 shall include:

(a) Establishments classified in SIC's 52-59 whose primary activity constitutes retail trade, finance, insurance, real estate, and services.

(b) Retail trade establishments classified as SIC's 52-59 which are engaged in selling merchandise to the general public for personal, household, or other personal use, or for use in preparing and serving meals.

(c) Finance, insurance, and real estate establishments classified as SIC's 50-67 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. These 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 fees and services rendered by an establishment determines its primary activity.

(b) In establishments with diversified activities, the activity 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 2. Log and Summary of Occupational Injuries and Illnesses. (1) Each employer shall, except as provided in subsection (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 update 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 comprehensive 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 injury has occurred, as required by subsection (1) of this section.

(b) At each of the employer’s establishments, there is available a log and summary which collect 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 like 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, or each work period, personnel who do not primarily report to work at a single establishment, and whose work is temporary or not tied to a daily work, like 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 injury has occurred, a supplementary record for each occupational injury or illness for that establishment, which shall be completed 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 entered in the log. The Kentucky Workers’ Compensation form 1A.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 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 shall be entered on the totals line, and the form shall be posted.

(2) The summary shall be completed by February 1 beginning with calendar year 1979. The summary for the calendar year of occupational injuries and illnesses shall be posted on Form OSHA No. 102.

(3) Each employer, or the officer or employee of the employer who oversees 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 complete.

(4)(e) Each employer shall post a copy of the establishment’s summary in each establishment in a manner that notices are required to be posted under 803 KAR 2-000. The summary for the previous calendar year shall be posted no later than February 4, 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 employee who receives pay during that month. For multi-establishment 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, or Form OSHA No. 200 and its predecessor Form OSHA No. 100 and OSHA No. 102 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, or Form OSHA No. 200 and its predecessor Form OSHA No. 100 and OSHA No. 102, to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employer, former employee, and their representatives shall have access to the log for any establishment in which the employee has or has been employed.

(2) Nothing in this section shall be deemed to preclude employers and employees and their 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 Sections 7 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 injury or death of any employee from a work-related incident or the 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 Commissioner of the Department of Workplace Standards or to the Occupational Safety and Health Administration (OSHA) by using the OSHA toll-free central telephone number (800-352-1222).

(2) This requirement shall apply to each fatality or hospitalization of three (3) or more employees which occurs within thirty (30) days of an incident.

(3) Exception: If the employee 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 to
Section 11. Change of Ownership. If 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 maintained at each establishment to which they relate, for the period or remainder thereof, required under Section 7 of this administrative regulation.

(2) Any employer filing a petition for recordkeeping exemptions in accordance with 29 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. Employees of employers engaged in physically dispersed operations that 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, 4, 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 supervisor, field supervisor, etc.) in an established central place;
(2) Having the address and telephone number of the central place available at each workplace;
(3) Having personnel available at the central place during normal business hours to provide information to the persons maintained there by telephone and mail.

Section 14. Duties of Employer. Upon receipt of an occupational injury and illness 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;
(2) Obligation to maintain a log and summary of occupational injuries and illnesses under Section 10 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, 53, 56, 76, 77, 79, and 80. A private sector employer whose establishment is classified in SIC's 52, 53, 56, 76, 77, 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;
(2) Obligation to maintain a log of occupational injuries and illnesses under Section 10 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. Incorporation by Reference. (1) The following material is incorporated by reference:
(b) OSHA Form No. 1, Bureau of Labor Statistics, Supplemental Record of Occupational Injuries and Illnesses, (29 CFR Part 1904.13). The National Committee for Labor, and
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Labor Cabinet Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601 (40602), Monday through Friday, 8 a.m. to 4:30 p.m. [ES]

KEMBRA SEXTON TAYLOR, Attorney
JOE NORSWORTHY, Chairman
APPROVED BY AGENCY: January 11, 2002
FILED WITH LRC: January 14, 2002 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 25, 2002, at 10 a.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, 3rd Floor, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2002, 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 attends will be given an opportunity to comment on the proposed administrative regulation. The 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: Tim Chancellor, Health Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1863.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kembra Taylor, Tim Chancellor
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation, in Section 2, incorporates by reference two Federal Register publications. The first publication, dated January 19, 2001, Volume 66, Number 13, pp. 5122-5135, revises the requirements addressing the recording and reporting of occupational injuries and illnesses. The second Federal Register publication, dated October 12, 2001, Volume 66, Number 198, Page 52034, delays for one year the effective date of three provisions of the recordkeeping rule and establishes interim criteria for recording cases of work-related hearing loss. Finally, this administrative regulation updates the incorporation by reference of the Code of Federal Regulations to July 2000.
(b) The necessity of this administrative regulation: It is necessary to promulgate this administrative regulation to comply with federal mandate 29 CFR 1953.23, which requires implementation of the federal standard, or one more stringent, within six months of the date of promulgation of the federal standard; and, to keep the state program as effective as the federal program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.161.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These amendments will enhance worker safety throughout Kentucky, and keep the state program as effective as the federal program.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment revises the requirements addressing the recording and reporting of occupational injuries and illnesses, delays for one year the effective date of the provisions of the recordkeeping rule, establishes interim criteria for recording cases of
work-related hearing loss, and updates the references to the Code of Federal Regulations to 2000.

(b) The necessity of the amendment to this administrative regulation: It is necessary to promulgate this administrative regulation to comply with federal mandate 29 CFR 1953.23, which requires implementation of the federal standard, or one more stringent, within six months of the date of promulgation of the federal standard and, to keep the state program as effective as the federal program.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms to the content of the authorizing statutes of KRS 338.161.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will enhance worker safety throughout Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments affect public and private sector employers covered by KRS Chapter 338.

(4) Provides an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment revises the requirements addressing the recording and reporting of occupational injuries and illnesses, delays for one year the effective date of three provisions of the recordkeeping rule, and establishes interim criteria for recording cases of work-related hearing loss 2000.

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

(a) Initially: There will be no initial cost to implement this emergency regulation.

(b) On a continuing basis: There will be no additional costs on a continuing basis to implement this regulation.

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

(7) Provide an assessment of whether an increase in fees of funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor a need for increase in funding necessary to implement these revisions.

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

(9) TIERING: Is tiering applied? Tiering is not applied. Kentucky's Occupational Safety and Health Program regulations affect 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 KYOSHA Program has received worker complaints, 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 91-696 (Occupational Safety and Health Act of 1970, Section 19(c)(2)).

2. State compliance standards. The amendments incorporate revisions published in 2 federal registers to federal regulations incorporated by reference in 803 KAR 2:180 addressing the recording and reporting of occupational injuries and illnesses.

3. Minimum or uniform standards contained in the federal mandate. The amendments, in Section 2, incorporates by reference a Federal Register publication dated January 19, 2001, Volume 66, Number 13, pp. 6122-6135, revising the requirements addressing the recording and reporting of occupational injuries and illnesses.

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 will not impose stricter, additional, or different requirements, responsibilities, or requirements than required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The revisions impose no stricter, additional, or different responsibilities than the 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. The amendments affect local government entities covered by the KRS Chapter 338.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government entities covered by the Occupational Safety and Health Act. The amendments will affect the standards, addressing the recording and reporting of occupational injuries and illnesses, delay for one year the effective date of three provisions of the recordkeeping rule, and establish interim criteria for recording cases of work-related hearing loss.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to a uniform national program of collection, compilation, and analysis of occupational safety and health statistics. There will be no increase or decrease in local government revenues or significant expenditures. The proposed amendments will not affect the number of local government employees.

PUBLIC PROTECTION AND REGULATION CABINET
Division of Health Insurance Policy and Managed Care
(Amendment)

806 KAR 17:081. Minimum standards for long-term care insurance policies.


STATUTORY AUTHORITY: KRS 304.2-110(1). 304.14-620, 304.32-250, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes [provides] the Commissioner of Insurance to promulgate [may make reasonable] administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.14-620 requires the Commissioner of Insurance to make administrative regulations to establish minimum standards for marketing practices, agent compensation, agent testing, penalties, and reporting practices for long-term care insurance. KRS 304.32-250 provides that the Commissioner of Insurance may promulgate reasonable administrative regulations which he deems necessary for the proper administration of KRS Chapter 304.32. KRS 304.38-150 provides that the Commissioner of Insurance may promulgate reasonable administrative regulations which he deems necessary for the proper administration of KRS Chapter 304.38. This administrative regulation establishes minimum standards for long-term care insurance.

Section 1. Definitions. (1) "Applicant" means:

(a) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and

(b) In the case of a group long-term care insurance policy, the proposed certificate holder.

(2) "Certificate" means any certificate issued under a group
long-term care insurance policy, which policy has been delivered or
issued for delivery in Kentucky;
(3) "Commissioner" means the Commissioner of the Kentucky
Department of Insurance;
(4) "Insurer" means insurer, fraternal benefit society, nonprofit
hospital, medical, surgical, dental, and health service corporation,
and health maintenance organization; and
(5) "Compensation" means pecuniary or nonpecuniary renumeration
of any kind relating to the sale or renewal of long-term care insur-
ance policies or certificates, such as bonuses, gifts, prizes, awards,
and finders' fees.
(6) "Exceptional increase" means a premium rate increase filed
by an insurer as exceptional for which the commissioner determines
the need for the premium rate increase is justified:
(a) Due to changes in laws or administrative regulations appli-
cable to long-term care coverage in this state; or
(b) Due to increased and unexpected utilization that affects the
majority of insurers of similar products.
(7) "Group long-term care insurance" is defined in KRS 304.14-
600(4).
(8) "Incidental" means that the value of the long-term care bene-
fits provided is less than ten (10) percent of the total value of the
benefits provided over the life of the policy measured as of the date
of issue.
(9) "Insurer" means an entity authorized to issue long-term care
insurance in Kentucky.
(10) "Long-term care insurance" is defined in KRS 304.14-600(1).
(11) "Qualified actuary" means a member in good standing of
the American Academy of Actuaries.
(12) "Qualified long-term care insurance contract" or "feder-
ally-tax-qualified long-term care insurance contract" means an indi-
vidual or group insurance contract that meets the requirements of 26
USC 7702(b) as follows:
1. The only insurance protection provided under the contract is
coverage of qualified long-term care services. A contract shall not
fail to satisfy the requirements of this subparagraph by reason of
payments being made on a per diem or other periodic basis without
regard to the expenses incurred during the period to which the pay-
ments relate;
2. The contract does not pay or reimburse expenses incurred for
services or items to the extent that the expenses are reimbursable
under Title XVIII of the Social Security Act, as amended, or would be
so reimbursable but for the application of a deductible or coinsur-
ance amount. The requirements of this subparagraph do not apply
to expenses that are reimbursable under Title XVIII of the Social
Security Act only as a secondary payor. A contract shall not fail to
satisfy the requirements of this subparagraph by reason of pay-
ments being made on a per diem or other periodic basis without
regard to the expenses incurred during the period to which the pay-
ments relate;
3. The contract is guaranteed renewable, within the meaning of
26 USC 7702(b)(1)(c);
4. The contract does not provide for a cash surrender value or
other money that can be paid, assigned, pledged as collateral for a
loan, or borrowed except as provided in subparagraph 5 of this
paragraph;
5. All refunds of premiums, and all policyholder dividends or
similar amounts, under the contract are to be applied as a reduction
in the premiums or to increase future benefits, except that a re-
fund on the event of death of the insured or a complete surrender
or cancellation of the contract cannot exceed the aggregate premiums
paid under the contract; and
6. The contract meets the consumer protection provisions set
forth in 26 USC 7702(b).
(a) "Qualified long-term care insurance contract" or "federally-
tax-qualified long-term care insurance contract" also means the
portion of a life insurance contract that provides long-term care insur-
ce coverage by rider or as part of the contract and that satis-
ifies the requirements of 26 USC 7702(b) and (e).
(b) "Similar policy forms" means all of the long-term care insur-
ance policies and certificates issued by an insurer in the same long-
term care benefit classification as the policy form being considered.
(c) Certificates of groups that meet the definition in KRS 304.14-
600(4) are not considered similar to certificates or policies otherwise
issued as long-term care insurance, but are similar to other compar-
able certificates with the same long-term care benefit classifica-
tions.
(b) For purposes of determining similar policy forms, long-term
care benefit classifications are defined as follows:
1. Institutional long-term care benefits only;
2. Noninstitutional long-term care benefits only; or
Section 2. Policy Definitions. A long-term care insurance policy
[policies] delivered or issued for delivery in Kentucky shall not use the
terms set forth below unless the terms are defined in the policy and
the definitions satisfy the following requirements:
1. "Activities of daily living" means at least bathing, continence,
dressing, eating, toileting and transferring. ["Adult day care" means
a program for six (6) or more individuals, of social and health-related
services provided during the day in a community group setting for
the purpose of supporting frail, impaired elderly or other disabled
adults who can benefit from care in a group setting outside the home.]
2. "Acute condition" means that the individual is medically un-
stable. The individual requires frequent monitoring by medical pro-
fessionals, such as physicians and registered nurses, in order to
maintain his health status.
3. "Adult day care" means a program for four (4) or more indi-
viduals, of social- and health-related, or both, services provided
during the day in a community group setting for the purpose of supporting
frail, impaired elderly or other disabled adults who can benefit from care
in a group setting outside the home.
4. "Bathing" means washing oneself by sponge bath, or in ei-
ter a tub or shower, including the task of getting into or out of the
tub or shower.
5. "Cognitive impairment" means a deficiency in a person's
short or long-term memory, orientation as to person, place and time,
deductive or abstract reasoning, or judgement as it relates to safety
awareness.
6. "Continence" means the ability to maintain control of bowel
and bladder function, or, when unable to maintain control of bowel or
bladder function, the ability to perform associated personal hygiene
(including caring for catheter or colostomy bag).
7. "Dressing" means putting on and taking off all items of
Clothing and any necessary braces, fasteners or artificial limbs.
8. "Eating" means feeding oneself by getting food into the body
from a receptacle (such as a plate, cup or table) or by a feeding tube
or intravenously.
9. "Hands-on assistance" means physical assistance (minimal,
moderate or maximal) without which the individual would not be able
to perform the activity of daily living.
10. "Home health care services" means medical and nonmed-
icare services, provided to ill, disabled or infirm persons in their resi-
dences. Such services may include homemaker services, assist-
cence with activities of daily living and respite care services.
11. "Medicare" means "The Health Insurance for the Aged Act,
Title XVIII of the Social Security Amendments of 1965 as Then Con-
sstituted or Later Amended", or "Title I, part I of Public Law 89-97, as
Enacted by the Eighty-Ninth Congress of the United States of
America, as it was popularly known as the Health Insurance for the Aged
Act, as then constituted and any later amendments or substitutes
thereof", or words of similar import.
12. "Mental or nervous disorder" shall not be defined to include
more than neurosis, psychoneurosis, psychosis or, mental or emo-
tional disease or disorder.
13. "Personal care" means the provision of hands-on services
by an individual with activities of daily living.
"home care" and other services shall be defined in relation to the
level of skill required, the nature of the care and the setting in which
care must be delivered.
15. "Toileting" means getting to and from the toilet, getting on
and off the toilet, and performing associated personal hygiene.
16. "Transferring" means moving into or out of bed, chair or
wheelchair.

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(17) All providers of services, including but not limited to "skilled nursing facility", "extended care facility", "intermediate care facility", "convalescent nursing home", "personal care facility", and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified. "Home health care services" means medical and nonmedical services, provided to ill, disabled, or infirm persons in their residences. The services may include homemaker services, assistance with activities of daily living, and respite care services.

(4) "Medicare" shall be defined as "The Health Insurance for the Aged, Title XVII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title XVII of the Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

(5) "Mental or nervous disorder" shall not be defined to include alcoholism, drug addiction, except for licit drugs.

(6) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living (such as bathing, eating, dressing, transferring, and toileting).

(7) "Skilled nursing care," "intermediate care," "personal care," "home care," and other services shall be defined in relation to the level of skill required, the nature of the care, and the setting in which care must be delivered.

(8) All providers of services, such as "skilled nursing facility," "extended care facility," "intermediate care facility," "convalescent nursing home," "personal care facility," and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

Section 3. Policy Practices and Provisions. (1) Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section 5 of this administrative regulation.

(a) A long-term care insurance policy [policies] issued to an individual shall not contain nonrenewable provisions other than "guaranteed renewable" or "noncancellable."

(b) The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or terminate the policy while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(c) The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(d) The term "level premium" may only be used when the insurer does not have the right to change the premium.

(e) In addition to the other requirements of this subsection, a qualified long-term care insurance contract shall be guaranteed renewable, within the meaning of 26 USC 7702B(b)(1)(C).

(2) Limitations and exclusions. A policy shall not be delivered or issued for delivery in Kentucky as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

(a) Preexisting conditions or diseases;

(b) Mental or nervous disorders, but this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's disease;

(c) Alcoholism and drug addiction;

(d) Illness, treatment, or medical condition arising out of:
   1. War or act of war (whether declared or undeclared);
   2. Participation in a felony, riot, or similar type; or
   3. Service in the armed forces or auxiliary units;

(e) Aviation (this exclusion applies only to nonfare-paying passengers);

(f) Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability, or occupational injury and illness law, services provided by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance;

(g) Expenses for services or items available or paid under another long-term care insurance or health insurance policy; and

(h) In the case of a qualified long-term care insurance contract, expenses for services or items to the extent that the expenses are reimbursable under Title XVII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount.

(b) This subsection is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.

(4) Requirements of this subsection are not intended to prohibit exclusions and limitations by type of provider or territorial limitations.

(3) Extension of benefits. (a) Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination.

(b) The extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits, and may be subject to any policy waiting period, and all other applicable provisions of the policy.

(4) Continuation or conversion. Group long-term care insurance [policies] shall provide a covered individual with a basis for continuation and conversion of coverage:

(a) A policy provision shall provide for continued coverage under the existing group policy when the coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due.

1. Group policies that restrict provision of benefits and services to, or contain incentives to use certain providers or facilities may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy; and

2. The commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and nonmanaged care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(b) A policy provision shall provide that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six (6) months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

1. A converted policy shall be an individual policy of long-term care insurance that provides benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made.

2. If the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and nonmanaged care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(c) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than thirtysix (36) days after termination of coverage under the group policy.

(d) A converted policy shall be issued effective on the day fol-
lowing the termination of coverage under the group policy, and shall be renewable annually.

(e) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured’s age at inception of coverage under the group policy from which conversion is made. Where the insured’s age at inception of coverage under the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured’s age at inception of coverage under the group policy replaced.

(f) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

1. Termination of group coverage resulted from an individual’s failure to make any required payment of premium or contribution when due; or
2. The terminating coverage is replaced not later than thirty-one (31) days after termination, by group coverage effective on the day following the termination of coverage:
   a. Providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage;
   b. The premium for which is calculated in a manner consistent with the requirements of paragraph (e) of this subsection.

(g) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy that provides benefits on the basis of incurred expenses, may contain a provision:

1. That results in a reduction of benefits payable if the benefits provided under the original policy, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses; and
2. The provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(h) A converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual’s coverage under the group policy remained in force and effect.

(i) Notwithstanding any other provision of this section, an insured individual whose eligibility for group long-term care coverage is based upon his relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of that relationship by death or dissolution of marriage.

(j) For the purposes of this section, a “managed-care plan” is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks, as required by KRS 304.13-110 and 304.18-120.

(5) Discontinuance and replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination in accordance with KRS 304.18-127.

(6) Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy shall not:

(a) Result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced; and
(b) Vary or otherwise depend on the individual’s health or disability status, claim experience or use of long-term care services.

(7)(e) The premium charged to an insured for long-term care insurance shall not increase due to either:

1. ([ae] The increasing age of the insured at ages beyond sixty-five [55]; or
2. [e] The duration the insured has been covered under the policy.

(b) The purchase of additional coverage shall not be considered a premium rate increase, but for purposes of the calculation required under Section 22 of this administrative regulation, the portion of the premium attributable to the additional coverage shall be added to and considered part of the annual premium.

(c) A reduction in benefits shall not be considered a premium change, but for purposes of the calculation required under Section 22 of this administrative regulation, the initial annual premium shall be based on the reduced benefits.

(8) Electronic enrollment for group policies.

(a) A requirement that a signature of a group long-term care insurance policy or certificate be obtained by an agent or insured shall be deemed satisfied if:

1. The consent is obtained by a telephonic or electronic enrollment by the group policyholder or insurer;
2. The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention and prompt retrieval of records; and
3. The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure that the confidentiality of individually-identifiable information is maintained.

(b) A verification of enrollment information shall be provided to the employee.

(c) An insurer shall make available, upon request of the commissioner, records that will demonstrate the insurer’s ability to conform enrollment and coverage amounts.

Section 4. Unintentional Lapse. An insurer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

(1) Notice before lapse or termination.

1. No individual long-term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one (1) person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium; or
2. Waiver dated and signed by the applicant electing not to designate additional persons to receive notice.

2. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured.

3. The form used for the written designation must provide space clearly designated for listing at least one (1) person.

4. The designation shall include each person’s full name and home address.

5. If an applicant elects not to designate an additional person, the waiver shall state: “Protection against unintentional lapse. I understand that I have the right to designate at least one (1) person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until thirty (30) days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice.”

6. The insurer shall notify the insured of the right to change a written designation, no less often than once every two (2) years.

(b) When a policyholder or certificate holder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements of paragraph (a) of this subsection need not be met until sixty (60) days after the policyholder or certificate holder is no longer on such a payment plan.

2. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant.

(c) Lapse or termination for nonpayment of premium.

1. No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least thirty (30) days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to paragraph (a) of this subsection, at the address provided by the insured for purposes of receiving notice of lapse or termination.

2. Notice shall:

a. Be given by first class United States mail, postage prepaid;
b. Not be given until thirty (30) days after a premium is due and unpaid; and
c. Be deemed to have been given as of five (5) days after the date of mailing.

(2) Reinstatement. In addition to the requirement in subsection (1) of this section, a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage,
in the event of lapse, if the insurer is provided proof that the policyholder or certificate holder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired.

(a) This option shall be available to the insured if requested within five (5) months after termination and shall allow for the collection of past due premiums, where appropriate.

(b) The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

Section 5. [4.] Required Disclosure Provisions. (1) Renewability. (a) Individual long-term care insurance policies shall contain a renewability provision.

(b) The provision shall:

1. Be appropriately captioned;

2. Appear on the first page of the policy; and

3. State clearly that the coverage is guaranteed renewable or noncancellable [the duration, where limited, of renewability and the duration in connection with riders or endorsements for which the policy is issued and for which it may be renewed].

(c) This subsection shall not apply to policies which do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.

(d) A long-term care insurance policy or certificate, other than one (1) where the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

(2) Riders and endorsements. (a) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured.

(b) After the date of policy issue, a rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law.

(c) Where a separate additional premium is charged for benefits provided by the policy or certificate, the premium charge shall be set forth in the policy, rider, or endorsement.

(3) Payment of benefits. A long-term care insurance policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of these terms and an explanation of these terms in its accompanying outline of coverage.

(4) Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

(5) Other limitations or conditions on eligibility for benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in KRS 304.14-615(4)(b) shall set forth a description of those limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label the paragraph "Limitations or Conditions on Eligibility for Benefits."

(6) Disclosure of tax consequences. (a) A disclosure statement shall be required, as specified in paragraphs (b), (c), and (d) of this subsection, for life insurance policies which provide benefits which are accelerated [an accelerated benefit] for long-term care.

(b) The disclosure statement shall be required both at the time:

1. Of application for the policy or rider; and

2. The [accelerated] benefit payment request is submitted.

(c) The statement shall disclose that:

1. Receipt of the [accelerated] benefits may be taxable; and

2. Assistance provided to the client as extraordinary tax advice.

(d) The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.

(e) This subsection shall not apply to qualified long-term care insurance contracts.

(f) Benefit triggers. Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits."

(g) Any additional benefit triggers shall also be explained in this section of the policy or certificate.

(h) If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description.

(i) If an attending physician or other specified person must certify a certain level of functional dependency in order to determine eligibility for benefits, this too shall be specified.

(j) A qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage, as contained in Section 25(5)(c) of this administrative regulation, that the policy is intended to be a qualified long-term care insurance contract under 29 USC 7702(b).

(k) A nonqualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage, as contained in Section 25(5)(c) of this administrative regulation, that the policy is not intended to be a qualified long-term care insurance contract.

Section 6. Required Disclosure of Rating Practices to Consumers. (1) Except as provided in subsection (2) of this section, this section applies to any long-term care policy or certificate issued in Kentucky beginning six (6) months after the effective date of this administrative regulation.

(2) For a certificate issued on or after the effective date of this administrative regulation under a group long-term care insurance policy, which policy was in force at the time this administrative regulation became effective, the provisions of this section shall apply on the policy anniversary following twelve (12) months after the effective date of this administrative regulation.

(3) Other than a policy for which no applicable premium rate or rate schedule increases can be made, an insurer shall provide all of the information listed in this subsection to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time:

(a) A statement that the policy may be subject to rate increases in the future;

(b) An explanation of potential future premium rate revisions, and the policyholder's or certificate holder's option in the event of a premium rate revision;

(c) The premium rate or rates schedules applicable to the applicant that shall be in effect until a request is made for an increase;

(d) A general explanation for applying premium rate or rate schedule adjustments that shall include:

1. A description of when premium rate or rate schedule adjustments will be effective (e.g., new anniversary date, new billing date, etc.); and

2. The right to a revised premium rate or rate schedule as provided in subsection (2) of this section if the premium rate or rate schedule is changed;

(e) Information regarding each premium rate increase on this policy form or similar policy forms over the past ten (10) years for Kentucky or any other state that, at a minimum, identifies:

a. The policy forms for which premium rates have been increased;

b. The calendar years when the form was available for purchase;

c. The amount or percent of each increase.

(i) The percentage may be expressed as a percentage of the premium rate prior to the increase or

(ii) May also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

2. The insurer may, in a fair manner, provide additional explanatory information related to the rate increases.

3. An insurer may exclude from the disclosure premium rate increases that occurred prior to the acquisition of and that only apply to:

a. Blocks of business acquired from other nonaffiliated insurers;
or

b. The long-term care policies acquired from other nonaffiliated insurers.

4. If an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers on or before the later of the effective date of this administrative regulation or the end of a twenty-four (24) month period following the acquisition of the block of business policies, the acquiring insurer may exclude that rate increase from the disclosure.

a. The rate increase that may be excluded pursuant to this subparagraph shall be disclosed by the nonaffiliated selling company in accordance with subparagraph 1 of this paragraph.

b. If the acquiring insurer files for a subsequent rate increase, even within the twenty-four (24) month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers, the acquiring insurer shall make all disclosures required by this paragraph, including disclosure of the earlier rate increase.

4. If the method of application does not allow for delivery at the time of application or enrollment, the information listed in subsection (3) of this section shall be delivered to the applicant no later than at the time of delivery of the policy or certificate.

5. An applicant shall sign an acknowledgement at the time of application that the insurer made the disclosure required under subsection (3)(a) and (e) of this section.

6. If, due to the method of application, the applicant cannot sign an acknowledgement at the time of application in accordance with subsection (5) of this section, the applicant shall sign an acknowledgement no later than at the time of delivery of the policy or certificate.

7. An insurer shall use forms HIPMC-LTC-1 (09/01) and HIPMC-LTC-2 (09/01), incorporated by reference in this administrative regulation, to comply with the requirements of subsections (1) through (3) of this section.

8. An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificate holders, if applicable, at least forty-five (45) days prior to the implementation of the premium rate schedule increase by the insurer.

9. The notice required, pursuant to subsection (8) of this section, shall include the information required by subsection (3) of this section when the rate increase is implemented.

Section 7. Initial Filing Requirements. (1) This section applies to any long-term care policy issued in Kentucky beginning on or after the effective date of this administrative regulation.

2. An insurer shall provide the information listed in this subsection to the commissioner in accordance with the time period set forth in KRS 304.14-120(2).

a. A copy of the disclosure documents required in Section 6 of this administrative regulation; and

b. An actuarial certification consisting of at least the following:

1. A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately-adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

2. A statement that the policy design and coverage provided have been reviewed and taken into consideration;

3. A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

4. A complete description of the basis for contract reserves that are anticipated to be held under the form, to include:
   a. Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;
   b. A statement that the assumptions used for reserves contain reasonable margins for adverse experience;
   c. A statement that the net valuation premium for renewal years does not increase; and
   d. A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur.

(1) An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably-consistent relationship.

(2) If the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration under subsection (3) of this section based on a standard age distribution.

3. A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits;

b. A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

4. The commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums which shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and creditable data from other studies, or both.

Section 8. [6] Prohibition Against Postclaims Underwriting. (1) Applications for long-term care insurance policies or certificates exclude those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

2. (a) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it shall also ask the applicant to list the medication that has been prescribed.

(b) If the medications listed in the application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

3. Except for policies or certificates which are guaranteed issue:

(a) The following language shall be set out conspicuously and in close conjunction with the applicant’s signature block on an application for a long-term care insurance policy or certificate: “Caution: If your answers on this application for long-term care benefits are incorrect or untrue, (insurer name) has the right to deny benefits or rescind your policy.”

(b) The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate concurrently with the time of delivery: “Caution: The issuance of this long-term care insurance (policy or certificate) is based upon your responses to the questions on your application. A copy of your (application or enrollment form) (is enclosed or was retained by you when you applied). If your answers are incorrect or untrue, the insurer has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises. If, for any reason, any of your answers are incorrect, contact the insurer at this address: (insert address).”

(c) Prior to issuance of a long-term care policy or certificate to an applicant age eighty (80) or older, the insurer shall obtain one (1) of the following:

1. A report of a physical examination;

2. An assessment of functional capacity;

3. An attending physician’s statement; or


(4) A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

(5) Every insurer issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both Kentucky and countrywide, except those which the insured voluntarily effectuated, and shall annually furnish this information to the commissioner in the form incorporated by reference in this administrative regulation as HIPMC-LTC-3 (09/01) [format prescribed by the National Association of Insurance Commissioners in Appendix A].

long-term care insurance policy or certificate provides benefits for
home health care or community care services, it shall not limit or
exclude benefits by:
(a) Requiring that the insured or claimant would need care in a
skilled nursing facility if home health-care services were not
provided;
(b) Requiring that the insured or claimant first or simultaneously
receive nursing or therapeutic services in a home, community, or
institutional setting before home health-care services are covered;
(c) Limiting eligible services to services provided by registered
nurses or licensed practical nurses;
(d) Requiring that a nurse or therapist provide services covered
by the policy that can be provided by a home health aide or other
licensed or certified home care worker acting within the scope of his
licensure or certification;
(e) Excluding coverage for personal care services provided by a
home health aide;
(f) Requiring that the provision of home health-care services be
at a level of certification or licensure greater than that required by
the eligible service;
(g) Requiring that the insured or claimant have an acute condi-
tion before home health-care services are covered;
(h) Limiting benefits to services provided by Medicare-certified
agencies or providers; or
(i) Excluding coverage for adult day care services.
(2) If a long-term care insurance policy or certificate provides
for home health or community care services, it shall provide total
home health or community care coverage that is a dollar amount equiva-
 lent to at least one-half (1/2) of one (1) year's coverage available for
nursing home benefits under the policy or certificate, at the time
to be determined by the provider. This requirement shall not apply to
benefits if the covered benefits are being re-
ceived.
(3) Home health-care coverage may be applied to the nonhome
health-care benefits provided in the policy or certificate when deter-
mining maximum coverage under the terms of the policy or certifi-
cate.

Section 10. [Z] Requirement to Offer Inflation Protection. (1) An
insurer shall not offer a long-term care insurance policy unless the
insurer also offers the policyholder, in addition to any other inflation
protection, the option to purchase a policy that provides for
benefit levels to increase with benefit maximums or a policy that
provides for an increase in the period of coverage which shall meet
the inflation adjustments in the costs of long-term care services covered
by the policy. Insurers shall offer to each policyholder, at the time of
purchase, the option to purchase a policy with an inflation protection
feature no less favorable than one (1) of the following:
(a) Increases benefit levels annually in a manner so that the
increases are compounded annually at a rate not less than five (5)
percent;
(b) Guarantees the insured individual the right to periodically
increase benefit levels without providing evidence of insurability or
health status only as long as the option for the previous period has not
been declined. The amount of the additional benefit shall be no less
than the difference between the existing policy benefit and that
benefit compounded annually at a rate of at least five (5) percent for
the period beginning with the purchase of the existing benefit and
extending until the year in which the offer is made; or
(c) Covers a specified percentage of actual or reasonable
charges and does not include a maximum specified indemnity
amount or limit.
(2) Where the policy is issued to a group, the required offer in
subsection (1) of this section shall be made to the group policy-
holder, but if the policy is issued to a group defined in KRS 304.14600(a)(d) other than to a continuing care retirement community, the
offering shall be made to each participating certificate holder.
(3) The offer in subsection (1) of this section shall not be re-
quired of life insurance policies or riders containing accelerated
long-term care benefits.
(4) Insurers shall include the following information in or with
the outline of coverage. An insurer may use a reasonable hypothetical,
or a graphic demonstration, for the purposes of this disclosure.
(a) A graphic comparison of the benefit levels of a policy that
increases benefits over the policy period with a policy that does not
increase benefits. The graphic comparison shall show benefit levels
over at least a twenty (20) year period; and
(b) Any expected premium increases or additional premiums to
pay for automatic or optional benefit increases.
(5) Inflation protection benefit increases under a policy which
contains these benefits shall continue without regard to an insured's
age, claim status or claim history, or the length of time the person
has been insured under the policy.
(6) An offer of inflation protection which provides for automatic
benefit increases shall include an offer of a premium which the in-
surer expects to remain constant. The offer shall disclose in a con-
spicuous manner that the premium may change in the future unless
the premium is guaranteed to remain constant.
(7) (a) Inflation protection as provided in subsection (1)(a) of this
section shall be included in a long-term care insurance policy unless
an insurer obtains a rejection of inflation protection signed by the
policyholder as required in this subsection.
(b) The rejection, which may be either in the application or in a
separate form, shall be considered a part of the application and shall
state: "I have reviewed the outline of coverage and the graphs
that compare the benefits and premiums of this policy with and with
out inflation protection. Specifically, I have reviewed Plans ____ and
I reject inflation protection."

Section 11. [A] Requirements for Application Forms and Re-
placement Coverage. (1) Application forms shall include the follow-
ing questions designed to elicit information as to whether:
(a) The applicant has another long-term care insurance policy or
certificate in force as of the date of application; or
(b) A long-term care insurance policy or certificate is intended to
replace:
1. Any other accident and sickness policy or certificate presently
in force;
2. Any other long-term care policy or certificate presently in
force.
(c) Except where coverage is sold without an agent, a supple-
mentary application or other form, containing the questions required
by this section, may be used if signed by the:
1. Applicant; and
2. Agent.
(d) If a replacement policy is issued to a group, as defined by
KRS 304.14-600(4)(a), the following questions may be modified only
to the extent necessary to elicit information about health or long-
term care insurance policies other than the group policy being re-
placed or certificate holder has been notified of the replacement.
1. Do you have any long-term care insurance policy or cer-
certificate in force (including health-care service contract or health
maintenance organization contract)?
2. Did you have another long-term care insurance policy or cer-
certificate in force during the last twelve (12) months?
   a. If so, with which company?
   b. If that policy lapsed, when did it lapse?
   c. Are you covered by Medicare?
   d. Do you intend to replace any of your medical or health insur-
ence coverage with this policy (certificate)?
2. Agents shall list other health insurance policies they have
sold to the applicant which:
(a) Are still in force; and
(b) Were sold in the past five (5) years but are no longer in
force.
(3) Solicitations other than direct response.
(a) Upon determining that a sale will involve replacement, an
insurer (other than an insurer using direct response solicitation
methods) or its agent shall furnish the applicant, prior to issuance
or delivery of the individual long-term care insurance policy, a notice
regarding replacement of accident and sickness or long-term care
coverage.
(b) One (1) copy of the notice shall be retained by the applicant
and an additional copy signed by the applicant shall be retained by
the insurer.
(c) The notice shall be provided as follows:
NOTICE TO APPLICANT REGARDING REPLACEMENT
OF INDIVIDUAL ACCIDENT AND SICKNESS OR
LONG-TERM CARE INSURANCE
(Insurer's name and address)
SAVE THIS NOTICE!
IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application or information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by (insurer name). Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY AGENT:
(Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. Any conclusion has taken into account the following considerations, which I call to your attention:

(a) Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

(c) If you are replacing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(d) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

Signature of Agent:
Typed Name and Address of Agent:
The above "Notice to Applicant" was delivered to me on:
Date:

Applicant's Signature:

(4) Direct response solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE
(Insurer's name and address)
SAVE THIS NOTICE!
IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application or information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by (insurer name). Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

(c) Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

(c) If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(d) (To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insurer name and address) within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

Insurer Name:

(5) Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured, and policy number or address including zip code. The notice shall be made within five (5) working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

(6) Life insurance policies that accelerate benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of 806 KAR 12:080.

(b) If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.

Section 12, [a] Reporting Requirements. (1) An [Insurer] shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

(b) An [Insurer] shall report annually by June 30 the ten (10) percent of its agents with the greatest percentages of lapses and replacements as measured by subsection (1) of this section.

(3) Reported replacement and lapse rates shall not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

(4) An [Insurer] shall report annually by June 30 the number of replaced policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

(5) An [Insurer] shall report annually by June 30 the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.

(6) An insurer shall report annually by June 30, by completing and filing HIPMC-LTC-4 (09/01), incorporated by reference in this
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administrative regulation, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied:

(1) For purposes of this section:
(a) "Policy" means only long-term care insurance;
(b) Subject to the paragraph (c) of this subsection, "claim" means a request for payment of benefits under an in-force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;
(c) "Denied" means the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition; and
(d) "Report" means on a statewide basis.
(2) All reports required by this section shall be filed with the commissioner. [."policy"
shall mean only long-term care insurance and "report"
means on a statewide basis.]

Section 13. [42] Licensing. An agent shall not be authorized to market, sell, solicit, or otherwise contact a person for the purpose of marketing long-term care insurance unless the agent has demonstrated his knowledge of long-term care insurance and the appropriateness of the insurance by passing a test required by Kentucky [this state] and maintaining appropriate licenses.

Section 11. [43] Discretionary Powers of Commissioner. The commissioner may, upon written request and after an administrative hearing or such other notice as the commissioner deems necessary, for the purpose of modifying or suspending a specific provision or provisions of this administrative regulation with respect to a specific long-term care insurance policy or certificate upon a written finding that:
(1) The modification or suspension would be in the best interest of the insured;
(2) The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and
(a) The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care, or
(b) The policy or certificate is to be issued to residents of a life care or continuing care retirement community or other facility or community for the elderly and the modification or suspension is reasonably related to the special needs or nature of the community;
(c) The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

Section 14. [44] Reserve Standards. (1)(a) If long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to these policies, policy reserves for these benefits shall be determined in accordance with KRS 304.6-130 to 304.6-180.
(b) Claim reserves shall also be established if the policy or rider is in claim status.
(c) Reserves for policies and riders subject to the requirements of this subsection may be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates.
(d) Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial.
(e) The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits, but the reserves for the long-term care benefit and the life insurance benefit shall not be less than the reserves for the life insurance benefit assuming no long-term care benefit.
(f) In the development and calculation of reserves for policies and riders subject to the requirements of this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claim costs, such as the following:
1. Definition of insured events;
2. Covered long-term care facilities;
3. Existence of home convalescence care coverage;
4. Definition of facilities;
5. Existence or absence of barriers to eligibility;
6. Premium waiver provision;
7. Renewability;
8. Ability to raise premiums;
9. Marketing method;
10. Underwriting procedures;
11. Claims and adjustment procedures;
12. Waiting period;
13. Maximum benefit;
14. Availability of eligible facilities;
15. Margins in claim costs;
16. Optional nature of benefit;
17. Delay in eligibility for benefit;
18. Inflation protection provisions; and
19. Guaranteed insurability option.
(g) Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.
(2) When long-term care benefits are provided other than as in subsection (1) of this section, reserves shall be determined in accordance with KRS 304.6-070.

Section 15. [44] Loss Ratio. (1) This section shall apply to all long-term care insurance policies or certificates except those covered under Sections 7 and 16 of this administrative regulation.
(2) Benefits under long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least sixty (60) percent, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:
(a) [44] Statistical credibility of incurred claims experience and earned premiums;
(b) [44] The period for which rates are computed to provide coverage;
(c) [44] Experience and projected trends;
(d) [44] Concentration of experience within early policy duration;
(e) [44] Expected claim fluctuation;
(f) [44] Experience refunds, adjustments, or dividends;
(g) [44] Renewability features;
(h) [44] All appropriate expense factors;
(i) [44] Interest;
(j) [44] Experimental nature of the coverage;
(k) [44] Policy reserves;
(l) [44] Mix of business by risk classification; and
(m) [44] Product features such as long elimination periods, high deductibles, and high maximum limits.
(3) Subsection (2) of this section shall not apply to life insurance policies that accelerate benefits for long-term care.
(4) A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following provisions:
(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
(b) The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of KRS 304.15-310.
(c) The policy meets the following disclosure requirements:
1. If an application for a long-term care insurance contract or certificate is approved, the insurer shall deliver the contract or certificate of insurance to the applicant no later than thirty (30) days after the date of approval;
2. At the time of policy delivery, a policy summary shall be delivered in accordance with KRS 304.14-615(9);
3. A statement that any long-term care inflation protection option required by Section 10(1) of this administrative regulation is not available under this policy;
4. The provision of the policy summary listed above may be incorporated into a basic illustration that meets the requirements of Section 29 of this administrative regulation; and
5. A monthly report in accordance with KRS 304.14-615(10), when a long-term care benefit funded through a life insurance vehi-
(d) Any policy illustration that meets the applicable requirements of Section 29 of this administrative regulation; and
(e) An actuarial memorandum is filed with the insurance department that includes:
1. A description of the basis on which the long-term care rates were determined;
2. A description of the basis for the reserves;
3. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
4. A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;
5. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
6. The estimated average annual premium per policy and the average issue age;
7. A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment.
Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs;
8. A description of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underwriting life insurance policy, both for active lives and those in long-term care claim status.

Section 16. Premium Rate Schedule Increases. (1) This section shall apply as follows:
(a) Except as provided in paragraph (b) of this section, this section applies to any long-term care policy or certificate issued in Kentucky beginning six (6) months after the effective date of this administrative regulation.
(b) For certificates issued on or after the effective date of this administrative regulation under a group long-term care insurance policy, which policy was in force at the time this administrative regulation became effective, the provisions of this section shall apply on the policy anniversary following twelve (12) months after the effective date of this administrative regulation.
(2) An insurer shall provide notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner at least thirty (30) days prior to the notice to the policyholder and shall include:
(a) Information required by Section 6 of this administrative regulation;
(b) Certification by a qualified actuary that:
1. If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately-adverse conditions, are realized, no further premium rate schedule increases are anticipated; and
2. The premium rate filing is in compliance with the provisions of this section;
(c) An actuarial memorandum justifying the rate schedule change request that includes:
1. Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;
a. Annual values for the five (5) years preceding and the three (3) years following the valuation date shall be provided separately; b. The projections shall include the development of the lifetime-loss ratio, unless the rate increase is an exceptional increase;
c. The projections shall demonstrate compliance with subsection (3) of this section; and
1. For exceptional increases:
(i) The projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and
(ii) If the commissioner determines as provided in subsection (3)(b) of this section that offsets may exist, the insurer shall use appropriate net-projected experience;
2. Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;
3. Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;
4. A statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and
5. If it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer shall file composite rates reflecting projections of new certificates;
6. A statement that renewal premium rate increases are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and
(c) Sufficient information for review of the premium rate schedule increase by the commissioner.
(3) The commissioner:
(a) May request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase; and
(b) In determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claim costs.
(4) Premium rate schedule increases shall be determined in accordance with the following requirements:
(a) Exceptional increases shall provide that seventy (70) percent of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;
(b) Premium rate schedule increases shall be calculated such that the sum of the accumulated values of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:
1. The accumulated value of the initial earned premium times fifty-eight (58) percent;
2. Eighty-five (85) percent of the accumulated value of prior premium rate schedule increases on an earned basis;
3. The present value of future projected initial earned premiums times fifty-eight (58) percent; and
4. Eighty-five (85) percent of the present value of future projected premiums not in subparagraph 3 of this paragraph on an earned basis;
(c) If a policy form has both exceptional and other increases, the values in paragraph (b) and 3 of this subsection will also include seventy (79) percent for exceptional rate increase amounts; and
(d) All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in 806 KAR 6:080. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.
(5) For each rate increase that is implemented, the insurer shall file for review by the commissioner updated projections, as defined in subsection (2)(c) of this section, annually for the next three (3) years and include a comparison of actual results to projected values.
(a) The commissioner may extend the period to greater than three (3) years if actual results are not consistent with projected values from prior projections.
(b) For group insurance policies that meet the conditions in subsection (12) of this section the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.
(6) If a premium rate in the revised premium rate schedule is greater than two hundred percent of the comparable rate in the initial premium schedule, lifetime projections, as defined in subsection (2)(c) of this section, shall be filed for review by the commissioner every five (5) years following the end of the required period in subsection (5) of this section.
(b) For group insurance policies that meet the conditions in subsection (12) of this section, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the
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commissioner.

(7)(a) If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection (4) of this section, the commissioner may require the insurer to implement any of the following:

1. Premium rate schedule adjustments; or
2. Other measures to reduce the difference between the projected and actual experience.

(b) In determining whether the actual experience adequately matches the projected experience, consideration should be given to subsection (2)(c) of this section, if applicable.

(8) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

(a) A plan, subject to commissioner's approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the commissioner may impose the condition in subsection (9) of this section; and

(b) The original anticipated lifetime-loss ratio, and the premium rate schedule increase that would have been calculated according to subsection (4) of this section had the greater of the original anticipated lifetime-loss ratio or fifty-eight (58) percent been used in the calculations described in subsection (4)(b)2 and 3 of this section.

(9)(a) For a rate increase filing that meets the following criteria, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the twelve (12) months following each increase to determine if significant adverse lapse has occurred or is anticipated:

1. The rate increase is not the first rate increase requested for the specific policy form or forms;
2. The rate increase is not an exceptional increase; and
3. The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

(b) If the event significant adverse lapse has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the scheduled projections provided by the insurer following the requested rate increase, the commissioner may determine that a rate spiral exists.

(c) Following a determination that a rate spiral exists, the commissioner may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with one (1) or more reasonably comparable products being offered by the insurer or its affiliates.

1. The offer shall:
   a. Be subject to the approval of the commissioner;
   b. Be based on actuarially sound principles, but not be based on attained age; and
   c. Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

2. The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:
   a. The maximum rate increase determined based on the combined experience; and
   b. The maximum rate increase determined based only on the experience of the insureds originally issued the form plus ten (10) percent.

(10) If the commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commissioner may, in addition to the provisions of subsection (9) of this section, prohibit the insurer from either of the following:

(a) Filing and marketing comparable coverage for a period of up to five (5) years; or
(b) Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

(11) Subsections (1) through (11) of this section shall not apply to policies for which the long-term care benefits provided by the policy are incidental, if the policy complies with all of the following provisions:

(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

(b) The portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:
   1. KRS 304.15-310;
   2. KRS 304.15-315;
   3. 806 KAR 15:010; and
   4. 806 KAR 15:030;

(c) The policy meets the disclosure requirements of Section 15(4)(c) of this administrative regulation;

(d) The portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:

   1. Policy illustrations that meet the requirements of Section 29 of this administrative regulation;
   2. Disclosure requirements in 806 KAR 15:010 and 806 KAR 15:030;

(e) An actuarial memorandum is filed with the insurance department that includes:

   1. A description of the basis on which the long-term care rates were determined;
   2. A description of the basis for the reserves;
   3. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
   4. A description and a table of each actuarial assumption used.

   For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

   5. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

   6. The estimated average annual premium per policy and the average issue age;

   7. A statement as to whether underwriting is performed at the time of application;

   8. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting; and

   9. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

   10. A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

(12) Subsections (7) and (9) of this section shall not apply to group insurance policies where:

(a) The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or
(b) The policyholder and not the certificate holders, pays a material portion of the premium, which shall not be less than twenty (20) percent of the total premium for the group in the calendar year prior to the year a rate increase is filed.

Section 17. [441] Filing Requirement. Prior to an insurer offering group long-term care insurance to a resident of Kentucky pursuant to KRS 304.14-610, it shall file with the commissioner evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in Kentucky [this state].

Section 18. [451] Filing Requirements for Advertising. (1)(a) Every insurer providing long-term care insurance or benefits in Kentucky shall provide a copy of any long-term care insurance ad-
Section 19. [46] Standards for Marketing. (1) Every insurer marketing long-term care insurance coverage in this state, directly or through its agents, shall:
(a) Establish marketing procedures and agent training requirements to assure that:
1. Any marketing activities, including any comparison of policies, by its agent or other producers will be fair and accurate; and
2. Excessive [any comparison of policies by its agents or other producers] will be fair and accurate.
(b) Establish marketing procedures to assure excessive insurance is not sold or issued.
(c) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy the following: "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."
(d) Provide copies of the disclosure forms required in Section 6(7) of this administrative regulation.
(e) Enforce and otherwise make every reasonable effort to identify:
1. Whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance; and
2. The types and amounts of this insurance.
(f) In the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance, in accordance with paragraph (d) of this section, is not required.
(g) Every insurer marketing long-term care insurance shall establish and maintain procedures to verify compliance with the requirements of this subsection.
(h) If the state in which the policy or certificate is to be delivered or issued for delivery has a consumer insurance counseling program approved by the commissioner, the insurer shall, at solicitation, provide written notice to the prospective policyholder and certificate holder that:
1. Kentucky's Insurance Programs for Seniors (KIPS, such a program) is available and the [name] address and telephone number of the program; and
2. The Kentucky State Health Insurance Assistance Program (SHIP) is available and the address and telephone number of the program.
(i) For long-term care insurance policies and certificates, use the term "noncancellable" or "level premium" only when the policy or certificate conforms to Section 3(1)(c) and (d) of this administrative regulation.
(j) Provide an explanation of contingent benefit upon lapse provided for in Section 22(4)(c) of this administrative regulation.
(k) In addition to the practices prohibited in KRS Chapter 304.12, the following acts and practices are prohibited:
(a) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.
(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of a insurance.
(c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.
(d) Misrepresentation. Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.
(e) With respect to the obligations set forth in this subsection, the primary responsibility of an association, as defined in KRS 304.14-600(4)(b), when endorsing or selling long-term care insurance shall be to educate its members concerning long-term care issues in general so that its members can make informed decisions.
(f) The associations shall provide objective information regarding long-term care insurance policies or certificates endorsed or sold by such associations to ensure that members of such associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold.
(g) The insurer shall file with the insurance department the following material:
1. The policy and certificate;
2. A corresponding outline of coverage; and
3. All advertisements requested by the insurance department.
(h) The association shall disclose in long-term care insurance solicitation:
1. The specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and
2. A brief description of the process under which the policies and the insurer issuing the policies were selected.
(i) If the association and the insurer have a common ownership or if the association has a financial interest in the insurer, the association shall disclose that fact to its members.
(j) The board of directors of associations selling or endorsing long-term care insurance policies or certificates shall review and approve the insurance policies as well as the compensation arrangements made with the insurer.
(k) Except for qualified long-term care insurance contracts, the association shall also:
1. At the time of the association's decision to endorse, engage the services of a person with expertise in long-term care insurance not affiliated with the insurer to conduct an examination of the policies, including its benefits, features, and rates and update the examination thereafter in the event of material change;
2. Actively monitor the marketing efforts of the insurer and its agents; and
3. Review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates.
(l) No group long-term care insurance policy or certificate may be issued to an association unless the insurer files with the commissioner the information required in this subsection.
(m) An insurer shall not issue a long-term care policy or certificate to an association or continue to market such a policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in this subsection.
(n) Failure to comply with the filing and certification requirements of this section constitutes an unfair trade practice in violation of KRS 304.12-130.

Section 20. Suitability. (1) This section shall not apply to life insurance policies that accelerate benefits for long-term care.
(2) An insurer marketing long-term care insurance shall:
(a) Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;
(b) Train its agents in the use of its suitability standards; and
(c) Maintain a copy of its suitability standards and make them available for inspection upon request by the commissioner.
(a) To determine whether the applicant meets the standards developed by the insurer, the agent and insurer shall develop procedures that take the following into consideration:
1. The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;
2. The applicant's goals or needs with respect to long-term care
and the advantages and disadvantages of insurance to meet these goals or needs; and

8. The values, benefits and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.

(b) The insurer, and where an agent is involved, the agent, shall make reasonable efforts to obtain the information set out in paragraph (a) of this subsection.

1. The insurer shall present to the applicant, at or prior to application, a "Long-term Care Insurance Personal Worksheet", HIPMC-LTC-1 (09/01), incorporated by reference in this administrative regulation.

2. The information in the format contained in HIPMC-LTC-1 (09/01) shall be in not less than twelve (12) point type.

(c) The insurer may request the applicant to provide additional information to comply with its suitability standards.

(d) A completed personal worksheet shall be returned to the insurer; the insurer shall consider the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

(e) The sale or dissemination outside the company or agency by the insurer or agent of information obtained through the personal worksheet is prohibited.

(f) The insurer shall use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

(g) An agent shall use the suitability standards developed by the insurer in marketing long-term care insurance.

(h) At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-term Care Insurance", incorporated by reference in this administrative regulation as HIPMC-LTC-5 (09/01) shall be provided.

(i) If the insurer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the insurer shall:

(a) Reject the application; or

(b) Send to the applicant a "Long-term Care Suitability Letter", incorporated by reference in this administrative regulation as HIPMC-LTC-6 (09/01).

(j) If the applicant has declined to provide financial information, the insurer may use some other method to verify the applicant's intent.

(k) Either the applicant's returned HIPMC-LTC-6 (09/01) or a record of the alternative method of verification shall be made part of the applicant's file.

(l) The insurer shall report annually to the commissioner:

(a) The total number of applications received from Kentucky residents;

(b) The number of those residents who declined to provide information on the personal worksheet;

(c) The number of those residents who did not meet the suitability standards; and

(d) The number of those residents who chose to confirm after receiving a suitability letter.

[Section 17. Appropriateness of Recommended Purchase. In recommending the purchase or replacement of any long-term care insurance policy or certificate, an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.]

Section 21. [46] Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates. If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

Section 22. Nonforfeiture Benefit Requirement. (1) This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

(2) A long-term care insurance policy shall not be delivered or issued for delivery unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate including a nonforfeiture benefit that complies with the following requirements:

(a) A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits.

(b) The nonforfeiture benefit included in the offer shall be the benefit described in subsection (5) of this section; and

(c) The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage required pursuant to KRS 304.14-815(7), or other materials given to the prospective policyholder.

(3) If the offer required to be made under subsection (2) of this section is rejected, the insurer shall provide the contingent benefit upon lapse described in this subsection.

(4) If the insurer is required to make an offer under subsection (2) of this section, for individual and group policies without nonforfeiture benefits issued after the effective date of this section, the insurer shall provide a contingent benefit upon lapse.

(b) In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificate holder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(c) The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's annual premium set forth in this paragraph based on the insured's issue age, and the policy or certificate lapses within 120 days of the date of the premium so increased.

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(d) Unless otherwise required, policyholders shall be notified at least thirty (30) days prior to the due date of the premium reflecting the rate increase, set forth in paragraph (c) of this subsection.

(e) On or before the effective date of a substantial premium increase as defined in paragraph (c) of this subsection, an insurer shall:

1. Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that the requirements of this subsection are not increased.

2. Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of subsection (5) of this section. This option may be elected at any time during the 120-day period referenced in paragraph (c) of this subsection; and

3. Notify the policyholder or certificate holder that a default or lapse at any time during the 120-day period referenced in paragraph (c) of this subsection shall be the election of the offer to convert in subparagraph 2 of this paragraph.

(5) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse shall be as described in this subsection:

(a) For purposes of this subsection, attained age rating is defined as a schedule of premiums starting from the issue date which increases age at least one (1) percent per year prior to age fifty (50), and at least three (3) percent per year beyond age fifty (50).

(b) For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in paragraph (c) of this subsection.

(c) The standard nonforfeiture credit will be equal to 100 percent of the sum of all premiums paid, including the premiums paid prior to any changes in benefits.

1. An insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration;

2. The minimum nonforfeiture credit shall not be less than thirty (30) times the daily nursing home benefit at the time of lapse; and

3. In either event, the calculation of the nonforfeiture credit is subject to the limitations of subsection (6) of this section.

(d)1. The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three (3) years as well as thereafter.

2. Notwithstanding subparagraph 1 of this paragraph, for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:
   a. The end of the tenth year following the policy or certificate issue date; or
   b. The end of the second year following the date the policy or certificate is no longer subject to attained age rating.

(e) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

(6) All benefits paid by an insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits which would be payable if the policy or certificate had remained in premium paying status.

7. There shall be no difference in the minimum nonforfeiture benefits as required under this section for group and individual policies.

8. The requirements set forth in this section shall become effective twelve (12) months after the effective date of this administrative regulation:

(a) Except as provided in paragraph (b) of this subsection, the provisions of this section apply to any long-term care policy issued in Kentucky on or after the effective date of this administrative regulation.

(b) For certificates issued on or after the effective date of this administrative regulation, under a group long-term care insurance policy in force at the time this administrative regulation became effective, the provisions of this section shall not apply.

(9) Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of Section 15 of this administrative regulation, treating the policy as a whole.

(10) To determine whether contingent nonforfeiture upon lapse provisions are triggered under subsection (4)(c) of this section, a replacing insurer that purchased or otherwise assumed a block of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

(11) A nonforfeiture benefit for qualified long-term care insurance contracts that are level-premium contracts shall be offered that meets the following requirements:

(a) The nonforfeiture provision shall be appropriately captioned;

(b) The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying contracts approved by the commissioner for the same contract form; and

(c) The nonforfeiture provision shall provide at least one (1) of the following:
   1. Reduced paid-up insurance;
   2. Extended term insurance;
   3. Shortened benefit period; or
   4. Other similar offerings approved by the commissioner.

Section 23. Standards for Benefit Triggers. (1) A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment.

(2) Eligibility for the payment of benefits shall not be more restrictive than requiring either a disability in the ability to perform not more than three (3) of the activities of daily living or the presence of cognitive impairment.

(3) Activities of daily living shall include at least the following as defined in Section 2 of this administrative regulation and in the policy:

1. Bathing;
2. Continence;
3. Dressing;
4. Eating;
5. Toileting; and
6. Transferring;

(b) Insurers may use activities of daily living to trigger covered benefits in addition to those contained in paragraph (a) of this subsection as long as they are defined in the policy.

(4) An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate and the provisions shall not restrict, and shall not be in lieu of, the requirements contained in subsections (1), (2), and (3) of this section.

(5) For purposes of this section the determination of a deficiency shall not be more restrictive than:

(a) Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

(b) If the deficiency is due to the presence of a cognitive impairment, supervision or verbal cuesing by another is needed in order to protect the insured or others.

(6) Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses or social workers.

(7) Long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

(8) A long-term care insurance policy shall cover services as required by KRS 304.14-617.

(9) The requirements set forth in subsections (1) through (8) of this section shall be effective twelve (12) months after the effective date of this administrative regulation and shall apply as follows:

(a) Except as provided in paragraph (b) of this subsection, the provisions of this section apply to a long-term care policy issued in
Kentucky on or after the effective date of this administrative regulation.

(b) For certificates issued on or after the effective date of this administrative regulation, under a group long-term care insurance policy that was in force at the time this administrative regulation became effective, the provisions of this section shall not apply.

Section 24. Additional Standards for Benefit Triggers for Qualified Long-Term Care Insurance Contracts. (1) For purposes of this section the following definitions apply:

(a) "Qualified long-term care services" means services that meet the requirements of 26 USC §7702B(c)(1) as follows: necessary diagnostic, preventive, therapeutic, curative, treatment, intermediate, and rehabilitative services, and maintenance or personal care services which are required by a chronically-ill individual, and are provided pursuant to a plan of care prescribed by a licensed health-care practitioner.

(b)1. "Chronically-ill individual" pursuant to 26 USC §7702B(c)(2), means any individual who has been certified by a licensed health-care practitioner as:

a. Being unable to perform (without substantial assistance from another individual) at least two (2) activities of daily living for a period of at least ninety (90) days due to a loss of functional capacity; or

b. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

2. The term "chronically-ill individual" shall not include an individual otherwise meeting these requirements unless within the preceding twelve (12) month period a licensed health-care practitioner has certified that the individual meets these requirements.

(c) "Licensed health-care practitioner" means a physician, as defined in 42 USC §1395(w), a registered professional nurse, licensed social worker or other individual who meets the requirements prescribed by the Secretary of the Treasury.

(d) "Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically-ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

(2) A qualified long-term care insurance contract shall pay only for qualified long-term care services received by a chronically-ill individual provided pursuant to a plan of care prescribed by a licensed health-care practitioner.

(3) A qualified long-term care insurance contract shall condition the payment of benefits on a determination of the insured's inability to perform activities of daily living for an expected period of at least ninety (90) days due to a loss of functional capacity or to severe cognitive impairment.

(4) Certifications regarding activities of daily living and cognitive impairment required pursuant to subsection (3) of this section shall be performed by the following licensed or certified professionals: physicians, registered nurses, licensed social workers, or other individuals who meet requirements prescribed by the Secretary of the Treasury.

(5) Certifications required pursuant to subsection (3) of this section may be performed by a licensed health-care professional at the direction of the carrier as is reasonably necessary with respect to a specific claim, except that when a licensed health-care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least ninety (90) days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded and additional certifications may not be performed until after the expiration of the ninety (90) day period.

(6) Qualified long-term care insurance contracts shall include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.

Section 25. [46] Standard Format Outline of Coverage. This section of the administrative regulation implements, interprets, and makes specific the provisions of KRS 304.14-615(7) in prescribing a standard format and the content of an outline of coverage.

(1) The outline of coverage shall be a freestanding document, using no smaller than ten (10) point type.

(2) The outline of coverage shall contain no material of an advertising nature.

(3) Text which is emphasized in the standard format outline of coverage may be emphasized by any means which provide prominence to the text.

(4) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

(5) Format for outline of coverage:

INSURER NAME
ADDRESS-CITY & STATE
TELEPHONE NUMBER
LONG-TERM CARE INSURANCE
OUTLINE OF COVERAGE
(Policy Number or Group Master Policy and Certificate Number)

(Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, may appear as follows in the outline of coverage):

Caution: The issuance of this long-term care insurance (policy or certificate) is based upon your responses to the questions on your application. A copy of your (application or enrollment form) is enclosed or was retained by you when you applied. If your answers are incorrect or untrue, the insurer has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the insurer at the address (insert address).

(a) This policy is (an individual policy of insurance or a group policy) which was issued in the (indicate jurisdiction in which group policy was issued).

(b) PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains covering contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

(c) FEDERAL TAX CONSEQUENCES. This (policy or certificate) is intended to be a federally-tax-qualified long-term care insurance contract under Section 7702(b) of the Internal Revenue Code of 1986, as amended.

OR
Federal Tax Implications of this policy or certificate. This (policy or certificate) is not intended to be a federally-tax-qualified long-term care insurance contract under Section 7702(b) of the Internal Revenue Code of 1986, as amended. Benefits received under the policy or certificate may be taxable as income.

(d) TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED. (For long-term care health insurance policies or certificates describe one (1) of the following permissable policy renewability provisions):

a. (Policies and certificates that are guaranteed renewable shall contain the following statement) RENEWABILITY: THIS POLICY (CERTIFICATE) IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy (certificate), to continue this policy as long as you pay your premiums on time. (Insurer) cannot change any of the terms of your policy on its own, except that, in the future, IT MAY INCREASE THE PREMIUM YOU PAY.

b. (Policies and certificates that are noncancellable shall contain the following statement) RENEWABILITY: THIS POLICY (CERTIFICATE) IS NONCANCELLABLE. This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. (Insurer) cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, (Insurer) may increase your premium at that time for those addi-
tional benefits.
2. For group coverage, specifically describe continuation/ conversion provisions applicable to the certificate and group policy.
3. (Describe waiver of premium provisions or state that there are no such provisions.)

(e) TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.

(In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium, and if there exist exceptions describe clearly and concisely each circumstance under which the premium may change.)

(f) TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

1. Provide a brief description of the right to return "free look" provision of the policy.
2. Include a statement that the policy either does or does not contain provisions for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains these provisions, include a description of them.

(g) [blank] THIS IS NOT MEDICARE SUPPLEMENT COVERAGE.
If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurer.
Neither (insert insurer name) nor its agents represent Medicare, the federal government, or any state government.

(h) [blank] LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one (1) or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community, or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy limitations (waiting periods) and (coinsurance) requirements.
(Modify this paragraph if the policy is not an indemnity policy.)

(i) [blank] BENEFITS PROVIDED BY THIS POLICY.
1. (Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be defined and described as part of the outline of coverage.
2. [Any additional benefit triggers [screened] shall also be explained in this section. If these triggers [screened] differ for different benefits, explanation of the triggers [screened] shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this shall be specified. If activities of daily living [ADLs] are used to measure an insured's need for long-term care, then these qualifying criteria [screened] shall be explained.)

(j) [blank] LIMITATIONS AND EXCLUSIONS.
(Describe:
1. Preexisting conditions;
2. Noneligible facilities or providers;
3. Noneligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);
4. Exclusions and exceptions; and
5. Limitations.)
(This section shall provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in paragraph (f) of this subsection.)

(k) [blank] POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

(l) [blank] RELATIONSHIP OF COST OF CARE AND BENEFITS.
Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. (As applicable, indicate the following:  

1. That the benefit level will not increase over time;
2. Any automatic benefit adjustment provisions;
3. Whether the insured will be provided the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
4. If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations; and
5. Describe whether there will be any additional premium charge imposed, and how that is to be calculated.)

(m) [blank] TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.
1. Describe the policy renewal provisions;
2. For group coverage, specifically describe continuation and conversion provisions applicable to the certificate and group policy;
3. Describe value of premium provisions or state that there are no value of premium provisions; and
4. State whether or not the company has a right to change premium, and if it right exists, describe clearly and concisely each circumstance under which premium may change.

(n) [blank] ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.
State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementia diseases. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for these insureds.

(m) [blank] PREMIUM.
1. State the total annual premium for the policy; and
2. If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.

(n) [blank] ADDITIONAL FEATURES.
1. Indicate if medical underwriting is used; and
2. Describe other important features.

(o) CONTACT THE SENIOR HEALTH INSURANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.

Section 26. [26] Requirement to Deliver Shopper's Guide. (1) A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the Commissioner, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.
(a) In the case of agent solicitations, an agent shall deliver the shopper's guide prior to the presentation of an application or enrollment form.
(b) In the case of direct response solicitations, the shopper's guide shall be presented in conjunction with any application or enrollment form.
(2) Life insurance policies or riders containing accelerated long-term care benefits are not required to furnish the shopper's guide, but shall furnish the policy summary required under KRS 304.14-615.

Section 27. Penalties. In addition to any other penalties provided by the laws of Kentucky, any insurer or agent found to have violated any requirement of Kentucky relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three (3) times the amount of any commissions paid for each policy involved in the violation or up to $10,000, whichever is greater.

Section 28. [28] Permitted Compensation Arrangements. (1) An insurer may provide commission or other compensation to an agent for the sale of a long-term care insurance policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.
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(2) [Upon replacement the replacing insurer shall not provide compensation to its agents or other producers greater than 200 percent of the renewal compensation payable by the replacing insurer on renewal policies. The commission or other compensation provided in subsequent (renewal) years by the replacing insurer shall be the same as that provided in the second year or period and shall be provided for a reasonable number of renewal years.

(3) No entity shall provide compensation to its agents or other producers and no agents or producer shall receive compensation greater than the renewal compensation payable by the replacing insurer on renewal policies.

(4) For purposes of this section, "compensation" includes pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.

Section 29. Illustrations. (1)(a) An illustration used in the sale of a life insurance policy that funds long-term care benefits, shall satisfy the applicable requirements of this administrative regulation, be clearly labeled "life insurance illustration" and contain the following basic information:

1. Name of insurer;
2. Name and business address of producer or insurer’s authorized representative, if any;
3. Name, age and sex of proposed insured, except where a composite illustration is permitted under this regulation;
4. Underwriting or rating classification upon which the illustration is based;
5. Generic name of policy, the company product name, if different, and form number;
6. Initial death benefit; and
7. Dividend option election or application of nonguaranteed elements, if applicable.

(b) When using an illustration in the sale of a life insurance policy that funds long-term care benefits, an insurer or its producers or other authorized representatives shall not:
1. Represent the policy as anything other than a life insurance policy;
2. Use or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
3. State or imply that the payment or amount of nonguaranteed elements is guaranteed;
4. Use an illustration that does not comply with the requirements of this administrative regulation;
5. Use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;
6. Provide an applicant with an incomplete illustration;
7. Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;
8. Use the term "vanish" or "vanishing premium," or a similar term that implies the policy becomes paid up, to describe a plan for using nonguaranteed elements to pay a portion of future premiums;
9. Except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported"; or
10. Use an illustration that is not "self-supporting".

(c) If an interest rate used to determine the illustrated nonguaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

(2)(a) Format. A basic illustration shall conform with the following requirements:
1. The illustration shall be labeled with the date on which it was prepared;
2. Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (e.g., the fourth page or seven (7) page illustration shall be labeled "page 4 of 7 pages");
3. The assumed dates of payment receipt and benefit pay-out within a policy year shall be clearly identified;
4. If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force;
5. The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay;
6. Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed;
7. If the illustration shows any nonguaranteed elements, they cannot be based on a scale more favorable to the policy owner than the insurer’s illustrated scale at any future. These elements shall be clearly labeled nonguaranteed;
8. The guaranteed elements, if any, shall be shown before corresponding nonguaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the nonguaranteed elements (e.g., "see page one for guaranteed elements");
9. The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender;
10. The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans and policy loan interest, as applicable;
11. Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form;
12. Any illustration of nonguaranteed elements shall be accompanied by a statement indicating that:
a. The benefits and values are not guaranteed;
b. The assumptions on which they are based are subject to change by the insurer; and
13.a. If the illustration shows that the premium payer may have the option to allow policy charges to be paid using nonguaranteed values, the illustration shall clearly disclose that:
13.i. A charge continues to be required; and
13.ii. Depending on actual results, the premium payer may need to continue or resume premium outlays.

(b) Narrative summary. A basic illustration shall include the following:
1. A brief description of the policy being illustrated, including a statement that it is a life insurance policy;
2. A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code;
3. A brief description of any policy features, riders or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;
4. Identification and a brief description of column headings and key terms used in the illustration; and
5. A statement containing in substance the following: "This illustration assumes that the currently illustrated nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

(c) Numeric summary.
1. Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the
premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. In the example shown, the summary shall show policy years five (5), ten (10) and twenty (20) and at age seventy (70), if applicable, on the three (3) bases shown below. For multiple life policies the summary shall show policy years five (5), ten (10), twenty (20) and thirty (30).

a. Policy guarantees;

b. Insurer's illustrated scale;

c. Insurer's illustrated scale used but with the nonguaranteed elements reduced as follows:

   (i) Dividends at fifty (50) percent of the dividends contained in the illustrated scale used;

   (ii) Nonguaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used;

   (iii) All nonguaranteed charges, including term insurance charges, mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

3. If coverage would cease prior to policy maturity or age 100, the year in which coverage ceases shall be identified for each of the three (3) bases.

4. Statements. Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner in the case of an illustration provided at time of delivery, as required in this administrative regulation.

A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any nonguaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."

2. A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are not consistent with the illustration."

(e) Tabular detail:

1. A basic illustration shall include the following for at least each policy year from one (1) to ten (10) and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and except for term insurance beyond the 20th year, for any year in which the premium outlay and contract premium, if applicable, is to change:

   a. The premium outlay and the contract premium, as applicable.

   b. The corresponding guaranteed death benefit, as provided in the policy; and

   c. The corresponding guaranteed value upon surrender, as provided in the policy.

3. Nonguaranteed elements may be shown if described in the contract.

   a. If an illustration is for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay the terminal dividends.

   b. If any nonguaranteed elements are shown they shall be shown at the same durations as the corresponding guaranteed elements, if any.

   c. If no guaranteed benefit or value is available at any duration for which a nonguaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

3(a) A supplemental illustration may be provided if:

1. It is appended to, accompanied by or preceded by a basic illustration that complies with this administrative regulation.

2. The nonguaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;

3. It contains the same statement required of a basic illustration that nonguaranteed elements are not guaranteed; and

4. For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

(b) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information.

Section 30. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Long-term Care Insurance Personal Worksheet, HIPMC-LTC-1 (09/01);

(b) Long-term Care Insurance Potential Rate Increase Disclosure Form, HIPMC-LTC-2 (09/01);

(c) Rescission Reporting Form for Long-term Care Policies, HIPMC-LTC-3 (09/01);

(d) Claims Denial Reporting Form for Long-term Care Insurance, HIPMC-LTC-4 (09/01);

(e) Things You Should Know Before You Buy Long-term Care Insurance, HIPMC-LTC-5 (09/01); and

(f) Long-term Care Insurance Suitability Letter, HIPMC-LTC-6 (09/01).

2. This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the Department's internet web site at www.doi.state.ky.us.

3. If long-term care insurance is provided under annuity-like life insurance policies or riders, the requirements of this section shall apply only to the commissions or other compensation attributable to the long-term care insurance provided by these policies or riders.

APPENDIX A

RESCISSION REPORTING FORM FOR LONG-TERM CARE POLICIES
FOR THE STATE OF

FOR THE REPORTING YEAR 19( )

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone Number</td>
<td>Dues: (___ annually)</td>
</tr>
</tbody>
</table>

Instructions:

The purpose of this form is to report all rescissions of long-term care insurance policies or certificates. These rescissions voluntarily effected by an insured are not required to be included in this report. Please furnish one (1) form per rescission.

Policy Form # | Policy & Certificate # | Name of Insurer | Date of Policy Issuance | Date Claim's Submitted | Date of Rescission |
|--------------|-------------------------|-----------------|-------------------------|-----------------------|-------------------|

Detailed reason for rescission:

Signature:

Name and Title (please type): [ ]

Date:

JANIE A. MILLER, Commissioner

RONALD B. MCCLOUND, Secretary

APPROVED BY AGENCY: December 17, 2001

FILED WITH LRC: December 19, 2001 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 26, 2002, at 9 a.m. (ET) 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 February 19, 2002, 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 cancelled. 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 administrative regulation to the contact person.

CONTACT PERSON: Charlette K. Hummel, Counsel, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40622, phone (502) 564-6032, ext. 293, fax (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charlette K. Hummel

1. Provide a brief summary of:

   (a) What this administrative regulation does: This administrative regulation sets standards for full and fair disclosure setting forth the manner, content, and the required disclosure for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation and conversion, probationary rights, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms. This regulation is substantially identical to the National Association of Insurance Commissioners’ Long-term Care Insurance Model Regulation.

   (b) The necessity of this administrative regulation: KRS 304.14-615 requires the Commissioner of Insurance to promulgate administrative regulations that establish minimum standards for long-term care insurance policies. This administrative regulation conforms to the content of the authorizing statutes: KRS 304.14-615 requires the Commissioner of Insurance to promulgate administrative regulations that include standards for full and fair disclosure setting forth the manner, content, and the required disclosure for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation and conversion, probationary rights, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms.

   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 304.14-615 requires the Commissioner of Insurance to promulgate administrative regulations that include standards for full and fair disclosure setting forth the manner, content, and the required disclosure for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation and conversion, probationary rights, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms. This administrative regulation sets forth those standards.

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

      (a) How the amendment will change this existing administrative regulation: This amendment updates the existing administrative regulation to incorporate the changes made by the National Association of Insurance Commissioners to the Long-term Care Insurance Model Regulation.

      (b) The necessity of the amendment to this administrative regulation: The Department of Insurance desires to continue having an administrative regulation that is substantially identical to the National Association of Insurance Commissioners’ Long-term Care Insurance Model Regulation.

   (c) How the amendment conforms to the content of the authorizing statutes: KRS 304.14-615 requires the Commissioner of Insurance to promulgate administrative regulations that include standards for full and fair disclosure setting forth the manner, content, and the required disclosure for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation and conversion, probationary rights, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms. This administrative regulation sets forth those standards.

   (d) How the amendment will assist in the effective administration of the statutes: KRS 304.14-615 requires the Commissioner of Insurance to promulgate administrative regulations that include standards for full and fair disclosure setting forth the manner, content, and the required disclosure for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation and conversion, probationary rights, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms. This administrative regulation sets forth those standards.

   (e) The effect of the amendment on the insurance industry and the public generally: There will be no effect on the insurance industry or the public.

   (f) On a continuing basis: There will be no continuing effect on the insurance industry and the public.

   (g) The source of funding: The funding will be from the insurance industry.

   (h) Implementation and enforcement: The Department will implement and enforce this administrative regulation.

   (i) Administrative appeal: The Department will provide an administrative appeal.

   (j) Is this amendment compliant with the National Association of Insurance Commissioners’ Long-term Care Insurance Model Regulation?

   (k) The amendment is consistent with the administrative regulations of other states.

   (l) Are there any other considerations?

   (m) Is there an impact analysis?

   (n) Is there a tiering statement?

   (o) Is there a regulatory compatibility statement?

   (p) Is there a financial impact analysis?

   (q) Is there an efficiency analysis?

   (r) Is there a link to the national model?

   (s) Is there a link to the state model?

   (t) Is there a link to the national standards?

   (u) Is there a link to the state standards?

   (v) Is there a link to the national regulations?

   (w) Is there a link to the state regulations?

   (x) Is there a link to the national statutes?

   (y) Is there a link to the state statutes?

   (z) Is there a link to the national codes?

   (aa) Is there a link to the state codes?

   (bb) Is there a link to the national rules?

   (cc) Is there a link to the state rules?

   (dd) Is there a link to the national orders?

   (ee) Is there a link to the state orders?

   (ff) Is there a link to the national orders?

   (gg) Is there a link to the state orders?

   (hh) Is there a link to the national orders?

   (ii) Is there a link to the state orders?

   (jj) Is there a link to the national orders?

   (kk) Is there a link to the state orders?

   (ll) Is there a link to the national orders?

   (mm) Is there a link to the state orders?

   (nn) Is there a link to the national orders?

   (oo) Is there a link to the state orders?

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   (rr) Is there a link to the national orders?

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   (uu) Is there a link to the state orders?

   (vv) Is there a link to the national orders?

   (ww) Is there a link to the state orders?

   (xx) Is there a link to the national orders?

   (yy) Is there a link to the state orders?

   (zz) Is there a link to the national orders?

   (aa) Is there a link to the state orders?

   (bb) Is there a link to the national orders?

   (cc) Is there a link to the state orders?

   (dd) Is there a link to the national orders?
and licensing of the possession or use of a source [source] of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides waste disposal limitations for radioactive material, and shall apply to: (a) The transfer to any authorized recipient as provided in 92 KAR 100:040, Section 13, or 92 KAR 100:022; (b) By decay in storage; (c) By release in an effluent [effluent] within the limits in 92 KAR 100:019, Section 10; or (d) As authorized by [under] Sections 2, 3, 4, or 5 of this administrative regulation. (2) A person shall be specifically licensed to receive waste containing radioactive material or waste from other persons for: (a) Treatment prior to disposal; (b) Treatment or disposal by incineration; (c) Decay in storage; or (d) Disposal at a land disposal facility licensed under 92 KAR 100:022. Section 2. Method for Obtaining Approval of Proposed Disposal Procedures. A person, licensee, or applicant for a license may apply to the cabinet for approval of a proposed procedure [proposed procedures], not [otherwise] authorized in 92 KAR 100:020, 100:021, 100:022, 100:050, and 100:073, to dispose of radioactive material or waste generated by their activity [activities]. An application shall include: (1) A description of the waste containing radioactive material to be disposed of, including the: (a) Physical and chemical properties important to risk evaluation; and (b) Proposed manner and conditions of waste disposal; [4] (2) An analysis and evaluation of pertinent information on the nature of the environment; [5] (3) The nature and location of other potentially affected licensed and unlicensed facilities; and [4] (4) An analysis and a procedure [analyzes and procedures] to ensure [maintain] doses are maintained ALARA and within the dose limits in 92 KAR 100:019, Sections 3, 8, 9, and 10. Section 3. Disposal by Release into Sanitary Sewerage. (1) A person or licensee may discharge licensed material into sanitary sewerage if the following conditions shall be [are] satisfied: (a) The material shall be [is] readily soluble, or shall be [is] readily dispersible biological material, in water; (b) The quantity of licensed or other radioactive material that the licensee released into the sewer in one (1) month, divided by the average monthly volume of water released into the sewer by the licensee, shall not exceed the concentration [listed] in 92 KAR 100:019, Section 44, Table II; (c) If more than one (1) radionuclide shall be [is] released, the following conditions shall be satisfied: 1. The license holder shall determine the fraction of the limit in 92 KAR 100:019, Section 44, Table II, represented by discharges into the sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee into the sewer by the concentration of that radionuclide [listed] in 92 KAR 100:019, Section 44, Table II; and 2. The sum of the fractions for each radionuclide required by subsection (1)(c) of this section shall [does] not exceed unity; and (d) The total quantity of licensed and other radioactive material that the licensee releases into the sewerage system in a year shall not exceed five (5) curies (186 GBq) of hydrogen-3, one (1) curie (37 GBq) of carbon-14, and one (1) curie of other radioactive materials combined. (2) Excreta from an individual [individuals] undergoing medical diagnosis or therapy with radioactive material shall not be subject to the limitations contained in subsection (1) of this section. Section 4. Treatment or Disposal by Incineration. A license may treat or dispose of licensed material by incineration only: (1) In the amounts and forms specified in Section 5 of this administrative regulation; or (2) As specifically approved by the cabinet and authorized by Section 2 of this administrative regulation. Section 5. Disposal of Specific Wastes [De Minimis Waste]. (1) A person or licensee may dispose of the following radioactive material without regard to its radioactivity: (a) 0.05 microcurie or less of hydrogen-3, or [tritium], carbon-14, or iodine-125 per gram of medium used for liquid scintillation counting or in vitro clinical or in vivo laboratory testing; and (b) 0.05 microcurie (1.85 kBq) or less of hydrogen-3, carbon-14, or iodine-125 per gram of animal tissue averaged over the weight of the entire animal. (2) A license shall not dispose of tissue pursuant to subsection (1)(b) in a section in a manner that may permit its use as food for a human [humans] or as animal feed. (3) A licensee shall maintain records required by [pursuant to] Section 11 of this administrative regulation. (4) A licensee shall comply with other applicable federal, state, and local regulations governing other toxic or hazardous properties of these materials. Section 6. Classification of Radioactive Waste for Near-Surface Disposal. (1) Considerations. Determination of the classification of waste shall be given the following considerations: (a) The concentration of long-lived radionuclides, and their shorter-lived precursors, whose potential hazard shall [will] persist long after a precaution [precautions] such as an institutional control [controls], improved waste form, and deeper disposal have ceased to be effective. (b) The concentration of a shorter-lived radionuclide [shorter-lived radionuclides] for which a requirement on an institutional control [requirements on institutional controls], waste form, and disposal methods are effective. (2) Classes of waste. (a) Class A waste shall be usually segregated from other waste classes at the disposal site. (b) The physical form and characteristics of Class A waste shall meet the minimum requirements [set forth] in Section 7 of this administrative regulation. 3. If Class A waste also meets the stability requirements set forth in Section 7(2) of this administrative regulation, it shall not be necessary to segregate Class A [the] waste for disposal. (b) Class B waste shall meet more rigorous requirements on waste form to ensure stability after disposal. (c) The physical form and characteristics of Class B waste shall meet both the minimum and stability requirements set forth in Section 7 of this administrative regulation. (c) Class C waste shall meet more rigorous requirements on waste form to ensure stability and shall require additional measures at the disposal facility to protect against inadvertent intrusion. (2) The physical form and characteristics of Class C waste shall meet both the minimum and stability requirements set forth in Section 7 of this administrative regulation. (3) Classification determined by long-lived radionuclides. If the waste contains only a radionuclide [radionuclides] listed in Table 1 of this subsection, classification shall be determined as follows: (a) If the concentration does not exceed one-tenth (0.1) times the value in Table 1, the waste shall be Class A. (b) If the concentration exceeds one-tenth (0.1) times the value, but does not exceed the value in Table 1, the waste shall be Class C. (c) If the concentration exceeds the value in Table 1, the waste shall not generally be acceptable for near-surface disposal. (d) For waste containing a mixture [mixtures] of radionuclides listed in Table 1, the total concentration shall be determined by the
sum of fractions rule described in subsection (7) of this section.

TABLE 1

<table>
<thead>
<tr>
<th>Radionuclide</th>
<th>Concentration curies/cubic meter</th>
</tr>
</thead>
<tbody>
<tr>
<td>C-14</td>
<td>3</td>
</tr>
<tr>
<td>C-11 in activated metal</td>
<td>0.0</td>
</tr>
<tr>
<td>Ni-59 in activated metal</td>
<td>220</td>
</tr>
<tr>
<td>Nb-94 in activated metal</td>
<td>0.2</td>
</tr>
<tr>
<td>Tc-99</td>
<td>3</td>
</tr>
<tr>
<td>I-129</td>
<td>0.08</td>
</tr>
<tr>
<td>Alpha emitting transuranic radionuclides with half-life greater than five (5) years</td>
<td>100*</td>
</tr>
<tr>
<td>Pu-241</td>
<td>3500*</td>
</tr>
<tr>
<td>Cm-242</td>
<td>200000*</td>
</tr>
<tr>
<td>Ra-226</td>
<td>100*</td>
</tr>
</tbody>
</table>

*Units are nanocuries per gram.

(4) Classification determined by short-lived radionuclides. If the waste contains none of the radionuclides [italicized] in Table 1 of subsection (3) of this section, classification shall be determined based on the concentrations shown in Table 2 of this subsection. If a radionuclide is not [italicized] in Table 2, it shall not need to be considered in determining the waste class.
(a) If the concentration does not exceed the value in Column 1, the waste shall be Class A.
(b) If the concentration exceeds the value in Column 1, but does not exceed the value in Column 2, the waste shall be Class B.
(c) If the concentration exceeds the value in Column 2, but does not exceed the value in Column 3, the waste shall be Class C.
(d) If the concentration exceeds the value in Column 3, the waste shall not generally be acceptable for near-surface disposal.
(e) For waste containing a mixture [italicized] of the radionuclides [italicized] in Table 2, the total concentration shall be determined by the sum of fractions rule described in subsection (7) of this section.

TABLE 2

<table>
<thead>
<tr>
<th>Radionuclide</th>
<th>Concentration, curies/cubic meter</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Column 1</td>
</tr>
<tr>
<td>Total of all radionuclides with less than five (5) year half-life</td>
<td>700</td>
</tr>
<tr>
<td>H-3</td>
<td>40</td>
</tr>
<tr>
<td>Co-60</td>
<td>700</td>
</tr>
<tr>
<td>Ni-63</td>
<td>3.5</td>
</tr>
<tr>
<td>Ni-63 in activated metal</td>
<td>35</td>
</tr>
<tr>
<td>Sr-90</td>
<td>0.04</td>
</tr>
<tr>
<td>Cs-137</td>
<td>1</td>
</tr>
</tbody>
</table>

*Limits have not been established for a radionuclide [italicized] in Class B or C waste. Practical considerations, such as the effects of external radiation and internal heat generation on transportation, handling, and disposal, limit the concentrations for these wastes. This waste shall be Class B unless the concentrations of other radionuclides in Table 2 determine the waste to be Class C independent of these radionuclides.

(5) Classification determined by both long-lived and short-lived radionuclides.
(a) If the waste contains a mixture of radionuclides, some [italicized] in Table 1 of this section, and some [italicized] in Table 2 of this section, classification shall be determined as follows:
(b) If the concentration of a radionuclide [italicized] in Table 1 does not exceed one-tenth (0.1) times the value [italicized] in Table 1, the class shall be determined by the concentration of a radionuclide [italicized] in Table 2.
(c) If the concentration of a radionuclide [italicized] in Table 1 exceeds one-tenth (0.1) times the value [italicized] in Table 1, the waste shall be Class C, if the concentration of a radionuclide [italicized] in Table 2 does not exceed the value shown in Column 3 of Table 2.
(d) Classification of waste with a radionuclide [italicized] other than those [italicized] in Tables 1 and 2. If the waste contains none of the radionuclides [italicized] in Table 1 or 2 of this section, the waste shall be Class A.
(e) The sum of fractions rule for mixtures of radionuclides. The following shall be considered in determining classification for waste that contains a mixture of radionuclides:
(f) The sum of fractions shall be determined by dividing each radionuclide [italicized] concentration by the appropriate limit and adding the resulting values.
(g) The appropriate limit [italicized] shall be taken from the same column of the same table.
(h) The sum of the fractions for the column shall be less than or equal to (0.1) if the waste class is determined by that column.
(i) Example: A waste contains Sr-90 in a concentration of fifty (50) curies [Ci]/cubic meter and Cs-137 in a concentration of twenty-two (22) curies [Ci]/cubic meter. Since the concentrations both exceed the values in Column 1, Table 2, they shall be compared to Column 2 values. For Sr-90 fraction, 50/150 = 0.33; for Cs-137 fraction, 22/44 = 0.5; the sum of the fractions = 0.83. Since the sum is less than one (1.0), the waste shall be Class B.

(8) Determination of concentrations in waste.
(a) If there is reasonable assurance that an indirect method [italicized] may be correlated with an actual measurement [italicized], the concentration of a radionuclide may be determined by an indirect method [italicized] such as use of a scaling factor [italicized] which relates the inferred concentration of one (1) radionuclide to another that is measured or radionuclide material accountability.
(b) If the units are expressed as nanocuries per gram, the concentration of a radionuclide may be averaged over the volume or weight of the waste.

Section 7. Radioactive Waste Characteristics. (1) The following shall be minimum requirements for a class [italicized] and [italicized] waste and shall be [italicized] intended to facilitate handling and provide protection of health and safety of personnel at the disposal sites:
(a) Waste shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste shall be shipped. If the conditions of the site license are more restricted than the provisions of this administrative regulation, the site license conditions shall govern.
(b) Waste shall not be packaged for disposal in cardboard or a fiberboard box [italicized].
(c) Liquid waste shall be solidified or packaged in sufficient absorbent material to absorb twice the volume of the liquid.
(d) Solid waste containing liquid shall contain as little freestanding and noncorrosive liquid as is reasonably achievable. The liquid shall not exceed one (1) percent of the volume.
(e) Waste shall not be readily capable of:
1. Detonation;
2. Explosive decomposition or reaction at normal pressures and temperatures;
3. Explosive reaction with water.
(f) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to a person [italicized] or [italicized].
(g) Waste shall not be pyrophoric. Pyrophoric material [italicized] contained in waste shall be treated, prepared, and packaged to be nonflammable.
(h) Waste in a gaseous form shall be packaged at a pressure that shall not exceed one and five-tenths (1.5) atmospheres at twenty (20) degrees Centigrade. Total activity shall not exceed 100 curies per container.
(i) Waste containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practicable the potential hazard from the nonradiological material [italicized].
(2) Stability shall be determined to ensure that the waste shall not structurally degrade and affect overall stability of the site through slumping, collapse, or other failure of the disposal unit and lead to water infiltration. Stability shall also be a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and non-
disposable waste. The following requirements shall provide stability of the waste:
(a) Waste shall have structural stability.
1. A structurally-stable waste form shall maintain its physical dimension [dimensions] and its form under expected disposal conditions, such as:
   a. Weight of overburden and compaction equipment;
   b. Presence of moisture and microbial activity; and
   c. Internal factors such as radiation effects and chemical changes.
2. Structural stability may be provided by:
   a. The waste form itself;
   b. Processing the waste to a stable form; or
   c. Placing the waste in a disposal container or structure that provides stability after disposal.
(b) Unless otherwise exempted in subsection (1)(c) and (d) of this section, liquid waste, or waste containing liquid, shall be converted into a form that contains as little free standing and noncorrosive liquid as is reasonably achievable. The volume shall not exceed one percent of the volume of the waste if the waste is in a disposal container designed to ensure stability, or five-tenths (0.5) percent of the volume of the waste for processed waste to a stable form.
(c) Void spaces within and between the waste and its package shall be eliminated.

Section 8. Labeling. Each package of waste shall be clearly labeled to identify if it is Class A, Class B, or Class C waste, in accordance with Section 6 of this administrative regulation.

Section 9. Transfer for Disposal and Manifests. (1) The requirements of this section and Section 10 of this administrative regulation shall:
(a) Control transfers of low-level radioactive waste intended for disposal at a land disposal facility as established [defined] in 902 KAR 100:022;
(b) Establish a manifest tracking system; and
(c) Supplement existing requirements concerning transfers and recordkeeping for the wastes being transferred.
(2) A shipment of radioactive waste intended for disposal at a licensed land disposal facility shall be accompanied by a shipment manifest as specified in Section 10(1) of this administrative regulation.
(3) The shipment manifest shall include a certification by the waste generator as specified in Section 10(12) [44] of this administrative regulation.
(4) A person involved in the transfer for disposal and disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in Section 10(13) [44] of this administrative regulation.

Section 10. Requirements for Low-level Waste Transfers Intended [Transferred] for Disposal at Land Disposal Facilities and Manifests. (1) A [shipment of] waste generator, collector, or processor who transports or offers for transportation low-level radioactive waste intended for ultimate disposal at a licensed low-level radioactive waste land disposal facility shall prepare a manifest reflecting information requested on the following applicable forms, or their equivalents:
   (a) NRC Form 540, Uniform Low-Level Radioactive Waste Manifest, Shipping Paper;
   (b) NRC Form 541, Uniform Low-Level Radioactive Waste Manifest, Container and Waste Description; and
   (c) If necessary, NRC Form 542, Uniform Low-Level Radioactive Waste Manifest, Manifest Index and Regional Compact Tabulation.
(2) NRC Forms 540 and 540A shall be completed and shall physically accompany the pertinent low-level waste shipment.
(3) Upon agreement between shipper and consignee, NRC Forms 541, 541A, 542, and 542A may be completed, transmitted, and stored in electronic media with the capability for producing legible, accurate, and complete records on the respective forms.
(4) A licensee shall not be required by the cabinet to comply with the manifesting requirements of this part, if they ship:
   (a) LLW for processing and expect its return, for example, for storage as prescribed by their license, prior to disposal at a licensed land disposal facility;
   (b) LLW that is being returned to the licensee who is the waste generator or generator, as defined in 902 KAR 100:010; or
   (c) Contaminated radioactive material to a waste processor that becomes the processor’s residual waste.
   (5) For guidance in completing a form, refer to instructions that accompany the form.
(6) A copy of a manifest required by this section may be legible carbon copies, photocopies, or computer printouts that reproduce the data in the format of the uniform manifest.
(7) Information on hazardous, medical, or other waste, required to meet Environmental Protection Agency regulations, for example, 40 CFR Parts 259 and 261, is not addressed in this section, and shall be provided on the required EPA form. The required EPA form shall accompany the Uniform Low-Level Radioactive Waste Manifest required by this section, and to a licensed land disposal facility shall be accompanied by a shipment manifest. The shipment manifest may be legible carbon copies or photocopies.
(8) [46] The shipper of the radioactive waste shall provide the following information on the uniform manifest:
   (a) [47] The name, facility address, and telephone number of the licensed shipper [person responsible] for the waste;
   (b) An explicit declaration indicating whether the shipper shall be acting as a waste generator, collector, processor, or a combination of these identifiers for purposes of the manifested shipment; and
   (c) [48] The name, address, and telephone number, or the name and U.S. Environmental Protection Agency hazardous identification number, for the carrier [at the person] transporting the waste to the land disposal facility.
(9) [49] The shipper of the radioactive waste shall provide the following information regarding the waste shipment on the uniform manifest [shall indicate as completely as practicable]:
   1. The date of the waste shipment;
   2. The total number of packages or disposal containers;
   3. The total disposal volume and disposal weight in the shipment;
   4. The total radionuclide activity in the shipment;
   5. The activity of each of the radionuclides, hydrogen-3, carbon-14, technetium-99, and iodine-129 contained in the shipment;
   6. The total masses of uranium-233, uranium-235, and plutonium in special nuclear material; and
   7. The total mass of uranium and thorium in source material.
(10) The shipper of the radioactive waste shall provide the following information on the uniform manifest regarding the waste and disposal container of waste in the shipment:
   (a) An alphabetic, or numeric identification, that uniquely identifies each disposal container in the shipment;
   (b) A physical description of the disposal container, including the manufacturer and model of a high integrity container;
   (c) The volume displaced by the disposal container;
   (d) The gross weight of the disposal container, including the waste;
   (e) For waste consigned to a disposal facility, the maximum radiation level at the surface of each disposal container;
   (f) A physical and chemical description of the disposal container;
   (g) The total weight percentage of a chelating agent for waste containing more than one-tenth (0.1) percent of a chelating agent by weight, plus the identity of the principal chelating agent;
   (h) The approximate volume of waste within a container;
   (i) The sorbing or solidification media, if present, and the identity of the solidification media vendor and brand name;
   (j) The identity and activity of a radionuclide contained in each container;
   2. The masses of uranium-233, uranium-235, and plutonium in special nuclear material;
   3. The masses of uranium and thorium in source material; and
   4. For discrete waste types, for example, activated materials, contaminated equipment, mechanical filters, sealed sources or devices, and wastes in solidification or stabilization media, the identities and activities of individual radionuclides associated with or contained on these waste types within a disposal container shall be
reported.

(k) The total radioactivity within each container;
(l) The classification of the waste in accordance with Section 6 of this administrative regulation, for wastes consigned to a disposal facility;
(m) Waste not meeting the structural stability requirements of Section 7(2) of this administrative regulation shall be identified.
(n) The shipper of the radioactive waste shall provide the following information on the uniform manifest regarding a waste shipment delivered without a disposal container:
(a) The approximate volume and weight of the waste;
(b) A physical and chemical description of the waste;
(c) The total weight percentage of a chelating agent if the chelating agent exceeds one-tenth (0.1) percent by weight, plus the identity of the principal chelating agent;
(d) The classification of the waste in accordance with Section 6 of this administrative regulation for waste consigned to a disposal facility;
(e) Waste not meeting the structural stability requirements of Section 7(2) of this administrative regulation shall be identified;
(f) The identity and activity of a radionuclide contained in the waste;
2. The masses of uranium-233, uranium-235, and plutonium in special nuclear material;
3. The masses of uranium and thorium in source material;
4. For a waste consigned to a disposal facility, the maximum radiation level at the surface of the waste;
11(a) The origin of the LLW resulting from activities of a processor may be attributable to one (1) or more generators, including, a waste generator. The requirements in this subsection apply to:
1. A disposal container enclosing a mixture of waste originating from different generators; and
2. A mixture of waste shipped in a form without a disposal container, for which portions of the mixture within the shipment originate from different generators.
(b) For a heterogeneous mixture of waste, such as incinerator ash, provide the:
1. Waste description applicable to the mixture; and
2. Volume of the waste contributed to each generator;
(c) For a heterogeneous mixture of a waste such as:
1. The combined products from a large compactor, identify each generator contributing waste to the disposal container; and
2. A discrete waste type, for example, activated materials, contaminated equipment, mechanical filters, sealed sources or devices, and wastes in solidification or stabilization media, the identity and activity of individual radionuclides contained on the waste type within the disposal container;
(d) For a generator, the following information shall be provided:
1. The volume of waste within the disposal container;
2. A physical and chemical description of the waste, including, if present, the solidification agent;
3. The total weight percentage of a chelating agent for a disposal container containing more than one-tenth (0.1) percent of a chelating agent by weight, plus the identity of the principal chelating agent;
4. The sorbing or solidification media, if present, and the identity of the solidification media vendor and brand name if the media is claimed to meet stability requirements in Section 7(2) of this administrative regulation; and
5.a. Radionuclide identity and activity contained in the waste;
b. The mass of uranium-233, uranium-235, and plutonium in special nuclear material; and
c. The mass of uranium and thorium in source material if contained in the waste.
12(a) An authorized representative of the waste generator, processor, or collector shall certify by signing and dating the shipment manifest that the transported materials are:
1. Properly classified;
2. Described;
3. Packaged;
4. Marked;
5. Labeled; and
6. In proper condition for transportation according to the applicable administrative regulations of the Department of Transportation and 902 KAR 100:070, and
(b) A collector in signing the certification shall certify that nothing has been done to the collected waste which would invalidate the waste generator's certification. (A physical description of the waste, 2. Waste volume, 3. Radionuclide identity and quantity, 4. Total radioactivity, and 5. Principal chemical form.
(c) The solidification agent shall be specified.
(d) Waste containing more than one-tenth (0.1) percent chelating agents by weight shall be identified and the weight percentage of the chelating agent estimated.
(e) A waste classified as Class A, Class B, or Class C in Section 6 of this administrative regulation shall be clearly identified in the manifest.
(f) The total quantity of the specifically indicated radionuclides H-3, C-14, Tc-99, and I-129 shall be shown on the manifest.
(g) The manifest required in subsection (1) of this section may be shipped paper or used to meet U.S. Department of Transportation or Environmental Protection Agency regulations or requirements of the receiver if all the required information is included.
(h) A manifest shall include a certification by the waste generator that the transported materials are properly classified, described, packaged, marked, labeled, and conditioned for transportation in compliance with 49 CFR 177, Subpart I and 902 KAR 100:070. An authorized representative of the waste generator shall sign and date the manifest.
13 (44) A licensee who transfers waste to a licensed waste processor for waste treatment or repackaging [who, legal or repackages waste] shall comply with the requirements of paragraphs (d) through (l) ([44]) of this subsection. A licensee who transfers waste to a land disposal facility or a licensed waste collector shall comply with the following requirements:
(a) Prepare waste so that the waste shall be [a] classified according to Section 6 of this administrative regulation and shall meet [meet] the waste characteristics requirements in Section 7 of this administrative regulation;
(b) Label each disposal container, or transport container if potential radiation hazards preclude labeling of the individual disposal container, [package] of waste to identify if the waste is Class A, Class B, or Class C, or greater than Class C waste, in accordance with Section 6 of this administrative regulation;
(c) Conduct a quality assurance [audit] program including, but include management evaluation of audits to assure compliance with Sections 6 and 7 of this administrative regulation.
(d) Prepare the NRC Uniform Low-Level Radioactive Waste Manifest as required by this subsection; [shipping manifests to meet the requirements of subsection (1) and (2) of this section.]
(e) Forward a copy or electronically transfer the Unified Low-Level Radioactive Waste Manifest to the intended consignee so that either:
1. Receipt of the manifest precedes the LLW shipment;
2. The manifest shall be delivered to the consignee with the waste at the time the waste shall be transferred to the consignee or
3. Using both subparagraphs 1 and 2 of this paragraph is also acceptable for the intended recipient, at the time of shipment, or deliver to a person at the time the waste is collected, obtaining acknowledgment of receipt in the form of a signed copy, the manifest or equivalent documentation from the recipient;
(f) Include NRC Form 540 and Form 540A, if required, [one (1) copy of the manifest] with the shipment regardless of the option chosen in subsection (12(e) of this section;
(g) Receive acknowledgment of the receipt of the shipment in the form of a signed copy of NRC Form 540;
(h) Retain a copy of or electronically store the Uniform Low-Level Radioactive Waste Manifest and the manifest with documentation of acknowledgment of receipt as the record of transfer of licensed material as required by 902 KAR 100:040; and
(i) (44) For a shipment [manifest] or parts of a shipment, for which acknowledgment of receipt has not been received within the times established [set forth] in this section, conduct investigation in accordance with subsection (16) ([44]) of this section.
(14) (45) A waste collector licensee who handles only prepackaged waste shall:
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(a) Acknowledge receipt of the waste from the generator within one (1) week of receipt by returning a signed copy of NRC Form 540; [the manifest or equivalent documentation to the generator;]
(b) Prepare a new manifest to reflect consolidated shipments that meet the requirements of the applicable sections;
(c) The waste collector shall ensure that, for each container of waste in the shipment, the manifest identifies the generator of that container of waste;

1. The new manifest shall serve as a listing or index for the detailed generator manifests;
2. Copies of the generator manifests shall be a part of the new manifest;
3. The waste collector may prepare a new manifest without attaching the generator manifests if the new manifest contains for each package the information specified in subsection (2) of this section;
4. The collector licensee shall certify that nothing has been done to the waste which would invalidate the generator's certification;
5. Forward a copy or electronically transfer the Uniform Low-Level Radioactive Waste Manifest to the intended consignee so that either:
   1. Receipt of the manifest precedes the LLW shipment; or
   2. The manifest shall be delivered to the consignee with the waste at the time the waste shall be transferred to the consignee;
3. Using both subparagraphs 1 and 2 of this paragraph is also acceptable;
4. Include NRC Form 540 and Form 540A, if required, with the shipment regardless of the option chosen in subsection (14)(c) of this section;
5. Receive acknowledgement of the receipt of the shipment in the form of a signed copy of NRC Form 540;
6. Receive a copy of or electronically store the Uniform Low-Level Radioactive Waste Manifest and [the new manifest to the land disposal facility operator at the time of shipment;]
7. Include the new manifest with the shipment to the disposal site.

(e) A receipt of a manifest with documentation of acknowledgement of receipt as the record of transfer of licensed material as required by 902 KAR 100:040; [and return information from generator manifests until disposition is authorized by the cabinet.]
(f) For a shipment, [shipments] or parts of a shipment, for which acknowledgement of receipt is not received within the time established [times set forth] in this section, conduct an investigation in accordance with subsection (10) [of] of this section;
(g) For a shipment, if the shipment has not arrived within sixty (60) days after receipt of an advance manifest, unless notified by the shipper that the shipment has been cancelled;

(15) [66] A licensed waste processor who treats or repackages waste shall:
(a) Acknowledge receipt of the waste from the generator [generator] within one (1) week of receipt by returning a signed copy of the manifest or equivalent documentation; [to the generator.]
(b) Prepare a new manifest that meets the requirements of this subsection;

(16) [67] Preparation of the new manifest shall reflect that the processor shall be [is] responsible for meeting these requirements; and
2. For each container of waste in the shipment, the manifest shall identify the waste generators, the preprocessed waste volume, and the other information as required in subsection (16) of this section;[the waste.
3. The waste so the waste shall be [is] classified according to Sections of this administrative regulation and meets the waste characteristics requirement in Section 7 of this administrative regulation;

(d) Label each package of waste to identify [if] the waste as [is] Class A, Class B, or Class C, in accordance with Sections 6 and 8 of this administrative regulation;
4. A quality control program [shall be conducted] to assure compliance with Sections 6 and 7 of this administrative regulation. The program shall include management evaluation of audits;
(f) Forward a copy or electronically transfer the Uniform Low-Level Radioactive Waste Manifest to the intended consignee so that either:
   1. Receipt of the manifest precedes the LLW shipment;
   2. The manifest shall be delivered to the consignee with the waste at the time the waste shall be transferred to the consignee; or
   3. Using both subparagraphs 1 and 2 is also acceptable;
(h) Return a copy of or electronically store the Uniform Low-Level Radioactive Waste Manifest and [copies of original manifests and new manifests with] documentation of acknowledgement of receipt as the record of transfer of licensed material required by 902 KAR 100:040;[the new manifest with the shipment regardless of the option chosen in subsection (15)(f) of this section;]
(i) For a shipment or part of a shipment for which acknowledgement of receipt is not received within the time established [times set forth] in this section, conduct an investigation in accordance with subsection (16) [of] of this section; and
(j) Notify the shipper and the cabinet when a shipment, or part of a shipment, has not arrived within sixty (60) days after receipt of an advance manifest, unless notified by the shipper that the shipment has been cancelled.

(16) [67] The land disposal facility operator shall:
(a) Acknowledge receipt of the waste within one (1) week of receipt by returning a signed copy of the manifest or equivalent documentation to the licensee that last possessed the waste and transferred the waste to the operator. If the returned copy of the manifest or equivalent documentation indicates [shall indicate] discrepancies between materials [listed] on the manifest and materials received, copies or electronic transfer of the affected forms shall be returned indicating the discrepancy; [the facility operator;]
(b) Maintain copies of completed manifests, or equivalent documentation, and electronically store the information required by 10 CFR 61.82(a) until the cabinet terminates the license; and [authorize disposition.]
(c) Notify the shipper, [the] generator, [the] contractor, or processor[the] and the cabinet if a shipment, or part of a shipment, has not arrived within sixty (60) days after the advance manifest was received, unless notified by the shipper that the shipment has been cancelled.

(17) [68] A shipment or part of a shipment for which acknowledgement is not received within the time established [times set forth] in this section shall be:
(a) Investigated by the shipper if the shipper has not received notification of receipt within twenty (20) days after transfer; and
(b) Traced and reported.
1. The investigation shall include tracing the shipment and filing a report with the cabinet.
2. A licensee who conducts a trace investigation shall file a written report with the cabinet within two (2) weeks of completion of the investigation.

Section 11. Records. (1) A licensee shall maintain a record [record] in the same units used in this administrative regulation.
(2) A record(RECORDS) of disposal of licensed material required by [made pursuant to] this administrative regulation shall be maintained until the cabinet authorizes disposition or in accordance with 902 KAR 100:073, Section 28.
(3) A licensee shall maintain a record [RECORDS] of the disposal of licensed materials required by [made pursuant to] 902 KAR 100:022 and Sections 2, 3, 4, and 5 of this administrative regulation, and disposed of by burial in soil, including burials authorized before January 28, 1981.
(4) A licensee shall retain the records required in subsection (3) of this section until the cabinet terminates each pertinent license requiring the record.
Section 12. Annual Report of Waste Generated. (1) A licensee issued a specific license, pursuant to 902 KAR 100:040 shall file an annual report with the cabinet containing information regarding low-level radioactive waste associated with activities authorized by the license. This report shall be filed if the licensee was, or was not, a waste generator during the reporting period.
(2) The report shall contain information regarding the waste for a period of one (1) calendar year and shall be filed no later than January 15 of the following year.
(3) The report shall be filed on a form provided by the cabinet and shall contain types and amounts of generated waste and estimates of future wastes to be generated.

Section 13. Incorporation by Reference. (1) NRC Forms 540, 540A, 541, 541A, 542 and 542A are incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Office of the Commissioner, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday 8 a.m. until 4:30 p.m.

NICHOLAS KAFOLIS, M.D., Chairman
RICE C. LEACH, M.D., Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: January 11, 2002
FILED WITH LRC: January 14, 2002 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held February 21, 2002 at 9 a.m. in the Cabinet for Health Services Auditorium, 1st floor, Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by February 14, 2002. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is opened to the public. Any person who attests will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administration regulation. Send written notice of intent to attend the public hearing or written comments to: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7873.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Volpe
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides waste disposal limitations for radioactive material, and applies to a person disposing of radioactive material or waste.
(b) The necessity of this administrative regulation: This administrative regulation provides equivalent requirements for a person disposing of radioactive material or waste to those of the U.S. Nuclear Regulatory Commission.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.842 and 211.844 requires the Cabinet for Health Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the requirements for the disposal of radioactive material or wastes.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment established the requirements for transfer of low-level radioactive waste intended for disposal at a licensed land disposal facility and establishes manifest requirements for shipping to a processor of low-level radioactive waste.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation provides equivalent requirements for disposal of radioactive material or waste to those of the U.S. Nuclear Regulatory Commission.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide regulations for the licensing and registration of sources of radiation and for the disposal of radioactive material or waste.
(d) How the amendment will assist in the effective administration of the statutes: The amendments will provide a mechanism for the cabinet to ensure the proper disposition of radioactive waste from a licensed waste generator to a processor and a disposal site. The amendment requires specific documentation to ensure disposition of low-level waste and shipment of low-level radioactive waste to a processor.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any radioactive material licensee who ships radioactive material or waste for disposal will be impacted by the amendment.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Licensees will be required to provide specific documentation to ensure disposition of low-level waste and shipment of low-level radioactive waste to a processor.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees from the licensing of radioactive material users.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amendment to the regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all licensees who may ship radioactive material or waste for disposal.

FEDERAL MANDATE ANALYSIS COMPARISON

2. State compliance standards. Administrative regulation provides radioactive material licensees with requirements for the transfer of low-level radioactive waste intended for disposal at a licensed land disposal facility and establishes manifest requirements for shipping to a processor of low-level radioactive waste.
3. Minimum or uniform standards contained in the federal mandate. This amendment will bring about compatibility with U.S. Nuclear Regulatory Commission's requirements.
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 standard, or additional or different responsibilities or requirements. Administrative regulation provides equivalent requirements for disposal of radioactive material or waste to those of the U.S. Nuclear Regulatory Commission.
GENERAL GOVERNMENT
DEPARTMENT OF AGRICULTURE
DIVISION OF MARKETING
(New Administrative Regulation)

302 KAR 50:010. Industrial hemp license.

RELATES TO: KRS 260.850 to 260.869
STATUTORY AUTHORITY: KRS 260.851
NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.851 directs the Department of Agriculture to promulgate administrative regulations to license research on industrial hemp and hemp products.

Section 1. Definitions. Unless otherwise specifically defined in this chapter or otherwise clearly indicated by their context, terms in this chapter shall have the following meaning:
(1) "Industrial hemp license" means a document issued by the Kentucky Department of Agriculture to a person engaging in industrial hemp research.
(2) "Industrial hemp research" means research of industrial hemp and hemp products.
(3) "Person" means any individual, corporation, government or governmental subdivision or agency, state, university and all departments thereof, association, cooperative, or other business entity.
(4) "Produce" or "production" means planting, cultivating, tending, or harvesting.
(5) "State police" means the Kentucky State Police or its successor agency.
(6) "University agricultural land" means agricultural lands owned or leased by a state university.

Section 2. License Requirements. (1) Each person involved in industrial hemp research shall be licensed by the Kentucky Department of Agriculture.
(2) A license shall not be transferable.
(3) A license shall not be issued to a person convicted of a felony or a drug-related misdemeanor.
(4) In order to determine a person's eligibility for a license under this section, the department shall apply to the state police for a national and state criminal history records check of the person.
(5) The mandatory processing fee required by the Federal Bureau of Investigation for a national criminal history records check and any fees required for the state criminal history records check shall be paid by the person seeking the license.

Section 3. Records. Records obtained pursuant to background checks and criminal history checks shall be:
(1) Confidential and may not be disseminated; and
(2) Used only for the purpose authorized by this chapter.

Section 4. Registration. A person shall register with the United States Department of Justice Drug Enforcement Administration pursuant to 21 USC before the Kentucky Department of Agriculture may issue a license to participate in industrial hemp research.

Section 5. Access to Land. Access to the university agricultural land where industrial hemp is being grown shall be restricted to those persons who are licensed under Section 2 of this administrative regulation, with the exception of state, local, and federal law enforcement officials who shall have access to the lands where industrial hemp is being grown, for the purpose of announced or unannounced inspections.

Section 6. Industrial Hemp Research License. An industrial hemp research license application shall be submitted on a form approved by the department, together with copies of the following documents:
(1) New application for Registration Under Controlled Substances Act of 1970;
(2) Application for Permit to Import Controlled Substances for Domestic and/or Scientific Purposes;
(3) Department of Justice - Drug Enforcement Administration Permit to Import Controlled Substances; and
(4) Controlled Substance Registration Certificate.

Section 7. License Information. The license issued by the department shall contain the following:
(1) Name of the licensee;
(2) Research affiliation;
(3) DEA registration number;
(4) License expiration date;
(5) Date issued;
(6) Schedule;
(7) Business activity; and
(8) Kentucky license number.

Section 8. Revocation of License. (1) A license shall be revoked for the violation of any federal or state drug law.
(2) If the licensee leaves the place of employment where the license is utilized, the license shall be invalid as of the date of leaving the employment and shall be returned to the Kentucky Department of Agriculture.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Marketing, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., Eastern Time.

BILLY RAY SMITH, Commissioner
MARK FARROW, General Counsel
APPROVED BY AGENCY: January 10, 2002
FILED WITH LRC: January 10, 2002 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Monday, February 25, 2002, at 10 a.m., at the Department of Agriculture, Conference Room, Room 188, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, February 18, 2002, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 available unless a written request for a transcript is made. If you wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, Phone: (502) 564-5102, Fax: (502) 564-5016.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Terry Garmen, Executive Director, Division of Marketing
(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes procedures for application of an industrial hemp research license.
(b) The necessity of this administrative regulation: To establish procedures authorized by KRS 260.851.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute mandates the Department of Agriculture to promulgate administrative regulations to carry out provisions of KRS 260.851. This administrative regulation establishes procedures to be followed when applying for industrial hemp research license.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administr-
tive regulation will inform individuals and entities of procedures to be followed when applying for industrial hemp research license.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: State universities and all departments thereof and university personnel.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Implementation will necessitate compliance of requirements of this administrative regulation.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

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

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

(9) TIERING: Is tiering applied? Tiering was not used. This administrative regulation applies equally to all individuals and entities regulated by it.

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


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 promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation repeals 401 KAR 51:200 which is no longer needed. Stricter air quality provisions mandated under the federal NOx SIP Call, 40 CFR 51.121, were promulgated in 401 KAR 51:160, NOx requirements for large utility and industrial boilers, which became effective August 15, 2001.

Section 1. 401 KAR 51:200, Regional NOx emission requirements, is hereby repealed.

JAMES E. BICKFORD, Secretary
APPROVED BY AGENCY: January 14, 2002
FILED WITH LRC: January 15, 2002 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for February 28, 2002, 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 February 22, 2002, five (5) 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 this 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 PERSON: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Millie Ellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 51:200.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to repeal an existing regulation that is no longer needed. The provisions in 401 KAR 51:200 are contained in a newly promulgated regulation, 401 KAR 51:160.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Commonwealth's air resources are better protected through the provisions of 401 KAR 51:160, which became effective August 15, 2001, and is mandated under the federal NOx SIP Call, 40 CFR 51.121. By repealing 401 KAR 51:200, which is a regulation that is no longer needed, this administrative regulation conforms to the cabinet's authorizing statutes, KRS 224.10-100, 224.20-100, 224.20-110 and 224.20-120, which provide for protection of air resources.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will repeal a regulation that is no longer necessary. The more recent federally-mandated standards have been promulgated in 401 KAR 51:160.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation does not amend the existing regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation does not amend the existing regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation does not amend the existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation does not amend the existing regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation merely repeals 401 KAR 51:200; therefore, no individuals, businesses, organizations, or state and local governments will be affected.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: None of the above groups will be affected by this administrative regulation.

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

(a) Initially: There are no costs associated with this administrative regulation.

(b) On a continuing basis: There are no costs associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required to implement and enforce this administrative regulation.
regulation
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. There are no fees or funding requirements to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish or increase any fees, either directly or indirectly.
(9) TIERING: Is tiering applied? No. Tiering is not applicable to this administrative regulation.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(Repealer)


RELATES TO: KRS 368.090(1), (2)
STATUTORY AUTHORITY: KRS 368.090(1), (2)
NECESSITY, FUNCTION, AND CONFORMITY: The subject of this administrative regulation is covered by another newer administrative regulation. This administrative regulation is no longer necessary.

Section 1. 808 KAR 13:010, Examination fees for check cashing licensees; prohibited advertising, is hereby repealed.

RONALD B. MCCLOUND, Secretary
ELLA D. ROBINSON, Commissioner
WILLIAM E. DOYLE, Staff Attorney
APPROVED BY AGENCY: January 7, 2002
FILED WITH LRC: January 9, 2002 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, February 21, 2002, at 11 a.m. at the offices of the Department of Financial Institutions, 1025 Capitol Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in attending this public hearing shall notify this agency in writing by Thursday, February 14, 2002, 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 cancelled. The 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 this 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. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by Thursday, February 21, 2002. Send written notification to attend the public hearing or comments on this administrative regulation to: Department of Financial Institutions, Public Protection and Regulation Cabinet, Attn: William E. Doyle, Staff Attorney, 1025 Capitol Center Drive, Suite 200, Frankfort, Kentucky 40601, Phone: (502) 573-3390, fax (502) 573-8767.

REGULATORY IMPACT ANALYSIS
Contact Person: William E. Doyle
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation repeals 808 KAR 13:010 (Examination fees for check cashing licensees; prohibited advertising).
(b) The necessity of this administrative regulation: 808 KAR 13:010 has been replaced in another section of the regulations (808 KAR 9:020, Establishment of examination fees) and is no longer needed because it is duplicative of the other regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: See 368.090 Authority to promulgate administrative regulations - compliance examination and fee authorizes regulations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will eliminate unnecessary duplication.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: It repeals it.
(b) The necessity of the amendment to this administrative regulation: The repealed regulation is duplicated elsewhere (808 KAR 9:020, Establishment of examination fees).
(c) How the amendment conforms to the content of the authorizing statutes: See KRS 368.090.
(d) How the amendment will assist in the effective administration of the statutes: It will eliminate confusion from the duplication.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All check cashing licensees will be affected by this repeal but there will be no effect because there is already one subject.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The impact is small and impossible to measure.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Nothing
(b) On a continuing basis: Nothing
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funds will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not establish or create any fees directly or indirectly.
(9) TIERING: Is tiering applied? Tiering does not apply. The standards of compliance with this law must apply uniformly to all check cashers to ensure fairness and to maintain the necessary level of protection for the public.

PUBLIC PROTECTION AND REGULATION CABINET
Mine Safety Review Commission
(New Administrative Regulation)

825 KAR 1:020. Administrative hearings procedures.

RELATES TO: KRS Chapter 13B, 351.1041(1)(a), (8)
STATUTORY AUTHORITY: KRS 13A.190(1)(a)(4), 351.194
NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.194(1) authorizes the Mine Safety Review Commission to promulgate administrative regulations to establish administrative hearing procedures in accordance with KRS Chapter 13B, which will be followed in determining if violations of mine safety laws have occurred. This administrative regulation supplements the provisions of KRS Chapter 13B by establishing procedures for the filing, evaluation, and disposition of complaints.

Section 1. Except as provided in Sections 2 through 28 of this administrative regulation, the provisions of KRS Chapter 13B.170 shall govern all hearings conducted pursuant to KRS 351.1041(1)(a).

Section 2. Practice Before the Commission. (1) The hearing shall be adversarial and presided over by a hearing officer designated by the commission, which may include a member of the commission or an independent hearing officer. The charges and evidence against the respondent shall be presented by the prosecuting attorney from the Department of Mines and Minerals.
(2) The respondent may appear pro se or by counsel.
(3) Attorneys admitted to practice law in the Commonwealth of Kentucky may practice before the commission.
(4) A person who is not authorized to practice before the commission as an attorney under subsection (3) of this section may practice before the commission as a representative of a party if he is
a party to the case.

(5) Entry of appearance. A representative of a party shall enter an appearance in a proceeding under these rules by:
(a) Signing the first document filed on behalf of the party with the commission;
(b) Filing a written entry of appearance with the commission; or
(c) With the permission of the hearing officer, orally entering an appearance in open hearing.

(6) Withdrawal of appearance. Any representative of a party desiring to withdraw his appearance shall file a motion with the commission. The motion to withdraw may, in the discretion of the hearing officer, be denied where it is necessary to avoid undue delay or prejudice to the rights of a party.

Section 3. Parties, Intervenors, and Amici Curiae. (1) Party status. A person who is named as a party, or who is permitted to intervene, is a party.

(2) Intervention. The procedure for intervention shall be governed by the provisions of KRS 13B.060. In denying a motion to intervene, the hearing officer may alternatively permit the movant to participate in the proceeding as amicus curiae.

(3) Participation as amicus curiae. Any person may move to participate as amicus curiae in a proceeding before the commission. Such participation as amicus curiae shall not be a matter of right, but at the sound discretion of the hearing officer. A motion for participation as amicus curiae shall set forth the interest of the movant and show that granting of the motion will not unduly delay or prejudice the adjudication of the issues. If the hearing officer permits amicus curiae participation, his order shall specify the time within which such amicus curiae's memorandum, brief, or other pleading must be filed and the time within which a reply may be made. The movant may conditionally attach its memorandum, brief or other pleading to its motion for participation as amicus curiae.

Section 4. Commencement of Action. An action shall be instituted by filing with the commission a verified complaint which shall contain the following information:

(a) The name and address of the alleged violator;
(b) If the alleged violator is a corporation, the address of the corporation along with the name and address of the process agent shall be provided;

(2) The section of the statutes or administrative regulations alleged to have been violated and the minimum and maximum penalties provided for said violation;

(3) A statement of the factual basis for the department's action along with a statement of issues involved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and arguments;

(4) The history of the alleged violator's previously adjudicated violations before the commission or its predecessor;

(5) Any supporting documents set forth in the statement; and

(6) The complaint shall be filed with the commission at the office of the commission, located at 132 Brighton Park Boulevard, Frankfort, Kentucky. At the time of filing, it shall be assigned a case number, which shall be used in all future proceedings of the matter.

Section 5. Probable Cause Hearing; Notice of Hearing. (1) Upon receipt of a verified complaint, the commission shall place the complaint on its agenda for a probable cause hearing to be reviewed at the next regularly-scheduled meeting of the commission, or as soon as practicable.

(a) The probable cause hearing shall not be adversarial in nature. Testimonial evidence will not be taken. The determination of probable cause shall be based upon the four corners of the verified complaint.

(b) If the commission finds that probable cause exists, it shall issue an order setting the matter for hearing no sooner than thirty (30) days after acting on the complaint.

(c) The commission shall dismiss any complaint where it does not find probable cause that a violation has occurred. Such dismissal shall be without prejudice. The commission shall notify the Commissioner and general counsel of the Department of Mines and Minerals of its decision.

(2) Emergency hearings may be set at the discretion of the commission upon a showing of an emergency.

(3) If an order setting the matter for hearing is issued by the commission, it shall mail notice of the hearing to the following:
(a) The Commissioner of the Department of Mines and Minerals;
(b) General counsel for the Department of Mines and Minerals;

(c) The respondent named in the verified complaint at the address shown in the complaint.

(4) The notice of hearing shall be sent by mail, return receipt requested, in compliance with KRS 13B.050, or service of process as provided in Civil Rule 4.

Section 6. Code of Conduct. The commissioners shall adhere to the Judicial Code of Conduct as required by KRS 351.104(5).

Section 7. Answer of the Respondent. (1) The respondent shall, file a response to the complaint with the commission within twenty (20) days of receiving the notice of hearing, setting forth any defenses to the complaint, or mitigating circumstances to the alleged offenses.

(2) The original of the response shall be kept on file with the commission and copies shall be mailed to the Commissioner and general counsel of the Department of Mines and Minerals.

Section 8. General Requirements for Pleadings and Other Documents. (1) Where to file. The original copy of all documents shall be filed with the commission. Documents filed with the commission shall be addressed to the general counsel and mailed or delivered to the Mine Safety Review Commission, 132 Brighton Park Blvd., Frankfort, Kentucky 40601. Copies shall be sent to all parties in the case, as well as to the office of hearing assigned to the case.

(a) Filing of complaints or other initiating documents shall be by personal delivery, including courier service, or by registered or certified mail, return receipt requested.

(b) All subsequent documents that are filed with the commission may be filed by first class mail, express mail, or personal delivery. Express mail includes delivery by a third-party commercial carrier.

(c) When filing is by personal delivery, filing is effective upon receipt.

(d) When filing is by mail, filing is effective upon mailing.

1. Exceptions include:
   a. Petition for discretionary review;
   b. Petition for review of temporary reinstatement order;
   c. Motion for an extension of time; and
   d. Motion to exceed page limit.

2. Documents listed in subparagraph 1 of this paragraph are effective upon receipt.

(e) Filing by facsimile transmission is permissible and is effective upon receipt.

(2) Required information.

(a) All documents shall be legible and shall clearly identify the filing party by name on the cover page.

(b) All documents filed with the commission shall be accompanied by a statement setting forth the date and manner of service.

(c) All documents shall include the assigned docket number, page numbers, and the filing person's address and telephone number. Written notice of any change in the address or telephone number shall be given promptly to the commission, the hearing officer, and all other parties.

(d) Number of copies. The original document and four (4) copies shall be filed with the commission. When filing is by facsimile transmission, the original document and four (4) nonfacsimile copies shall be filed with the commission within three (3) business days of the facsimile transmission.

Section 9. Computation of Time. In computing any period of time prescribed by these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or state holiday, in which event the period runs until the end of the next business day.

Section 10. Extensions of Time. The time for filing or serving any document may be extended for good cause shown. A motion re-
requesting an extension of time shall be received no later than three (3) days prior to the expiration of the time allowed for the filing or serving of the document. In exigent circumstances, an extension of time may be granted even though the request was filed after the designated time for filing has expired. In such circumstances, the party requesting the extension must show, in writing, the reasons for the party's failure to make the request before the time prescribed for the filing had expired.

Section 11. Motions. (1) An application for an order shall be by motion which, unless made during a hearing or a prehearing conference, shall be made in writing and shall set forth the relief or order sought.

(2) A statement in opposition to a written motion may be filed by any party within ten (10) calendar days after service upon the party. Unless otherwise ordered, oral argument on motions will not be heard.

Section 12. Withdrawal of a Motion. A party may withdraw a pleading at any stage of a proceeding with the approval of the commission or a hearing officer.

Section 13. Consolidation of Proceedings. The commission or a hearing officer may at any time, upon their own motion or a party's motion, order the consolidation of proceedings that involve similar issues.

Section 14. A hearing officer will be assigned to each case and shall conduct the hearing in accordance with KRS 13B.080-13B.130.

Section 15. Hearing Sites. All cases will be assigned a hearing site by order of the commission. The commission shall give due regard to the convenience and necessity of the parties or their representatives and witnesses, the availability of suitable hearing facilities, and other relevant factors.

Section 16. Expedition of Proceedings. (1) A party may request expedition of the proceedings by oral motion, with concurrent notice to all parties, or may file and serve such motion by facsimile transmission. Oral motions for expedition of the proceedings shall be reduced to writing and filed with the commission within twenty-four (24) hours of the making of the motion.

(2) In the event an emergency hearing is granted, it shall be conducted in accordance with KRS 13B.125.

Section 17. Prehearing Conferences. Prehearing conferences shall be conducted in accordance with KRS 13B.070.

Section 18. Powers of Hearing Officers. Subject to these rules, a hearing officer is empowered to:

(1) Administer oaths and affirmations;
(2) Issue subpoenas authorized by law;
(3) Rule on offers of proof and receive relevant evidence;
(4) Order depositions to be taken;
(5) Regulate the course of the hearing;
(6) Hold conferences for the settlement or simplification of the issues;
(7) Dispose of procedural requests or similar matters;
(8) Make decisions in the proceedings before him, provided that he shall not be assigned to make a final decision; and
(9) Take other action authorized by these rules, or by KRS Chapter 13B.

Section 19. Discovery. (1) Methods. Parties may obtain discovery by one (1) or more of the following methods:

(a) Depositions upon oral examination or written questions;
(b) Written interrogatories;
(c) Requests for production of documents or objects; or
(d) Requests for permission to enter upon property for inspecting, copying, photographing, and gathering information.

(2) Scope of discovery. Parties may obtain discovery of any relevant, non-privileged matter that is admissible evidence or appears likely to lead to discovery of admissible evidence.

(3) Limitation of discovery. Upon motion by a party or by the person from whom discovery is sought, the hearing officer may, for good cause shown, limit discovery to prevent undue delay or to protect a party or person from oppression or undue burden or expense.

(4) Depositions. Any party, without leave of the hearing officer, may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories. If the parties are unable to agree, the time, place, and manner of taking depositions shall be governed by order of the hearing officer.

(5) Interrogatories and requests for production, entry or inspection. Any party, with leave of the hearing officer, may serve the following documents upon another party:

(a) Written interrogatories
(b) Requests for production, entry or inspection.

(6) A party served with interrogatories or a request for production, shall answer each interrogatory or request separately and fully in writing, under oath, within twenty-five (25) calendar days of service, unless the proponent of the interrogatories or request for production agrees to a longer time. A party objecting to an interrogatory or request for production shall state the basis for the objection in its response. The hearing officer may order a shorter or longer time period for responding.

Section 20. Failure to Cooperate in Discovery. Upon the failure of any person, including a party, to respond to a discovery request, or upon an objection to such a request, the party seeking discovery may file a motion with the hearing officer requesting an order compelling discovery. If any person, including a party, fails to comply with an order compelling discovery, the hearing officer may make such orders with regard to the failure as are just and appropriate, including deeming as established the matters sought to be discovered or submitting a recommended order dismissing the proceeding in favor of the party seeking discovery. For good cause shown the hearing officer may excuse an objecting party from complying with the request.

Section 21. Subpoenas. The commission and its hearing officers are authorized to issue subpoenas, on their own motion or on the oral or written application of a party, requiring the attendance of witnesses and the production of documents or physical evidence. A subpoena may be served by any person who is at least eighteen (18) years of age. A subpoena may also be served by registered or certified mail, return receipt requested, but, in such case, any risk of delivery is on the serving party. A copy of the subpoena bearing a certificate of service shall be filed with the commission or the hearing officer.

(1) Any person served with a subpoena may move within five (5) days of service, or at the hearing, whichever is sooner, to revoke or modify the subpoena. The commission or the hearing officer, as appropriate, shall revoke or modify the subpoena if it seeks information outside the proper scope of discovery, or if it does not describe with sufficient particularity the evidence required to be produced, or if for any reason it is found to be invalid or unreasonable. The commission or the hearing officer shall set forth a concise statement of the grounds for such ruling.

(2) Upon the failure of any person to comply with an order to testify or with a subpoena issued by the commission or the hearing officer, the commission or the hearing officer's general counsel at the request of the hearing officer or at the direction of the commission, may undertake to initiate proceedings for the enforcement of the subpoena pursuant to KRS 13B.080(3).

(3) The person requesting the subpoenas shall bear the cost of serving the subpoenas, paying witness fees and expenses. The commission shall bear the cost of witnesses subpoenaed on its behalf.

Section 22. Continuance; Proceedings in Absentia. (1) It is the policy of the commission not to postpone cases which have been scheduled for hearing absent good cause. A request by a party or attorney prosecuting the allegations of the complaint for a continuance may be considered if communicated to the staff reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the hearing officer.
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(2) Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

Section 23. Settlement by Informal Proceedings. (1) The commission, through counsel may, at any time during this process, enter into informal proceedings with the individual who is the subject of the verified complaint for the purpose of appropriately dispensing with the matter.
(2) An agreed order or settlement reached through this process shall be approved by the commission and signed by the individual who is the subject of the complaint and the chairman.
(3) The commission may employ mediation as a method of resolving the matter informally.

Section 24. Rules of Evidence. (1) The commission shall not be bound by the technical rules of evidence as applied in civil cases in the circuit courts of the Commonwealth of Kentucky.
(2) The commission may receive any evidence which it considers to be reliable, including testimony which would be hearsay if presented in a court of law.
(3) Documentary evidence may be admitted in the form of copies or excerpts, and need be authenticated only to the extent that the commission is satisfied of its genuineness and accuracy.
(4) Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the board is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.
(5) The commission shall retain the discretion to exclude any evidence that it considers to be unreliable, incompetent, irrelevant, immaterial or unduly repetitious.

Section 25. Retention of Exhibits. Retention of exhibits shall be in accordance with KRS 13B.130. The withdrawal of original exhibits may be permitted by the commission or the hearing officer, upon request and after notice to the other parties, if true copies are substituted, where practical for the originals.

Section 26. Proposed findings, conclusions, and orders shall be made in accordance with KRS 13B.090.

Section 27. The commission shall make a decision that constitutes the final disposition of the proceedings in accordance with KRS 13B.120. If a decision is announced orally it shall be reduced to writing. An order by the commission approving a settlement proposal is a final decision of the commission.

Section 28. Ex Parte Communications. (1) For purposes of this section, the following definitions shall apply:
(a) "Ex parte communication" means an oral or written communication not on the public record involving any matter or proceeding with respect to which reasonable prior notice to all parties has not been given. A status or informational request does not constitute an ex parte communication.
(b) "Status or informational request" means a request for a status report on any matter or proceeding or a request concerning filing requirements or other docket information.
(c) "Ments of a case" which shall be broadly construed by the commission includes discussion of the factual or legal issues in a case or resolution of those issues.
(2) Prohibited ex parte communications are set forth in KRS 13B.100.

CHARLES M. TACKETT, ACTING CHAIR
APPROVED BY AGENCY: January 14, 2002
FILED WITH LRC: January 15, 2002 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 28, 2002, at 10 a.m. (EST) at the offices of the Mine Safety Review Commission, 132 Brighton Park Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. (EST), February 21, 2002, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be furnished 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: Diane Schuler Fleming, General Counsel, Mine Safety Review Commission, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-0318, fax (502) 573-6526.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diane Schuler Fleming
(1) Provide a brief summary of:
(a) What this administrative regulation does:
This administrative regulation establishes a complaint procedure for the filing, evaluation and disposition of administrative complaints.
(b) The necessity of this administrative regulation: KRS 351.194(4) authorizes the commission to promulgate administrative regulations to establish administrative hearings procedures in accordance with KRS Chapter 13B, which will be followed in determining if violations of mine safety laws have occurred. This administrative regulation supplements the provisions of KRS Chapter 13B by establishing procedures for the filing, evaluation, and disposition of complaints.
(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 351.194 requires the commission to promulgate administrative regulations to establish procedures for conducting hearings and issue orders regarding licensees, coal operators, and other persons involved in the mining of coal, in accordance with KRS Chapter 13B. This administrative regulation establishes the administrative hearing procedures that will enable the commission to carry out its statutory duties.
(d) How this administrative regulation will assist in the effective administration of the statute: This administrative regulation clearly delineates the procedural steps to be followed when a complaint is filed with the commission thereby putting the public on notice of the procedures to be followed and increasing efficiency.
(2) New administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Owners of mines, supervisors, foremen, miners and all other employees engaged in coal mining in Kentucky. The number is approximately 16,000. Unions and owner organizations will also be affected.
(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: This administrative regulation will assist the aforementioned groups by providing detailed information on the complaint process, such as the requirements for notice, the timelines for responses, etc. It is hoped that the provision of this information will streamline the process by reducing procedural inquiries.
(5) Estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are no costs associated with the implementation of this administrative regulation.
(b) On a continuing basis: The costs would be the expenses incurred in the event the commission decides to conduct an administrative hearing. These costs will vary from case to case depending upon such variables as number of allegations, number of defendants, settlement possibilities, court reporters, etc. Therefore, it is impossible to give an accurate assessment at this time.
(6) The source of funding for the implementation and enforcement of this administrative regulation: General commission funds.
(7) Assessment of whether an increase in funding will be necessary to implement this administrative regulation: The commission does not anticipate the need to increase funding to implement this administrative regulation. It is merely formalizing the administrative process established by KRS Chapter 13B as authorized by KRS 351.194.
(8) This administrative regulation does not establish fees, nor does it directly or indirectly increase any fees.
(9) TIERING: Tiering is not applied in this administrative regulation as all licensees are to be treated equally in the hearing process utilized by the commission.
The January meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, January 8, 2002 at 10:00 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 December 11, 2001 meeting were approved.

Present were:
- Members: Representative John Arnold, Chairman; Senators Marshall Long, Joe Pendleton, Richard Roeding; Representatives Woody Allen, Jimmie Lee, and James Bruce.
- LRC Staff: Dave Nicholas, Karen Smith, Sarah Amburgey, Donna Little, Edna Lowery, Susan Wunderlich, Donna Kemper, and Ellen Steinberg.
- Guests: David Lawhorn, Denise Reid, Kentucky Higher Education Assistance Authority; Richard Ornstein, Barbara Buechler, Department for Local Government; Michael A. Mone, Board of Pharmacy; Bill Schmidt, Lloyd Vest, Board of Medical Licensure; Robert Illick, Board of Psychology; Becky Klusch Hughes, Board of Physical Therapy; Danna Droz, Board of Podiatry; James J. Gravez, Mark Brengelman, Attorney General's Office; Nancy L. Black, Division of Occupations and Professions; Sam Blackburn, Larry Dewey, Real Estate Appraisers Board; Ann Stewart, Mark Farrow, Dr. Don Notter, Department of Agriculture; Mary Ellen Wiederwohl, Education Professional Standards Board; Dr. Carol McPeak, Charlotte Houts; Janie Miller, Department of Insurance; Riche Leach, James Carerer, Colleen Ryall, Debbie Sallmant, Tricia Salyer, Cabinet for Health Services; Elizabeth Caywood, Shirley Eldridge, Karen C. Doyle, Cabinet for Families and Children.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

**Kentucky Higher Education Assistance Authority: Kentucky Educational Savings Plan Trust**
- 11 KAR 12:010: Definitions for 11 KAR Chapter 12. David Lawhorn, Program Advisor, and Denise Reid, Assistant General Counsel, represented the Authority.
- This administrative regulation was amended as follows: Section 1 was amended to correct: (1) a statutory citation; and (2) two typographical errors.
- 11 KAR 12:040: Residency classification for Kentucky Educational Savings Plan Trust vested participation agreements. This administrative regulation was amended as follows: Sections 1 and 3 were amended to correct typographical errors.
- 11 KAR 12:050: Substitution of a beneficiary. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) Section 1 was amended to comply with the drafting requirements of KRS Chapter 13A.

**Department For Local Government: Training Incentives**
- 109 KAR 2:020: Training incentive. Richard Ornstein, Counsel, represented the Department.
- In response to questions by Senator Roeding, Mr. Ornstein stated that by statute, certain county officials who completed forty hours of job-related training were entitled to a $100 incentive payment, as adjusted by the Consumer Price Index. Officials could earn one training incentive per year until they attained the maximum of four incentives. Officials only received the cumulative incentives if they maintained forty hours of training each year. Counties were required to include funding for these incentives in their county budgets.
- In response to questions by Representative Bruce, Mr. Ornstein stated that to his knowledge, no county had been forced to raise taxes to fund these training incentives.
- This administrative regulation was amended as follows: Sections 2, 3, 4, 5, and 7 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

**Board of Pharmacy**
- 201 KAR 2:080: Reference material and prescription equipment. Michael A. Mone, Executive Director, represented the Board.
- 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; and (2) Sections 1 to 3 were amended to comply with the drafting and format requirements of KRS Chapter 13A.
- 201 KAR 2:165. Transfer of prescription information. 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; and (2) Sections 1 to 3 were amended to comply with the drafting and format requirements of KRS Chapter 13A.
- 201 KAR 2:250. Impaired pharmacists committee. This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 3, 5, 6, 7, and 8 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (2) Section 9 regarding civil immunity was deleted as it modified statutory provisions, as required by KRS 13A.120(2)(e) and (f).

**Board of Medical Licensure**
- 201 KAR 9:016. Restrictions on use of amphetamine and amphetamine-like anorectic controlled substances. Bill Schmidt, Executive Director, and Lloyd Vest, General Counsel, represented the Board.
- This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1, 3, 4, and 6 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (4) Section 4(4)(g) was amended to require documentation that a physician requested a patient to sign the specified patient agreement if an agreement was not signed.

**Board of Physical Therapy**
- 201 KAR 22:020. Method of applying for licensure. Becky Klusch Hughes, Executive Director, and Mark Brengelman, Assistant Attorney General, represented the Board.
- This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 3 were amended to comply with the drafting and format requirements of KRS Chapter 13A.
- 201 KAR 22:040. Procedure for renewing licenses. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) Sections 1 and 2 were amended to comply with the drafting and format requirements of KRS Chapter 13A.
- 201 KAR 22:070. Requirements for foreign-educated physical therapists. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1, 2, and 3 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (4) Section 3 was amended to incorporate by reference the required evaluation form.
- 201 KAR 22:101. Eligibility and method of applying for physical therapists' assistant certification. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct statutory citations.
graph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1 was amended to comply with the drafting and format requirements of KRS Chapter 13A; (4) Section 4 was amended to specify the name of the required application form; and (5) a new Section 5 was created to incorporate by reference the required application form.

201 KAR 22:110. Renewal of assistant's certification. 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); (3) Sections 1, 2, 3, and 3 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (4) a new Section 4 was created to incorporate by reference the required application form.

Board of Podiatry

201 KAR 25:031. Continuing education. James Grawe, Assistant Attorney General, and Donna Droz, consumer representative, represented the Board.

This administrative regulation was amended as follows: Sections 3, 4, 5, and 6 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

Board of Examiners of Psychology

201 KAR 26:115. Definition of psychological testing. Nancy Black, Division of Occupations and Professions, Robert Ilback, Chairperson, and Mark Brangelman, Assistant Attorney General, represented the Board.

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; and (2) Sections 1 to 3 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

201 KAR 26:121. Scope of practice and dual credentialing. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; and (2) Sections 1 to 3 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

201 KAR 26:125 E. Health service provider designation. This administrative regulation was amended as follows: Section 2 was amended to comply with the drafting requirements of KRS Chapter 13A.

201 KAR 26:130 E. Complaint procedure. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 3, 5, and 6 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (2) Section 5 was amended to correct a statutory citation.

201 KAR 26:140. Procedures for disciplinary hearings. 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; (2) Sections 3 to 10 were deleted to allow KRS Chapter 13B to govern the hearing process; and (3) Sections 11 and 12 were renumbered.

201 KAR 26:145 E. Code of conduct. This administrative regulation was amended as follows: Section 1 was amended to refer to a statutory definition.

201 KAR 26:155 E. Licensed psychologist: application procedures and temporary license. This administrative regulation was amended as follows: (1) Sections 2 and 4 were amended to comply with the drafting requirements of KRS Chapter 13A; and (2) Section 5 was amended to incorporate by reference the required material.

201 KAR 26:160. Fee schedule. In response to a question by Senator Roewing, Ms. Black stated that the amendments to this administrative regulation created a licensure fee for the new licensure level of psychological practitioner and deleted national examination fees. The amendments did not double any existing fees.

201 KAR 26:165 E. Licensed psychologist: application procedures amended to: (1) comply with the drafting and format requirements of KRS Chapter 13A; and (2) specify that the examination fee shall be paid directly to the exam contractor.

201 KAR 26:171 & E. Requirements for supervision. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) Section 5 was amended to delete language that exceeded statutory authority; and (3) Section 12 was amended to comply with the drafting requirements of KRS Chapter 13A.

201 KAR 26:175. Continuing education. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) Section 2 was amended to delete superfluous language, as required by KRS 13A.222(4)(a); and (3) Section 3 was amended to change the term "licenser" to "credentialer".

201 KAR 26:180. Requirements for granting licensure as a psychologist by reciprocity. This administrative regulation was amended as follows: Section 5 was amended to correct statutory citations.

201 KAR 26:185 & E. Requirements for granting licensure as a psychologist to an applicant licensed in another state. This administrative regulation was amended as follows: Section 1 was amended to correct statutory citations.

201 KAR 26:190 & E. Requirements for supervised professional experience. 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; and (2) Sections 1 and 2 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

201 KAR 26:200. Definitions of terms used by the Board of Examiners of Psychologists for meeting educational requirements for licensure as a licensed psychologist. This administrative regulation was amended as follows: Sections 1 and 2 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

201 KAR 26:210 & E. Definitions of terms used by the Board of Examiners of Psychologists for meeting educational requirements for licensure as a licensed psychological associate. This administrative regulation was amended as follows: (1) Sections 1 was amended to delete provisions that repeated or summarized statutory provisions, as required by KRS 13A.120(2); and (2) Section 2 was amended to comply with the drafting and format requirements of KRS Chapter 13A.

201 KAR 26:230 & E. Examinations. This administrative regulation was amended as follows: (1) Sections 1, 2, and 5 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (2) Sections 2 and 3 were amended to correct statutory and regulatory citations.

201 KAR 26:250 & E. Employment of a psychological associate. This administrative regulation was amended as follows: (1) the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Section 2 was amended to comply with the drafting requirements of KRS Chapter 13A; and (3) Section 7 was amended to incorporate by reference the required material.

201 KAR 26:270 & E. Change of credential status. This administrative regulation was amended as follows: Section 3 was amended to correct regulatory citations.

201 KAR 26:280 & E. Licensed psychological associate: application procedures and temporary license. This administrative regulation was amended as follows: (1) Sections 1 and 2 were amended to correct statutory citations; and (2) Sections 2 and 3 were amended to comply with the drafting requirements of KRS Chapter 13A.

201 KAR 26:290 & E. Licensed psychological practitioner: application procedures. This administrative regulation was amended as follows: Section 1 was amended to (1) reference the appropriate form; and (2) delete provisions that repeated or summarized statutory provisions, as required by KRS 13A.120(2).

201 KAR 26:300 & E. Definitions of terms used by the Board of Examiners of Psychologists for meeting educational requirements for licensure as a licensed psychological practitioner. This administrative regulation was amended as follows: (1) the TITLE was amended to correctly reflect the content of the administrative regulation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function
served by this administrative regulation; (3) Sections 1 and 2 were amended to delete provisions that repeated or summarized statutory provisions, as required by KRS 13A.120(2); and (4) Sections 2 to 4 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

Real Estate Appraisers Board
201 KAR 30:010. Definitions for 201 KAR Chapter 30. Sam Blackburn, Executive Director, Larry Disney, Investigator Education Director, and James Grave, Assistant Attorney General, represented the Board.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to add a statutory citation; and (2) Section 1 was amended to comply with the drafting and format requirements of KRS Chapter 13A; and (2) Section 3 was amended to correct the name of the application form.

201 KAR 30:050. Examination, education, and experience requirements for appraisal certificates and licenses. This administrative regulation was amended as follows: (1) Sections 2 to 9 would be amended to comply with the drafting and format requirements of KRS Chapter 13A; and (2) Section 6 was amended to clarify the scope of the Board's discretion to require further information.

201 KAR 30:070. Complaints of violations. This administrative regulation was amended as follows: Sections 1, 2, and 4 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

201 KAR 30:110. Appraiser roster, transmission, fees, deletions, notification, and hearing. In response to a question by Representative Bruce, Subcommittee staff stated that the amendments to this administrative regulation reduced the Appraisal Subcommittee roster fee from $35 to $25.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended for accuracy; and (3) Sections 2, 4, and 5 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

201 KAR 30:130. Standards for education approval - fees. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended for accuracy; (3) Section 2 was amended to comply with the drafting and format requirements of KRS Chapter 13A; and (4) a new Section 2 was created to incorporate by reference an application form.

Department Of Agriculture: Livestock Sanitation
302 KAR 20:240. Mycobacterium paratuberculosis (Johnne's). Mark Farrow, General Counsel, and Dr. Don Noller, State Veterinarian, represented the Department.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph and Sections 1, 2, 3, and 7 were amended to comply with the drafting and format requirements of KRS Chapter 13A; (2) Section 2(2)(c) was amended to require the immediate identification of animals testing positive for Johnne's; and (4) Section 7 was amended to replace the form incorporated by reference with an updated version of the form.

Education Professional Standards Board
704 KAR 20:555. Professional certificate for college faculty: secondary education. Mary Ellen Wiederwohl, Legislative Liaison, represented the Board.

In response to a question by Senator Roeding, Ms. Wiederwohl stated that this administrative regulation enabled more persons to serve as teachers in public schools by permitting those with five years of teaching experience at the college level to be certified as secondary teachers.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2(3)(a) were amended to delete superfluous language, as required by KRS 13A.222(4)(a).

Department of Insurance: Authorization of Insurers and General Requirements
806 KAR 3:210 & E. Privacy of consumer financial information. Janie Miller, Commissioner, Julie McPeak, General Counsel, and Charlotte Hummel, Staff Attorney, represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to specify citations with the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to include authorizing citations and to delete superfluous language, as required by KRS 13A.222(4)(a); (3) Section 1 was amended to comply with the requirements for definitions under KRS 13A.222(4)(d) and (e); and (4) Sections 2 to 22 were amended to specify citations and comply with the drafting and format requirements of KRS Chapter 13A.

Health Insurance Contracts
806 KAR 17:380. Repeal of 806 KAR 17:066. Janie Miller, Commissioner, Julie McPeak, General Counsel, Charlotte Hummel, Staff Attorney, and Jay Thomson, represented the Department.

In response to a question by Senator Roeding, Ms. Miller stated that the Department repealed this administrative regulation because they replaced it with five smaller administrative regulations to simplify the administrative regulations and to incorporate new standards from the Federal Benefits Improvement and Protection Act of 2000. The five new administrative regulations, 806 KAR 17:390, 17:400, 17:410, 17:420, and 17:430, imposed minimum standards on insurers to protect the consumers.

This administrative regulation was amended as follows: the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to comply with the drafting and format requirements of KRS Chapter 13A.

806 KAR 17:350. Benefits and disclosures in Medicare supplement insurance policies. In response to questions by Senator Roeding, Ms. Miller stated that the fourteen forms incorporated by reference in this administrative regulation did not impose a hardship on insurance companies because federal law also required their use. Additionally, supplemental insurance policies for primary reason senior citizens had problems in obtaining and retaining adequate insurance coverage. Managed care plans, which replaced Medicare benefits, were a much bigger contributing factor. Because this administrative regulation did not apply to managed care plans, it did not affect that issue.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to specify federal citations; and (2) Sections 1 to 11 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

806 KAR 17:400. Marketing and sales practices in Medicare supplement insurance policies. In response to a question by Representative Bruce, Mr. Thompson stated that this administrative regulation implemented a statute enacted in 1992 to protect senior citizens from being sold unneeded supplemental insurance policies.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to specify citations; (2) Section 1 was amended to comply with the requirements of KRS 13A.222(4)(d) and (e); and (3) Sections 3 to 13 were amended for clarity and to comply with the drafting and format requirements of KRS Chapter 13A.

806 KAR 17:410. Claims payment practices in Medicare supplement insurance policies. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to specify citations; and (2) Sections 1 and 2 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

806 KAR 17:420. Rates, premiums and loss ratio requirements
in Medicare supplement insurance policies. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to specify citations; and (2) Sections 1 to 3 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

806 KAR 17:430. Reporting requirements in Medicare supplement insurance policies. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to specify federal citations; and (2) Sections 1 to 3 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

Cabinet For Health Services: Certificate of Need


This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 were amended to comply with the drafting requirements of KRS Chapter 13A.

Department for Public Health: Lead Abatement

902 KAR 48:010. Definitions. Terry Wescott, Manager, and James Carreer, Legislative Liaison, represented the Cabinet.

This administrative regulation was amended as follows: (1) the Title was amended to show that the definitions apply to Chapter 48; (2) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; and (3) Section 1 was amended to clarify, add, delete, or correct statutory citations.

902 KAR 48:020. Training and certification requirements for persons who perform lead-hazard detection or lead-hazard abatement. In response to questions by Senator Roeding, Mr. Carreer stated that this administrative regulation stratified the certification fees so that the Cabinet could charge reduced fees to certification applicants whose applications were processed faster. In response, Senator Roeding, Mr. Wescott stated that while the Cabinet did require certification for local health departments which performed lead-hazard assessments for residences of children with lead poisoning, the Cabinet did not assess them certification fees.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to add, delete, or correct statutory citations; and (2) Sections 1 to 10 were amended for clarity and to comply with the drafting and format requirements of KRS Chapter 13A.

902 KAR 48:030. Accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection and abatement. This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to add, delete, or correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to clarify language and to comply with the drafting and format requirements of KRS Chapter 13A; and (3) Section 5(2) was amended to delete a regulatory schema and replace it with a reference to the relevant statute.

Department for Medicaid Services: Payment and Services

907 KAR 3:090 & 8: E. Acquired brain injury services. Tricia Salyer and Colleen Rayal represented the Department.

In response to questions by Senator Roeding, Ms. Salyer stated that the facility level of care determination was required for an applicant to receive services under the acquired brain injury program. The Department had not tracked the costs of the prior authorization required before acquired brain injury services could be provided.

Senator Roeding requested that the Department track the prior authorization costs and report them back to the Subcommittee. Mr. Salyer stated that this information would be provided.

This administrative regulation was amended as follows: Sections 5, 6, 9, 10, 12 to 16, 18, 20, and 22 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

Cabinet For Families And Children: Department of Community Based Services: Protection and Permanency: Child Welfare


In response to questions by Senator Roeding, Ms. Jordan stated that children's advocacy centers were regional centers which provided advocacy, medical, and mental health services to abused children. The Department had established them as partnerships between governmental and private entities. Their $1.4 million of state funding served to employ directors for each center and the centers were responsible for obtaining the remainder of their needed funding through local fundraising and grants from federal sources, local governments, and private foundations. Due to their specialized focus on the needs of abused children, the centers did not provide services to abused senior citizens.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph and Sections 1, 2, 3, 4, 6, and 7 were amended to comply with the drafting and format requirements of KRS Chapter 13A; (2) Section 1 was amended to include provisions that modified statutory definitions, as required by KRS 13A.120(2) and 13A.222(4)(d); (b) to include psychiatry in the definition of "mental health discipline," and (c) to establish a definition for "Regional children's advocacy center;" and (3) Section 4(11) was deleted which prohibited a known or alleged offender from visiting a children's advocacy center.

The Subcommittee determined that the following administrative regulations complied with statutory authority:

Kentucky Higher Education Assistance Authority: Kentucky Educational Savings Plan Trust

11 KAR 12:060. Cancellation, partial withdrawal, and payment of refunds. David Lawson, Program Advisor, and Denise Reid, Assistant General Counsel, represented the Authority.

Board of Examiners of Psychology

201 KAR 20:105. Inactive status. Nancy Black, Division of Occupations and Professions, Robert Illback, Chairperson, and Marc Bragelman, Assistant Attorney General, represented the Board.


Real Estate Appraisers Board

201 KAR 30:040. Standards of practice. Sam Blackburn, Executive Director, Larry Disney, Investigative Education Director, and James Grave, Assistant Attorney General, represented the Board.

Education Professional Standards Board

704 KAR 20:550. Provisional certificate for college faculty. Mary Ellen Wiederwohl, Legislativa Liaison, represented the Board.

In response to a question by Senator Roeding, Ms. Wiederwohl stated that this administrative regulation enabled more nervous teachers to serve as teachers in public schools by permitting college faculty members on sabbatical to receive provisional teaching certificates for one to two years.
Day Care
922 KAR 2:090E. Child care facility licensure.

OTHER BUSINESS

Cabinet For Health Services: Department for Public Health: Food and Cosmetics
902 KAR 45:120. Inspection fees; permit fees; hotels, mobile home parks, recreational vehicle parks, youth camps and private water supplies. Dr. Rice Leach, Commissioner, represented the Department.

Subcommittee staff stated that at the December, 2001 meeting of the Subcommittee, the Subcommittee placed this administrative regulation on the current agenda so that it could be studied. It had been cited as an internal reference for an administrative regulation on December’s agenda, 902 KAR 15:010, and it established a fee that was in excess of the statutory mandate fee.

In response to questions by Chairman Arnold, Dr. Leach stated that the Department had resolved the conflict by amending 902 KAR 15:010 so that it no longer referred to this administrative regulation to determine the fee amount. The statutory fee alone would apply. Additionally, the Department would amend 902 KAR 45:120 to delete Section 2(3), which violated KRS 219.350.

The Subcommittee adjourned at 11 a.m. until February 13, 2002, at 12 noon in Room 149 of the Capitol Annex.

Kentucky Retirement Systems: General Rules
105 KAR 1:150E. Installment purchase procedures.

Board of Emergency Medical Services
202 KAR 7:010E. Definitions.

Tourism Cabinet: Department of Fish and Wildlife Resources: Game
301 KAR 2:225E. Dove, wood duck, teal, and other migratory game bird hunting.

Hunting and Fishing
301 KAR 3:026E. Access to wildlife management areas for mobility-impaired individuals.

Labor Cabinet: Occupational Safety and Health

Kentucky Mine Safety Review Commission
825 KAR 1:020E. Administrative hearing procedures.

Cabinet For Health Services: Office of Inspector General
905 KAR 1:120E. Informal dispute resolution.

Department for Medicaid Services: Services
907 KAR 1:013E. Payments for hospital inpatient services.
907 KAR 1:019E. Outpatient Pharmacy Program.
907 KAR 1:021E. Reimbursement for drugs.
907 KAR 1:025E. 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.
907 KAR 1:031 & E. Payments for home health services.
907 KAR 1:145E. Supports for community living services for an individual with mental retardation or a developmental disability.
907 KAR 1:170 & E. Payments for home and community based waiver services.
907 KAR 1:320E. Kentucky Patient Access and Care System (KenPAC).
907 KAR 1:810E. Presumptive eligibility for pregnant women.

Payment and Services
907 KAR 3:030E. Coverage and payments for IMPACT Plus services.

Cabinet For Families And Children: Department of Community Based Services: Protection and Permanency: Child Welfare
922 KAR 1:470E. Central registry.

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CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates ................................................................. H - 2

The Locator Index lists all administrative regulations published in VOLUME 28 of the Administrative Register from July, 2001 through June, 2002. 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 27 are those administrative regulations that were originally published in Volume 27 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2001 bound Volumes were published.

KRS Index ........................................................................................................... H - 15

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 28 of the Administrative Register.

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The Subject Index is a general index of administrative regulations published in VOLUME 28 of the Administrative Register, and is mainly broken down by agency.
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*Statement of Consideration Not Filed by Deadline*

*Found deficient by legislative committee*

### VOLUME 28

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(Note: Emergency regulations expire 170 days from publication; or 170 days from publication plus number of days of requested extension; or upon replacement or repeal, whichever occurs first)

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***Was not removed from regulations database; expired due to finding of deficiency ARRS
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