# ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet March 9, 2004 at 9:30 a.m. in Room 125 of the Capitol Annex, Frankfort, Kentucky. See tentative agenda on pages 1999 - 2000 of this Administrative Register.

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

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

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# ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
# TENTATIVE AGENDA - March 9, 2004, at 9:30 a.m., Room 125, Capitol Annex

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601 KAR 9:085. Procedures for becoming a certified motor vehicle inspector. (Deferred from November)

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

**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 and Public Comment Period**

The administrative body shall schedule a public hearing on proposed administrative regulations which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted for a 30 day period following publication.

The administrative regulation shall include: place, time, and date of hearing; the manner in which persons submit notification to attend the hearing and written comments; that notification shall be sent no later than 5 workdays prior to the hearing date; the deadline for submitting written comments; and the name, position, address, and telephone and fax numbers of the person to whom notification and written comments shall be sent.

The administrative body shall notify the Compiler, by phone and letter, if the hearing is cancelled and no written comments are received. If the hearing is held or written comments are received, the administrative body shall file a statement of consideration with the Compiler within 15 days following the last day of the comment period.

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**

After the public hearing and public comment period processes are completed, 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 30 days after being referred by LRC, whichever occurs first.

## EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, FEBRUARY 13, 2004

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

**STATEMENT OF EMERGENCY**
**815 KAR 35:050E**

This emergency administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, electricians and master electricians for the issuance of one (1) year certificates as established in 2003 Ky. Acts ch. 119. An ordinary administrative regulation is not sufficient because there is an immediate need to create procedures governing the licensure of electrical contractors, electricians and master electricians to protect the human health and environment of the citizens of Kentucky. The emergency administrative regulation also reflects amendments deemed necessary by the Legislative Research Commission to bring the provisions within the statutory authority of the Office of Housing, Buildings and Construction. This emergency administrative regulation will be replaced by an ordinary administrative regulation and the ordinary administrative regulation will be filed simultaneously with this emergency administrative regulation.

LAJUANA WILCHER, Secretary
ERNIE FLETCHER, Governor

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**
**Office of Housing, Buildings and Construction**
**Office of State Fire Marshal**
**(New Emergency Administrative Regulation)**

**815 KAR 35:050E. Licensing of electrical contractors, electricians, and master electricians.**

RELATES TO: KRS 227A.010; 227A.060; 227A.080
STATUTORY AUTHORITY: KRS 227A.040(1), (8); 227A.060
EFFECTIVE: February 4, 2004
NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 227A requires the Office of Housing, Buildings and Construction to promulgate administrative regulations by June 24, 2003, establishing a process for the licensing of electrical contractors, electricians, and master electricians. Executive Order No. 2003-064 filed December 23, 2003 created the Environmental and Public Protection Cabinet. Executive Order No. 2004-031 filed January 6, 2004 changed the Department of Housing, Buildings and Construction to the Office of Housing, Buildings and Construction and changed the title of commissioner to executive director. This proposed administrative regulation complies with the directive of KRS Chapter 227A.

Section 1. Application Procedure. An applicant for licensure pursuant to Section 8 of HB 115 shall:
(1) Complete an application as described in Section 2 of this administrative regulation;
(2) Pay the application fee required by Section 3 of this administrative regulation; and
(3) Provide verifiable evidence of experience by:
(a) Submitting a copy of a current electrical contractor's, master electrician's or electrician's license issued by a Kentucky city, county, urban-county or consolidated local government;
(b) Submitting a copy of a current license issued by another state or jurisdiction whose standards have been determined by the Office of Housing, Buildings and Construction to be substantially equal to those required by Section 6 of HB 115; or
(c) Submitting verification of the required years of experience as an electrical worker in a form specified in Section 4 of this administrative regulation.

Section 2. Application Requirements. The applicant shall complete an application form which shall include the following information:
(1) Applicant's name;
(2) Applicant's home address;
(3) Applicant's business address;
(4) Applicant's home and business telephone numbers;
(5) Applicant's date of birth;
(6) Applicant's Social Security number and/or employer identification number;
(7) Applicant's e-mail address;
(8) Licenses applied for;
(9) A listing of the applicant's experience in the electrical industry, including business name and address, job title and supervisor's name;
(10) A listing of all approved training or apprenticeship programs the applicant has completed;
(11) A statement confirming that the applicant is not in default on any educational loan guaranteed by the KHEAA;
(12) For master electrician and electrician licenses, passport sized photograph of the applicant;
(13) For electrical contractor licenses, the name and license number of the master electrician who will be affiliated with the applicant; and
(14) For electrical contractor licenses, the name of the insurer providing the applicant's liability and worker's compensation coverage and the policy number of each coverage.

Section 3. Application and Renewal Fees. The application fee for an electrical contractor's license shall be $200. The application fee for a master electrician's license shall be $100. The application fee for an electrician's license shall be fifty (50) dollars. Application fees shall not be refundable. License renewal fees shall be the same as the relevant application fee.

Section 4. Verification of Experience.
(1) An applicant shall submit verification of experience for licensure as an electrical contractor, master electrician or electrician.
(2) Verification shall be submitted in the form of:
(a) Tax returns or other official tax documents which indicate the applicant's occupation or the nature of the applicant's business activities, including but not limited to Federal Schedule C, Form W-2, Form 1099, or local occupational tax returns;
(b) Copies of business licenses issued by a county or municipal government which does not issue electrical contractor's, master electrician's or electrician's licenses if the business license indicates the applicant operated as an electrical contractor or worker;
(c) For licensure as an electrical contractor, a sworn affidavit, on the affiant's letterhead, certifying that the author of the letter has personal knowledge that the applicant has operated as an electrical contractor from at least one (1) of the following:
1. An electrical workers union;
2. An electrical industry organization, including but not limited to the National Electrical Contractors Association, the Association of Builders and Contractors, the Associated General Contractors, the International Association of Electrical Inspectors, or the Independent Electrical Contractors Association;
3. A certified electrical inspector;
4. A Kentucky licensed insurance agent who has provided liability or other business coverage for the applicant's electrical contracting business; or
5. A Kentucky county judge executive, state representative or state senator.
(d) For licensure as a master electrician or an electrician, a sworn affidavit, on the affiant's letterhead, certifying that the author of the letter has personal knowledge that the applicant has worked as a master electrician or an electrician from at least one (1) of the following:
1. An electrical workers union;

2. A certified electrical inspector;
3. An employer which employed the applicant as an electrician or a master electrician;
4. A Kentucky licensed insurance agent who has provided liability or other business coverage for the applicant's electrical contracting business; or
5. A Kentucky county judge executive, state representative or state senator.

(e) Records of a branch of the United States Armed Forces which indicate the applicant performed a function which primarily involved electrical work. Experience gained while in the military shall be deemed to have been earned in Kentucky.

Section 5. Appeal Procedure. Applicants denied a license may appeal the decision of the Office of Housing, Buildings and Construction to the Electrical Advisory Board. The applicant shall submit written notice of the appeal to the Office of Housing, Buildings and Construction within ten (10) days of receiving notice that the license application has been denied. The appeal shall be conducted pursuant to KRS Chapter 13B by a hearing officer appointed by the Electrical Advisory Board. The hearing officer shall submit findings of fact, conclusions of law and a recommended order to the Electrical Advisory Board, which may adopt it, amend it or substitute its own decision based upon the evidence.

Section 6. Proof of Insurance. Applicants for an electrical contractor's license shall provide proof of compliance with liability insurance requirements by providing an insurance certificate showing general liability insurance coverage of at least $500,000 issued by an authorized Kentucky insurer or other insurer certified by the Kentucky Department of Insurance. The applicant shall provide proof of worker's compensation insurance by providing an insurance certificate from an authorized Kentucky insurer or other workers compensation coverage provider or by providing a letter certifying that the applicant is not required to obtain worker's compensation coverage. Electrical contractors shall require their liability and worker's compensation insurers to provide notice to the Office of Housing, Buildings and Construction in the event their policies are cancelled, terminated, nonrenewed or the policy limits are lowered. Electrical contractors shall have a duty to advise the Office of Housing, Buildings and Construction of any change in their insurance coverage, including cancellation or termination of any policy or any change in the insurer providing the coverage. A licensee's failure to notify the Office of Housing, Buildings and Construction of a change in liability or worker's compensation coverage shall be grounds for license revocation, suspension or other disciplinary action.

Section 7. Renewal Requirements. Licenses shall be valid for one (1) year and shall be renewed on or before the last day of the licensee's birth month. For electrical contractor licenses issued to corporations, partnerships or business entities without a birth month, the Office of Housing, Buildings and Construction shall issue a renewal month on a rotating basis. The Office of Housing, Buildings and Construction may issue an initial license to an applicant for a period of up to twenty-three (23) months and may charge a pro rata license renewal fee to reflect the added term of the initial license. The pro rata license renewal fee may be refundable. No initial license shall be for a term of longer than one (1) year plus sufficient months to reach the applicant's next birth month or renewal month.

Section 8. Pending License. Upon receipt of an application from an applicant, or portion of an application from an applicant or a local government acting on behalf of an applicant, the Office of Housing, Buildings and Construction may issue the applicant a pending license. This pending license shall be deemed to be the license required by HB 115, Section 3. Issuance of a pending license shall not create a presumption that the applicant will receive, is entitled to, or has a right to a permanent license. Issuance of a pending license does not waive or diminish the Office of Housing, Buildings and Construction's authority to deny or refuse to issue a permanent license to any applicant. All pending licenses shall expire upon issuance of a permanent license, the Office of Housing, Buildings and Construction's decision to deny a permanent license or July 15, 2004, whichever is earliest.

Section 9. Inactive License Status. An applicant may request a license be placed in inactive status. A licensee shall not perform any electrical work requiring a license while their license is inactive. An electrical contractor licensee in inactive status shall not be required to maintain liability insurance or provide proof to the Office of Housing, Buildings and Construction of compliance with worker's compensation laws. Certified electrical inspectors may be licensed as an electrical contractor, master electrician or electrician, but shall maintain any license as inactive while their Electrical Inspector certification is active. Performing electrical work which requires a license while holding an inactive license shall be grounds for revocation or suspension of all electrical licenses and certifications held by the licensee.

Section 10. Material Incorporated by Reference. (1) The following material is incorporated by reference: Form SFM-EC-1, "Electrical Contractor's License (June, 2003 Edition)", Office of Housing, Buildings and Construction.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, Electrical Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, between 8 a.m. and 4:30 p.m., Monday through Friday.

DENNIS J. LANGFORD, Executive Director
LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY:
FILED WITH LRC: February 4, 2004 at 9 a.m.
CONTACT PERSON: Frank L. Dempsey, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Frank L. Dempsey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for the licensing of electrical contractors, electricians and master electricians under the grandfathering provisions of 2003 Ky. Acts ch. 119, Section 8.
(b) The necessity of this administrative regulation: This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, electricians and master electricians for the issuance of licenses as established in 2003 Ky. Acts ch. 119.
(c) How this administrative regulation conforms to the content of the authorizing statutes: It sets the standards and procedures that to be followed in implementing HB 115 for the licensing of electrical contractors, electricians and master electricians.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth the standards and procedures authorized by the statute in implementation of the requirements for licensing of electrical contractors, electricians and master electricians.
(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: Not applicable. This is a new regulation.
(b) The necessity of the amendment to this regulation:
(c) How the amendment conforms to the content of the authorizing statute:
(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: Every business or individual currently acting as an electrician or electrical contractor will be affected by this administrative regulation. While the Office of Housing, Buildings and Construction does not have an exact number of current electricians

or electrical contractors, it is estimated that approximately 30,000 licenses will be issued. This administrative regulation will also affect city and county governments which issue electrical licenses or electrical permits. Currently 11 cities or counties have licensing programs for electricians or electrical contractors. A similar number of cities or counties issue electrical permits.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative, if new, or by the change if it is an amendment: Businesses and individuals working in the electrical industry will be required to be licensed as electrical contractors, master electricians and/or electricians. They will be required to provide proof that they meet the statutory qualifications each of the license categories. Cities and counties which currently licenses electricians or electrical contractors will be asked to provide information regarding their licensees to aid in the process of converting local licenses to state licenses. Local jurisdictions which issue electrical permits will be required to check the permit purchasers either hold the required license or are exempt from licensure.

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

(a) Initially: Cost to implement the electrical licensure grandfathering program is currently estimated at $700,000.

(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: Initial funding will be borrowed from funds held by other divisions of the Office of Housing, Buildings and Construction. These funds will be repaid over 2 years. Permanent funding will be from license fees.

(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: Since this is a new statutory initiative, this administrative regulation sets the license application and renewal fees required in the statute.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes electrical contractor, master electrician, and electrician license application fees and license renewal fees.

(9) TIERING: Is tiering applied? Tiering is not applied.

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 regulation will affect local governments that issue electrical permits and local governments that license electricians.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation relates to the statewide licensure of electricians, master electrician and electrical contractors. Local governments will only be allowed to issue electrical permits to licensed electrical contractors.

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 (+/-):

Expenditures (+/-):

Other Explanation: Exact revenue effects cannot be determined at this time. The additional cost involved in confirming that an electrical permit applicant is a licensed electrical contractor is expected to be minimal. Local governments will quickly learn which local contractors are licensed, thus minimizing the burden. The Office of Housing, Buildings and Construction will have an online database available to local governments to quickly and inexpensively check on contractor license status.

**STATEMENT OF EMERGENCY**
**907 KAR 1:022E**

This emergency administrative regulation is being promulgated to revise the qualifying requirements regarding nursing facility (NF) level of care. An individual shall now be required to meet two (2) of nine (9) rather than three (3) of nine (9) NF level of care criteria and an individual shall not be discharged from an NF if he or she meets transfer trauma criteria. This action is being taken to enable the Department for Medicaid Services (DMS) to maximize the number of medically needy recipients to be served by the nursing facility and home and community based waiver service programs with the limited resources available to DMS. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the safety and welfare of Medicaid recipients whose receipt of services may be otherwise jeopardized. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

ERNIE FLETCHER, Governor
JAMES. W. HOLSINGER, JR., M.D., Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**
**Department for Medicaid Services**
**Division of Long Term Care and Disability Services**
**(Emergency Amendment)**

**907 KAR 1:022E. Nursing facility and intermediate care facility for an individual with mental retardation or a developmental disability [~~the mentally retarded and developmentally disabled~~] level of care criteria.**

RELATES TO: 42 C.F.R. 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 U.S.C. 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s

STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3), 205.558

EFFECTIVE: January 30, 2004

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 citizenry. This administrative regulation establishes the nursing facility (NF) and intermediate care facility for an individual with mental retardation or a developmental disability (ICF MR DD) level of care criteria as well as establishes the provisions relating to NF and ICF MR DD services [~~nursing facility and intermediate care facility for the mentally retarded and developmentally disabled level of care criteria~~] for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy recipients.

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

(2) "Intermediate care facility for an individual with mental retardation or a developmental disability [~~the mentally retarded and developmentally disabled~~]" or "ICF-MR-DD" means a licensed intermediate care facility for an individual with mental retardation or a developmental disability [~~the mentally retarded and developmentally disabled~~] certified to the Department for Medicaid Services as meeting all standards for an intermediate care facility for an individual with mental retardation or a developmental disability [~~facilities for the mentally retarded and developmentally disabled~~].

(3) "Intermediate care for an individual with mental retardation or a developmental disability [~~the mentally retarded and developmentally disabled~~] services" means care provided that is consistent with a combination of the services listed in Section 5 of this administrative regulation.

(4) "Intermittent skilled nursing care services" means services for an individual who requires skilled nursing care services at regular or irregular intervals, but not on a twenty-four (24) hour-per-day basis and not less than three (3) days per week.

(5) "Medical condition" means a usually-defective state of health relative to a clinical diagnosis made by a licensed physician, physician assistant, or advanced registered nurse practitioner.

(6) "Nursing care services" means care provided that is consistent with a combination of the services listed in Section 4 of this administrative regulation and that is provided by or under the supervision of technical or professional staff in an institutional setting.

(7) "Nursing facility" or "NF" means:

(a) A facility:

1. To which the state survey agency has granted an NF license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), (d), 42 C.F.R. 447.280 and 482.66.

(8) "Nursing facility level of care" means that care that meets the criteria established in this administrative regulation for inpatient treatment of an individual in a nursing facility and that is based on a medical condition requiring professional or technical nursing care services to be ordered and supervised by a physician, physician assistant, or advanced registered nurse practitioner on an ongoing basis.

(9) "Nursing facility with Medicaid waiver" or "NF-W" means a facility:

(a) To which the state survey agency has granted an NF license;

(b) For which the state survey agency has recommended to the department certification as a Medicaid provider;

(c) To which the department has granted a waiver of the nursing staff requirement; and

(d) To which the department has granted certification for Medicaid participation.

(10) "Skilled nursing care services" means care that is consistent with a combination of the services listed in Section 4(2) of this administrative regulation and that is provided on a daily basis by, or under the supervision of, a registered nurse, licensed practical nurse, or certified therapist in an institutional setting.

(11) "Skilled rehabilitative services" means those therapy services which:

(a) Are expected to improve an individual's condition while the individual possesses reasonable potential for improvement in functional capability; and

(b) Do not include restorative and maintenance nursing procedures, including routine range of motion exercises and application of splints or braces by nurses and staff.

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

Section 2. Participation Requirements. A facility desiring to participate as a nursing facility, nursing facility with waiver, or ICF-MR-DD shall meet the following requirements:

(1) An application for participation shall be made in accordance with 907 KAR 1:671 and 907 KAR 1:672.

(2) A nursing facility shall have at least twenty (20) percent of all Medicaid certified beds, but not less than ten (10) beds, also certified to participate in Medicare unless the facility has obtained a Medicaid waiver of the nurse staffing requirement. If a nursing facility has less than ten (10) beds certified for Medicaid, all Medicaid certified beds shall also be certified to participate in Medicare.

(3) If a nursing facility which has obtained a Medicaid waiver of the nurse staffing requirements chooses to participate in Medicare, the facility shall have at least twenty (20) percent of all Medicaid certified beds, but not less than ten (10) beds, also certified to participate in Medicare. If less than ten (10) beds are certified for Medicaid, all Medicaid beds shall also be certified to participate in Medicare.

(4) A nursing facility or a nursing facility with waiver shall be required to comply with the preadmission screening and resident review requirements specified in 42 U.S.C. 1396r and 907 KAR 1:755. A facility failing to comply with these requirements shall be subject to disenrollment, with exclusion from participation to be accomplished in accordance with 907 KAR 1:671, 42 C.F.R. 431.153 and 431.154.

(5) A facility shall be required to be certified by the state survey agency as meeting NF, NF-W, or ICF-MR-DD status.

(6) In order to provide specialized rehabilitation services to an individual with a brain injury in accordance with Section 7 of this administrative regulation, a facility shall be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF).

(7) A participating nursing facility shall be certified in accordance with standards and conditions specified in the Medicaid Nursing Facility Services Manual before the facility may operate a unit that provides:

(a) Preauthorized specialized rehabilitation services for a person with a brain injury; or

(b) Care for a person who is ventilator dependent.

Section 3. Payment Provisions. (1) Payment for nursing care services and ICF-MR-DD services shall be limited to those services meeting the care definitions established in Section 1 of this administrative regulation.

(2) An NF or NF-W shall receive payment for nursing care services provided to a Medicaid-eligible individual meeting nursing facility level of care criteria if the services are provided in a Medicaid-certified bed.

(3) An ICF-MR-DD shall receive payments for ICF-MR-DD services only.

Section 4. Determining Nursing Facility Level of Care. The department shall review and evaluate the health status and care needs of an individual in need of inpatient care giving consideration to the medical diagnosis, age-related dependencies, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or noninstitutional services.

(1) An individual shall not qualify for Medicaid nursing facility level of care unless the individual is qualified for admission, and continued stay as appropriate, under the preadmission screening and resident review criteria specified in 42 U.S.C. 1396r and 907 KAR 1:755.

(2) An individual shall qualify for skilled nursing care services if:

(a) On a daily basis:

1. The individual's needs mandate:

a. Skilled nursing care services; or

b. Skilled rehabilitative services; and

2. The care can only be provided on an inpatient basis;

(b) The inherent complexity of a service prescribed for an individual exists to the extent that it can be safely or effectively performed only by or under the supervision of technical or professional personnel; or

(c) The individual has an unstable medical condition manifesting a combination of care needs in the following areas:

1. Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;

2. Nasogastric or gastrostomy tube feedings;

3. Nasopharyngeal and tracheotomy aspiration;

4. Recent or complicated ostomy requiring extensive care and self-help training;

5. In-dwelling catheter for therapeutic management of a urinary tract condition;

6. Bladder irrigations in relation to previously indicated stipulation;

7. Special vital signs evaluation necessary in the management of related conditions;

8. Sterile dressings;

9. Changes in bed position to maintain proper body alignment;

10. Treatment of extensive decubitus ulcers or other widespread skin disorders;

11. Receiving medication recently initiated, which requires skilled observation to determine desired or adverse effects or fre-

quent adjustment of dosage; or

12. Initial phases of a regimen involving administration of medical gases.

(3) An individual with a stable medical condition manifesting a combination of at least two (2) [~~three (3)~~] of the following care-need categories shall be determined to meet nursing facility level of care:

(a) Mobility. To demonstrate a care need in this category, an individual shall meet at least one (1) of the three (3) conditions listed below to satisfy this one (1) care-need category:

1. Assistance with wheelchair. The individual is incapable of propelling a manual wheelchair using upper or lower extremities or incapable of operating a powered wheelchair independently;

2. Changes in bed position or transfer. The individual is incapable of turning in bed or transferring to or from bed, chair or toilet without physical assistance being provided by another on an ongoing basis (at least three (3) times weekly); or

3. Ambulation. The individual requires standby assistance from at least one (1) person while walking;

(b) Physical or environmental management for confusion or agitation. The individual requires staff intervention due to an established pattern of aggressive or disruptive behavior that presents a substantial physical risk to self or others;

(c) Must be fed. The individual is incapable of taking food from a plate to his or her mouth without assistance of another person. Assistance includes the actual feeding of the individual or verbal assistance to the extent that, without continuous presence and repetitive verbal instructions to the individual, he or she would require to be fed;

(d) Assistance with going to bathroom or using bedpan for elimination. The individual requires the physical assistance of another person for elimination or to use a bedpan or to perform incontinence care, ostomy care, or catheter care on an ongoing basis (three (3) or more times each week);

(e) Administration of stabilized dosages of medication. The individual is not mentally or physically capable of self-administration of prescribed medications despite the availability of limited assistance of another person. Limited assistance shall include reminding when to take medications, filling a medication box, encouragement to take medications, reading labels, and opening bottles;

(f) Requires restorative and supportive nursing care to maintain the individual and prevent deterioration of his or her condition by means of a planned program administered by nursing staff, such as range of motion exercises and application of splints, when prescribed, that the patient is unable to apply by him or herself;

(g) Administration or preparation of injections by licensed personnel, either due to the nature of the injection or due to the inability of the individual. An individual shall have a physical or mental limitation that prevents him or her from preparing or self-administering injections even with appropriate training;

(h) Services that could ordinarily be provided or administered by the individual but due to the individual's physical or mental condition, the individual is incapable of providing self-care. This shall include daily total hands-on assistance with bathing, dressing, or grooming by a person other than the individual; or

(i) Cognition and communication. The individual is disoriented as to self or place or is incapable of communicating basic needs and wants (such as need for assistance with toileting, presence of pain) using oral or written language. Illiteracy shall not meet this requirement.

(4) An individual shall not be considered to meet nursing facility level of care criteria if care needs are limited to:

(a) Limited assistance with activities of daily living, for example, bathing, dressing, or grooming;

(b) Independent use of mechanical devices; for example, assistance in mobility by means of a wheelchair, walker, crutch or cane;

(c) A limited diet, for example, low salt, low residue, reducing or another minor restrictive diet;

(d) Medications or therapies that can be self-administered or the individual requires minimal supervision;

(e) General supervision;

(f) Routine use of oxygen (as needed, continuous, or at night); or

(g) Limited ability to perform instrumental activities of daily living (IADL), for example, meal preparation, homemaking, or doing laundry.

(5) An individual with a mental illness, mental retardation, or a developmental disability meeting the health status and care needs specified in this section shall:

(a) Be considered to meet nursing facility level of care criteria; and

(b) Be specifically excluded from coverage in the following situations:

1. If the department determines that in the individual case the combination of care needs are beyond the capability of the facility, and that placement in the facility is inappropriate due to potential danger to the health and welfare of the individual, other patients in the facility, or staff of the facility;

2. If the nursing care needs result directly and specifically from a mental illness, mental retardation, or a developmental disability; or

3. If the individual does not meet the preadmission screening and resident review criteria specified in 42 U.S.C. 1396r and 907 KAR 1:755 for entering or remaining in a facility.

(6) Transfer trauma criteria. A Medicaid recipient who does not meet the nursing facility level of care criteria established in subsection (3) of this section shall not be discharged from an NF if:

(a) The recipient has resided in an NF for at least eighteen (18) consecutive months;

(b) The recipient's attending physician determines that the recipient would suffer transfer trauma in that his or her physical, emotional or mental well being would be compromised by a discharge action as a result of not meeting NF level of care criteria; and

(c) The department confirms the recipient's attending physician's assessment regarding the trauma caused by possible discharge from the NF.

(7) A Medicaid recipient who meets transfer trauma criteria in accordance with subsection (6) of this section:

(a) Shall remain in an NF and continue to be covered by the department for provider reimbursement at least until his or her subsequent transfer trauma assessment; and

(b) Be reassessed for transfer trauma every six (6) months.

Section 5. Determining ICF-MR-DD Level of Care. An individual shall be determined to meet ICF-MR-DD level of care for an ICF-MR-DD if the individual requires physical or environmental management or rehabilitation for moderate to severe retardation. In making the decision as to ICF-MR-DD level of care, the following criteria shall apply:

(1) An individual with significant developmental disabilities or significantly subaverage intellectual functioning who requires a planned program of active treatment to attain or maintain the individual's optimal level of functioning but does not necessarily require NF or NF-W services, shall be considered to meet ICF-MR-DD level of care.

(2) An individual requiring a protected environment while overcoming the effects of developmental disabilities or subaverage intellectual functioning shall be considered to meet ICF-MR-DD level of care while:

(a) Learning fundamental living skills;

(b) Learning to live happily and safely within his or her own limitations;

(c) Obtaining educational experiences that will be useful in self-supporting activities; or

(d) Increasing his or her awareness of his or her environment.

(3) An individual with a psychiatric primary diagnosis or needs shall be considered to meet ICF-MR-DD level of care if:

(a) The individual also has care needs as described in subsection (1) or (2) of this section;

(b) His or her mental care needs can be adequately handled in an ICF-MR-DD; and

(c) He or she does not require psychiatric inpatient treatment.

(4) An individual who does not require a planned program of active treatment to attain or maintain his or her optimal level of functioning shall not be considered to meet ICF-MR-DD level of

care.

(5) An individual shall not be denied ICF-MR-DD level of care solely due to advanced age, length of stay in an institution, or history of previous institutionalization, if the individual qualifies for ICF-MR-DD level of care on the basis of all other factors.

(6) Excluding an individual with mental retardation, for an individual with a developmental disability, the disability shall have manifested itself prior to the individual's 22nd birthday.

Section 6. Reevaluation of Need for Service. (1) Nursing facility, nursing facility with waiver, or ICF-MR-DD services shall continue to be provided to an individual if his or her health status and care needs are within the scope of program benefits as described in Sections 3, 4 and 5 of this administrative regulation.

(2) The nursing facility or ICF-MR-DD level of care status of an individual shall be reevaluated at least once every six (6) months.

Section 7. Requirements, Standards and Preauthorization of Specialized Rehabilitation Services for Individuals with Brain Injuries. An individual who is brain injured and meets the nursing facility level of care criteria or is qualified under subsection (5) of this section shall be provided care in a certified unit providing specialized rehabilitation services for persons with brain injuries (i.e., brain injury unit) if the care is preauthorized by the department using criteria specified in this section. For coverage to occur, authorization of coverage shall be granted prior to admission of the individual with the brain injury into the certified brain injury unit, or if previously admitted to the unit with other third party coverage, authorization shall be granted prior to exhaustion of those benefits.

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

(a) Central nervous system injury from physical trauma;

(b) Central nervous system damage from anoxia or hypoxic episodes; or

(c) Central nervous system damage from an allergic condition, toxic substance or another acute medical or clinical incident.

(2) The following items shall be indicators for admission and continued stay:

(a) The individual sustained a traumatic brain injury with structural, nondegenerative brain damage and is medically stable;

(b) The individual shall not be in a persistent vegetative state;

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

(d) The individual requires coma management; or

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

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

(a) The presenting problem;

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

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

(d) The services needed.

(4) The following list of conditions shall not be considered brain injuries requiring specialized rehabilitation under this section:

(a) A stroke treatable in a nursing facility providing routine rehabilitation services;

(b) A spinal cord injury in which there is no known or obvious injury to the intercranial central nervous system;

(c) Progressive dementia or other mentally impairing condition;

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

(e) Mental retardation or birth defect related disorder of long standing; or

(f) Neurological degenerative, metabolic or other medical condition of a chronic, degenerative nature.

(5) An individual may qualify for coverage under the brain injury program if:

(a) He or she has a stable medical condition with complicating care needs which prevent the individual from caring for him or herself in an ordinary manner outside an institution;

(b) The individual has sufficient neurobehavioral sequelae resulting from the brain injury which when taken in combination require specialized rehabilitation services; and

(c) if the following criteria are met:

1. The individual shall not have previously received specialized rehabilitation services (an individual discharged for the purpose of transfer to another brain injury facility shall not be considered to have "previously received specialized rehabilitation services") as established in this section;

2. The individual shall have the potential for rehabilitation;

3. The care shall be prior authorized on an individual basis by the department; and

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

Section 8. Requirements, Standards and Preauthorization of Certified Distinct-part Nursing Facility Ventilator Services. An individual who is ventilator dependent and requires the skilled nursing care services established in Section 4(2) of this administrative regulation criteria shall be provided care in a certified distinct-part ventilator nursing facility unit providing specialized ventilator services if the care is preauthorized using criteria specified in this section and the Medicaid Nursing Facility Services Manual.

(1) To participate in the Medicaid Program as a distinct-part nursing facility ventilator service provider:

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

(b) A certified distinct-part nursing facility unit shall:

1. Not have less than twenty (20) beds certified for the provision of ventilator care;

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

3. Have a ventilator machine owned by the facility for each certified bed with an additional backup ventilator machine required for every ten (10) beds; and

4. Have an appropriate program for discharge planning and weaning from the ventilator.

(2) The following items shall be the patient criteria and treatment characteristics for a distinct-part ventilator nursing facility:

(a) An individual shall be considered ventilator (or respiration stimulating mechanism) dependent if the individual:

1. Requires:

a. This mechanical support for twelve (12) or more hours per day; and

b. Twenty-four (24) hours per day skilled specialty nursing care; or

2. Is in an active weaning program ordered by and under the management of a physician and reviewed and approved by the department; and

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

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

c. The individual requires twenty-four (24) hours per day skilled specialty nursing care.

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

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

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

(c) An admission from hospitalization or other location shall demonstrate two (2) weeks clinical and physiologic stability including applicable weaning attempts prior to transfer.

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

(3) A nursing facility level of care determination shall be made taking into consideration the following factors and those defined in

the Medicaid Nursing Facility Services Manual, Section IV-B, C and D:

(a) Alternative care possibilities;

(b) Goals for patient care;

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

(d) Nonhospital management factors and needs;

(e) Patient treatment characteristics;

(f) Home care potential;

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

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

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

Section 9. Denial of Nursing Facility and ICF-MR-DD Level of Care. If an individual does not meet Medicaid criteria for admission or continued stay in a nursing facility or ICF-MR-DD, the individual may appeal the denial in accordance with 907 KAR 1:563.

Section 10. Reserved Bed Days. The department shall cover reserved bed days in accordance with the following criteria.

(1) In accordance with subsection (3) of this section, reserved bed days, per resident, for an NF or an NF-W shall be covered for a maximum of:

(a) Fourteen (14) days per temporary absence due to hospitalization, with an overall maximum of forty-five (45) days during a calendar year; and

(b) Fifteen (15) days during a calendar year for leaves of absence other than hospitalization.

(2) In accordance with subsection (3) of this section, for an ICF-MR-DD:

(a) Reserved bed days, per resident, for an ICF-MR-DD shall:

1. Be covered for a maximum of forty-five (45) days per provider within a calendar quarter; and

2. Not exceed fifteen (15) days per stay due to hospitalization; and

(b) More than thirty (30) consecutive reserved bed days due to hospitalization plus leave of absence or due to leave of absence shall not be approved for coverage.

(3) Coverage during an individual's absence due to hospitalization or due to leave of absence shall be contingent upon the following conditions being met:

(a) The individual shall:

1. Be in Medicaid payment status in the level of care he or she is authorized to receive; and

2. Have been a resident of the facility at least overnight;

(b) An individual for whom Medicaid is making Medicare coinsurance payments shall not be considered to be in Medicaid payment status for purposes of this policy;

(c) The individual shall be reasonably expected to return to the same level of care;

(d) Due to demand at the facility for beds at that level, there shall be a likelihood that the bed would be occupied by another patient were it not reserved;

(e) The hospitalization shall be for treatment of an acute condition, and not for testing, brace-fitting, or another noncovered service;

(f) For a leave of absence other than for hospitalization, the individual's plan of care shall include a physician's order providing for leave; and

(g) A leave of absence shall include a visit with a relative or friend, or a leave to participate in a state-approved therapeutic or rehabilitative program.

Section 11. Preadmission Screening and Resident Review. (1) Prior to admission of an individual, an NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

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

Section 12. Incorporation by Reference. (1) "Medicaid Nursing Facility Services Manual", Department for Medicaid Services, January 2004 [~~April 2003~~] edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained, subject to applicable 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.

MIKE ROBINSON, Commissioner
JAMES W. HOLSINGER, JR, MD, Secretary
APPROVED BY AGENCY: January 30, 2004
FILED WITH LRC: January 30, 2004 at 1 p.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health and Family Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Teresa Goodrich (564-6204)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the nursing facility (NF) and intermediate care facility for an individual with mental retardation or a developmental disability (ICF MR DD) level of care criteria as well as the establishes the provisions relating to NF and ICF MR DD services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish the NF and ICF MR DD level of care criteria as well as to establish the provisions relating to NF and ICF MR DD services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy recipients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by establishing the NF and ICF MR DD level of care criteria as well as by establishing the provisions relating to NF and ICF MR DD services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of statutes by establishing the NF and ICF MR DD level of care criteria as well as by establishing the provisions relating to NF and ICF MR DD services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy 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: The qualifying requirements regarding NF level of care are being relaxed. An individual will now need to meet 2 of 9 rather than 3 of 9 NF level of care criteria and an individual who is determined to meet transfer trauma criteria shall not be discharged from an NF. This action is being taken to enable DMS to maximize the number of medically needy recipients to be served by the nursing facility and home and community based (HCB) waiver service programs with the limited resources available to DMS.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to enable DMS to maximize the number of medically needy recipients to be served by the nursing facility and home and community based HCB waiver service programs with the limited resources available to DMS.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of authorizing statues by revising qualifying requirements regarding NF level of care in order to enhance recipient access to services within the limited resources available to DMS.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by revising qualifying requirements regarding NF level of care in order to

enhance recipient access to services within the limited resources available to DMS.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Approximately 275 nursing facilities serving over 16,000 Medicaid recipients currently participate in the Medicaid nursing facility program and approximately 115 home and community based waiver providers serve over 15,000 individuals via the Medicaid home and community based waiver program.

(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: It is difficult to determine the number of individuals who will be impacted by the amendment to this administrative regulation; however, DMS estimates that nursing facility denials will drop from approximately 20 a month to approximately 5 a month as a result of this amendment. Home and community based waiver denials are estimated to drop from approximately 220 a month to approximately 70 a month.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: DMS estimates that the amendment to this administrative regulation will result in a cost of approximately $5.77 million annually ($4.21 million federal funds; $1.56 million state funds).

(b) On a continuing basis: DMS estimates that the amendment to this administrative regulation will result in a cost of approximately $5.77 million annually ($4.21 million federal funds; $1.56 million state funds).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of revenue to be utilized to implement and enforce this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(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 the amendments to 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 any fees nor 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.

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. This administrative regulation revises the Department for Medicaid Services qualifying requirements regarding nursing level of care.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation revises the Department for Medicaid Services qualifying requirements regarding nursing level of care.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

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

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY**
**Division of Student and Administrative Services**
**(As Amended at ARRS, February 10, 2004)**

**11 KAR 16:010. Early Childhood Development Scholarship Program applicant selection process.**

RELATES TO: KRS 164.518
STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes the applicant selection process for the Early Childhood Development Scholarship Program.

Section 1. Eligibility of Applicants. (1) Initial eligibility. To qualify for an Early Childhood Development Scholarship, an applicant shall:

(a) Be:

1. A citizen, national, or permanent resident of the United States;

2. A Kentucky resident as determined by the participating educational institution in accordance with criteria established by the Council on Postsecondary Education for the purposes of admission and tuition assessment;

3.a. Employed at least twenty (20) hours per week in a participating early childhood facility;

b. Employed to provide training at least twelve (12) times per year in early childhood development by a participating early childhood facility approved by the Office of Inspector General of the Cabinet for Health Services to offer the training; or

c.(i) Except as provided in subclause (ii) of this clause, employed at least twenty (20) hours per week providing direct instruction to children as a preschool associate teacher pursuant to 704 KAR 3:420 by a participating early childhood facility that is a developmentally appropriate preschool program defined in KRS 157.3175.

(ii) ~~[Notwithstanding the provisions of subclause (i) of this clause,]~~ An applicant shall not be employed on a regular basis as a lead teacher as described in 704 KAR 3:410, Section 7(1)~~[(b)3.]~~;

4.a. Except as provided in clause b of this subparagraph, enrolled in no more than nine (9) credit hours, or the equivalent under a trimester or quarter system, per academic term in the scholarship program curriculum at a participating educational institution. ~~[;]~~

b. ~~[Notwithstanding the provisions of clause a of this subparagraph,]~~ An applicant who is enrolled in the final semester of study before earning an ECDA-approved early childhood development credential may be enrolled in up to twelve (12) credit hours, but shall not receive an award amount for more than nine (9) credit hours of enrollment; ~~[.]~~

5. Pursuing an ECDA-approved early childhood development credential;

6. Ineligible to receive professional development funds from another education program; and

7. Maintaining satisfactory academic progress as determined by the participating institution; and

(b) Satisfy all financial obligations to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause.

(2) Renewal eligibility. Persons seeking additional early childhood development scholarships shall:

(a) Meet the eligibility requirements of subsection (1) of this section; and

(b) Be making satisfactory academic progress toward the completion of the ECDA-approved early childhood development credential as determined by the participating institution.

(3) Appeal of determination.

(a) A student denied a scholarship for a reason other than lack of funds may appeal the determination by the ECDA.

(b) A student shall submit a written statement of appeal to the ECDA within fifteen (15) calendar days after the date of notification of denial.

(c) The ECDA shall establish and make available to scholarship applicants written procedures for consideration of the student's appeal of the eligibility determination. The written procedures shall provide at a minimum:

1. That a hearing officer or committee appointed by ECDA shall consider the student's appeal and make a decision on the issues involved; and

2. That the procedures shall ensure due process to the student, including the right to present information in support of his claim of eligibility and the right to be represented by legal counsel.

(4) Commitment of service. A scholarship applicant shall commit that he shall subsequently render service:

(a) For six (6) months at the participating early childhood facility upon obtaining the child development associate certificate, paid for in part by a scholarship;

(b) For one (1) year at the participating early childhood facility upon obtaining the early childhood development credential of an associate degree or the Kentucky Early Childhood Development Director's Certificate, paid for in part by a scholarship; or

(c) For six (6) months at the participating early childhood facility and one (1) additional year at an early childhood facility located in Kentucky upon obtaining the early childhood development credential of a baccalaureate degree, paid for in part by a scholarship.

Section 2. Application. (1) Prior to the beginning of each academic term, a person seeking an early childhood development scholarship shall obtain an Early Childhood Development Scholarship Application from a childcare resource and referral agency, the ECDA, or the authority. The applicant shall complete and sign the application.

(2) The applicant shall ensure that the completed application is certified by an authorized representative of the participating early childhood facility and that the completed application is received by the professional development counselor on or before:

(a) July 15, or the next regular business day if July 15 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested;

(b) November 15, or the next regular business day if November 15 falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested; or

(c) April 15, or the next regular business day if April 15 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.

Section 3. Selection Process. (1) The professional development counselor shall verify the application information and determine the eligibility of the applicant.

(2) The professional development counselor shall recommend scholarship awards for eligible applicants in the following order until funds are depleted:

(a) First, scholarships shall be awarded to eligible renewal applicants, ranked in order of the date and time the application is received by the professional development counselor.

(b) Next, scholarships shall be awarded to eligible new applicants, ranked in order of the date and time the application is received by the professional development counselor.

(3) The professional development counselor shall forward to

the ECDA the applications of those persons recommended to receive a scholarship and ensure that the applications are received by the ECDA on or before:

(a) August 1, or the next regular business day if August 1 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested;

(b) December 1, or the next regular business day if December 1 falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested; or

(c) May 1, or the next regular business day if May 1 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.

(4) ECDA shall approve the eligibility determination and compile a list of approved applicants and sort the list of applicants by the participating educational institution and academic term for which the scholarship is awarded and shall submit the list with the following information to the authority:

(a) The name and Social Security number of the applicant approved to receive a scholarship;

(b) The award amount for each eligible student to be disbursed by the authority; and

(c) The total number of eligible students and total amount of awards.

Section 4. (1) Award amount. The scholarship amount awarded to an eligible applicant for an academic term shall be the amount of tuition actually charged for the academic term by the participating educational institution that the scholarship recipient will be attending based on the recipient's enrollment status, but shall not exceed:

(a) The amount of tuition charged for enrollment in nine (9) credit hours; and

(b) [~~not to exceed~~] The award maximum.

(2) Award maximum. The maximum scholarship amount awarded to an eligible applicant for an award year shall be $1,400.

Section 5. Incorporation by Reference. (1) The Early Childhood Development Scholarship Application, January 2001, is 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, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARCIA CARPENTER, Chair

APPROVED BY AGENCY: October 27, 2003

FILED WITH LRC: November 13, 2003 at 3 p.m.

CONTACT PERSON: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

## KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
## Division of Student and Administrative Services
## (As Amended at ARRS, February 10, 2004)

### 11 KAR 18:010. Robert C. Byrd Honors Scholarship Program.

RELATES TO: KRS 164.744(2), 164.748(7), (8), 34 C.F.R. 654.1 to 654.5, 654.30 to 654.52 [~~Part 654, subparts A, D, E, F~~], 20 U.S.C. 1070d-31 through 1070d-41

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 34 C.F.R. 654.30, 654.41, 20 U.S.C. 1070d-36, 1070d-37, 1070d-38

NECESSITY, FUNCTION, AND CONFORMITY: [~~Title IV, Part A, Subpart 6 of the federal act, as amended,~~] 20 U.S.C. 1070d-31 et seq., establishes the Robert C. Byrd Honors Scholarship Program and requires the secretary to make grants to states to provide scholarships to outstanding high school graduates who show promise of continued excellence. 20 U.S.C. [~~sections~~] 1070d-35 and 1070d-37, and 34 C.F.R. [~~sections~~] 654.30 and 654.41, require the authority, as the state agency designated to receive the grant, to establish criteria and application procedures for the selection of eligible scholars. This administrative regulation establishes application procedures and selection criteria for the administration of the Robert C. Byrd Honors Scholarship Program in Kentucky.

Section 1. Definitions. (1) "ACT score" means the composite score achieved on the American College Test at a national test site on a national test date.

(2) "Authority" is defined in KRS 164.740(1).

(3) "Award year" means the period of time from July 1 of one (1) year through June 30 of the following year.

(4) "Eligible student" is defined in KRS 164.740(7).

(5) "Federal act" is defined in KRS 164.740(9).

(6) "High school" means [~~shall mean~~] a school located within or outside of the Commonwealth enrolling students for secondary school instruction that is:

(a) Operated by a state; or

(b) A private, parochial, or church secondary school that has been recognized as accredited, or voluntarily complying with accreditation standards, by one (1) of the fifty (50) state departments of education or one (1) of the seven (7) independent regional accrediting associations.

(7) "High school graduate" means an individual who receives:

(a) A high school diploma;

(b) A General Education Development (GED) Certificate; or

(c) Any other evidence recognized by the Commonwealth as the equivalent of a high school diploma.

(7) "Participating institution" is defined in KRS 164.740(15).

(8) "SAT score" means the composite score achieved on the Scholastic Aptitude Test at a national test site on a national test date.

(9) "Scholar" means an individual who is selected as a Byrd Scholar.

(10) "Secretary" is defined in KRS 164.740(22).

Section 2. Eligibility Criteria. (1) Initial eligibility. An individual shall meet the following criteria to be eligible to be selected as a scholar. Initial eligibility is governed by 34 C.F.R. [~~section~~] 654.40, 58 FR 42669, effective September 25, 1993, adopted without change.

(2) Continued eligibility. A scholar shall meet the following criteria to remain eligible to receive additional awards under this program for subsequent award years. Continued eligibility is governed by 34 C.F.R. [~~section~~] 654.51, 58 FR 42669, effective September 25, 1993, adopted without change.

Section 3. Initial Application Procedures. Applications submitted by individual students shall not be accepted. In order for an eligible student to be considered for an award under this program:

(1) The eligible student shall not have applied for consideration in a prior year; and

(2)(a) For high school seniors, the eligible student's participating high school shall nominate the eligible student, and shall submit to the authority a completed application by February 15 on the Robert C. Byrd Honors Scholarship Program 2004-2005 Application form. The application shall be accompanied by the following supporting documentation pertaining to the eligible student:

1. [~~(a)~~] A certified transcript showing the cumulative grade point average for seven (7) semesters of high school;

2. [~~(b)~~] An official ACT score or SAT score;

3. [~~(c)~~] A high school guidance counselor's recommendation, not exceeding fifty (50) words, pertaining to the student's promise of continued academic achievement; and

4. [~~(d)~~] A listing of honors, activities, and community service performed during high school; or [~~and~~]

(b) [~~(3)~~] For a GED recipient, a GED coordinator shall nominate the eligible student, and submit to the authority a completed application by February 15 on the Robert C. Byrd Honors Scholarship Program 2004-2005 Application (for GED Recipients) form. The application shall be accompanied by the following supporting documentation pertaining to the eligible student:

1. [~~(a)~~] An official General Education Development score certification; and

2. [~~(b)~~] The GED coordinator's recommendation, not exceeding fifty (50) words, pertaining to the student's promise of continued

academic achievement.

Section 4. Nomination Procedures. Each participating high school shall select and submit applications as follows:

(1) Number of nominations per school. A participating high school shall submit nominations according to the following guidelines:

(a) High schools with enrollments of 1,500 or more may nominate a maximum of five (5) applicants;

(b) High schools with enrollments of 1,000-1,499 may nominate a maximum of four (4) applicants;

(c) High schools with enrollments of 500-999 may nominate a maximum of three (3) applicants; and

(d) High schools with enrollments of less than 500 may nominate a maximum of two (2) applicants.

(2) A participating high school shall nominate only eligible students who:

(a) Have a minimum:

1. ACT score of twenty-three (23); or

2. SAT score of 1060; and

(b) Have a minimum 3.5 grade point average for seven (7) semesters of high school.

(3) [~~3.~~] A GED coordinator shall nominate only eligible students who have a minimum GED score of 2700.

Section 5. Selection Procedures. (1) Applications shall [~~will~~] be reviewed to ensure compliance with the requirements set forth in Sections 2, 3, and 4 of this administrative regulation.

(2) The authority shall sort acceptable applications according to the six (6) congressional districts in order to ensure proportional distribution.

(3) The authority shall evaluate and score applications on a scientific basis by a stratified random technique, with consideration to demonstrated outstanding academic achievement and promise of continued achievement and reasonable geographic representation throughout the state.

(4) At least one (1) scholar shall be selected among the GED recipients.

(5) A scholar shall be selected from eligible applicants without regard to:

(a) The applicant's race, color, national origin, sex, religion, disability, economic background, educational expenses, or financial need;

(b) Whether the scholar attended a high school located within or outside of the Commonwealth; or

(c) Whether the participating institution that the scholar plans to attend is public or private or is within or outside the Commonwealth.

(6) A selected scholar shall agree in writing that he shall repay to the authority the total amount of the scholarship funds received for the academic term during which he receives an award if the scholar is ineligible during the academic term as determined by the participating institution or the authority.

Section 6. Notification Procedures. The authority shall notify eligible students, tentatively selected as scholars, of their status within forty-five (45) days after the application submission deadline.

Section 7. Award Amount. (1) The amount of the annual award shall be [~~is~~] governed by 34 C.F.R. [~~section~~] 654.50, 58 FR 42669, effective September 25, 1993, and 34 C.F.R. [~~section~~] 654.51(b), 58 FR 42669, effective September 25, 1993, adopted without change.

(2) A scholar shall [~~may~~] receive an aggregate maximum of $6,000 over four (4) years if he or she maintains eligibility.

Section 8. Disbursements. (1) The first payment shall be made at the beginning of the fall term after the participating institution has certified that the scholar is enrolled on a full-time basis and that the total amount of financial aid awarded to a scholar for a year of study, including the scholarship amount awarded pursuant to this administrative regulation, does not exceed the eligible student's total cost of attendance.

(2) The award shall be paid in at least two (2) disbursements in the amount of:

(a) One-half (1/2) in the fall term; and

(b) One-half (1/2) in the spring term.

(3) The warrant shall [~~will~~] be made payable to the scholar, but shall [~~will~~] be sent to the school for delivery to the scholar.

(4)(a) Except as provided in paragraph (b) of this subsection, the award shall be utilized within twelve (12) months of the time of initial award.

(b) The authority executive director may authorize a postponement of the award utilization.

1. The postponement shall be for up to twelve (12) additional months from the date the scholar:

a. Otherwise would have enrolled in the institution after the scholarship award was made; or

b. Interrupts enrollment.

2. A postponement shall be granted only if:

a. There is sufficient good cause; and

b. The scholar requests in writing, before the payment is certified by the participating institution, that the award be delayed to postpone or interrupt his enrollment.

(c) [~~The award shall be utilized within twelve (12) months of the time of initial award, except that the authority executive director may authorize for sufficient cause a postponement of the utilization of the award for up to twelve (12) additional months, beginning on the date the scholar otherwise would have enrolled in the institution after the scholarship award or the date the scholar interrupts enrollment, if the scholar requests in writing, before the fall payment is certified by the participating institution, that the award be delayed to postpone or interrupt his enrollment.~~

~~(b)~~] A scholar who postpones or interrupts his enrollment at a participating institution in accordance with paragraph (b) [~~(a)~~] of this subsection shall not be eligible to receive scholarship funds during the period of postponement or interruption, but shall be eligible to receive scholarship payments upon enrollment or reenrollment at a participating institution.

(d) [~~(c)~~] The authority may extend the twelve (12) month suspension period without terminating the scholar's eligibility if the scholar demonstrates to the satisfaction of the authority that extended postponement or interruption of enrollment beyond the twelve (12) month suspension is due to exceptional circumstances beyond the scholar's control or necessary for the scholar to meet a commitment.

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

(a) The "Robert C. Byrd Honors Scholarship Program 2004-2005 Application", November 2003; and

(b) The "Robert C. Byrd Honors Scholarship Program 2004-2005 Application (for GED Recipients)", November 2003.

[~~The "Robert C. Byrd Honors Scholarship Program 2004-2005 Application" is incorporated by reference.~~]

(2)[~~(a)~~] This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

[~~(b)~~] The application shall be available on the authority's website, www.KHEAA.com.

MARCIA CARPENTER, Chair

APPROVED BY AGENCY: October 27, 2003

FILED WITH LRC: November 13, 200 at 3 p.m.

CONTACT PERSON: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

## KENTUCKY STATE TREASURER
## (As Amended at ARRS, February 10, 2004)

**20 KAR 1:040. Unclaimed properties; claims.**

RELATES TO: KRS 393.010, 393.040, 393.110, 393.130, 393.140, 393.150

STATUTORY AUTHORITY: KRS [~~393.130,~~] 393.280(4)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 393.280(4) allows the State Treasurer to promulgate administrative regulations and any reasonable and necessary rules for the enforcement of KRS Chapter 393.** KRS 393.130 allows the holder of unclaimed property or the Division [~~Department~~] of Unclaimed Property, Kentucky Department of Treasury [~~Office of the Kentucky State Treasurer~~], to turn that property over to a claimant upon proper proof. This administrative regulation establishes **requirements** [~~the requirement~~] for claims for unclaimed property.

Section 1. Entities to Whom Claims Shall Be Filed. (1)[~~(a)~~] A claim for unclaimed property held in an interest-bearing demand, savings or time deposit held in an account assignable to the Department of the Treasury under KRS 393.130(5) shall be filed in writing with the holder of the unclaimed property [~~who maintains the interest-bearing account containing the unclaimed property.~~

~~(b) Upon receipt of a claim by a person other than a depositor or beneficiary of an account, the holder may refer the claim to the department to determine ownership of the property~~].

(2)[~~(a)~~] A monetary claim for unclaimed property not held in an interest-bearing demand, savings or time deposit **account** shall be filed in writing with either the Department of the Treasury or the holder who remitted the unclaimed property to the Department of the Treasury.

(b) All other claims for unclaimed property shall be made in writing and filed with the department.

Section 2. Proof. **(1)** Upon receipt of a claim for unclaimed property which has been transferred to the department [~~, either submitted to the Department of the Treasury~~] by the apparent owner or a holder seeking to recover money paid to an apparent owner, the Department of the Treasury shall determine whether or not there is sufficient proof that the claimant is entitled to the claimed property. [~~The Department of the Treasury may consider the following proof~~] [~~Proper proof shall consist of the following~~]:

**(2)** [~~(1)~~] Documentation to prove ownership may [~~shall~~] consist of one (1) of the following:

(a) Driver's license or other government-provided picture identification;

(b) A document proving Social Security number;

(c) Copy of birth certificate;

(d) If the owner of the property is deceased, a copy of death certificate[~~;~~] and one (1) of the following:

1. [~~a driver's license or other picture identification, a document proving Social Security number; and any of the following as the department finds necessary to establish that the claimant is entitled to the unclaimed property~~

~~(a) Copy of birth certificate;~~

~~(b)1. Copy of death certificate; and~~

~~2.a.~~] Copy of probate distribution;

2. [~~b.~~] Copy of an order of the court appointing an administrator to an estate;

3. [~~c.~~] A copy of an order from the court dispensing with administration; or

4. [~~d.~~] A small estate affidavit;

(e) [~~(c)~~] Copy of marriage certificate;

(f) [~~(d)~~] Copy of divorce decree;

(g) [~~(e)~~] A signature verification card of a financial institution; **or**

(h) [~~(f)~~] Copy of guardianship or trust agreement**.** [~~; or~~]

**(3)** [~~(i)~~] [~~(g)~~] If the claimant documents that the items required by **subsection (2) of this section** [~~paragraphs (a) through (h) [(f)] of this subsection~~] are not available or not applicable, the claimant may **submit** for consideration [~~shall~~] use other documentation in support of the claim including the following:

**(a)** [~~1.~~] An income tax return;

**(b)** [~~2.~~] Adoption records;

**(c)** [~~3.~~] Court records;

**(d)** [~~4.~~] A certificate of deposit;

**(e)** [~~5.~~] Stale dated checks;

**(f)** [~~6.~~] Public or business records;

**(g)** [~~7.~~] Copy of documentation providing a connection with the reported address or business for the year cited as the "Date of Last Transaction" in the holder's report;

**(h)** [~~8.~~] Newspaper articles including a marriage announcement, birth or obituary notice;

**(i)** [~~9.~~] Family or church records;

**(j)** [~~10.~~] Personal correspondence; or

**(k)** [~~11.~~] A notarized affidavit executed by an individual other than the claimant having knowledge of a claim.

**(4)** [~~(2)~~] In addition to the items required by subsection **(2)** [~~(1)~~] of this section, additional evidence which may be considered by the Department of the Treasury to establish ownership for property valuing over $400 shall include:

(a) For a checking account:

1. A check showing the account number for that bank; or

2. A statement on that account which contains the account number;

(b) For a savings account:

1. A copy of the passbook showing the account number; or

2. Correspondence referencing the account number;

(c) For a safe deposit box:

1. A copy of the safe deposit box rental receipt; or

2. Correspondence referencing that rental;

(d) For wages, a copy of:

1. A W-2 form;

2. Tax records;

3. Pay stub; or

4. Correspondence relating to that employment;

(e) For stocks or dividends:

1. A copy of a stock certificate of the business entity reported;

2. Correspondence relating to the stock certificate; or

3. A statement from the broker showing ownership of that stock;

(f) For a bearer bond:

1. If the Department of the Treasury holds the original bond, a copy of the bond or information that establishes the claimant's relationship to the bonds; or

2. If the Department of the Treasury held the original bond but sold the bond pursuant to statute, the claimant shall use evidence which establishes ownership of the bond, including:

a. A copy of the bond; or

b. A list of serial numbers and a relationship to the holder;

(g) For a certificate of deposit:

1. A copy of the certificate of deposit; or

2. A record of purchase;

(h) For insurance:

1. A copy of the policy; or

2. Correspondence relating to that policy;

(i) For court funds, a copy of the court decree or court order for the case that was the source of the funds, including but not limited to:

**1. Probate;**

**2. Condemnation;**

**3. Quiet title;**

**4. Divorce;**

**5. Child support; or**

**6. Appearance bond**; [~~(~~][~~probate, condemnation, quiet title, divorce, child support, or appearance bond~~][~~);~~]

(j) For vendor checks:

1. A copy of accounts receivable billing, or invoices;

2. Bills of lading; [~~or~~]

3. Correspondence with the holder reporting and remitting the funds that show a business relationship for each payment; or

4. A statement that the funds are still considered to be due and owing on the account;

(k) For a claim by an heir of a listed owner:

1. Final decree of probate; or

2. If the estate is intestate:

a. An order of the court dispensing with administration; or

b. A court order appointing an administrator to the estate and a letter from the administrator of the estate allowing the release of the property from the estate;

(l) **For cashier's checks, the payee shall tender proof of identity as the owner** [~~A cashier's check shall be claimed by the payee as the owner based upon proof of identity~~], unless the purchaser submits sufficient documentation to prove a superior claim;

or

(m) For a claim where ownership cannot be established by proof as required by paragraphs (a) through (l) of this subsection, the Department of the Treasury may accept alternative proof to establish ownership.

(5)(a) [~~(3)~~] A claim by a finder or agent of a listed owner [~~. The claim~~] shall be based on a notarized contract with the owner or heir of the owner. The Department of the Treasury may contact the owner or claimant to verify that the owner or the claimant is aware of the full amount of unclaimed property involved.

(b) The finder or agent shall provide to the Department of the Treasury:

1. [~~(a)~~] A notarized copy of the contract showing names, current addresses, and Social Security numbers or Federal Employer Identification numbers of all parties to the contract; [~~and~~]

2. [~~(b)~~] A notarized affidavit from the claimant **stipulating** [~~,~~] [~~owner or heir of the owner for the executive or power to act on his behalf.~~] [~~The affidavit shall stipulate~~] that the finder or agent has explained to the [~~owner or~~] claimant the law on unclaimed properties and that unclaimed property due [~~to~~] the [~~owner or~~] claimant may be claimed without a fee, free and simple; and

3. [~~(c)~~] The same documentation that the [~~owner or~~] claimant of the unclaimed property would otherwise have to exhibit in order to show proper proof of entitlement to the unclaimed property.

(6)(a) [~~(4)~~] Payment of claims valued at $4,999.99 and below[~~,~~] [~~a claim~~] shall be authorized upon review of documentation submitted by the claimant and approval by two (2) Treasurer-designated Department of the Treasury employees.

(b) Payment of claims valued above $4,999.99[~~,~~] shall be authorized upon review of documentation submitted by claimant and approval by three (3) Treasurer-designated Department of the Treasury employees. [~~three (3) designated department employees.~~]

(c) Payment shall be made:

1. [~~(a)~~] In the name of, and mailed to, the established owner; or

2. [~~(b)~~] To the executor, executrix, administrator, administratrix of the estate or personal representative; the court appointed guardian; or to an heir for distribution to other heirs, if any.

Section 3. Stock Certificates. A stock certificate received through a safe deposit box or directly from a holder shall be released to the rightful owner by one (1) of the following methods:

(1) Stock certificate in the owner's name;

(2) Stock certificate in the name of the Department of the Treasury with an affidavit ready for transfer to the owner;

(3) Payment of money received for the certificate if the stock has been redeemed by the issuer or has been sold in accordance with state law; or

(4) If the stock certificate is obsolete and in the original owner's name, the stock certificate shall be transferred directly to the owner. If the original owner is deceased, the lawful heirs shall determine disposition.

Section 4. Duty of Holder Who Receives Claim. (1) If a claim for unclaimed property is made to a holder [~~for property which is not held in an interest bearing demand, savings or time deposit account~~], the holder may direct the claimant to the Department of the Treasury for review and payment of the claim.

(2) If the holder chooses to consider the claim for payment, the holder shall, prior to paying the claim, inquire in writing to the Department of the Treasury to determine whether there have been any other competing claims for that property.

(3) The Department of the Treasury shall respond to the holder in writing within ten (10) business days of receipt of the inquiry indicating whether another claim has been paid out for [~~of~~] the property at issue or whether there is a competing claim pending. If there is a competing claim or if another claim has been paid out for [~~of~~] the property at issue, the Department of the Treasury shall notify:

(a) The holder and the holder shall not pay the claimant; and

(b) The claimant in writing of his right to request a hearing on his claim.

Section 5. Payment of Claim. (1) If a claimant submits a claim for unclaimed property to a holder, and the holder determines that the claimant is entitled to the property and that there have been no other competing claims paid out of the same property, the holder may pay the claimant.

(2) If the property was not held in an interest-bearing demand, savings or time deposit **account**, and if the property has already been turned over to the Department of the Treasury, the holder shall be reimbursed by the Department of the Treasury for a claim paid if the holder submits:

(a) Written confirmation from the Department of the Treasury that the Department of the Treasury was contacted prior to the payment of the claim to determine if there were any conflicting claims or if there were any prior paid claims on the property;

(b) An affidavit which identifies the proof used to determine that the claimant was entitled to the property. The proof shall meet the requirements established in Section 2 of this administrative regulation. A copy of the proof relied on shall be attached to the affidavit; and

(c) Proof that payment was made to the claimant.

JONATHAN MILLER, Kentucky State Treasurer

APPROVED BY AGENCY: November 13, 2003

FILED WITH LRC: November 13, 2003 at 2 p.m.

Contact Person: Robert S. Jones, Capitol Building, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-2894.

## KENTUCKY STATE TREASURER
## (As Amended at ARRS, February 10, 2004)

**20 KAR 1:080. Reports to be filed by holders of unclaimed property.**

RELATES TO: KRS 393.110(1)

STATUTORY AUTHORITY: KRS [~~393.110(1)~~], 393.280(4)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 393.280(4) allows the State Treasurer to promulgate administrative regulations and any reasonable and necessary rules for the enforcement of KRS Chapter 393.** KRS 393.110(1) requires the holder of unclaimed property to submit annual reports to the Department of the Treasury [~~State Treasurer~~] concerning the property. This administrative regulation establishes the reporting requirements for a holder of unclaimed property.

Section 1. Reports Filed by a Holder of Unclaimed Property. A holder of unclaimed property shall annually file**, in accordance with KRS 393.110,** a completed [~~Form 400~~], Unclaimed Property Report/Remit Form, with the Department of the Treasury [~~main office of the State Treasurer~~] no later than the close of business on November 1 of each year.

Section 2. Reports on Property Held in an Interest Bearing Account. If the holder of unclaimed property is required to place that property in an interest bearing account, the holder shall submit to Department of the Treasury [~~the State Treasurer~~] the following reports:

(1) **A statement** [~~Statements~~] on the interest-bearing account holding unclaimed property. The statement shall:

(a) Be the kind normally issued on an interest-bearing account; [~~and~~]

(b) Be filed with the Department of the Treasury on an annual basis according to the holder's normal course of business; and [~~:~~

~~1. With the main office of the State Treasurer; and~~

~~2. According to the holder's normal course of business no less than quarterly; and~~]

(c) Include the value of the unclaimed property and the amount of the interest paid on the account.

**Section 3.** [~~(2)~~] Reports on an Amount Paid Out of an Account Holding Unclaimed Property. **(1)** A holder of an account holding unclaimed property shall file a report within ten (10) business days of paying an amount out of the account.

**(2)** The report shall [~~:~~

~~(a)~~] include:

(a) [~~1.~~] The name, Social Security number, and the address of the property owner;

(b) [~~2.~~] The amount paid;

(c) [~~3.~~] The portion of the amount that represents interest paid and the portion that represents the original amount of unclaimed property;

(d) [~~4.~~] The date the property was presumed abandoned;

(e) [~~5.~~] Proof of payment;

(f) [~~6.~~] An itemization of each fee or expense charged against the account; and

(g) [~~7~~] An affidavit indicating:

1. [~~a.~~] What specific proof was used in determining that the person that received the amount or payment was the rightful claimant; and

2. [~~b.~~] That the procedures for paying a claim for unclaimed property as established in 20 KAR 1:040 were followed.

**(3) The report shall** [~~; and~~

~~(b)~~] be filed at the Department of the Treasury [~~main office of the State Treasurer~~].

Section 4. [~~3.~~] Incorporation by Reference. (1) [~~Form 400,~~] "Unclaimed Property Report/Remit Form" **2003** [~~October 1999~~], is incorporated by reference.

(2) This material may be inspected, copied or obtained**, subject to applicable copyright law,** at the Department of the Treasury [~~Kentucky State Treasurer~~], Capitol Annex, Room 183, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4 p.m.

JONATHAN MILLER, Kentucky State Treasurer
APPROVED BY AGENCY: November 13, 2003
FILED WITH LRC: November 13, 2003 at 2 p.m.
CONTACT PERSON: Robert S. Jones, Capitol Building, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-2894.

## KENTUCKY STATE TREASURER
## (As Amended at ARRS, February 10, 2004)

**20 KAR 1:090. Accounts for unclaimed property that was held in an interest-bearing demand, savings or time deposit.**

RELATES TO: KRS 393.110, 393.130(5)
STATUTORY AUTHORITY: KRS 393.280(4)
NECESSITY, FUNCTION, AND CONFORMITY: **KRS 393.280(4) allows the State Treasurer to promulgate administrative regulations and any reasonable and necessary rules for the enforcement of KRS Chapter 393.** KRS 393.130 mandates that the holder of unclaimed property that is held in an interest-bearing demand, savings, or time deposit **account**, shall place that property in an interest-bearing account assignable to the Department of the Treasury. This administrative regulation governs those accounts.

Section 1. **When an interest-bearing account made assignable to the Department of Treasury is established in accordance with KRS 393.130(5), a record of the year the property was presumed abandoned shall be included.** [~~All holders of unclaimed property which is held in an interest-bearing demand, savings or time deposit account shall, from the time it is presumed abandoned, place that property in an interest-bearing account which shall include the Department of the Treasury as the assignee and the year the property was presumed abandoned in its title.~~]

Section 2. The account created under KRS 393.130**(5)** shall yield a rate of interest equal to contract rate for the predecessor account. Interest accruing to the account shall be calculated by the financial institution and reported to the Department of the Treasury on or before November 1 of the next year. [~~The annual report shall identify:~~

~~(1) The name of the property owner;~~

~~(2) Principal in the account either from the predecessor account or, after the first reporting year, the prior reporting year;~~

~~(3) The contract rate of interest for the account;~~

~~(4) Interest accruing to the account in the past year;~~

~~(5) The total value of the account; and~~

~~(6) The account number.~~]

Section 3. Accounts created under KRS 393.130 shall remit to the Department **of the Treasury in accordance with KRS 393.130(5).** [~~immediately upon the expiration of ten (10) years from the date that the property was presumed abandoned, if the property has not been paid to a rightful claimant.~~] All accumulated interest shall remit with the account, and the account shall not be reduced by fees or charges assessed by the holder from and after the date the property was presumed abandoned.

JONATHAN MILLER, Kentucky State Treasurer
APPROVED BY AGENCY: November 13, 2003
FILED WITH LRC: November 13, 2003 at 2 p.m.
CONTACT PERSON: Robert S. Jones, Capitol Building, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-2894.

## KENTUCKY STATE TREASURER
## (As Amended at ARRS, February 10, 2004)

**20 KAR 1:100. Multiple claims on the Unclaimed Property Fund.**

RELATES TO: KRS 393.110**, 393.150**
STATUTORY AUTHORITY: KRS 393.110, 393.280**(4)**
NECESSITY, FUNCTION, AND CONFORMITY: **KRS 393.180(4) allows the State Treasurer to promulgate administrative regulations and any reasonable and necessary rules for the enforcement of KRS Chapter 393.** KRS 393.150 authorizes the Treasurer to determine claims for unclaimed property. This administrative regulation defines proof which may be accepted by the Treasurer when multiple claims are received from a single claimant.

Section 1. **(1)** A corporation having ten (10) or more employees that is registered to do business in the Commonwealth of Kentucky and is in good standing with the Kentucky Secretary of State and that submits two (2) or more claims for unclaimed property during a fiscal year **shall** [~~need only~~] submit its proof of entitlement as required by 20 KAR 1:040 for the initial claim **only**.

**(2)** For all claims **made by the same corporation** [~~that the same corporation makes~~] during the same fiscal year, the **corporation shall** [~~entity is required to~~] submit the Unclaimed Property Multiple Claims Form, which identifies the property and serves as a continued proof of entitlement.

Section 2. Any corporation having ten (10) or more employees that submitted valid claims for the unclaimed property during the prior fiscal year and is making its first claim for a new fiscal year, **shall not** [~~is not required to~~] submit proof of entitlement to the property, as required by 20 KAR 1:040. Instead **the corporation shall** [~~that entity must~~] submit a Corporate Verification Form[~~,~~] with its initial claim in the new fiscal year.

Section 3. An individual or a corporation having nine (9) or fewer employees that submits two (2) or more claims on the Unclaimed Property Fund during a fiscal year **shall** [~~need only~~] submit its proof of entitlement required by 20 KAR 1:040 for the initial claim **only**, so long as the proof of entitlement is sufficient for the successive claims. **The entity shall** [~~Such entities need only~~] submit one (1) signed and notarized **Unclaimed Property Multiple Claims Form.**

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

**(a) "Corporate Verification Form" (2003); and**

**(b) "Unclaimed Property Multiple Claims Form" (2003).**

**(2) This material may be inspected, copied, or obtained,**

subject to applicable copyright law, at the Department of the Treasury, Capitol Annex, Room 183, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. [~~claim form attached to its multiple claims.~~]

JONATHAN MILLER, Kentucky State Treasurer
APPROVED BY AGENCY: November 13, 2003
FILED WITH LRC: November 13, 2003 at 2 p.m.
CONTACT PERSON: Robert S. Jones, Capitol Building, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-2894.

## KENTUCKY STATE BOARD OF ELECTIONS
## (As Amended at ARRS, February 10, 2004)

**31 KAR 6:020. Provisional voting.**

RELATES TO: KRS 117.015(1), 42 U.S.C. 15482
STATUTORY AUTHORITY: KRS 117.015(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) authorizes the Kentucky State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties in the administration of the election laws. [~~This administrative regulation is to comply with the requirement of~~] The Help America Vote Act of 2002, 42 U.S.C. 15482 [~~Pub.L. 107-252~~], Section 302 establishes requirements for provisional voting in elections for federal offices. This administrative regulation establishes procedures for provisional voting, in compliance with federal law.

Section 1. [~~Applicability. This administrative regulation shall be applicable to special, primary and general elections for the federal elective offices of President/Vice President, United States Senator and United States House of Representatives.~~]

~~Section 2.~~] Definitions. (1) "Provisional ballot" means a ballot cast in an election for federal office by an individual who resides in a voting precinct but whose eligibility to vote is in question or is not determinable on election day.

(2) "Provisional ballot inner envelope" means the envelope with the words "provisional ballot" printed on the front.

(3) "Provisional ballot outer envelope" means the envelope with the following printed on the front:

(a) Precinct election officer checklist of circumstances for issuing a provisional ballot;

(b) Provisional ballot affirmation; and

(c) The county board of elections checklist for indicating whether the ballot was counted and if not counted the reason why.

[~~(3) "Provisional ballot inner envelope" means the envelope with the words "provisional ballot" printed on the front.~~]

Section 2. Applicability. This administrative regulation shall be applicable to special, primary, and general elections for the federal elective offices of President/Vice President, United States Senator, and United States House of Representatives.

Section 3. Precinct Election Officer Notice. (1) A precinct election officer[~~,~~] who cannot confirm a potential voter's eligibility to vote on election day[~~,~~] shall notify the individual of the option of appearing before the county board of elections to dispute eligibility or voting [~~vote~~] a provisional ballot in that precinct if [~~provided~~] they reside at a residence within the geographical boundaries of the precinct.

(2) If the individual chooses to cast a provisional ballot, then they shall not be eligible to vote in any other manner.

Section 4. Procedures and Circumstances for Casting a Provisional Ballot. (1) The individual shall sign a provisional ballot precinct signature roster prescribed by the State Board of Elections, which contains the individual's Social Security number, name, address, signature, date of birth, political party affiliation, identification type, and precinct officer initials [~~and political party affiliation~~].

(2) The precinct election officer shall check the appropriate box next to the circumstance for issuing the provisional ballot.

(3) The circumstances for issuing the provisional ballot:

(a) Voter whose name does not appear on the precinct roster and whose registration status cannot be determined by the precinct officer;

(b) Voter whose name does not appear on the precinct roster and who has been verified as ineligible to vote;

(c) Voter who does not have identification;

(d) Voter who is voting as a result of a federal or state court order or any order under state law in effect ten (10) days prior to election day which extends polling hours; or

(e) Voter has been challenged by all four (4) precinct election officers[~~; or~~

~~(f) Other~~].

(4) The precinct election officer shall give the individual the provisional ballot, a provisional ballot inner envelope and the provisional ballot outer envelope.

(5) To cast a provisional ballot, an individual shall execute the written affirmation on the provisional ballot outer envelope before a precinct officer at the polling place declaring they are a registered voter in the county and reside within the geographical boundaries of the [~~said~~] precinct. The written affirmation executed by the individual shall state:

(a) Their name;

(b) Current residential address;

(c) Political party affiliation;

(d) That they are a registered voter in the county and reside in the precinct;

(e) That they know of no legal reason to prevent their vote from being cast and counted;

(f) That the individual has not voted and shall not vote in another precinct or by absentee ballot in this state during this election;

(g) That the individual understands that any person who falsely signs and verifies any form requiring verification shall be guilty of perjury and subject to penalties therefore; and

(h) That the individual further understands that if they execute the affirmation and are not a registered voter at the current address stated, they have committed a criminal act.

(6) The precinct election officer shall direct the individual to a private voting area in which they shall cast their provisional ballot.

(7)(a) An individual may spoil up to two (2) provisional ballots and shall not be issued [~~no~~] more than a total of three (3) provisional ballots.

(b) Spoiled ballots shall be placed in the provisional ballot inner envelope, sealed by the individual, and returned to a precinct election officer who shall mark on the provisional ballot stub of the issued ballot and on the front of the envelope "spoiled ballot".

(8) The individual shall place the voted provisional ballot in the provisional ballot inner envelope and seal. The individual shall place the sealed provisional ballot inner envelope in the provisional ballot outer envelope and seal.

(9) The individual shall return the sealed provisional ballot outer envelope to the precinct election officer.

(10) The precinct election officer, upon receiving the sealed provisional ballot outer envelope from the individual, shall give the individual the provisional ballot information sheet prescribed by the State Board of Elections, which explains the individual's right to contact their local county clerk to learn if the provisional ballot was counted, and if not counted the reason why.

(11) A precinct election officer shall place sealed provisional ballot outer envelopes and sealed spoiled provisional ballot inner envelopes in a container and transmit to the county board of elections.

(12) The county board of elections shall determine the eligibility to vote of each individual casting a provisional ballot, in accordance with KRS Chapters 116 to 118 and 31 KAR Chapters 2 to 6.

(13) If the county board of elections determines the individual is eligible to vote in the precinct in the election, the vote shall be counted and the county board shall so indicate on the provisional ballot outer envelope.

(14) [~~(13)~~] If the county board of elections determines the individual is ineligible to vote in the precinct in the election, the vote shall not be counted and the county board shall so indicate on the provisional ballot outer envelope.

Section 5. Provisional Ballot During Extension of Time to Close Polls. (1) An individual who votes in an election for federal office as a result of a federal or state court order or any other order extending the time established for closing the polls by a state law in effect ten (10) days before the date of that election may only vote in that election by casting a provisional ballot.

(2) A provisional ballot cast during an extension of the time for closing the polls required by orders described in this section shall be separated and held apart from other provisional ballots cast by those not affected by the order.

Section 6. Responsibilities. (1) The county board of elections shall count all eligible provisional ballots.

(2) The county board of elections shall begin counting provisional ballots no later than 9 a.m. prevailing time on the day following the election.

(3) The provisional ballot count shall be certified by the county board of elections on the Certification Official Count and Record of Election Totals prescribed by the State Board of Elections, which contains the office name, name of candidate, machine vote totals, absentee machine vote totals, paper absentee ballot vote totals, provisional ballot vote totals, and total votes. This form shall be certified to the Secretary of State's Office not later than 12 p.m., prevailing time, on the Friday following the election. For special elections this form shall be certified to the Secretary of State's Office not later than 12 p.m., prevailing time, on the day following the election.

(4) Upon completion of a recanvass of vote totals, the county board of elections shall report recanvassed vote totals on the recanvass of official count and record of election totals prescribed by the State Board of Elections, which contains the office name, name of candidate, machine vote totals, absentee machine vote totals, paper absentee ballot vote totals, provisional ballot vote totals, and total votes. The recanvassed vote totals shall be certified and immediately reported to the Secretary of State's Office.

(5) County clerks shall cause provisional ballots to be printed. The provisional ballots shall be printed with a ballot stub that will be consecutively numbered with a place for voter name, precinct election officer initials and marked by precinct officers if it was a spoiled ballot.

(6) County clerks shall post instructions in each precinct on how to cast a provisional ballot**, in accordance with Section 4 of this administrative regulation**.

(7) A minimum of twenty (20) provisional ballots and other applicable forms shall be sent to each precinct.

(8) After the county board of elections has completed its investigation of each provisional ballot and marked the face of the provisional ballot outer envelope appropriate to their findings, the county clerk shall photocopy the face of each outer envelope for future access to convey to the individual whether or not the ballot was counted, and if not counted the reason why.

(9) Provisional ballots and all envelopes from a general election shall be locked for thirty (30) days and retained for twenty-two (22) months. Provisional ballot and all envelopes from a primary or special election shall be locked for ten (10) days and retained for twenty-two (22) months.

(10) A provisional ballot accountability statement for provisional ballots prescribed by the State Board of Elections shall be sent to each precinct and returned to the county board of elections, which contains the county name, precinct name, number of ballots issued, ballot stub numbers, number of provisional ballots used, number of provisional ballots unused, number of provisional ballots spoiled and place for the signature of all four (4) precinct election officers.

(11) County boards of election shall instruct precinct election officers as to who is eligible to vote a provisional ballot and the proper procedures**, in accordance with Section 4 of this administrative regulation**.

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

(a) Provisional Ballot Precinct Signature Roster - SBE 35 **(2/04)** [~~(11/03)~~];

(b) Provisional Ballot Informational Sheet - SBE 36 (11/03);

(c) Provisional Ballot Accountability Sheet - SBE 37 (11/03);

(d) Provisional Ballot Outer Envelope - SBE 38 **(2/04)** [~~(11/03)~~];

(e) Provisional Ballot Inner Envelope - SBE 39 (11/03);

(f) Certification Official Count and Record of Election Totals - SBE 49 (11/03); and

(g) Recanvass of Official Count and Record of Election Totals - SBE 49A (11/03).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN Y. BROWN III, Chairman
APPROVED BY AGENCY: November 24, 2003
FILED WITH LRC: November 26, 2003 at 3 p.m.
CONTACT PERSON: Mary Sue Helm, Executive Director, Kentucky Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

## TEACHERS' RETIREMENT SYSTEM
## (As Amended at ARRS, February 10, 2004)

### 102 KAR 1:035. Employment by retired members.

RELATES TO: KRS 161.605
STATUTORY AUTHORITY: KRS 161.310
NECESSITY, FUNCTION, AND CONFORMITY: KRS **161.310 requires the Board of Trustees of the Teacher's Retirement System of the State of Kentucky to promulgate administrative regulations for the administration of retirement system funds and for the transaction of business. This administrative regulation establishes procedures necessary to administer KRS 161.605, concerning employment by retired members.** [~~161.605 provides that retired members may perform part-time or substitute teaching or be employed part-time in a nonteaching capacity not to exceed the equivalent of 100 days in a school year. This administrative regulation provides the procedures necessary to administer this statute.~~]

Section 1. For purposes of [~~this administrative regulation and~~] KRS 161.605, any period of substitute or part-time teaching of three and one-half (3 1/2) hours or less shall be considered one-half (1/2) day and any period greater than three and one-half (3 1/2) hours shall be considered **one (1)** [**a**] full day. Part-time employment in a nonteaching capacity shall not exceed:

**(1)** Fifty-four (54) percent of a full-time member's weekly schedule for the equivalent of a regular school term (nine and one-fourth (9 1/4) months)**; and**

**(2)** [~~, and no more than~~] Thirty-nine (39) percent of a full-time member's weekly schedule for the equivalent of a twelve (12) month school term.

[~~Section 2. Retired members who perform part-time or substitute teaching or are employed part-time in a nonteaching capacity shall not pay any contributions to the Teachers' Retirement System for these employment services and their retirement annuity shall not be reduced during these periods of service~~].

VIRGINIA MURRELL, Chairperson
APPROVED BY AGENCY: December 15, 2003
FILED WITH LRC: December 15, 2003 at noon
CONTACT PERSON: Robert B. Barnes, General Counsel, Teacher's Retirement System of the State of Kentucky 479 Versailles Road, Frankfort Kentucky 40601, phone (502) 848-8500, fax (502) 573-0199.

**TEACHERS' RETIREMENT SYSTEM**
**(As Amended at ARRS, February 10, 2004)**

**102 KAR 1:150. Optional benefits.**

RELATES TO: KRS 161.620, 161.630, **161.650**
STATUTORY AUTHORITY: KRS 161.310
NECESSITY, FUNCTION, AND CONFORMITY: **KRS 161.310 requires the Board of Trustees of the Teacher's Retirement System of the State of Kentucky to promulgate administrative regulations for the administration of retirement system funds and for the transaction of business.** KRS 161.630 provides that a member of the Teachers' Retirement System retiring for service, may elect an optional benefit in lieu of the life annuity provided by KRS 161.620. This administrative regulation **establishes** [~~describes~~] the various options which may be elected by the retiring member at the time of retirement.

Section 1. Option I - Straight Life Annuity with Refundable Balance. If no option is chosen by the retiring member, or if member is retiring for disability, Option I shall prevail, and shall consist of a life annuity (a retirement allowance payable throughout life). Upon death of a retired member, unless Options II, III, III(a), IV, IV(a), or V are selected, an amount consisting of the excess, if any, of his accumulated account at time of retirement over the amount of all annuity payments received by the member prior to his death shall be refundable to his named beneficiary or to his estate, **pursuant to KRS 161.650.** [~~(KRS 161.650.)~~]

Section 2. Option II - Annuity for Ten (10) Years Certain and for Life Thereafter. (1) At time of retirement the retiring member may file with application for retirement a sworn statement choosing Option II, and this option shall be a lesser annuity actuarially equivalent to the annuity provided under Option I above with payments guaranteed for ten (10) years in any event and for life thereafter if the member survives the ten (10) year period from date of retirement. If the member's death occurs within the ten (10) year guarantee period, annuity payments shall continue for the remainder of the ten (10) year guarantee period to the named beneficiary, if any, or estate.

(2) Death during the first thirty (30) days immediately after retirement shall not affect the payment of this annuity for ten (10) years certain.

(3) Under Option II, a member may also select an annuity for five (5), fifteen (15), or twenty (20) years certain and for life thereafter under the conditions provided for the ten (10) years certain annuity, except that the length of time that the survivor would receive an annuity if the member dies would vary according to the years certain option selected. To select a years certain period other than ten (10) years certain, the member **shall** [~~must~~] specifically designate the number of years to be included in the years certain period. Selection of Option II without designation of a period of years certain shall be deemed to be the selection of Option II as an annuity for ten (10) years certain and life thereafter.

(4) Under Option II, in the event of the death of both the member and the primary beneficiary before the expiration of the years certain period selected by the member, the surviving contingent beneficiary, if any, **shall** [~~will~~] be entitled to receive annuity payments for the remainder of the term certain. In the event of the death of the surviving contingent beneficiary who has been predeceased by the member and the primary beneficiary prior to the expiration of the years certain period, a lump sum payment of the present value of all remaining annuity payments **shall** [~~will~~] be paid to the contingent beneficiary's estate. In the event that the primary beneficiary dies before the expiration of the years certain period, but the member did not designate a contingent beneficiary, or the contingent beneficiary predeceases the primary beneficiary, a lump sum payment of the present value of all remaining annuity payments **shall** [~~will~~] be paid to the primary beneficiary's estate, unless the primary beneficiary predeceases the member in which case a lump sum payment of the present value of all remaining annuity payments **shall** [~~will~~] be paid to the member's estate.

Section 3. Option III - Joint and Last Survivor Annuity. (1) The retiring member may file with application for retirement a sworn statement choosing Option III, and this option shall be a lesser annuity actuarially equivalent to the annuity provided under Option I above with payments continuing for the life of the annuitant (member) plus the provision that upon his death prior to that of his named beneficiary his annuity shall be continued throughout the life of the beneficiary having an insurable interest in the life of the member.

(2) If both annuitant and the named beneficiary die within thirty (30) days after date of retirement, this option shall be void and Option I shall prevail.

Section 4. Option III(a) - Joint and Last Survivor with "Pop-up" Option. The retiring member may file with application for retirement a sworn statement choosing Option III(a), which option shall be a lesser annuity actuarially equivalent to the annuity provided under Option I and incorporating the same guarantee provision as Option III with the additional provision that if the named beneficiary dies prior to the death of the annuitant, the benefit payable shall revert to that which would have been applicable under Option I at the time of retirement of the member.

Section 5. Option IV - Joint and Last Survivor Annuity, One-half (1/2) Benefit to Survivor. (1) The retiring member may file with application for retirement a sworn statement choosing Option IV, which option shall be a lesser annuity actuarially equivalent to the annuity provided under Option I above with payments continuing for the life of the annuitant (member) plus the provision that upon his death prior to that of his named beneficiary one-half (1/2) of his annuity shall be continued throughout the life of the beneficiary having an insurable interest in the life of the member.

(2) If both the annuitant and the beneficiary die within thirty (30) days after retirement, this option shall be void and Option I shall prevail.

Section 6. Option IV(a) - Joint and Last Survivor with One-half (1/2) to Surviving Beneficiary with "Pop-up" Option. The retiring member may file with application for retirement a sworn statement choosing Option IV(a), which option shall be a lesser annuity actuarially equivalent to the annuity provided under Option I and incorporating the same guarantee provision as Option IV with the additional provision that if the named beneficiary dies prior to the death of the annuitant, the benefit payable shall revert to that which would have been applicable under Option I at the time of retirement of the member.

Section 7. Option V - General. In lieu of any option outlined above, the retiring member may file with his or her application for retirement a sworn statement requesting that some other benefit or benefits be paid to the member with or without a survivorship option that upon the death of the member would pay to the other person or persons having an insurable interest in the life of the member as he or she shall nominate in writing, **if** [~~provided~~] the other benefit or benefits, together with the lesser annuity, shall be certified by the actuary to be of equivalent actuarial value to the annuity provided under Option I above and shall be approved by the board.

VIRGINIA MURRELL, Chairperson
APPROVED BY AGENCY: December 15, 2003
FILED WITH LRC: December 15, 2003 at noon
CONTACT PERSON: Robert B. Barnes, General Counsel, Teacher's Retirement System of the State of Kentucky 479 Versailles Road, Frankfort Kentucky 40601, phone (502) 848-8500, fax (502) 573-0199.

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**
**Department for Environmental Protection**
**Division of Waste Management**
**(As Amended at ARRS, February 10 2004)**

**401 KAR 47:030. Environmental performance standards.**

RELATES TO: KRS 224.01-010, 224.10-100, 224.10-105, 224.10-110, 224.40-100 to 224.40-650, 224.43-010 to 224.43-505, 224.70-100, 224.70-110, 224.99-010 to 224.99-030 [~~224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.70, 224.99,~~] 50 C.F.R. Part 424

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-105, 224.40-100, 224.40-305, 224.43-340 [~~, 224.43-350~~]

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 224.10-100(19) and (24) and 224.10-105 require the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations concerning waste management. KRS 224.40-305 and 224.40-100 require the cabinet to promulgate administrative regulations establishing requirements for obtaining a permit to use a waste site or facility and response actions to close and reclaim or upgrade open dumps. KRS 224.43-340 requires the cabinet to promulgate administrative regulations establishing requirements for the reduction and management of solid waste.** [~~KRS Chapter 224 requires the cabinet to adopt rules and administrative regulations for the treatment, storage, recycling and disposal of solid wastes. KRS 224.40-305 requires that persons engaging in the treatment, storage, recycling and disposal of solid waste obtain a permit. This chapter establishes the permitting standards for solid waste sites or facilities, the standards applicable to all solid waste sites or facilities, and the standards for certification of operators. An overview of the permit program is found in Section 1 of 401 KAR 47:080.~~] This administrative regulation **establishes** [~~sets forth~~] the minimum environmental standards with which all solid waste sites or facilities shall comply.

Section 1. Purpose, Scope and Applicability. The standards in this administrative regulation **shall be** [~~are~~] for use under the waste management provisions of KRS Chapter 224 in determining which solid waste sites or facilities pose a reasonable probability of adverse effects on human health or the environment. Solid waste sites or facilities failing to satisfy the requirements of this administrative regulation shall be considered open dumps which are prohibited by KRS 224.40-100. **An** [~~No~~] owner or operator shall **not** cause, suffer, or allow a solid waste site or facility or any unit of a solid waste site or facility to violate any provision of this administrative regulation.

Section 2. Flood Plains. **A** [~~No~~] solid waste site or facility shall **not** restrict the flow of the 100 year flood, reduce the temporary water storage capacity of the flood plain, or be placed in a manner likely to result in washout of waste, so as to pose a hazard to human health, wildlife, or land or water resources.

Section 3. Endangered Species. **A** [~~No~~] solid waste site or facility shall **not**:

(1) Cause or contribute to the taking of any endangered or threatened species or candidate species of the Endangered Species Act of 1973 as amended through January 1984, **16 U.S.C. 1531 to 1544,** and 50 C.F.R. Part 424 as of October 1984; or

(2) Result in the destruction or adverse modification of the critical habitat of endangered or threatened species or candidate species as identified in the Endangered Species Act of 1973 as amended through January 1984, **16 U.S.C. 1531 to 1544,** and 50 C.F.R. Part 424 as of October 1984.

Section 4. Surface Waters. **A** [~~No~~] solid waste site or facility shall **not**:

(1) Cause a discharge of pollutants into waters of the Commonwealth, including wetlands, that violates any requirements of KRS Chapter 224, including but not limited to the Kentucky Pollutant Discharge Elimination System;

(2) Cause a discharge of dredged material or fill material to waters of the Commonwealth that is in violation of the requirements under Section 404 of the Clean Water Act as of February 4, 1987, **33 U.S.C. Section 1344**; or

(3) Cause the release of nonpoint source pollution to waters of the Commonwealth, including wetlands, that violates any requirements of the Kentucky Nonpoint Source Pollution Program.

Section 5. Groundwater. **A** [~~No~~] solid waste site or facility shall **not** contaminate an underground drinking water source beyond the point of compliance in excess of the maximum contaminant levels [~~and the action levels for lead and copper~~] contained in Section 6 of this administrative regulation [~~401 KAR Chapter 8~~] [~~Section 6 of this administrative regulation~~].

Section 6. Maximum Groundwater Contaminant Levels. The maximum contaminant levels of this section **shall be used** [~~are for use~~] in determining whether solid waste site or facility activities comply with the groundwater criteria of Section 5 of this administrative regulation. Only analytical methods for these contaminants that are approved by the cabinet shall be used. **A** [~~No~~] solid waste site or facility shall **not** contaminate an underground drinking water source beyond the maximum contaminant levels established in this section.

(1) Maximum contaminant levels for inorganic chemicals. **A** [~~No~~] solid waste site or facility shall **not** contaminate an underground drinking water source beyond the following maximum contaminant levels:

| Contaminant | Maximum Level[1] (milligrams per liter) |
|---|---|
| Arsenic | 0.05 mg/l |
| Barium | 2.0 mg/l |
| Cadmium | 0.005 mg/l |
| Chromium | 0.1 mg/l |
| Lead | 0.05 mg/l |
| Mercury | 0.002 mg/l |
| Nitrate (as N) | 10.0 mg/l |
| Selenium | 0.05 mg/l |
| Silver | 0.05 mg/l |
| Flouride | 4.0 mg/L |

[1]Metal criteria are total recoverable metals to be measured in an unfiltered sample.

(2) Maximum contaminant levels for organic chemicals. The following **shall be** [~~are~~] the maximum contaminant levels for organic chemicals other than volatile synthetic organic chemicals:

| (a) Chlorinated hydrocarbons: | Maximum Level |
|---|---|
| Endrin (1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-1,4-endo-endo-5,8-dimethano-naphthalene) | 0.002 mg/l |
| Lindane (1,2,3,4,5,6-Hexachlorocyclohexane, gamma isomer) | 0.0002 mg/l |
| Methoxychlor (1,1,1-Trichloro-2,2-bis (p-methoxy-phenyl)ethane) | 0.04 mg/l |
| Toxaphene ($C_{10}H_{10}C_{18}$-Technical chlorinated camphene, 67 to 69 percent chlorine) | 0.003 mg/l |
| (b) Chlorophenoxys: | |
| 2,4-D (2,4-Dichlorophenoxyacetic acid) | 0.07 mg/l |
| 2,4,5-TP Silvex (2,4,5-Trichlorophenoxy-propionic acid) | 0.05 mg/l |

(3) Maximum contaminant levels for radioactivity. The following **shall be** [~~are~~] the maximum contaminant levels for radionuclides:

| Radionuclides | Maximum Level |
|---|---|
| Gross alpha particles | 15 picocuries per liter |
| Radium | 5 picocuries per liter |
| Gross beta particles | 50 picocuries per liter |
| Strontium 90 | 8 picocuries per liter |
| Tritium | 20,000 picocuries per liter |
| Iodine 131 | 3 picocuries per liter |

(4) Maximum contaminant levels for volatile synthetic organic chemicals. The following **shall be** [~~are~~] the maximum contaminant levels for volatile synthetic organic chemicals:

| Chemicals | Maximum Level (milligrams per liter) |
|---|---|
| Benzene | 0.005 |
| Carbon tetrachloride | 0.005 |
| 1,2-Dichloroethane | 0.005 |
| Trichloroethylene | 0.005 |
| para-Dichlorobenzene | 0.075 |
| 1,1-Dichloroethylene | 0.007 |
| 1,1,1-Trichloroethane | 0.2 |
| Vinyl chloride | 0.002 |

(5) Maximum microbiological contaminant levels. The maximum contaminant level for coliform bacteria from any one (1) well shall be:

(a) Using the membrane filter technique:

1. Four (4) coliform bacteria per 100 milliliters if one (1) sample is taken; or

2. Four (4) coliform bacteria per 100 milliliters in more than one (1) sample of all the samples analyzed in one (1) month; or

(b) Using the five (5) tube most probable number procedure (the fermentation tube method) in accordance with the analytical procedures approved by the cabinet, and using a standard sample, each portion being one-fifth (1/5) of the sample:

1. If the standard portion is ten (10) milliliters, coliform in any five (5) consecutive samples from a well shall not be present in three (3) or more of the twenty-five (25) portions; or

2. If the standard portion is 100 milliliters, coliform in any five (5) consecutive samples from a well shall not be present in five (5) portions in any of five (5) samples or in more than fifteen (15) of the twenty-five (25) portions.

[~~Section 6. Maximum Groundwater Contaminant Levels. The maximum contaminant levels of this section are for use in determining whether solid waste site or facility activities comply with the groundwater criteria of Section 5 of this administrative regulation. Only analytical methods for these contaminants that are approved by the cabinet shall be used. No solid waste site or facility shall contaminate an underground drinking water source beyond the maximum contaminant levels established in this section.~~

~~(1) Maximum contaminant levels for inorganic chemicals. No solid waste site or facility shall contaminate an underground drinking water source beyond the maximum contaminant levels established herein.~~

~~(a) The following are the maximum levels of inorganic chemicals other than fluoride:~~

| ~~Contaminant~~ | ~~Maximum Level[1] (milligrams per liter)~~ |
|---|---|
| ~~Arsenic~~ | ~~0.05 mg/l~~ |
| ~~Barium~~ | ~~1.0 mg/l~~ |
| ~~Cadmium~~ | ~~0.01 mg/l~~ |
| ~~Chromium~~ | ~~0.05 mg/l~~ |
| ~~Lead~~ | ~~0.05 mg/l~~ |
| ~~Mercury~~ | ~~0.002 mg/l~~ |
| ~~Nitrate (as N)~~ | ~~10.0 mg/l~~ |
| ~~Selenium~~ | ~~0.01 mg/l~~ |
| ~~Silver~~ | ~~0.05 mg/l~~ |

~~[1]Metal criteria are total recoverable metals to be measured in an unfiltered sample.~~

~~(b) The maximum contaminant levels for fluoride are:~~

| ~~Degrees Fahrenheit~~ | ~~Temperature[1] Degrees Celsius~~ | ~~Maximum Level~~ |
|---|---|---|
| ~~53.7 and below~~ | ~~12 and below~~ | ~~2.4 mg/l~~ |
| ~~53.8 to 58.3~~ | ~~12.1 to 14.6~~ | ~~2.2 mg/l~~ |
| ~~58.4 to 63.8~~ | ~~14.7 to 17.6~~ | ~~2.0 mg/l~~ |
| ~~63.9 to 70.6~~ | ~~17.7 to 21.4~~ | ~~1.8 mg/l~~ |
| ~~70.7 to 79.2~~ | ~~21.5 to 26.2~~ | ~~1.6 mg/l~~ |
| ~~79.3 to 90.5~~ | ~~26.3 to 32.5~~ | ~~1.4 mg/l~~ |

~~[1]Annual average of the maximum daily air temperature.~~

~~(2) Maximum contaminant levels for organic chemicals. The following are the maximum contaminant levels for organic chemicals other than volatile synthetic organic chemicals:~~

| ~~(a) Chlorinated hydrocarbons:~~ | ~~Maximum Level~~ |
|---|---|
| ~~Endrin (1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-1,4-endo-endo-5,8-dimethano-naphthalene)~~ | ~~0.0002 mg/l~~ |
| ~~Lindane (1,2,3,4,5,6-Hexachlorocyclohexane, gamma isomer)~~ | ~~0.004 mg/l~~ |
| ~~Methoxychlor (1,1,1-Trichloro-2,2-bis (p-methoxy-phenyl)ethane)~~ | ~~0.1 mg/l~~ |
| ~~Toxaphene ($C_{10}H_{10}C_{18}$-Technical chlorinated camphene, 67 to 69 percent chlorine)~~ | ~~0.005 mg/l~~ |
| ~~(b) Chlorophenoxys:~~ | |
| ~~2,4-D (2,4-Dichlorophenoxyacetic acid)~~ | ~~0.1 mg/l~~ |
| ~~2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)~~ | ~~0.01 mg/l~~ |

~~(3) Maximum contaminant levels for radioactivity. The following are the maximum contaminant levels for radionuclides:~~

| ~~Radionuclides~~ | ~~Maximum Level~~ |
|---|---|
| ~~Gross alpha particles~~ | ~~15 picocuries per liter~~ |
| ~~Radium~~ | ~~5 picocuries per liter~~ |
| ~~Gross beta particles~~ | ~~50 picocuries per liter~~ |
| ~~Strontium 90~~ | ~~8 picocuries per liter~~ |
| ~~Tritium~~ | ~~20,000 picocuries per liter~~ |
| ~~Iodine 131~~ | ~~3 picocuries per liter~~ |

~~(4) Maximum contaminant levels for volatile synthetic organic chemicals. The following are the maximum contaminant levels for volatile synthetic organic chemicals:~~

| ~~Chemicals~~ | ~~Maximum Level (milligrams per liter)~~ |
|---|---|
| ~~Benzene~~ | ~~0.005~~ |
| ~~Carbon tetrachloride~~ | ~~0.005~~ |
| ~~1,2-Dichloroethane~~ | ~~0.005~~ |
| ~~Trichloroethylene~~ | ~~0.005~~ |
| ~~para-Dichlorobenzene~~ | ~~0.075~~ |
| ~~1,1-Dichloroethylene~~ | ~~0.007~~ |
| ~~1,1,1-Trichloroethane~~ | ~~0.2~~ |
| ~~Vinyl chloride~~ | ~~0.002~~ |

~~(5) Maximum microbiological contaminant levels. The maximum contaminant level for coliform bacteria from any one (1) well shall be:~~

~~(a) Using the membrane filter technique:~~

~~1. Four (4) coliform bacteria per 100 milliliters if one (1) sample is taken; or~~

~~2. Four (4) coliform bacteria per 100 milliliters in more than one (1) sample of all the samples analyzed in one (1) month; or~~

~~(b) Using the five (5) tube most probable number procedure (the fermentation tube method) in accordance with the analytical procedures approved by the cabinet, and using a standard sample, each portion being one-fifth (1/5) of the sample:~~

~~1. If the standard portion is ten (10) milliliters, coliform in any five (5) consecutive samples from a well shall not be present in three (3) or more of the twenty-five (25) portions; or~~

~~2. If the standard portion is 100 milliliters, coliform in any five (5) consecutive samples from a well shall not be present in five (5) portions in any of five (5) samples or in more than fifteen (15) of the twenty-five (25) portions.~~]

Section 7. [~~6.~~] [~~7.~~] Application to Land Use for the Production of Food Chain Crops. **A** [~~No~~] solid waste site or facility shall **not** exist or occur which applies solid waste within three (3) feet of the surface of land used for the production of food chain crops unless in compliance with all the requirements of subsection (1) or (2) of this section:

(1)(a) The pH of the solid waste and soil mixture **shall be** [~~is~~] six and five-tenths (6.5) or greater at the time of each solid waste application, except for solid waste containing cadmium at concentrations of two (2) mg/kg (dry weight) or less;

(b) The annual application of cadmium from solid waste **shall** ~~does~~ not exceed 0.44 pounds per acre on land used for production of tobacco or food chain crops. The annual cadmium application rate **shall** ~~does~~ not exceed 0.44 pounds per acre; and

(c) The maximum cumulative application of cadmium from the waste **shall** ~~does~~ not exceed the levels in Table 1 of this paragraph.

| Table 1<br>Maximum cumulative application | | |
|---|---|---|
| Soil Cation Exchange Capacity (meq/100g) | Background Soil pH | Pounds/per/Acre |
| <5 | ≥6.5 | 4.46 |
| 5-15 | ≥6.5 | 8.92 |
| >15 | ≥6.5 | 17.84 |
| >15 | <6.5* | 4.46 |

*For soils with a background pH of less than six and five-tenths (6.5), the maximum cumulative cadmium applications rate for soils with a background pH equal to or greater than six and five-tenths (6.5) may be used if the pH of the sludge-soil mixture is adjusted to and maintained at six and five-tenths (6.5) or greater whenever food chain crops are grown.

(2) If animal feed is the only food chain crop produced, there **shall not be** ~~is no~~ limit to the cadmium application rate, as long as the pH of sludge and soil mixture is six and five-tenths (6.5) or greater at the time of sludge application or at the time the crop is planted, whichever occurs later, and this pH level is maintained whenever food chain crops are grown. A plan shall also be developed which demonstrates how the animal feed shall be distributed to preclude human ingestion, and the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses. Future property owners shall also be notified by a stipulation in the land record or property deed which states that the property received sludge at high cadmium application rates and that food chain crops, except for animal feed, shall not be grown due to possible health hazards.

Section 8. ~~7.~~ ~~8.~~ Polychlorinated Biphenyls. **A** ~~No~~ solid waste site or facility shall **not** exist or occur which places solid waste containing concentrations of polychlorinated biphenyls (PCBs) equal to or greater than one (1) mg/kg (dry weight) on the land. However, residual landfills may dispose of PCBs in accordance with their permit and contained landfills may dispose of solid wastes containing PCBs equal to forty-nine (49) mg/kg (dry weight) or less.

Section 9. ~~8.~~ ~~9.~~ Disease. (1) Disease vectors. **A** ~~No~~ solid waste site or facility shall **not** exist or occur unless the on-site population of disease vectors is prevented or controlled through the periodic application of cover material or other techniques as appropriate to protect human health and the environment.

(2) Sewage sludge and septic tank pumpings. **A** ~~No~~ solid waste site or facility shall **not** exist or occur which applies sewage sludge or septic tank pumpings within three (3) feet of the surface of the land unless a method to reduce pathogens has been utilized.

Section 10. ~~9.~~ ~~10.~~ Air. (1) **A** ~~No~~ solid waste site or facility shall **not** engage in open burning of solid waste or hazardous wastes. This requirement **shall** ~~does~~ not apply to infrequent burning of agricultural wastes in the field, silvicultural wastes for forest management purposes, land-clearing debris, diseased trees, debris from emergency cleanup operations, or ordnance ~~ordinance~~.

(2) **A** ~~No~~ solid waste site or facility shall **not** violate applicable air pollution requirements contained in KRS Chapter 224 or 401 KAR Chapters 50 through 63.

Section 11. ~~10.~~ ~~11.~~ Safety. (1) Explosive gases. **A** ~~No~~ solid waste site or facility shall **not** allow the concentration of explosive gases generated by the facility to exceed:

(a) Twenty-five (25) percent of the lower explosive limit for the gases in facility structures (excluding gas control or recovery system components); and

(b) The lower explosive limit for the gases at the facility property boundary.

(2) Fires. **A** ~~No~~ solid waste site or facility shall **not** pose a hazard to the safety of persons or property from fires. This may be accomplished through compliance with Sections 8 and 9 ~~and 10~~ of this administrative regulation, through the periodic application of **daily, interim, or long-term cover materials or other techniques such as, but not limited to, isolation, fire breaks, compliance with local fire codes, availability of fire fighting equipment, and normal fire prevention measures as appropriate.** ~~cover material or other techniques as appropriate.~~

(3) Access. **A** ~~No~~ solid waste site or facility shall **not** allow uncontrolled public access, unauthorized vehicular traffic, or illegal dumping of wastes. This requirement to ensure protection of human health and the environment may be met by using artificial barriers, natural barriers, or other methods as appropriate.

Section 12. ~~11.~~ ~~12.~~ Public Nuisance. **A** ~~No~~ solid waste site or facility shall **not** result in a public nuisance because of blowing litter, debris, or other waste or material.

Section 13. ~~12.~~ ~~13.~~ Wetlands. **A** ~~No~~ new or expanded solid waste site or facility shall **not** be located in wetlands.

Section 14. ~~13.~~ ~~14.~~ Compliance. **A** ~~No~~ solid waste site or facility shall **not** violate any requirement of KRS Chapter 224.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: January 14, 2004
FILED WITH LRC: January 14, 2004 at 1 p.m.
CONTACT PERSON: Julia Lightner, Environmental Technologist II, PPA Branch, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716 ext. 342, fax (502) 564-3492.

## NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
### Department for Environmental Protection
### Division of Waste Management
### (As Amended at ARRS, February 10, 2004)

### 401 KAR 100:030. Remediation requirements.

RELATES TO: KRS 224.01-400, 224.01-405, 224.01-450 to 224.01-465, 224.01-510 to 224.01-532, 224.40-100
STATUTORY AUTHORITY: KRS 224.10-100(30), 224.40-100, 224.01-400**(2)**, 224.01-405**(2)**, 224.01-530**(2)**, 224.01-532
NECESSITY, FUNCTION AND CONFORMITY: **KRS 224.01-530(2) requires the cabinet to promulgate administrative regulations establishing standards under KRS 224.01-400 and 224.01-405 with respect to hazardous substances, pollutants, contaminants, petroleum, or petroleum products, that are protective of human health, safety, and the environment. KRS 224.01-532 authorizes the cabinet to promulgate administrative regulations to implement KRS 224.01-510 to 224.01-532.** This administrative regulation governs remediation under KRS 224.01-400 and 224.01-405, 224.01-510 through 224.01-532, and 224.01-450 to 224.01-465.

Section 1. Definitions. **[**~~Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in this administrative regulation shall have the meanings given in this section.~~**]**

(1) "Ambient background" means the concentrations of naturally-occurring inorganic substances and ubiquitous anthropogenic inorganic substances in the environment that are representative of the region surrounding the site and not attributable to an identifiable release.

(2) "Applicant" means a person who has applied to participate in the Voluntary Environmental Remediation Program in accordance with KRS 224.01-514.

(3) "Application" means Application to Enter the Voluntary

Environmental Remediation Program, DEP Form 6059 (October 22, 2003), including any additions, revisions, or modifications and any narrative and drawings.

(4) [~~"ARARs" means applicable or relevant and appropriate requirements including:~~

~~(a) Maximum contaminant levels;~~

~~(b) Water quality standards;~~

~~(c) Action levels;~~

~~(d) Guidance;~~

~~(e) Advisories; and~~

~~(f) A maximum allowable concentration of 50 mg/kg for lead in surface soils intended for unrestricted use.~~

~~(5)~~] "Contaminant of concern" means a hazardous substance or petroleum that is sufficiently present in frequency and concentration in the environment to require further evaluation of human and ecological health effects.

(5) [~~(6)~~] "Industrial" means a type of property not used for residential purposes or for other purposes with a similar potential for human exposure.

[~~(7) "Maximum contaminant levels" shall have the meaning set out in 401 KAR 8:010(1).~~]

(6) [~~(8)~~] "Notice of completion" means a letter from the cabinet to the person indicating that the person has satisfactorily completed the requirements of KRS 224.01-400(18) and 224.01-405(1) and Sections 6 through 9 of this administrative regulation.

(7) "Party" **means** [~~shall mean~~] a person as defined [~~(9) "Person" shall have the meaning~~] in KRS 224.01-010(17) who is:

(a) Conducting remediation in accordance with KRS 224.01-400(18) or 224.01-405(1), who is seeking a notice of completion from the cabinet; or

(b) Conducting remediation in accordance with KRS 224.01-400(18) or 224.01-405(1), and seeking a no further remediation letter in accordance with KRS 224.01-450 to 224.01-465.

(8) [~~(10)~~] "Region 9 PRGs" means the U.S. EPA Region 9 Preliminary Remediation Goals, (October 1, 2002) used in accordance with the U.S. EPA Region 9 Preliminary Remediation Goals Table User's Guide/Technical Background Document (October 1, 2002).

(9) [~~(11)~~] "Residential" means a type of property used [~~as~~]:

(a) As a residence or dwelling, including a house, apartment, or condominium; or

(b) For other purposes with a similar potential for human exposure [~~A facility regularly frequented by sensitive subpopulations such as children, the elderly, and chronically ill persons~~].

(10) [~~(12)~~] "Target risk" means an excess cancer risk of one in one million for carcinogenic endpoints and a hazard index of 1.0 for noncancer endpoints.

(11) [~~(13)~~] "Voluntary Environmental Remediation Program" (VERP) means the process for site remediation established in this administrative regulation and KRS 224.01-510 to 224.01-532.

Section 2. Applicability. This administrative regulation **shall govern** [~~governs~~] remediation pursuant to KRS 224.01-400(18)-(21), 224.01-405(1), 224.01-450 to 224.01.465, and 224.01-510 to 224.01-532.

Section 3. Eligibility (1) A notice of completion, a no further remediation letter, or a covenant not to sue shall be issued by the cabinet only for those sites at which remediation is conducted under cabinet oversight or is otherwise approved by the cabinet.

(2) Upon approval of a remediation done in accordance with KRS 224.01-400 or 224.01-405 and Sections 6 through 9 of this administrative regulation, the cabinet shall issue a notice of completion to the person.

(3) Upon approval of a remediation done in accordance with KRS 224.01-450 to 465 and Sections 6 through 9 of this administrative regulation, the cabinet shall issue a no further remediation letter to the eligible public entity.

(4) Eligible participants seeking a covenant not to sue from the cabinet shall apply to enter the Voluntary Environmental Remediation Program. Upon approval of a remediation done in accordance with KRS 224.01-510 to 224.01-532 and Sections 5 through 9 of this administrative regulation, the cabinet shall issue a covenant not to sue to the applicant.

(5) A person conducting characterization and remediation, with or without cabinet oversight as provided by KRS 224.01-400(19), shall have all the options of KRS 224.01-400 and of this administrative regulation.

Section 4. Initial Property Screening. (1) KRS 224.01-530 establishes the Region 9 PRGs as screening values. Contamination on a property that does not exceed the residential value in the Region 9 PRGs and does not otherwise require action under KRS 224.01-400 or 224.01-405, **shall** [~~does~~] not rise to a level of concern under KRS 224.01-530.

(2) Contamination on a property which exceeds the residential value but does not exceed the industrial value in the Region 9 PRGs and does not otherwise require action under KRS 224.01-400 or 224.01-405, **shall** [~~does~~] not rise to a level of concern under KRS 224.01-530 if the property is restricted in use to industrial [~~or commercial~~] use by a deed instrument in the property's chain of title that industrial exposures have been assumed at the site and is recorded with the county clerk for the county in which the property exists [~~an enforced restrictive covenant and a copy of the restrictive covenant is filed with the cabinet~~].

(3) The cabinet shall not issue a covenant not to sue for sites described by Section 4(1) and (2) of this administrative regulation unless the owner of the property applies to the Voluntary Environmental Remediation Program and complies with Sections 5 through 9 of this administrative regulation [~~including full characterization of any contamination regardless of the use of screening levels as described in Section 4(1) and (2) of this administrative regulation~~].

(4) The cabinet may require further characterization and remediation of any release [~~of a property~~] pursuant to and in compliance with all applicable statutes and regulations regardless of the application of Section 4(1) and (2) of this administrative regulation.

Section 5. Application. In order to enter into the Voluntary Environmental Remediation Program an applicant shall submit to the cabinet:

(1) A completed **"Application to Enter Voluntary Environmental Remediation Program," DEP Form 6059, October 22, 2003** [~~application~~];

(2) The tear sheet for the public notice required by KRS 224.01-514(3)(d);

(3) A site characterization plan prepared in accordance with Section 6 of this administrative regulation; and

(4) A nonrefundable application fee, if required by KRS 224.01-514(3).

Section 6. Site Characterization Plan. The party [~~person~~] or applicant shall submit to the cabinet a site characterization plan that complies with KRS 224.01-400(18) to [~~and~~] (21) or 224.01-405(1) and Section 7(2) of this administrative regulation, and shall include:

(1) To the extent known or reasonably obtained, the location and ownership of the property and site; the history of the use of the property and site, surrounding land use and ownership; information regarding the circumstances surrounding known or suspected releases at the property and site, including the types of hazardous substances or petroleum released, approximate volumes or amounts of releases, and actions taken in response to known or suspected releases to date;

(2) The site conditions and physical setting including soils, groundwater, geology, and other pertinent features; a 7.5 minute USGS topographic quadrangle map or the appropriate part of **this** [~~such a~~] map indicating the location of the property, a 7.5 minute USGS geological quadrangle map or the appropriate part of such a map indicating the location of the property; and a base map, at an appropriate scale, accuracy, and detail depicting property lines, surrounding land ownership and uses, significant structures and infrastructure; and significant environmental or geological features;

(3) A soil sampling plan to identify and [~~fully~~] characterize the horizontal and vertical extent of contamination and the variation in types and concentrations of hazardous substances and petroleum sufficient to support selection of remediation options for the site;

(4) A plan to determine [~~determination, with supporting infor-~~

~~mation, of~~] whether a groundwater assessment is necessary[~~, conducted in accordance with the Kentucky Guidance for Groundwater Assessment Screening, or other method selected by the person or applicant and approved by the cabinet~~];

(5) A plan to determine [~~determination, with supporting information, of~~] whether air quality, surface water and its associated sediments, or terrestrial or aquatic habitat have been affected by a release[~~, and the extent of the effect of the release on these media~~];

(6) A plan to determine [~~determination of~~] whether an ecological risk assessment is necessary [~~in accordance with "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments (1997)", and "Guidelines for Ecological Risk Assessment (1998)"~~]; [~~and~~]

(7) A statement specifying that sample collection and analysis requirements, quality assurance, and quality control will be met in accordance with "Test Methods for Evaluating Solid Wastes: Physical Chemical Methods (EPA Publication No. SW-846) Third Edition"; **and** [~~.~~]

(8) A proposed schedule for implementation of the characterization plan and submittal of a site characterization report.

Section 7. Site Characterization and Site Characterization Report. (1) The party [~~person~~] or applicant shall conduct a site characterization that complies with the site characterization plan, as required in Section 6 of this administrative regulation. [~~; and~~]

(2) The party [~~person~~] or applicant shall submit a site characterization report that includes:

(a) A list of the contaminants of concern at the site **that complies with the following requirements:** [~~:~~]

1. The party [~~person~~] or applicant shall identify contaminants of concern at the site using the Region 9 PRGs; [~~.~~]

2. In identifying contaminants of concern the party [~~person~~] or applicant shall consider the following:

a. The frequency of detection of the contaminants;

b. The effects on human health due to the interaction between contaminants, including additivity. Additivity of contaminants of concern shall be evaluated using the screening index described in the "U.S. EPA Region 9 Preliminary Remediation Goals Table User's Guide/Technical Background Document (October 1, 2002)";

c. Ambient background conditions, including ambient background based on generic statewide ambient background levels as presented in Table 2 of the Kentucky Guidance for Ambient Background Assessment, or site-specific ambient background conditions determined in accordance with the Kentucky Guidance for Ambient Background Assessment; and

d. Any other applicable requirements; **and** [ARARs][~~.~~]

3. A person conducting characterization and screening with or without cabinet oversight as provided by KRS 224.01-400(19), may use Region 9 PRGs to screen sites and identify contaminants of concern, as described in KRS 224.01-530(1). However, the cabinet shall not approve the adequacy [~~certify the applicability~~] of the Region 9 PRGs without review of site-specific conditions; [~~.~~]

(b) A determination of the extent of the contamination in all media impacted by contaminants of concern including:

1. The horizontal and vertical extent of contamination in soils;

2. The results of the determination of whether a groundwater assessment is necessary, conducted in accordance with the "Kentucky Guidance for Groundwater Assessment Screening", or other method selected by the party or applicant and approved by the cabinet;

3. The results of the determination of whether air quality, surface water and its associated sediments, or terrestrial or aquatic habitat have been affected by a release, and the extent of the effect of the release on these media; and

(c) A determination by way of screening or risk assessment, as appropriate, of the human health and ecological risks posed by contamination at the site or resulting from the site:

1. Human health risk assessments shall comply with the "Risk Assessment Guidance for Superfund: Volume 1, Human Health Evaluation Manual, Part A, Part B, and Part C"; **and**

2. Ecological risk assessments shall be conducted in accordance with "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments (1997)", and "Guidelines for Ecological Risk Assessment (1998)".

Section 8. Corrective Action Plan. (1) The party [~~person~~] or applicant shall submit a corrective action plan to the cabinet that addresses contaminants of concern in impacted media, and unacceptable [~~identified~~] ecological risks. The corrective action plan shall contain a proposed schedule for implementation of the corrective action.

(2) A person conducting corrective action pursuant to KRS 224.01-400(19) may use the Region 9 PRGs in order to identify final remediation goals. However, the cabinet shall not approve the adequacy [~~certify the applicability~~] of the Region 9 PRGs as final remediation goals without review of site-specific conditions.

(3) The corrective action plan shall employ one (1) of the following options:

(a) No action necessary.

1. No action is necessary in accordance with KRS 224.01-400(18)(a) if the party [~~person~~] or applicant:

a. Demonstrates to the cabinet that the risk posed by contaminants of concern does not exceed target risk levels [~~at the point of exposure~~] for unrestricted land use and does not exceed ecological risk endpoints in accordance with "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments (1997)" and "Guidelines for Ecological Risk Assessment (1998)"; or

b. Demonstrates to the cabinet that organic contaminants of concern do not exceed target risk levels [~~at the point of exposure~~] for unrestricted land use and inorganic contaminants of concern do not exceed ambient background levels for the respective media. Contaminants of concern shall not exceed ecological risk endpoints in accordance with "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments (1997)" and "Guidelines for Ecological Risk Assessment (1998)".

2. The party's [~~person~~] or applicant's attempt to demonstrate that no action is necessary to protect human health, safety and the environment may include demonstrations by the party [~~person~~] or applicant that the remaining organic constituents in soil are naturally occurring or are not attributable to an identifiable release [~~releases on the property~~].

3. The party's [~~person~~] or applicant shall consider any applicable requirements [~~incorporate ARARs~~] when demonstrating no action is necessary.

4. Region 9 PRGs may be used as the final remediation goals for human health at sites:

a. That do not have multiple contaminants of concern that result in an additive risk above the target risk level. Additivity of contaminants of concern shall be evaluated using the screening index described in the "U.S. EPA Region 9 Preliminary Remediation Goals Table User's Guide/Technical Background Document (October 1, 2002)"; and

b. For which the assumptions used in developing the Region 9 PRGs are applicable.

(b) Management in place. KRS 224.01-400(18)(b) **shall apply** [~~applies~~] to sites where the party [~~person~~] or applicant will manage releases in place. The goal of management in place shall be to attain target risk levels at the point of exposure, and be protective of ecological health.

1. Management of the release shall include engineering and institutional controls amounting to containment of the release, and either elimination of exposure pathways, or reduction of exposure.

2. The party [~~person~~] or applicant shall consider current and proposed land use in selecting the remedy. Proposed land use shall not be in conflict [~~be consistent~~] with local zoning codes and other applicable ordinances.

3. The party [~~person~~] or applicant shall describe to the cabinet the method for maintenance of engineering and institutional controls, **including** [~~to include~~]:

a. Annual (or other approved frequency) inspections of the engineering and institutional controls, as approved by the cabinet in the corrective action plan;

b. Annual (or other approved frequency) certification to the cabinet that the engineering and institutional controls remain pro-

tective of human health, safety and the environment; and

c. A deed instrument containing an enforceable restrictive covenant[~~, if applicable,~~] which is transferable and is binding on current and subsequent property and recorded with the county clerk for the county in which the property exists. A copy of the restrictive covenant shall be filed with the cabinet [~~owners~~].

4. If [~~In the event~~] the target risk levels at the point of exposure will not be achieved by the proposed remedy, the party [~~person~~] or applicant shall demonstrate to the cabinet the protectiveness of the remedy using the criteria listed in clauses a through h of this subparagraph. The cabinet shall place emphasis on criteria listed in clauses a through d of this subparagraph when evaluating the remedy selected.

a. The overall protection of human health and the environment;

b. The compliance with any other applicable requirements [~~ARARs~~];

c. The long-term effectiveness and permanence of the remedial option;

d. The reduction of toxicity, mobility, or volume through the use of treatment;

e. The short-term effectiveness of the remedy;

f. The ability to implement the remedy;

g. The cost of the remedy; and

h. Community acceptance of the remedy.

5. If the proposed remedy will not achieve target risk levels at the point of exposure the party [~~person~~] or applicant shall provide a public notice of the remedy, including a summary of the contamination at the site, the remedial actions taken, and the residual risks associated with the site. The cabinet shall receive public comments on the proposed remedy for at least thirty (30) days following publication of the notice. For VERP participants, the public notice and comment period required by KRS 224.01-524 shall serve as the required public notice.

(c) Restoration. KRS 224.01-400(18)(c) **shall apply** [~~applies~~] to sites where the party [~~person~~] or applicant restores the environment through removal of the contaminants of concern to ambient background levels, target risk levels at the point of exposure, or levels derived from a site-specific risk assessment approved by the cabinet, that do not require engineering or institutional controls.

(d) Combination of options. The party [~~person~~] or applicant shall have the option to employ a combination of the remedial options described in this section.

(4) The cabinet shall review and approve or disapprove the corrective action plan pursuant to KRS 224.01-522 or 224.01-400 (22), as applicable.

Section 9. Corrective Action Completion Report. (1) The party [~~person~~] or applicant shall submit to the cabinet a corrective action completion report.

(2) The corrective action completion report shall include:

(a) Documentation that the corrective actions implemented comply with [~~KRS 224.01-400(18) to (21), 224.01-405(1), and 224.01-526(1) and~~] the corrective action plan approved by the cabinet;

(b) Documentation of the completion of all the activities specified in the corrective action plan required in Section 7 of this administrative regulation, including documentation of any modification from the approved corrective action plan, documentation of the weight, volume, and classification of any material removed as part of the corrective action, copies of signed manifests and any other pertinent waste disposal forms, sampling procedures used for waste profile determination and restoration conformation, results from any confirmatory sampling and copies of all laboratory analytical reports, and information regarding backfill material, where it was obtained, and any attendant analytical results;

(c) Documentation of all engineering and institutional controls implemented to contain the release, eliminate pathways of exposure, reduce exposure, or achieve a combination thereof; and

(d) A statement signed by the party [~~person~~] or applicant certifying that the document and all attachments were prepared under the party [~~person~~] or applicant's direction or supervision, and the information submitted is, to the best knowledge of the party [~~person~~] or applicant, true, accurate, and complete.

(3) The cabinet shall review and approve or disapprove the corrective action completion report pursuant to KRS 224.01-522 or 224.01-400(22), as applicable.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application to Enter Voluntary Environmental Remediation Program, DEP Form 6059 (October 22, 2003)";

(b) "U.S. EPA Region 9 Preliminary Remediation Goals, and the Region 9 PRGs Table User's Guide/Technical Background Document (October 1, 2002)";

(c) "Kentucky Guidance for Ambient Background Assessment (January 8, 2004) [~~(October 28, 2003)~~]";

(d) "Kentucky Guidance for Groundwater Assessment Screening (January 15, 2004) [~~(October 23, 2003)~~]";

(e) "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments (1997)" Interim Final. U.S. EPA Environmental Response Team, Edison, NJ;

(f) "Guidelines for Ecological Risk Assessment (1998)" U.S. EPA Risk Assessment Forum, Washington, DC. EPA/630/R-95/002F; [~~and~~]

(g) "SW-846 Test Methods for the Evaluation of Solid Waste, Physical/Chemical: Methods, Third Edition, Integrated Version (June 1997)";

(h) "Risk Assessment Guidance for Superfund: Volume 1, Human Health Evaluation Manual, Part A, Interim Final Version (December 1989);

(i) "Risk Assessment Guidance for Superfund: Volume 1, Human Health Evaluation Manual, Part B, Development of Risk-based Preliminary Remediation Goals, Interim Version (December 1991); and

(j) "Risk Assessment Guidance for Superfund: Volume 1, Human Health Evaluation Manual, Part C, Risk Evaluation of Remedial Alternatives, Interim Version (October 1991).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 14 Reilly Rd, Frankfort, Kentucky 40601, (502) 564-6716, Monday through Friday, 8 a.m. to 4:30 p.m., Eastern Time, excluding state holidays.

LAJUANA S. WILCHER, Secretary

APPROVED BY AGENCY: January 14, 2004

FILED WITH LRC: January 15, 2004 at noon

CONTACT PERSON: Michael S. Mullins, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-3492, email Michael.Mullins@mail.state.ky. us

**TRANSPORTATION CABINET**
**Department Of Vehicle Regulation**
**Division Of Motor Carriers**
**(As Amended at ARRS, February 10, 2004)**

**601 KAR 1:005. Safety administrative regulation.**

RELATES TO: KRS 138.665, 281.600, 281.730, 281.750, 281.880, 49 C.F.R. 40, 382-383, 385, 390-397

STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.730, 281.750, 281.880 to 281.888, 49 C.F.R. 40, 382-383, 385, 390-397

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.600 authorizes the Transportation Cabinet to promulgate administrative regulations relating to safety requirements. This administrative regulation establishes requirements for motor carriers operating in Kentucky.

Section 1. Definitions. (1) "City bus" is defined in KRS 281.013(1).

(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.

(3) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier, is using a vehicle:

(a) To transport agricultural products from his farm;

(b) To transport farm machinery or farm supplies to his farm; or

(c) Generally thought of as farm machinery; and

(d) Which is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025.

(4) "Load limit" means the seating capacity established by the manufacturer for a passenger-carrying vehicle plus an additional twenty-five (25) percent.

(5) "Suburban bus" is defined in KRS 281.013(2).

(6) "Utility" means an entity which provides water, electricity, natural gas, sewage disposal, telephone service, television cable, or community antenna service.

Section 2. Governing Federal Regulations. A commercial motor vehicle and its operator meeting the definitions set forth in 49 C.F.R. 390.5 operating for-hire or in private carriage, interstate or intrastate, except as set forth in Section 3 of this administrative regulation, shall be governed by the following Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation, and [~~are~~] hereby adopted without change:

(1) 49 C.F.R. Part 40, as effective October 1, 2003 [~~2001~~], Procedures for Transportation Workplace Drug **and Alcohol** Testing Programs;

(2) 49 C.F.R. Part 382, as effective October 1, 2003 [~~2001~~], Controlled Substances and Alcohol Use and Testing;

(3) 49 C.F.R. Part 383, as effective October 1, 2003 [~~2001~~], Commercial Driver's License Standards; Requirements and Penalties;

(4) 49 C.F.R. Part 385, as effective October 1, 2003 [~~2001~~], Safety Fitness Procedures;

(5) 49 C.F.R. Part 390, as effective October 1, 2003 [~~2001~~], General;

(6) 49 C.F.R. Part 391, as effective October 1, 2003 [~~2001~~], Qualifications of Drivers;

(7) 49 C.F.R. Part 392, as effective October 1, 2003 [~~2001~~], Driving of **Commercial** Motor Vehicles;

(8) 49 C.F.R. Part 393, as effective October 1, 2003 [~~2001~~], Parts and Accessories Necessary for Safe Operation;

(9) 49 C.F.R. Part 395, as effective October 1, 2003 [~~2001~~], Hours of Service of Drivers;

(10) 49 C.F.R. Part 396, as effective October 1, 2003 [~~2001~~], Inspection, Repair and Maintenance; and

(11) 49 C.F.R. Part 397, as effective October 1, 2003 [~~2001~~], Transportation of Hazardous Materials; Driving and Parking Rules.

Section 3. Exemptions and Exceptions. The following exemptions and exceptions to compliance with the provisions of Section 2 of this administrative regulation are adopted:

(1)(a) A city or suburban bus shall not be required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation.

(b) The operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall:

1. Comply with the provisions of 49 C.F.R. Parts 382 and 383; and

2.a. Provide proof of having passed the medical examination set forth in 49 C.F.R. Part 391; or

b. Have received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section for intrastate operators or as set forth in 49 C.F.R. Part 381 for interstate operators.

(2)(a) A motor vehicle operated by the federal government, a state government, a county government, a city government, or a board of education shall not be required to comply with the federal regulations adopted in this administrative regulation.

(b) An operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of:

1. Having passed the medical examination set forth in 49 C.F.R. Part 391; or

2. Having received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section for intrastate operators or as set forth in 49 C.F.R. Part 381 for interstate operators.

(c) The operator of a vehicle specified in paragraph (a) of this subsection shall meet the requirements of 49 C.F.R. Part 382 relating to drug and alcohol testing.

(3)(a) A motor vehicle which is used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier shall not be required to comply with **49 C.F.R. 393.9 to 393.33** [~~Title 49, Code of Federal Regulations, Part 393, Subpart B~~], relative to lighting device requirements.

(b) A motor vehicle as described in paragraph (a) of this subsection shall have two (2) stop lamps and mechanical turn signals as set forth in 49 C.F.R. **393.9 to 393.33** [~~393, Subpart B~~].

(4)(a) A motor vehicle which is used exclusively in intrastate commerce and exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles (eighty and five-tenths (80.5) air kilometers) from the harvest area when operated during daylight hours shall not be required to comply with **49 C.F.R. 393.9 to 393.33,** [~~Title 49, Code of Federal Regulations, Part 393, Subpart B~~] relative to lighting devices requirements.

(b) A motor vehicle as described in paragraph (a) of this subsection shall have two (2) stop lamps and mechanical turn signals as set forth in 49 C.F.R. **393.9 to 393.33** [~~393, Subpart B~~].

(5) Except for a transporter of hazardous materials subject to the requirements of 601 KAR 1:025, a motor vehicle operator who is operating a vehicle in intrastate commerce shall not be required to be twenty-one (21) years of age as set forth in 49 C.F.R. 391.11(b)(1). However, he shall be at least eighteen (18) years of age.

(6) A utility motor carrier, if operating exclusively in intrastate commerce, shall be exempt from the maximum and on-duty hours for drivers set forth in 49 C.F.R. 395.3 during an emergency as defined in 49 C.F.R. 390.5 which requires their employees to work to restore service.

(7) Medical waivers for intrastate drivers.

(a) A commercial vehicle driver who operates a commercial vehicle exclusively in intrastate commerce within Kentucky, may apply for a medical waiver of the requirements of 49 C.F.R. Part 391 under the provisions of 601 KAR 11:040.

(b) If a medical waiver is issued, the waiver shall be in the possession of the commercial driver any time he is operating a commercial motor vehicle.

(8) Except for a farm-to-market agricultural transportation motor vehicle with a gross vehicle weight rating of 26,000 pounds or less, a motor carrier which operates exclusively in intrastate commerce shall:

(a) Apply for an intrastate motor carrier identification number on Form TC 95-1, "Kentucky Trucking Application", April 2000 edition or Form TC 92-150, "Application for Intrastate Carrier Identification Number", March 1996 edition;

(b) Display the assigned intrastate motor carrier identification number and the name of the motor carrier in the same manner as required pursuant to 49 C.F.R. [~~Part~~] 390.21 except the identification number shall be preceded by the letters "USDOT" and followed by the letters "KY".

(9) Notwithstanding 49 C.F.R. [~~Part~~] 391.68(c), a Kentucky licensed commercial driver operating a passenger transportation vehicle on behalf of a private motor carrier of passengers shall not be exempt from the sections of 49 C.F.R. [~~Parts~~] 391.41 and 391.45 requiring a driver to be medically examined and to have a medical examiner's certificate on his person.

Section 4. Buses. (1) A bus shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired.

(2) A seat shall be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare.

(3) An employee in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and shall be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays.

(4) An operator shall take into consideration the health and welfare of his passengers and control his operations in the public interest.

(5) Express and freight, mail bags, newspapers and baggage shall be so placed as not to interfere with the driver or with the safety and comfort of passengers. These items shall be protected from the weather but shall not be carried in the aisles or in a position to block exits or doorways on the bus.

Section 5. Overcrowding of Passenger Vehicles. A bus operated by an authorized carrier, except city or suburban buses, shall not be used to transport passengers in excess of its load limit. A passenger shall not be permitted to occupy the rear door-well of any bus vehicle that is equipped with a rear doorwell.

Section 6. Out-of-service Criteria and Sticker. (1) The basic safety criteria to be followed by the Kentucky Transportation Cabinet in determining if a commercial motor vehicle driver or commercial motor vehicle shall be declared unqualified or placed out-of-service shall be the "North American Uniform Out-of-service Criteria" issued by the Commercial Vehicle Safety Alliance.

(2)(a) If a commercial motor vehicle is being operated with improper or invalid registration, without registration or in violation of any safety regulation or requirement, an officer or inspector of the Division of Motor Vehicle Enforcement shall be authorized to affix to the vehicle a notice indicating the nature of the violation and requiring its correction before the commercial motor vehicle is further operated.

(b) Refusal of the vehicle operator to grant permission for a law enforcement officer or inspector to conduct a safety inspection of the vehicle shall be cause for the officer or inspector to place the vehicle out-of-service until the permission is granted.

(c) Operation of a vehicle in violation of the out-of-service notice affixed to it shall constitute a separate violation of **this** [~~these~~] administrative **regulation** [~~regulations~~].

(3)(a) If a commercial motor vehicle driver is determined to be unqualified to drive and is placed out-of-service but the commercial motor vehicle is not placed out-of-service, the motor carrier may provide a different driver for the commercial motor vehicle.

(b) The commercial motor vehicle driver placed out-of-service shall not again operate a commercial motor vehicle until he is once again qualified.

(c) Refusal of the commercial motor vehicle driver to grant permission for a law enforcement officer or inspector to conduct a safety inspection regarding the driver himself shall be cause for the officer to place the driver out-of-service until the permission is granted.

(d) Operating a commercial motor vehicle in violation of an out-of- service order shall constitute a separate violation of this administrative regulation.

Section 7. Persons Allowed to Perform Physical Examinations. A physical examination required pursuant to state or federal law shall be conducted by a medical examiner as defined in 49 C.F.R. 390.5. The following shall qualify:

(1) Physician licensed by the Kentucky Board of Medical Licensure;

(2) Osteopath licensed by the Kentucky Board of Medical Licensure;

(3) Physician assistant certified by the Kentucky Board of Medical Licensure when working under the direct supervision of a licensed physician;

(4) Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing; and

(5) Chiropractor licensed by the Kentucky State Board of Chiropractic **Examiners** [~~Licensure~~].

Section 8. [~~Interpretations of the Federal Motor Carrier Regulations. The document published by the Federal Highway Administration in the Federal Register at 62 Fed. Reg. 16370 on April 4, 1997 presents official interpretive guidance material for the Federal Motor Carrier Safety Regulations which govern this administrative regulation. The document shall be used to interpret the provisions of this administrative regulation.~~

~~Section 9.~~] Intrastate Safety Rating System. (1) The Transportation Cabinet may issue a safety rating to a motor carrier subject to the provision of this administrative regulation if all of the commercial motor vehicles operated by the motor carrier are operated exclusively in intrastate commerce.

(2) The safety standards and rating criteria set forth in 49 C.F.R. Part 385 shall be used by the Transportation Cabinet in issuing a safety rating.

Section **9.** [~~10.~~] Random Alcohol Testing Rate. Commercial Motor Vehicle employers shall randomly test a percentage of the average number of driver positions employed by them. The applicable percentage shall be determined by the Federal Motor Carrier Safety Administration's Administrator annually as set forth in 49 C.F.R. **382.305** [~~382.302~~].

Section **10. Incorporation** [~~11. Material Incorporated~~] by Reference. (1) The following material is incorporated by reference:

(a) "North American Uniform Out-Of-Service Criteria" revised January 1, 2004 [~~April 1, 2001~~] by the Commercial Vehicle Safety Alliance;

(b) [~~62 Fed. Reg. 16370, April 4, 1997;~~

~~(c)~~] TC 95-1, revised April, 2000; and

(c) [~~(d)~~] TC 92-150, revised March, 1996.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at any of the weigh stations operated by the Transportation Cabinet, and at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

MACK BUSHART, Commissioner
JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: December 12, 2003

FILED WITH LRC: December 5, 2003 at noon

CONTACT PERSON: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of General Counsel and Legislative Affairs, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

## TRANSPORTATION CABINET
## Department of Vehicle Regulation
## (As Amended at ARRS, February 10, 2004)

### 601 KAR 9:135. Apportioned registration.

RELATES TO: KRS 186.020(1), (3), 186.050(3), (13), 186.051(2), 49 U.S.C. Chapter 317

STATUTORY AUTHORITY: KRS 186.050(13), 186.051(3), 49 U.S.C. 31704

NECESSITY, FUNCTION, AND CONFORMITY: 49 U.S.C. 31704 requires each state to participate in the International Registration Plan. KRS 186.051(3) requires the Transportation Cabinet to establish a system of staggered registration time periods for commercial motor vehicles. KRS 186.050(13) requires the Transportation Cabinet to promulgate administrative regulations concerning the registration of commercial motor vehicles under the Articles of the International Registration Plan. This administrative regulation establishes the procedures to be followed in registering a commercial motor vehicle under the provisions of the International Registration Plan. It further clarifies when a vehicle licensed under the provisions of KRS 186.050(13) shall be deemed to be licensed under the provisions of other sections of KRS 186.050. **This** [~~The~~] administrative regulation establishes the recordkeeping standards required for apportionable vehicles, auditing of the records by the Transportation Cabinet, and the appeal procedure when a disagreement occurs. [~~There are no requirements in this administrative regulation which are more stringent than the federal mandate.~~]

Section 1. Definitions. (1) "Apportionable vehicle" means any vehicle**,** except a recreational vehicle, vehicle displaying a restricted plate, a city pickup and delivery vehicle, a bus used in the transportation of a chartered party, **or** [~~and~~] a government-owned vehicle **that:**

(a) Is [,] used or intended for use in two (2) or more jurisdictions that allocate or proportionally register vehicles;

(b) [and] Is used for the transportation of persons for hire or designed, used or maintained primarily for the transportation of property; and

(c)1. [(a)] Is a power unit having a gross weight or registered gross weight in excess of 26,000 pounds; [or]

2. [(b)] Is a power unit having three (3) or more axles, regardless of weight; or

3. [(c)] Is used in combination and the weight of the combination exceeds 26,000 pounds gross vehicle weight.

(2) "Base jurisdiction" means the state where:

(a) The registrant has an established place of business;

(b) Mileage is accrued by the registrant's fleet; and

(c) Operational records of the fleet are maintained or can be made available for audit.

(3) "Established place of business" means a physical structure:

(a) Owned, leased, or rented by the fleet registrant;

(b) Designated by a street number or road location;

(c) Open during normal business hours;

(d) In which is located:

1. A telephone publicly listed in the name of the registrant;

2. A person conducting the fleet registrant's business; and

3. The operational records of the fleet or where the records are made available for audit.

(4) "Fleet" means one (1) or more apportionable vehicles. [;]

(5) "International registration plan" or "IRP" means [is defined as] a registration reciprocity agreement among the states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions [means the interstate agreement on apportioning vehicle registration fees paid by motor carriers which was developed by the American Association of Motor Vehicle Administrators].

(6) "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or a state, province, or territory of a country.

(7) "Operational records" means source documents supporting miles traveled in each jurisdiction and total miles traveled such as fuel reports, trip sheets, and logs.

Section 2. Governing Material. (1) The "International Registration Plan, With Official Commentary" issued by the International Registration Plan, Inc. shall govern Kentucky's participation in IRP.

(2) The "Uniform Operational [Operation] Audit Procedure Guidelines" issued by the Audit Committee of the International Registration Plan, Inc. shall govern:

(a) The recordkeeping requirements of registrants; and

(b) The Kentucky Transportation Cabinet's audit responsibilities under the IRP.

(3) The "Kentucky IRP, Apportioned Registration [Instruction] Manual" issued by the Transportation Cabinet shall be followed by an operator or owner of an apportionable vehicle whose base jurisdiction is Kentucky.

(4) The "International Registration Plan Policies and Procedures Manual" shall be followed by the Kentucky Transportation Cabinet in administering the apportioned registration program.

Section 3. Application for Apportioned Registration. (1) The operator of an apportionable vehicle who operates in more than one (1) licensing jurisdiction shall apply for apportioned registration of his fleet in those jurisdictions in which he operates and which are members of the International Registration Plan unless he purchases a trip permit from a jurisdiction for each trip into the jurisdiction.

(2) A vehicle, or combination of power unit and trailer having a gross vehicle weight of 26,000 pounds or less and two (2) axle vehicles may be apportioned registered at the option of the registrant.

(3) If Kentucky is the base jurisdiction for an operator of an apportionable vehicle, he shall apply for his apportioned registration in Kentucky.

Section 4. Apportioned Mileage Reporting and Recordkeeping. (1)(a) The fleet miles required to be reported on the application for apportioned registration shall be the fleet miles traveled from July 1 through June 30 of the year immediately preceding the registration year.

(b) The mileage shall be distributed by jurisdiction. For each jurisdiction, whether or not a member of the International Registration Plan, all miles traveled in that jurisdiction by any apportioned power unit, whether the vehicle is empty or loaded, shall be reported.

(c) The mileage to be reported for any motor vehicle power unit which was added to or deleted from the apportioned fleet during the mileage reporting period shall be only those miles generated while it was part of the apportioned fleet.

(d) Mileage shall include the following:

1. Loaded and unladen trips;

2. Intrastate and interstate trips; and

3. Miles operated under trip permits.

(2)(a) An apportioned registrant shall maintain operational records for the current registration year and the three (3) registration years immediately prior to the current year.

(b) The information shall be retained in an individual vehicle mileage record.

(c) The individual vehicle mileage record shall contain the following information:

1. Registrant's name and fleet number;

2. Beginning and ending date of trip;

3. Trip origin and destination;

4. Route of travel for trip;

5. Beginning and ending odometer or hubometer reading of each trip;

6. Total trip miles and mileage;

7. Mileage by jurisdiction for each trip;

8. Vehicle unit number and vehicle identification number; and

9. Driver's name or signature.

Section 5. Proof of Insurance and Certificate of Apportioned Registration. (1) The applicant shall apply to the appropriate county clerk for a certificate of apportioned registration for each vehicle in the fleet and any other vehicle to be apportioned registered.

(2) The county clerk's fee for the issuance of the certificate shall be twenty (20) [two (2)] dollars for each vehicle.

(3) A vehicle owned by a non-Kentucky registrant properly titled in a foreign jurisdiction being leased to a Kentucky based-motor carrier may be registered in the name of the Kentucky based-motor carrier with a copy of the foreign title, a copy of the lease agreement and a copy of the owner's commercial driver's license.

(4) The applicant shall submit proof of insurance to the county clerk at the time he applies for the certificate of apportioned registration.

Section 6. Registration Fees. (1)(a) The applicant shall submit the application for apportioned registration to the Department of Vehicle Regulation for approval. This submission may either be in person or by mail.

(b) Original application shall be made on Transportation Cabinet forms:

1. TC 95-1, Kentucky Trucking Application;

2. TC 95-303E, Schedule C [A], IRP Apportioned Registration; and

3. TC 95-303E, Schedule B, [Kentucky] IRP Apportioned Registration Application.

(c) Renewal application shall be made on Transportation Cabinet forms:

1. TC 95-303E, Schedule C [A], IRP Apportioned Registration; and

2. TC 95-303E, Schedule B, [Kentucky] IRP Apportioned Registration Application.

3. The renewal application may be submitted via electronic format using the Kentucky IRP Internet application located at the following web address: **http://oraweb.kytc.state.ky.us/IRP_Applications.htm** [http://oraweb.kytc.state.ky.us/webhtml60/webcat.html].

(d) After the Department of Vehicle Regulation has approved an application, the department shall compute the apportioned reg-

istration fee due each jurisdiction under the International Registration Plan.

(e) The applicant shall be given a bill for registration in all jurisdictions which do not bill the applicant directly.

(f) The applicant shall return to the department, either in person or by mail or electronic payment, the bill and a certified check, cashier's check, personal check, business check, or money order made payable to the Kentucky State Treasurer.

(g) If the applicant is required to post a bond pursuant to 601 KAR 1:200 or has had a personal or business check returned for insufficient funds to the Transportation Cabinet by the applicant's bank, the Transportation Cabinet may require the applicant to make payment by cash, certified check, money order, or cashier's check.

(2) The required tax and fee shall be accompanied by proof of payment of the federal heavy vehicle use tax in accordance with the provisions of 601 KAR 9:115.

(3)(a) The Department of Vehicle Regulation shall issue an IRP apportioned license plate, and IRP cab card to the registrant for each vehicle registered under the provisions of the International Registration Plan.

(b) The originally issued IRP license plate shall have a decal, indicating the expiration month and year.

(c) After renewal each year, the registrant shall be issued a new decal designating the year of expiration and a new IRP cab card.

(d) The IRP cab card shall list those jurisdictions to which the registrant has apportioned his registration fees and any other information required by the International Registration Plan.

(e) The original IRP cab card shall be carried in the cab of the vehicle at all times.

Section 7. Supplemental Applications. (1) If an applicant need to add to or delete vehicles from its fleet, the department shall be notified on a supplemental application form TC 95-303E, Schedule C, "Kentucky IRP Apportioned Registration Supplemental Application" or via the Kentucky IRP Internet application located at **http://oraweb.kytc.state.ky.us/IRP_Applications.htm** [~~http://oraweb.kytc.state.ky.us/webhtml60/webcat.html~~]. This form shall be used to provide notice of the following:

(a) A vehicle addition;

(b) A vehicle deletion;

(c) A vehicle transfer; or

(d) A gross weight increase.

(2)(a) A vehicle deletion notice shall be accompanied by the apportioned registration plate and the certificate of apportioned registration.

(b) The registrant may, at the end of the registration month, apply for a refund of the taxes which apply to the unexpired months of the registration year.

(3)(a) If a vehicle is being added by a registrant at the same time he is deleting another vehicle with the same weight within the fleet, the Kentucky registration tax may be transferred from the deleted to the added vehicle.

(b) The Kentucky transfer fee shall be two (2) dollars.

(c) The registrant shall be notified of the transfer fee owed to other jurisdictions.

(4) If the declared gross weight of the vehicle is to be increased, the increased tax owed shall be prorated from the date the increased weight is allowed.

Section 8. Adding Jurisdictions to IRP Registrations. (1) If the operation of a registrant is being expanded to include an additional jurisdiction which participates in the International Registration Plan, the registrant may amend his mileage schedule TC 95-303E, Schedule B, **[**~~Kentucky~~**]** IRP Apportioned Registration Application, to reflect an estimate of miles to be operated in the new jurisdiction.

(2) The mileage percentages for an added jurisdiction shall be computed as added on to the actual mileages earlier reported.

(3) Percentages approved on the original application shall not be changed during the registration year.

(4)(a) If an additional jurisdiction is added during the registration year, all vehicles in the fleet shall be changed to reflect operation in the additional jurisdiction.

(b) The Department of Vehicle Regulation shall send replacement IRP cab cards to the registrant.

(c) Upon receipt of the new cab cards, the registrant shall return the outdated IRP cab cards to the department.

Section 9. Conversion to Apportioned Registration. (1) If a vehicle is registered in Kentucky as a commercial or limited activity vehicle and the registrant intends to convert to an apportioned registration, the registrant shall first purchase an apportioned registration from the appropriate county clerk.

(2) The current commercial or limited activity license plate shall be submitted to the Department of Vehicle Regulation with the application for apportioned registration.

(3)(a) The applicant shall be given credit for the remainder of the value of his current Kentucky registration.

(b) This credit shall be applied toward taxes or fees due other IRP jurisdictions and collected by Kentucky on the apportioned registration.

(4) All taxes and fees due other jurisdictions and any additional taxes or fee due to Kentucky shall be paid in accordance with Section 6 of this administrative regulation before the apportioned credentials may be issued.

Section 10. Replacement of Credentials. (1) If the owner of a vehicle registered pursuant to KRS 186.050(13) loses his copy of a certificate of apportioned registration, he may obtain a duplicate from the Department of Vehicle Regulation by:

(a) Filing an affidavit upon form TC 96-167, "Affidavit for Replacement County/Affidavit for Nonexchange - County" furnished by the department; and

(b) Paying to the department a fee of three (3) dollars.

(2)(a) If the owner loses a registration plate issued him under the provisions of KRS 186.050(13), he shall report the plate as lost or stolen to his area state police post or local law enforcement agency.

(b) The enforcement agency shall report the loss in the nationwide computer system for the information of all enforcement agencies.

(3) The owner of a lost registration plate shall file with the Department of Regulation the following:

(a) A form TC 96-167**, Affidavit for Replacement County/Affidavit for Nonexchange-County**;

(b) **[**~~An affidavit for replacement;~~

~~(c)~~**]** His certificate of apportioned registration; and

**(c) [**~~(d)~~**]** A three (3) dollar fee.

(4)(a) The Department of Vehicle Regulation after review and acceptance of the completed forms shall issue the owner another certificate of apportioned registration and a plate which shall bear a different number from that of the lost plate.

(b) The original copy of the surrendered certificate of apportioned registration shall be maintained by the department.

(5) The department shall forthwith cancel the registration corresponding to the number of the lost plate, and the cancellation shall be reported by the department to the Commissioner of the Department of State Police.

(6) A person finding a lost registration plate shall deliver it to the Department of Vehicle Regulation or to a county clerk for forwarding it to the department.

Section 11. Apportioned Registration of Leased Vehicles. Apportioned registration of a leased vehicle **shall [**~~may~~**]** be accomplished in one (1) of the following ways:

(1) The owner or lessor may be the registrant and the vehicle may be registered in the name of the owner or lessor. The allocation of registration fees shall be based on the operational records of the owner or lessor. The apportioned license plate and IRP cab card shall be the property of the lessor; or

(2) The **lessee [**~~leasee~~**]** may be the registrant and the vehicle may be registered by the lessee in both the owner's or lessor's name and that of the **lessee [**~~leasee~~**]**. The allocation of registration fees shall be based on the operational records of the lessee. The apportioned license plate and IRP cab card shall be the property of the lessee.

Section 12. [~~Apportioned Registration of Trailers. (1) Pursuant to Section 404 of the International Registration Plan, a Kentucky registrant shall pay trailer registration taxes and fees to Kentucky and a member jurisdiction which has filed an exception under Section 404 to apportioned registration.~~

~~(2) Kentucky trailer credentials shall be obtained through the appropriate county clerk.~~

~~(3) If a Kentucky trailer registration is purchased, the registrant shall submit to the Department of Vehicle Regulation a list of all trailers apportioned registered.~~

~~(4) The fee for each IRP trailer cab card shall be two (2) dollars.~~

~~(5) After receiving the list of trailers and appropriate tax and fee, the department shall send the registrant the IRP cab cards.~~

~~(6) In order to receive the IRP cab card by the beginning date of the registrant's assigned registration year, the registrant shall submit the list at least one (1) month in advance of the beginning date.~~

~~Section 13.~~] Registration Equivalent. (1) Registration of a motor vehicle under the provisions of KRS 186.050(13) and this administrative regulation shall be equivalent to registration of the motor vehicle under the provisions of KRS 186.050(3).

(2) A privilege afforded a motor vehicle in Kentucky when operating on KRS 186.050(3) registration shall be afforded a motor vehicle in Kentucky when operating on KRS 186.050(13) registration.

Section 13. [~~14.~~] Audit of Apportioned Registrants. (1) In accordance with the provisions of the International Registration Plan, the Transportation Cabinet, Division of Audit Review shall every five (5) years audit fifteen (15) percent of the apportioned registrants based in Kentucky.

(2) An audit shall be performed in accordance with the "Uniform Operational Audit Procedure Guidelines".

(3) The Division of Audit Review shall in writing notify the apportioned registrant of the date, time, and location of the audit. At least thirty (30) days' advance notice shall be given to the registrant.

(4) Failure of the registrant to make available records required to be kept by the registrant pursuant to Section 4 of this administrative regulation and requested for the audit may result in a penalty assessment of up to 100 percent of Kentucky's registration fees set forth in KRS 186.050 in addition to fees for all other apportioned jurisdictions included in the original application or cancellation of apportioned registration.

(5) If it is determined that the registrant's operational records are not located in Kentucky and it is necessary for the Transportation Cabinet's auditors to travel to where the records are maintained, the registrant shall pay the Transportation Cabinet for the travel expenses incurred by its auditors in accordance with the per diem and travel rates established in 200 KAR 2:006.

(6)(a) If the audit is being conducted on site, the auditor shall conduct and document a preaudit conference with the registrant outlining the following:

1. Operation;
2. Audit procedures;
3. Records to be examined;
4. Sample period; and
5. Sampling procedures.

(b) The motor carrier and auditor shall determine at the preaudit conference who:

1. Has the responsibility for the final acceptance of audit findings; and
2. Should be involved in the close-out conference.

(7) If the audit is being conducted on site, the auditor shall conduct and document a close-out conference with the registrant outlining preliminary findings to include the following:

(a) Applicable penalty and interest;
(b) Recommendations;
(c) Rights of appeal; and
(d) To whom the audit report should be addressed.

(8)(a) The Transportation Cabinet shall furnish the registrant a letter of audit findings and recap schedules.

(b) If requested, the cabinet shall supply any other work papers to the registrant.

(9) If an audit indicates that additional tax is owed, the Transportation Cabinet shall issue an audit supplemental tax statement.

(10) Within forty-five (45) days of the date of the audit supplemental tax statement, the registrant shall:

(a) Pay the supplemental tax; or

(b) Protest in writing to the Transportation Cabinet, Division of Audit Review.

Section 14. [~~15.~~] Protest or Appeal of Audit Results. (1) The registrant may within forty-five (45) days of the date of the audit findings, protest in writing to the Transportation Cabinet, Division of Audit Review any portion of the audit.

(2) If the registrant does not protest, the audit or the audit supplemental tax statement shall be final on the beginning of the 46th day.

(3)(a) If a registrant protests pursuant to this section, the protest shall include a supporting statement and documents which:

1. Identify the:
a. Specific adjustment requested; or
b. Portion of the audit being protested; and
2. Set forth the reason for making the protest.

(b) If the supporting statement and documents are sufficient to cause the Transportation Cabinet to change the audit or audit supplemental tax statement, the registrant shall be notified of the adjustments to the audit or tax statement.

(c)1. If the supporting statement and documents are not sufficient to cause the Transportation Cabinet to change the audit or audit supplemental tax statement exactly as requested by the registrant in its protest, the registrant shall be notified to attend an information-gathering and protest conference with the Division of Audit Review.

2. The information-gathering and protest conference shall be scheduled to be held within thirty (30) days of the issuance of the written protest.

3. It may be rescheduled twice by either party.

(d) Within twenty (20) days of the information-gathering and protest conference the Transportation Cabinet shall issue the final ruling.

(4) If the registrant desires, he may, within thirty (30) days of the date of the final audit or final audit supplemental tax statement or the Transportation Cabinet's final ruling, appeal to the Kentucky Board of Tax Appeals pursuant to KRS 131.340.

Section 15. [~~16.~~] Protest or Appeal of Nonaudit IRP Issue. (1) Except for the audit provisions established in Sections **13 and** 14 [~~and 15~~] of this administrative regulation, a person aggrieved by an action or decision of the Transportation Cabinet, made pursuant to the provisions of this administrative regulation, shall protest to the Division of Motor Carriers within ten (10) days of the decision.

(2)(a) If a protest is made pursuant to this section, the protest shall include a supporting statement and documents which:

**1.** Identify the:

**a.** Specific adjustments requested; or

**b.** The action of the Transportation Cabinet being protested; [~~,~~] and

**2. Set** [~~setting~~] forth the reasons the protest is being made.

(b) If the supporting statement and documents are sufficient to cause the Transportation Cabinet to change its action or decision, the protestant shall be notified of the change.

(c) If the supporting statement and documents are not sufficient to cause the Transportation Cabinet to change its action or decision as requested by the protestant, the protestant shall be notified to attend an information-gathering and protest conference with the Division of Motor Carriers. The information-gathering and protest conference shall be scheduled to be held within thirty (30) days of the issuance of the written protest. It may be rescheduled one (1) time by either party.

(d) Within twenty (20) days of the information-gathering and protest conference, the Transportation Cabinet shall issue a final decision.

(3)(a) An appeal of any nontax action of the Transportation Cabinet resulting from its actions relating to this administrative

regulation shall be in writing and directed to the Transportation Cabinet, Office of General Counsel, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622.

(b) An administrative hearing shall be conducted in accordance with the provisions of KRS Chapter 13B.

(4) If a protestant desires, he may, within thirty (30) days of the date of the final decision of the Transportation Cabinet, appeal a tax issue to the Kentucky Board of Tax Appeals pursuant to KRS 131.340.

Section 16. [~~17.~~] **Incorporation** [~~Material Incorporated~~] by Reference. (1) The following material is incorporated by reference:

(a) Transportation Cabinet form TC 95-1, Kentucky Trucking Application, effective September 1998;

(b) Transportation Cabinet form TC 95-303E, Schedule C [A], "IRP Apportioned Registration", effective March 2001 [~~December 1997~~];

(c) Transportation Cabinet form TC 96-167, "Affidavit for Replacement-County/Affidavit for Nonexchange-County" effective April 1992;

(d) "Kentucky IRP, Apportioned Registration Manual" effective January 1, 1999 and issued by the Kentucky Transportation Cabinet;

(e) "Uniform Operational Audit Procedure Guidelines" effective March 1, 1993 and issued by the Audit Committee of the International Registration Plan, Inc;

(f) "International Registration Plan, With Official Commentary" effective January 15, 1998 and issued by the International Registration Plan, Inc.; [~~and~~]

(g) "International Registration Plan Policies and Procedures Manual" effective April 1994; and

(h) Transportation Cabinet form TC 95-303E, Schedule B, IRP Apportioned Registration Application, effective March 2001. [~~December 1997; and~~

~~(i) Transportation Cabinet form TC 95-303, Schedule C, Kentucky IRP Apportioned Registration Supplemental Application, effective December 1997.~~]

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

**(a) For the items incorporated by reference in paragraphs (a), (b), (c), (d), (g), and (h) of this subsection, at** [~~The material incorporated by reference in subsection (1)(a), (b), (c), (d), (f), (g), and (h)[, and (i)] of this section may be inspected, copied, or obtained, subject to applicable copyright law, from~~] the Department of Vehicle Regulation, Division of Motor Carriers, **200 Mero Street, Third Floor** [~~501 High Street, Second Floor, State Office Building~~], Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.; **or**

**(b) For the items** [~~(3) The material~~] incorporated by reference in **paragraphs (e) and (f) of this subsection, at** [~~subsection (1)(e) and (f) of this section may be inspected, copied, or obtained, subject to applicable copyright law, from~~] the Department of Fiscal Management, Division of **Road Fund Audits, 200 Mero Street, Fourth Floor** [~~Audit Review, 641 Teton Trail~~], Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM M. BUSHART, Commissioner
JAMES C. CODELL, III, Secretary
APPROVED BY AGENCY: October 6, 2003
FILED WITH LRC: October 9, 2003 at 1 p.m.

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**
**Department for Natural Resources**
**Division of Mine and Minerals**
**(As Amended at ARRS, February 10, 2004)**

**805 KAR 1:190. Gathering lines.**

RELATES TO: KRS 353.500(2), 353.5901(1), 40 C.F.R. Part 112, 49 C.F.R. Parts 191, 192, 194, 195

STATUTORY AUTHORITY: KRS 353.500(2), 353.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.500(2) requires the department to promulgate administrative regulations pertaining to gathering lines, in order to minimize their potential effects on the citizens and the environment of the Commonwealth. This administrative regulation **establishes** [~~sets forth~~] provisions for the installation **of gathering lines**, reclamation of disturbed areas, and safety requirements of gathering lines as they pertain to oil and gas production operations.

Section 1. Definitions. The definitions set out in KRS 353.510 and the following additional definitions shall apply to this administrative regulation.

(1) "Environmentally sensitive feature" means a stream, spring, sinkhole, wetland, state or national park, wilderness area, or wildlife refuge.

(2) "Existing gathering line" means any gathering line installed and not abandoned or taken out of service prior to the effective date of this administrative regulation.

[~~(3)~~ [~~(2)~~] ~~"GPS" means the collection method of acquiring location data using the Global Positioning System, stationary location data, such as line makers~~ [~~as~~] ~~required by this administrative regulation shall be captured in three (3)~~ [~~sub~~] ~~meter accuracy, reported as latitude and longitude and recorded in degrees and decimal degrees; gathering line location data may be submitted as waypoints and track logs reported as latitude and longitude and recorded in degrees and decimal degrees. All GPS data shall be recorded in the datum of WGS84. Data may be submitted electronically as an ArcView shape file or as an ASCII file.~~]

(3) [~~(4)~~] [~~(3)~~] "Gas production flow line" means the segment of a gathering line running from a well to the point of interconnection with another gathering line or production compressor. When a well produces both oil and gas, the line from the well shall be considered to be a gas production flow line, to which all appropriate requirements of this administrative regulation are applicable.

(4) [~~(5)~~] [~~(4)~~] "Gathering line" means any pipeline that is installed or used for the purpose of transporting crude oil or natural gas from a well or production facility to the point of interconnection with another gathering line, an existing storage facility or a transmission or main line, and includes all lines between interconnections, except those lines or portions thereof subject to the exclusive jurisdiction of the United States Department of Transportation under 49 C.F.R. Parts 191, 192, 194 and 195.

**(5) "GPS" means the collection method of acquiring location data using the Global Positioning System that is:**

**(a) Reported as latitude and longitude and recorded in degrees and decimal degrees and:**

**1. Captured in three (3) meter accuracy for stationary location data, such as line markers.**

**2. Submitted as waypoints and track logs for gathering line location data.**

**(b) Recorded in the datum of WGS84.**

**(c) If submitted electronically, submitted as ArcView shape file or as an ASCII file.**

(6) [~~(5)~~] "Oil production flow line" means a gathering line running from a well or wells to a tank battery for production treatment and storage. In the case of an injection well, the line from the tank battery to the well shall be considered an oil production flow line, to which all appropriate requirements of this administrative regulation are applicable [~~located on the same property or unit as the well or wells~~].

(7) [~~(6)~~] "Production compressor" means a compressor installed on a gathering line and used to increase produced gas pressure to enhance delivery.

(8) [~~(7)~~] "Transmission line" means a pipeline that is subject to the exclusive jurisdiction of the United States Department of Transportation under 49 C.F.R. Parts 191, 192, 194 and 195.

Section 2. Applicability. This administrative regulation shall apply to gathering lines installed under permits issued after the effective date of this administrative regulation and shall not apply to existing gathering lines unless **these** [~~such~~] lines are identified as being subject to the requirements of [~~a particular~~] Section 4 of this administrative regulation [~~below~~].

Section 3. License. (1) The operator of any gathering line, including an existing gathering line, shall obtain a gathering line

operator's license from the division to operate any and all [an] oil or gas gathering lines operated by him, [line] upon the effective date of this administrative regulation. The operator in physical control of any gathering line shall maintain a current license even if the gathering line is shut in or idle. All gathering lines operated by the same operator shall be subject to a single gathering line operator's license. An operator of an existing gathering line shall make application for license within ninety (90) days of the effective date of this administrative regulation.

(2) Each licensee shall annually submit a completed license renewal form using the "Application - Gathering Line Operator's License," Form ED-2, on or before the expiration date of his current license. Annual renewal of the gathering line operator's license shall be made on January 1 and due no later than February 15. If there are no **substantive** [subtenant] changes to the operator information provided in the initial application for license, the license shall be renewed upon receipt of the license fee. A licensee may also submit the license renewal information and payment through the division's on-line application when [at such time] the on-line application becomes available. To qualify for a license or license renewal, the applicant shall be in compliance with applicable laws and shall submit the following items to the division:

(a) An application satisfying the requirements of subsection (3) of this section; **and**

(b) A $100 license fee, except that an applicant for a license to operate a gathering line for a gas well used strictly for the purpose of heating a residential dwelling shall pay an annual license fee of twenty-five (25) dollars for each dwelling.

(3) Application. The application for a license or a license renewal shall be notarized or meet the requirements for electronic signature **if** [when] electronically submitted as per KRS Chapter 369**, shall be** [and] filed with the division, and shall contain the following information:

(a) The full name under which the operator transacts or intends to transact business under the license and the operator's correct mailing address. [If the operator is a partnership or association,] The application shall include the name and address of the principal officers [each partner or member] of the partnership or corporation [association. If the operator is a corporation, the application shall contain the names and addresses of the principal officers], including the agent for process;

(b) **All other information required by the "Gathering Line Operator's License Application", Form ED-2, October 2003** [Any other information that the form may require]; and

(c) Each application for a license shall be signed or submitted with electronic signature as previously described by the operator if the operator is a natural person, by a principal officer [partner or a member] if the operator is a partnership or [association, or by an executive officer if the operator is a] corporation.

Section 4. Maps of Existing Gathering Lines. Within eighteen (18) months of the effective date of this administrative regulation, each operator of any existing gathering line shall file with the division a map, which outlines approximate the location of the existing gathering line. The gathering line may be noted over an enlarged section of a United States Geological Survey (USGS) 1:24000 topographic map, which may be enlarged to approximately 1"=400' and be submitted on an 8 1/2 in. x 14 in. sheet**.** [;] Additional maps may be provided if necessary to fully document the total length of the gathering line. This requirement for the filing of maps may also be satisfied by electronic submission of the maps subject to the division being able to import and view the map files.

Section 5. Permit. Prior to the installation of a gathering line, the operator shall submit a permit application to the division for the installation and operation of the gathering line in the following manner:

(1) Permit by rule for an oil production flow line. [Notwithstanding any other provision of this administrative regulation,] An oil production flow line shall be deemed to have a permit by rule upon the issuance of the well drilling permit if the operator satisfies the following conditions:

(a) Notifies the division in the manner prescribed in Section 7 of this administrative regulation upon the successful completion of the well and prior to the installation or disturbance of any surface upon which the oil production flow line shall be installed;

(b) [Complies with all applicable requirements of 40 C.F.R. Part 112;

(c)] Complies with Sections 9, 10, 11(1), (2), (3), (4), 12 and 14 of this administrative regulation; and

(c) [(d)] Pays a fee of $100, in addition to the well permit fee required by KRS 353.590(2).

(2) Permit by rule for a gas production flow line. [Notwithstanding any other provision of this administrative regulation,] A gas production flow line shall be deemed to have a permit by rule upon the issuance of the well drilling permit if the operator satisfies the following conditions:

(a) Notifies the division in the manner prescribed in Section 7 of this administrative regulation upon successful completion of the well and prior to the installation or disturbance of any surface upon which that gathering line shall be installed; and

(b) Pays a fee of $200, in addition to the well permit fee required by KRS 353.590(2).

(3) Permit for a gathering line other than an oil production or gas production flow line. [Notwithstanding any other provision of this administrative regulation,] The division may issue a permit for the installation and operation of a gathering line other than an oil production or gas production flow line if the operator satisfies the following conditions:

(a) Files an application with the division for a permit for the installation, reclamation, and operation of a gathering line in the manner prescribed by Section 7 of this administrative regulation prior to the installation or disturbance of any surface upon which that gathering line shall be installed; and

(b) Pays a fee of $500.

Section 6. Transfer of Ownership of a Gathering Line. A successor operator of a gathering line shall notify the division in advance of commencing use or operation of a gathering line. The successor shall assume the obligations of this administrative regulation and relieve the original permittee of responsibility under this administrative regulation with respect to the gathering line. It shall be the responsibility of the selling operator to require the successor operator to notify the division before use or operation is commenced by the successor and relief of responsibility under this administrative regulation is granted to the original permittee. **If** [In the case of] an oil production or gas production flow line **is involved**, the successor shall be deemed to have provided notice to the division upon the successful completion of the well transfer, as required under KRS 353.590(6), for the oil production or gas production flow line applicable to the corresponding well.

Section 7. Permit Requirements. (1) The notification or application for permit for the installation[, reclamation] and operation of a gathering line shall be submitted to the division using the "Notification/Application for a Gathering Line Permit: Installation, Reclamation and Operation Plan," Form ED-11, along with an attached topographical map depicting the location of the proposed line which shall be in sufficient detail to allow ready identification of adjacent surface features. An operator may also submit the notification or application, map and payment through the division's on-line application when [at such time] the on-line application becomes available subject to the provisions of KRS Chapter 369. The map shall have a legend with the names of the gathering line owner and operator and any owners of surface tracts upon which the gathering line is to be installed not otherwise listed on the map; the scale of the map; the well name and number, if applicable; and the lease name, if applicable; and shall depict the following:

(a) The approximate locations of property lines, dwellings, environmentally sensitive features and road and stream crossings along the path of the gathering line;

(b) The names of the owners of surface tracts upon which the gathering line is to be installed, as identified as the party assessed for the purposes of property taxation in the records of the property valuation administrator of the county in which the land is located, unless listed in the legend; and

(c) The approximate acreage to be disturbed along the path of the proposed gathering line.

(d) Items (a) through (c) shall be noted clearly and legibly on an enlarged section of a United States Geological Survey (USGS) 1:24000 topographic map, which may be enlarged to approximately 1"=400' and be submitted on an 8 1/2 in. x 14 in. sheet. This requirement for the filing of maps may also be satisfied by electronic submission of the maps subject to the division being able to import and view the map files.

(2) In filing the application for the installation[~~, reclamation~~] and operation of a gathering line with the division, the operator shall state that he has the authority necessary to install and operate the gathering line upon the property which the gathering line will traverse and that he maintains general liability insurance coverage for his gathering line operations. The operator shall include the division as a "certificate holder" on his policy so that the division shall receive advance notice of any cancellation of the operator's general liability insurance.

(3) The operations and reclamation plan required by KRS 353.5901, filed in conjunction with the application for a permit for a well located on a tract on which there is a severance of the ownership of the surface and mineral estates, shall satisfy this administrative regulation's requirements for an operations and reclamation plan applicable to the property upon which the well is drilled.

(4) If the operations and reclamation plan is not subject to KRS 353.5901, the operator shall file a plan which includes a short narrative indicating the following:

(a) Location of all areas to be disturbed in connection with the installation of the gathering line and the proposal to prevent erosion and sedimentation on those areas;

(b) A revegetation plan which includes a listing or description of fertilizers and soil amendments and seed or trees to be planted for each affected area requiring revegetation treatment and the types and amounts per acre of seed or trees to be planted; and

(c) A proposed plan for the timely reclamation of all disturbed areas.

Section 8. Right-of-Way Agreements. (1) Prior to submitting an application for a permit or prior to any installation or operations on any surface on which a gathering line is proposed other than the property upon which the well is located, the operator shall **have obtained** [~~obtain~~] the necessary authority, right-of-way or lease agreement from an [~~the surface~~] owner of the property on which the gathering line is to be installed. [~~The agreement shall contain the following provisions, unless waived by the surface owner:~~

~~(a) The reclamation of all disturbed areas.~~

~~(b) A description of the timing of the operation to accommodate seasonal uses of the land by the surface owner and the need of the operator to locate the gathering line expeditiously.~~

~~(c) A plan to minimize the impact on the other uses of the land by the surface owner, including the use of timber, houses, barns, ponds, crops, and other improvements.~~

~~(d) Notification to the surface owner upon execution of an agreement to sell and transfer a gathering line; this notification is not required to the surface owner of the property for an oil or gas production flow line on which the well it serves is located.~~

~~(e) The minimum distance from the gathering line to any inhabited building on the surface owner's property.~~

~~(f) These provisions shall not require the payment of any additional compensation to the surface owner other than as required by KRS Chapter 353.595(5).~~]

(2) Prior to the issuance of a permit for the installation and operation of a gathering line on which the operator has an existing right-of-way, lease or deed, or on land that requires a new right-of-way by the operator, the operator shall certify in the application for the permit that he has met and conferred with, or offered to meet and confer with, the surface owner as to any activity that may disturb the surface. [~~Nothing in this section shall be construed to limit or otherwise abridge the terms of any deed, right-of-way or lease agreement executed prior to the effective date of this administrative regulation by the surface owner of the property upon which the gathering line will be installed.~~]

Section 9. Meeting with Bonded Permittee. Prior to the issuance of a permit for the installation [~~, reclamation~~] and operation of a gathering line on land which is permitted or bonded under the provisions of KRS Chapter 350, the operator of the gathering shall certify in the application for a permit that the operator has met and conferred with, or offered to meet and confer with, the bonded permittee as to any activity that may disturb the permitted area.

Section 10. Reclamation Plans. Reclamation of all disturbed areas shall be conducted in accordance with the reclamation plan on file with the division. Any amendments to the reclamation plan shall be submitted to and approved by the division prior to commencement of installation or as soon as practical after discovery that reclamation shall be conducted in a manner other than that described in the reclamation plan on file with the division. If the surface is disturbed incidental to the repair of a gathering line after reclamation has occurred under the reclamation plan, the reclamation of the area so disturbed shall be commenced [~~restored and revegetated~~] within thirty (30) days of completion of the repair operation, if practical. The operator shall satisfy the following standards for excavation, backfilling and reclamation:

(1) **If** [~~When~~] a gathering line crosses agricultural lands, the operator shall segregate topsoil while trenching, and trenches shall be backfilled so that the soils are returned to their original relative positions and contour, unless waived by the surface owner. This requirement to segregate and backfill topsoil shall not apply to trenches that are twelve (12) inches or less in width.

(2) On agricultural lands and nonagricultural lands, gathering line trenches shall be maintained in order to correct trench subsidence and reasonably minimize erosion. Interim and final reclamation, including revegetation, shall be performed in accordance with the reclamation plan.

Section 11. General Requirements. (1) Burial of a gathering line. The operator shall bury a gathering line or portion thereof that crosses agricultural land or that would otherwise interfere with the use of a preexisting private roadway, if requested to do so by the owner of the surface of the agricultural land or of other land to which access would be affected, prior to the installation of the gathering line to protect it from damage. The gathering line shall be buried to a minimum depth of twenty-four (24) inches, except where solid rock is encountered, in which case the minimum depth of burial shall be twelve (12) inches, if practical. **If** [~~Where~~] an underground structure or other geologic or economic condition prevents a gathering line from being buried in accordance with the standards set out above, or **if** [~~when~~] there is an agreement between the surface owner and the operator whereby the minimum standard is waived, the line may be installed at less than the minimum depth or above ground.

(2) A gathering line constructed of plastic pipe shall be installed below ground level, unless otherwise permitted by subsection (3) of this section, and in accordance with the following:

(a) The operator shall undertake efforts to minimize shear and tensile stresses; and

(b) A tracer line, location device, or suitable conductive wire shall be placed in the trench to facilitate the detection of the gathering line.

(3) A gathering line constructed of plastic pipe may be temporarily installed above ground if:

(a) The operator demonstrates that the cumulative period of above-ground exposure of the pipe does not exceed the manufacturer's recommended maximum period of exposure or two (2) years, whichever is less; [~~and~~]

(b) The pipe either is located so as to minimize the possibility of damage by external forces or is otherwise protected against damage; and

(c) The pipe adequately resists exposure to ultraviolet light and high and low temperature; or

(d) The pipe is being used during a production test period not to exceed ninety (90) days.

(4) Line burial at road crossing. Notwithstanding any other provision of this administrative regulation, a gathering line crossing a road shall be buried in accordance with the requirements of the agency having jurisdiction over the road.

(5) Line markers. The operator shall install and maintain line markers over an active buried gathering line in accordance with the following standards:

(a) At intervals of no greater than 500 feet, corresponding to the 500 foot GPS data requirements described in subsection (8) of this section, provided, however, that this requirement shall not apply to lines crossing agricultural lands;

(b) At points where the line changes direction, so that the line location is accurately known;

(c) At both sides of each public or private road crossing and at each railroad crossing; and

(d) Each marker shall contain the word "Warning," "Caution," or "Danger," followed by the words "Petroleum Pipeline" or "Gas Pipeline," whichever is appropriate, in letters at least one (1) inch high with one-quarter (1/4) inch stroke and the name of the operator with a twenty-four (24) hour emergency response telephone number.

(6) Testing of a gathering line. Before placing a gathering line in operation, it shall be tested to ensure that it is capable of maintaining 110 percent of the maximum anticipated operating pressure. In conducting the test, the operator shall ensure that reasonable precautions are taken to protect his employees and the general public. The testing may be conducted using natural gas, compressed air, inert gas or water. Production flow lines operating at less than fifteen (15) psig are exempt from pressure testing requirements.

(7) Patrolling, maintenance and repair. All gathering lines shall be maintained in good operating condition at all times and the operator shall take reasonable precautions to prevent failures, leakage and corrosion by performing the following procedures:

(a) Perform on-site inspections of a permitted gathering line at least once each calendar year, at intervals not to exceed eighteen (18) months. If [~~Whenever~~] an operator discovers any condition that could adversely affect the safe and proper operation of a gathering line, the operator shall correct it within a reasonable time and in accordance with KRS 353.160. However, if the condition presents an immediate hazard to persons or property, the operator shall not operate the affected part of the system until the unsafe condition has been corrected;

(b) In repairing the gathering line, the operator shall take appropriate action to conduct the repair in a safe manner so as to prevent injury to persons and damage to property; and

(c) Maintain records of gathering line inspections and leak repair for division inspection, if requested, for at least three (3) years.

(8) As-built requirement. The as-built location of the gathering line shall be depicted with GPS data points spaced every 500 feet, if practical, at points where the gathering line changes direction and at the beginning and termination points of the gathering line. All information regarding the as-built location shall be submitted to the division within twelve months of completion of the gathering line.

(9) Compressor station requirements. All wellhead and field compressors shall be installed and maintained according to the following requirements:

(a) The operator shall maintain a positive suction pressure at all times;

(b) The operator shall install safety devices to ensure the downstream pressure does not exceed the test pressure of the gathering line; and

(c) The operator shall record a GPS location of all compressor station sites and submit that location data to the division.

Section 12. Reporting of Incidents. (1) As soon as reasonably practicable following discovery of an incident regarding the installation, reclamation or operation of a gathering line, the operator shall give notice by telephone to the division inspector responsible for the county in which the line is installed or to the division inspector supervisor for the area, of any the following:

(a) Personal injury requiring hospitalization or a fatality;

(b) Either fire or explosion not intentionally set by the operator for purposes of routine maintenance or construction;

(c) The release of a significant volume of gas that would require a protective action being taken by the general public; or

(d) The pollution of any stream, river, lake or reservoir, or other similar body of water, in violation of applicable water quality standards.

(2) Nothing in this requirement for the reporting of incidents shall be deemed to release the operator from making any notice required by any other state or federal agency.

(3) Notice made under this section shall include the following information:

(a) Name and address of the operator;

(b) Name and telephone number of the person making the report;

(c) Location of the incident;

(d) Date and time of the incident;

(e) A brief description of the incident;

(f) Number of, and information regarding, personal injuries or fatalities, if any; and

(g) Any other significant facts known by the operator that are relevant to the cause of the incident or extent of the damages.

Section 13. Emergency Response Plans. The operator shall prepare a manual of written procedures for the making of an emergency response, available to the division upon request, and shall keep that manual in a location accessible to employees whose responsibilities include implementation of an emergency response. The operator shall provide training to those employees and review their performance following an emergency to determine whether applicable procedures were effectively followed in that emergency. The manual shall be reviewed at least once each calendar year and appropriate changes made as necessary to ensure that the manual is an effective emergency response tool. The manual shall include procedures for the following in order to facilitate safety if [~~when~~] an emergency condition occurs:

(1) Receiving, identifying, and classifying notices of events which require immediate response by the operator or notice to fire, police, or other appropriate emergency response entities and communicating this information to appropriate operational personnel for corrective action.

(2) Providing prompt and effective response to each type of emergency, including gas, fire, explosion or natural disaster near or involving a building or adjacent facility.

(3) Dispatching personnel, equipment, and instruments, as needed, to the scene of the emergency.

(4) Taking necessary action, such as emergency shutdown or pressure reduction, to minimize the amount of release from the gathering line in the event of a failure.

(5) Minimizing public exposure to injury and probability of accidental ignition by assisting with evacuation of residents and assisting with the control of traffic on roads and railroads in the affected area, or by taking other appropriate action.

(6) Notifying fire, police, and other appropriate emergency response entities of a gathering line incident or emergency and coordinating with them in devising responses to be made during an emergency. Methods to accomplish this shall include the following:

(a) Including in the emergency response manual a listing of appropriate fire, police, and other health and safety entities, along with their officials' names and emergency telephone numbers;

(b) Establishing and maintaining liaison with fire, police, and other appropriate emergency response entities to determine the responsibility and resources of each government organization that may respond to a gathering line emergency;

(c) Apprising fire, police and other appropriate emergency response entities of the operator's ability to respond to a gathering line emergency;

(d) Identifying the types of gathering line emergencies about which the operator notifies fire, police and other appropriate emergency response entities; and

(e) Determining the manner in which the operator and fire, police and other appropriate emergency response entities can engage in mutual assistance to minimize hazards to life or property.

(f) Providing a copy of the emergency response manual to fire, police and other appropriate emergency response entities.

(7) An operator may incorporate the applicable spill prevention, control, and countermeasures (SPCC) plan into the emergency response manual.

Section 14. Abandonment. Each gathering line abandoned in

place, unless otherwise agreed to be removed under a right-of-way or lease agreement, shall be disconnected from all sources and supplies of natural gas and petroleum, purged of liquid hydrocarbons, depleted to atmospheric pressure, and cut off three (3) feet below ground surface, or at the depth of the gathering line, whichever is less, and sealed at the ends. Prior to abandonment, the operator shall contact the division inspector and request a site scanning for naturally occurring radioactive materials to be conducted by the division inspector.

Section 15. Inspections. The commissioner of the department may, by written order or by other means appropriate under the circumstances, designate and authorize representatives to perform duties pursuant to the administrative regulations contained in 805 KAR Chapter 1. Unless the commissioner has made a written order contrary to the terms of this section, personnel authorized by the director **shall be** [~~are deemed~~] the authorized representatives of the department for the purposes of this administrative regulation as follows:

(1) General. In accordance with the provisions of this administrative regulation, the division shall conduct inspections, studies, investigations or make other determinations as it deems reasonable and necessary to obtain information and evidence which shall ensure that the installation, reclamation and operation of gathering lines are conducted in accordance with the provisions of all applicable statutes and administration regulations, and all terms and conditions of the gathering line permit.

(2) Right of entry and access. Authorized employees of the division shall have unrestricted right of entry to all portions of the gathering line for any purpose associated with their duties pursuant to this administrative regulation, including but not limited to making inspections and delivering documents or information of any kind to persons responsible for or otherwise associated with the gathering line.

(3) Timing and frequency of inspections.

(a) The division shall determine the frequency of its inspections of gathering lines;

(b) Inspections shall ordinarily be conducted at irregular and unscheduled times during normal workdays, but may be conducted at night, on weekends or on holidays if the division deems these inspections necessary to properly monitor compliance with all applicable statutes and administrative regulations and the terms and conditions of the gathering line permit; and

(c) The division shall have no obligation to give prior notice that an inspection shall be conducted or to obtain a warrant to do so.

(4) Citizen's request for inspection of a gathering line.

(a) Any citizen may request that the division conduct an inspection of a gathering line by furnishing to the division a signed statement or an oral report followed by a signed statement in which circumstances are set out which give the division reason to believe that a violation, condition or practice in violation of this administrative regulation or a permit condition exists, and setting forth a telephone number and address at which the person making the request can be contacted;

(b) The identity of any person supplying information to the division relating to a possible violation, condition or practice in violation of this administrative regulation or permit condition shall remain confidential with the division if requested by that person, unless disclosure is required by law; and

(c) Within a reasonable time, the division shall advise the person making the request for inspection or providing information to the division of the following:

1. If no inspection was conducted, an explanation of the reasons for which no inspection was conducted.

2. If an inspection was conducted, a description of the enforcement action taken, if any, or an explanation of why no enforcement action was taken.

(5) Notice of noncompliance. Any authorized representative of the division may issue to the operator [~~or other responsible person~~] a notice of noncompliance and order for remedial measures if, on the basis of an inspection, he finds a violation of this administrative regulation, any permit condition, or any other applicable requirement. The notice of noncompliance shall contain the following:

(a) The nature of the violation; and

(b) The provision of a period of forty-five (45) days from the date of issuance of the notice for the taking of corrective action or making of an agreement with the division, which may include a schedule for the accomplishment of interim corrective procedures, if appropriate. The director or his authorized representative may extend the time established for the taking of corrective action or for accomplishment of an interim remedial requirement for good cause shown.

Section 16. Order of Cessation and Immediate Compliance. (1) Issuance.

(a) If the operator to whom a notice of noncompliance is issued fails to comply with the terms of the notice within the time for the taking of corrective action established in the notice of noncompliance or agreement made regarding corrective measures as subsequently extended, the director may issue to the operator an order for cessation and immediate compliance;

(b) The director may issue an order for cessation and immediate compliance if he finds, on the basis of an inspection performed by any authorized representative, any condition or practice, any violation of this administrative regulation or any violation of a term or condition of the applicable permit which:

1. Is creating or can reasonably be expected to create an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources;

(c) The director may issue an order for the cessation of installation and immediate compliance if he finds, on the basis of an inspection performed by any authorized representative, that gathering line installation is being conducted without a valid gathering line permit in accordance with this administrative regulation.

(2) Effect.

(a) The order for cessation and immediate compliance shall require the cessation of the operation of the gathering line or portion thereof that is the subject of the notice of noncompliance. The order shall also require the operator to whom it is issued to undertake any procedure reasonably deemed necessary to abate the violation, condition, or practice in the most expeditious manner possible, including but not limited to the use of existing or additional personnel and equipment;

(b) The order shall remain in effect until the violation, condition, or practice has been abated and until the order is vacated, modified, or terminated in writing by the director; and

(c) The operator shall continue to perform reclamation operations and other activities intended to protect public health, safety and the environment during the period of any cessation order unless the order requires that the reclamation operations and other activities cease.

(3) Modification, extension, and termination.

(a) The director may, by written notice, modify or terminate an order for cessation and immediate compliance issued under this section for good cause and may extend the time for abatement if the failure to abate within the period initially established was not caused by lack of diligence on the part of the operator to whom it was issued;

(b) The director may terminate an order for cessation and immediate compliance, by written notice to the operator to whom the order was issued, if he determines that all violations, conditions, and practices noted in the notice of noncompliance have been abated. Termination of the order of cessation and immediate compliance shall not affect the right of the division to impose any other applicable sanction authorized by law.

Section 17. Penalties. An operator in noncompliance with the requirements of this administrative regulation is subject to the penalties established in KRS 353.991.

Section 18. Incorporation by Reference. (1) The following **material is** [~~forms are~~] incorporated by reference:

(a) "Application - Gathering Line Operator's License," Form ED-2, December 2003**; and** [~~,~~]

(b) "Notification/Application for Gathering Line Permit: Installation, Reclamation and Operation Plan," Form ED-11, December 2003.

(2) These forms may be inspected, copied, and obtained, subject to **applicable** copyright law, at the Department Natural Resources [~~of Mines and Minerals~~], 1025 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

HUGH ARCHER, Commissioner
LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: January 14, 2004
FILED WITH LRC: January 15, 2004 at noon
CONTACT PERSON: Rick Bender, Director, Department of Mines and Minerals, Division of Oil and Gas, P.O. Box 2244, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-0140, fax (502) 573-0152.

## PUBLIC PROTECTION AND REGULATION CABINET
## Department of Financial Institutions
## (As Amended at ARRS, February 10, 2004)

### 808 KAR 12:075. Requirements of mortgage broker residence office.

RELATES TO: KRS 294.032(7)
STATUTORY AUTHORITY: KRS 294.140(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 294.140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 294. KRS 294.032(7) relates to mortgage loan broker license applications, and license application renewals, and requires information on the location of the physical office, and if the office is a residence, requires proof that the mortgage loan broker owns or leases the residence and lives in the residence as the broker's main residence. This administrative regulation establishes requirements of ownership if the office is a residence.

Section 1. **(1)** If the physical office is a residence, the office shall be the residence of an owner who owns at least twenty (20) percent of the applicant.

**(2)** The application shall include **the following proof that the location is a residence:**

**(a)** A signed, notarized letter from the owner of twenty (20) percent or more of the applicant, stating that the office is the main residence of the owner;

**(b)** [,] A copy of the deed or lease; [,] and

**(c)** A letter from the local zoning board stating that the requirements for an in-home office have been met.

ELLA D. ROBINSON, Commissioner
JANIE A. MILLER, Secretary
APPROVED BY AGENCY: November 25, 2003
FILED WITH LRC: December 5, 2003 at 4 p.m.
CONTACT PERSON: Sally Taylor, Staff Attorney, Department of Financial Institutions, Public Protection and Regulation Cabinet, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 235, fax (502) 573-2183.

## CABINET FOR HEALTH SERVICES
## Department for Medicaid Services
## Division of Medicaid Services for Maternal & Children's Health
## (As Amended at ARRS, February 10, 2004)

### 907 KAR 1:035. Payments for early and periodic screening, diagnosis, and treatment services and early and periodic screening, diagnosis, and treatment special services.

RELATES TO: KRS 205.520, 605.115, 42 C.F.R. 440.40(b), 441.50 to 441.62, 447.201 to 447.205 [~~447, Subpart B~~], 42 U.S.C. 1396a, b, d
STATUTORY AUTHORITY: KRS 194A.030(2), 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 Medicaid to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Department for Medicaid Services for early and periodic screening, diagnosis, and treatment services and early and periodic screening, diagnosis, and treatment special services.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designated agent [~~agency~~].

(2) "EPSDT" means early and periodic screening, diagnosis, and treatment in accordance with 42 C.F.R. 440.40(b), 441.56**(b)-(c)** [~~(b-c)~~], 441.57, and 441.58.

(3) "EPSDT special services" means a service that is:

(a) Allowable under 42 C.F.R. 441.50 through 441.62 and 42 U.S.C. 1396d(r);

(b) Not otherwise covered under the Kentucky Medicaid Program; and

(c) Medically necessary in accordance with 907 KAR 3:130 to correct or ameliorate a defect, physical or mental illness, or condition of a recipient.

**(4) "Medicaid physician fee schedule" means a list of current reimbursement rates for physician services established in accordance with 907 KAR 3:010, Section 3(1).**

**(5)** Recipient" means a Medicaid eligible individual under the age of twenty-one (21), which includes [and may include] the month in which the child becomes twenty-one (21).

[~~(5) "Medicaid physician fee schedule" means a list of current reimbursement rates for physician services established in accordance with 907 KAR 3:010, Section 3(1).~~]

(6) [~~(4)~~] "Usual and customary charge" means the uniform amount a physician charges to the general public for a specific medical procedure or service.

Section 2. Reimbursement. (1) A provider shall be reimbursed for a screening service in accordance with the payment provisions established through the appropriate Medicaid provider program.

(2) Payment for a screening service provided by an EPSDT enrolled screening clinic shall be the amount specified in the Medicaid physician fee schedule for the procedure code.

(3) Payment for a screening service shall not exceed the usual and customary charge of the provider for the service. [~~is defined in 907 KAR 1:002.~~]

~~Section 2. A physician or primary care center shall be reimbursed for screening services in accordance with the payment provisions established in 907 KAR 3:010 and 907 KAR 1:055 for the service provider.~~

~~Section 3. Reimbursement of Enrolled Screening Providers. The department shall reimburse a participating enrolled screening provider on the basis of a preestablished fee which shall be:~~

~~(1) Related to the cost of service. The preestablished fees payable shall be in accordance with the following:~~

~~(a)1. For a complete screening which shall include all items or procedures listed in 907 KAR 1:034, Section 3, appropriate to the age and health history of the recipient, except the fifth year (kindergarten examination) and 12th year (sixth grade examination), the fee shall be seventy (70) dollars per recipient screened;~~

~~2. For a complete screening for the fifth and 12th years, the fee shall be ninety (90) dollars per recipient screened;~~

~~(b) For a partial screening, which shall include at least a health history and unclothed physical examination, the fee shall be thirty (30) dollars per recipient screened; and~~

~~(c) For completion of a partial screening with some items or procedures appropriate to the age and health history of the recipient provided as a follow-up to a partial screening as established in subsection (2) of this section, the fee shall be forty (40) dollars per recipient screened; and~~

~~(d) For an interperiodic screen, which shall be medically necessary to determine the existence of a suspected physical or mental illness and in addition to the regular periodicity schedule~~

~~screenings, the fee shall be thirty (30) dollars per recipient screened; and~~

~~(2) Not exceed the usual and customary charge of the provider for the service.~~]

Section 3. [~~4.~~] Reimbursement of EPSDT Diagnosis [~~Diagnostic~~] and Treatment Providers. The department shall reimburse an EPSDT diagnosis [~~diagnostic~~] or treatment provider participating in compliance with 907 KAR 1:034, Section 8(1) as specified in 907 KAR Chapters 1 and 3 for reimbursement for the particular diagnosis or treatment service rendered.

Section 4. [~~5.~~] Reimbursement of EPSDT Special Services Providers. (1) Except as specified in Section 5 [~~6~~] of this administrative regulation, the department shall reimburse for an EPSDT special service which is similar to a service covered in another Medicaid Program based on the payment methodology established for that provider program.

(2) Reimbursement for a special service that does not have a reimbursement rate established under subsubsection (1) of this section shall be based on [~~provider a percentage of the usual and customary charges or~~] a fee negotiated by the department adequate to obtain the service.

(3) The [~~percentage of charges or~~] negotiated fee shall not exceed 100 percent of the usual and customary charges.

(4) If the item is covered under Medicare, the payment amount shall not exceed the amount that would be paid using the Medicare payment methodology and upper limits.

(5) If an EPSDT special service is provided before prior authorization is received, the provider shall assume the financial risk that the prior authorization may not be subsequently approved.

Section 5. [~~6.~~] Reimbursement of School-based Health Services Providers. (1) The department shall reimburse a school-based health service provider for a service included in an individualized [~~individual~~] education program which is provided to a Medicaid eligible recipient based on a fee-for-service system designed to approximate cost for all participating providers in the aggregate without settlement to exact cost.

(2) Payment rates for a service [~~provided on or after January 1, 1995,~~] shall be established using the following methodology:

(a) [~~(1)~~] Interim payment rates for a service shall be based on annual cost data submitted in accordance with paragraph (b) of this subsection [~~provided from January 1, 1995, through June 30, 1996, shall be based on a reasonable sample of providers statewide. Payments for services shall be adjusted up or down as appropriate when final rates are established.~~

~~(2) Interim payment rates for a service provided after June 30, 1996, and annually thereafter shall be based on cost data in accordance with subsection (3) of this section~~] for the previous state fiscal year and shall be adjusted up or down as appropriate when final payment rates are established.

(b) [~~(3)~~] Final payment rates shall be set based on the following:

1. [~~(a)~~] Except as specified in subparagraphs 4 and 5 of this paragraph [~~paragraphs (d) and (e) of this subsection~~], a payment rate for a particular service shall be based on the lower of the mean or median of the participating providers' cost of providing the service;

a. [~~1.~~] The statewide mean and median cost for a service shall be based on the contracted hourly service cost and the cost associated with publicly employed professionals; and

b. [~~2.~~] The mean and median hourly cost shall be calculated, for each class of qualified professionals, from an array of hourly cost data falling within one (1) standard deviation of the mean;

2. [~~(b)~~] Cost for publicly employed professionals shall be computed in the following manner:

a. [~~1.~~] Salary, fringe benefits, and indirect overhead shall be included;

b. [~~2.~~] Annual professional salaries (including full time equivalent employees) shall be converted to hourly wages using 185 work days per year and six (6) work hours per day;

c. [~~3.~~] The applicable fringe benefit cost based on the actual percentage rate for classified and certified employees shall be added to the hourly salary wage; and

d. [~~4.~~] An indirect overhead cost consisting of seven (7) percent of the hourly wage shall be added to the hourly salary wage;

3. [~~(c)~~] Payments for a professional service shall be based on units of service which are fifteen (15) minute increments;

4. [~~(d)~~] Payments for medical transportation provided in accordance with 907 KAR 1:715, Section 3 [~~5~~], shall be based on the average cost per mile of pupil transportation as calculated by the Department of Education;

5. [~~(e)~~] Payments for assistive technology and medical equipment provided in accordance with 907 KAR 1:715, Section 3 [~~6~~], shall be based on actual invoiced cost including cost, of shipping and handling, for the authorized equipment included in an **individualized** [~~individual~~] education program;

6. For each school year ending June 30, final payment rates shall be set using corresponding cost data available as of September 1 for that school year; and

7. Final payment rates shall be the lower of the billed charge or the Medicaid rate on file for the date the service is provided;

(c)1. A school based health services provider shall submit annual cost data to the department no later than August 31 of each year; and

2. If the cost data is not submitted within the specified period, the school-based health services provider shall be terminated from the program; and

(d) A school-based health services provider shall certify quarterly expenditures of state or local funds used to provide covered school-based health services to Medicaid-eligible children as specified in 702 KAR 3:285.

[~~(f) The due date for the required cost data shall be July 31 following the end of the state fiscal year (June 30 of each year).~~

~~(g) A one (1) month grace period shall exist for the submittal of the cost data. If the cost data is not submitted either timely or within the specified grace period, the school-based health services provider shall be terminated from the program.~~

~~(h) For rate years ending June 30, 1997 and thereafter, the final rates for prior years shall be set using cost data available as of September 1 of the current rate year.~~]

MIKE ROBINSON, Commissioner
MARCIA MORGAN, Secretary
APPROVED BY AGENCY: November 19, 2003
FILED WITH LRC: November 25, 2003 at 4 p.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH SERVICES**
**Department for Medicaid Services**
**Division of Long Term Care and Disability Services**
**(As Amended at ARRS, February 10, 2004)**

**907 KAR 1:065. Payments for price-based nursing facility services.**

RELATES TO: 42 C.F.R. Parts 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 483.10(i) 42 U.S.C. 1396, a, b, c, d, g, n, o, p, r, r-2, r-5

STATUTORY AUTHORITY: KRS 194A.030(2) [~~(3)~~], 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 citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for services provided by a price-based nursing facility.

Section 1. Definitions. (1) [~~"Allowable cost" means that portion of a price-based nursing facility's cost which shall be allowed by~~

~~the department in determining ancillary cost.~~

~~(2) "Ancillary cost-to-charge ratio" means the total cost of ancillary services provided by an NF to its residents divided by the total customary and usual ancillary charges.~~

~~(3)~~] "Ancillary service" means a direct service for which a charge is customarily billed separately from the per diem rate including:

(a) Ancillary services pursuant to 907 KAR 1:023; and

(b) If ordered by a physician:

1. Laboratory procedures; and

2. X-rays.

(2) [~~(4)~~] "Appraisal" means an evaluation of a price-based nursing facility building, excluding equipment and land, conducted by the department in accordance with Section 4 of this administrative regulation for the purpose of calculating the depreciated replacement cost of a price-based nursing facility.

(3) [~~(5)~~] "Appraisal base year" means a year in which the department shall conduct an appraisal of each price-based NF.

(4) [~~(6)~~] "Appraisal period" means a five (5) year period beginning with an appraisal base year. For example, the appraisal period corresponding to appraisal base year 2000 is January 1, 2000 through December 31, 2004.

(5) [~~(7)~~] "Auxiliary building" means a roofed and walled structure:

(a) Serviced by electricity, heating and cooling;

(b) Independent of an NF;

(c) Used for administrative or business purposes related to an NF; and

(d) Constructed on the same tract of ground as an NF.

(6) [~~(8)~~] "Capital rate component" means a calculated per diem amount for an NF based on:

(a) The NF's appraised depreciated replacement cost;

(b) A value for land;

(c) A value for equipment;

(d) A rate of return;

(e) A risk factor;

(f) The number of calendar days in the NF's cost report year;

(g) The number of licensed NF beds in the NF; and

(h) The NF's bed occupancy percentage.

(7) [~~(9)~~] "Case-mix" means the average price-based NF acuity for Medicaid eligible and dual eligible Medicare and Medicaid residents under a Medicare Part A reimbursed stay in a price-based nursing facility, and is based on Minimum Data Set (MDS) 2.0 data classified through the RUG III, M3 p1, (version 5.12B) thirty-four (34) group model resident classification system.

[~~(10) "Cost settlement" means an NF's billed charges for ancillary services that are retrospectively settled to the cost of ancillary services provided to Medicaid residents.~~]

(8) [~~(11)~~] "Department" means the Department for Medicaid Services or its designee.

(9) [~~(12)~~] "DRI" means an indication of changes in health care cost from year to year developed by Data Resources Incorporated.

(10) [~~(13)~~] "Equipment" means a depreciable tangible asset, other than land or a building, which is used in the provision of care for a resident by an NF staff person.

(11) [~~(14)~~] "Expenditure period" means the period beginning July 1, 2002, and ending June 30, 2004.

(12) [~~(15)~~] "Governmental entity" means a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).

(13) [~~(16)~~] "Hospital-based NF" means an NF that:

(a) Is separately identifiable as a distinct part of the hospital; and

(b) If separated into multiple but distinct parts of a single hospital are combined under one (1) provider number.

(14) [~~(17)~~] "Land" means a surveyed tract or tracts of ground which share a common boundary:

(a) As recorded in a county government office;

(b) Upon which a building licensed as an NF is constructed; and

(c) Including site preparation and improvements.

(15) [~~(18)~~] "Local unit of government" means a city, county, special purpose district, or other governmental unit in the state.

(16) [~~(19)~~] "Metropolitan Statistical Area" or "MSA" means the designation of urban population centers based on the national census and updated on a yearly basis, as published by the Federal Office of Management and Budget.

(17) [~~(20)~~] "NF" or "nursing facility" means:

(a) A facility:

1. To which the state survey agency has granted an NF license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), (d), 42 C.F.R. 447.280 and 482.66. [~~that:~~

~~(a) The state survey agency has:~~

~~1. Granted an NF license to a facility; and~~

~~2. Recommended the NF to the department for certification as a Medicaid provider; and~~

~~(b) The department has granted certification for Medicaid participation to the NF.~~]

(18) [~~(21)~~] "NF building" means a roofed and walled structure serviced by electricity, heating and cooling which is also an NF.

(19) **"Nursing facility with a mental retardation specialty" or "NF-MRS" means an NF in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation as determined by the department.**

**(20)** [~~(22)~~] "Nursing facility with Medicaid waiver" or "NF-W" means an NF to which the state survey agency has granted a waiver of the nursing staff requirement. [~~that:~~

~~(a) The state survey agency has:~~

~~1. Granted an NF license to a facility;~~

~~2. Recommended the NF to the department for certification as a Medicaid provider; and~~

~~3. Granted the NF a waiver of the nursing staff requirement; and~~

~~(b) The department has granted certification for Medicaid participation to the NF.~~]

[~~(20)~~ [~~(23)~~] ~~"Nursing facility with a mental retardation specialty" or "NF-MRS" means an NF in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation as determined by the department.~~]

(21) [~~(24)~~] "Revenue Period" means the period beginning April 2, 2001, and ending June 30, 2004.

(22) [~~(25)~~] "Routine services" means the services covered by the Medicaid Program pursuant to 42 C.F.R. 483.10(c)(8)(i).

(23) [~~(26)~~] "R.S. Means Construction Index" means an indicator of changes in construction costs from year to year developed by the R.S. Means Company, Inc.

(24) [~~(27)~~] "Site improvement" means a depreciable asset element, other than an NF building or auxiliary building, on NF land extending beyond an NF's foundation if used for NF-related purposes.

(25) [~~(28)~~] "Standard price" means a facility-specific reimbursement that includes a case-mix adjusted, noncase-mix adjusted, noncapital-facility related, and capital rate component.

(26) [~~(29)~~] "State survey agency" means the Cabinet for Health Services, Office of Inspector General, Division of Long Term Care.

Section 2. NF Reimbursement Classifications and Criteria. (1) An NF, a hospital-based NF, or an NF-MRS shall be reimbursed as a price-based NF pursuant to this administrative regulation if:

(a) It provides NF services to an individual who:

1. Is a Medicaid recipient;

2. Meets the NF level of care criteria pursuant to 907 KAR 1:022; and

3. Occupies a Medicaid-certified bed; and

(b)1. It has more than ten (10) NF beds and the greater of:

a. Ten (10) of its Medicaid-certified beds participate in the Medicare Program; or

b. Twenty (20) percent of its Medicaid certified beds participate in the Medicare Program; or

2. It has less than ten (10) NF beds and all of its NF beds participate in the Medicare Program.

(2) An NF-W shall be reimbursed as a price-based NF pursuant to this administrative regulation if it meets the criteria established in subsection (1)(a) of this section.

(3) The following shall not be reimbursed as a price-based NF and shall be reimbursed pursuant to 907 KAR 1:025:

(a) An NF with a certified brain injury unit;

(b) An NF with a distinct part ventilator unit;

(c) An NF designated as an institution for mental disease;

(d) A dually-licensed pediatric facility; or

(e) An intermediate care facility for an individual with mental retardation or developmental disability.

Section 3. Swing Bed and Critical Access Hospital NF Bed Reimbursement. (1) The reimbursement rate for a federally-defined swing bed shall be:

(a) The average rate per patient day paid to freestanding price-based NF's for routine services furnished during the preceding calendar year, excluding any payment made pursuant to Section 15 of this administrative regulation; and

(b) Established effective January 1 of each year.

(2) Skilled nursing facility beds in a critical access hospital shall be reimbursed pursuant to subsection (1) of this section if the critical access hospital:

(a) Has no more than twenty-five (25) skilled nursing facility beds; and

(b) Has no more than fifteen (15) acute care patients in the skilled nursing facility beds.

Section 4. Price-based NF Appraisal. (1) The department shall appraise a price-based NF each appraisal base year, which shall be each fifth year beginning with 2000, in order to calculate the NF's depreciated replacement cost.

(2) The department shall not appraise equipment or land. A provider shall be given the following values for land and equipment:

(a) Ten (10) percent of an NF's average licensed bed value for land; and

(b) $2,000 per licensed NF bed for equipment.

(3) The department shall utilize the following variables and fields of the nursing home or convalescent center (#503) model of the E.H. Boeckh Commercial Building Valuation System to appraise an NF identified in Section 2(1) of this administrative regulation:

(a) Provider number;

(b) Property owner - NF name;

(c) Address;

(d) Zip code;

(e) Section number - the lowest number shall be assigned to the oldest section and a basement, appraised as a separate section, immediately follows the section it is beneath;

(f) Occupancy code - nursing home or substructure;

(g) Average story height;

(h) Construction type;

(i) Number of stories;

(j) Gross floor area (which shall be the determination of the exterior dimensions of all interior areas including stairwells of each floor, specifically excluding outdoor patios, covered walkways, carports and similar areas).[;] In addition, interior square footage measurements shall be reported for:

1. A non-NF area;

2. A shared service area by type of service; and

3. A revenue-generating area;

(k) Gross perimeter (common walls between sections shall be excluded from both sections);

(l) Construction quality;

(m) Year built;

(n) Building effective age;

(o) Building condition;

(p) Depreciation percent;

(q) Exterior wall material;

(r) Roof covering material and roof pitch;

(s) Heating system;

(t) Cooling system;

(u) Floor finish;

(v) Ceiling finish;

(w) Partition wall structure and finish;

(x) Passenger and freight elevators - actual number;

(y) Fire protection system (sprinklers, manual fire alarms, and automatic fire detection) - percent of gross area served. If both the floor and attic areas are protected by a sprinkler system or automatic detection, the percent of gross area served shall be twice the floor area; and

(z) Miscellaneous additional features which shall be limited to:

1. Canopies;

2. Entry foyers (sheltered entry ways): glass and aluminum standard allowance shall be twenty (20) dollars per square foot; bulkhead standard allowance shall be 5 (five) dollars per square foot;

3. Loading docks;

4. Bay windows, if not included in the perimeter calculation shall be valued at $1,500 each;

5. Code alerts, Wanderguards, or other special electronically-secured doorways (standard allowance shall be $1,500 for each fully-functioning door at the time of appraisal);

6. Automatic sliding doors (standard allowance shall be $2,700 per doorway);

7. Detached garages or storage sheds (which shall have an attached reinforced concrete floor and a minimum of 200 square feet);

8. Modular buildings or trailers, if the structure has a minimum of 200 square feet, electrical service, and heating or cooling services (standard allowance shall be thirty-eight (38) dollars and fifty (50) cents per square foot);

9. Walk-in coolers or freezers;

10. Laundry chutes (standard allowance shall be $1,000 per floor serviced);

11. Dumb waiters (which shall have a minimum speed of fifty (50) feet per minute. The standard allowance shall be $4,500 for initial two (2) stops; $2,100 per additional stop);

12. Skylights (standard allowance shall be twenty-six (26) dollars per square foot);

13. Operable built-in oxygen delivery systems (valued at $250 per serviced bed); and

14. Carpeted wainscotting (standard allowance shall be three (3) dollars and fifty (50) cents per linear foot).

(4) An item listed in subsection (3)(z) of this section shall be subject to the Boeckh model #503 monetary limit unless a monetary limit is provided for that item.

(5) The department shall use the corresponding E.H. Boeckh System default value for any variable listed in subsection (3) of this section if no other value is stated for that variable in subsection (3) of this section.

(6) Values from the most recent E.H. Boeckh tables, as of July 1 of the year prior to the appraisal base year, shall be used during an appraisal. For example, values from the most recent 1999 E.H. Boeckh tables, as of July 1, 1999, shall be used for an appraisal conducted during the appraisal period beginning January 1, 2000.

(7) In addition to an appraisal cited in subsection (1) of this section, the department shall appraise an NF identified in Section 2(1) of this administrative regulation if:

(a) The NF submits written proof of construction costs to the department; and

(b)1. The NF undergoes renovations or additions costing a minimum of $150,000 and the NF has more than sixty (60) licensed beds; or

2. The NF undergoes renovations or additions costing a minimum of $75,000 and the NF has sixty (60) or fewer licensed beds.

(8) An auxiliary building shall be:

(a) Appraised if it rests on land, as defined in Section 1(14) [(16)] of this administrative regulation; and

(b) Appraised separately from an NF building.

(9) To appraise an auxiliary building, the department shall utilize an E.H. Boeckh building model other than the nursing home or convalescent center (#503) model, if the model better fits the auxiliary building's use and type.

(10) If an NF building has beds licensed for non-NF purposes,

the appraisal shall be apportioned between NF and non-NF by dividing the number of licensed NF beds by the total number of beds, regardless of the occupancy factors.

(11) If, in an NF building, a provider conducts business activities not related to the NF, the appraisal shall be apportioned by the percent of NF square footage relative to the square footage of non-NF-related business activities.

(12) Cost of an appraisal shall be the responsibility of the NF being appraised.

(13) A building held for investment, future expansion, or speculation shall not be considered for appraisal purposes.

(14) The department shall not consider the following location factors in rendering an appraisal:

(a) Climate;
(b) High-wind zone;
(c) Degree of slope;
(d) Position;
(e) Accessibility; or
(f) Soil condition.

Section 5. Standard Price Overview. (1) Rates shall reflect the differential in wages, property values and cost of doing business in rural and urban designated areas.

(2) Effective October 31, 2003, the department shall utilize the Federal Office of Management and Budget's Metropolitan Statistical Area (MSA) urban and rural designations, in effect on January 1, 2003 [~~July 1 of each year~~], to classify an NF as being in an urban or rural area.

(3) The department shall utilize an analysis of fair-market pricing and historical cost for the following data:

(a) Staffing ratios;
(b) Wage rates;
(c) Cost of administration, food, professional support, consultation, and nonpersonnel operating expenses as a percentage of total cost;
(d) Fringe benefit levels;
(e) Capital rate component; and
(f) Noncapital facility-related component.

(4) The following components shall comprise the case-mix adjustable portion of an NF's standard price:

(a) The personnel cost of:
1. A director of nursing;
2. A registered nurse (RN);
3. A licensed practical nurse (LPN);
4. A nurse aid;
5. An activities staff person; and
6. A medical records staff person; and
(b) Nonpersonnel operating cost including:
1. Medical supplies; and
2. Activity supplies.

(5) The following components shall comprise the noncase mix adjustable portion of an NF's standard price:

(a) Administration;
(b) Nondirect care personnel;
(c) Food;
(d) Professional support; and
(e) Consultation.

(6) The following components shall comprise the facility and capital component of an NF's standard price:

(a) The noncapital facility-related component, which shall be a fixed, uniform amount for all price-based NF's; and

(b) The NF's capital rate component, which shall be facility specific.

(7) Excluding noncapital facility-related and capital rate components, the following is an example of an urban and a rural price-based NF's standard price:

| MSA Designation | Case-Mix Adjustable Portion of Standard Price | Noncase-Mix Adjustable Portion of Standard Price without Capital Cost Component | Total Standard Price Excluding Noncapital Facility Related and Capital Rate Components |
|---|---|---|---|
| Urban | $61.83 | $41.92 | $103.75 |
| Rural | $51.03 | $36.53 | $87.56 |

(8) A price-based NF's standard price shall be:

(a) Established effective on January 1, 2000 representing the state fiscal year July 1, 1999 through June 30, 2000;

(b) Adjusted for inflation every July 1 by two and one-half (2.5) percent and the R.S. Means Construction Index; and

(c) Rebased every four (4) years thereafter.

(9) An NF receiving a rate less than its standard price shall have its rate adjusted for inflation on July 1 of each year pursuant to the DRI.

(10) The department shall adjust an NF's standard price if:

(a) A governmental entity imposes a mandatory minimum wage or staffing ratio increase and the increase was not included in the DRI; or

(b) A new licensure requirement or new interpretation of an existing requirement by the state survey agency results in changes that affect all facilities within the class. The provider shall document that a cost increase occurred as a result of a licensure requirement or policy interpretation.

Section 6. Standard Price Calculation. (1) Based on the classification of urban or rural, the department shall calculate an individual NF's standard price to be the sum of:

(a) The case-mix adjustable portion of the NF's standard price, adjusted by the NF's current case-mix index pursuant to Section 7 of this administrative regulation;

(b) The noncase mix adjustable portion of the NF's standard price;

(c) The noncapital facility-related component; and

(d) Pursuant to subsection (2) of this section, the capital rate component.

(2) An NF's capital rate component shall be calculated as follows:

(a) The department shall add the total of:

1. The NF's average licensed bed value which shall:

a. Be determined by dividing the NF's depreciated replacement cost, as determined from an appraisal conducted in accordance with Section 4 of this administrative regulation, by the NF's total licensed NF beds; and

b. Not exceed $40,000;

2. A value for land which shall be ten (10) percent of the NF's average licensed NF bed value, established in accordance with subparagraph 1 of this paragraph; and

3. A value for equipment which shall be $2,000 per licensed NF bed;

(b) The department shall multiply the sum of paragraph (a) of this subsection by a rate of return factor which shall:

1. Be equal to the sum of:

a. The yield on a twenty (20) year treasury bond as of the first business day on or after May 31 of the most recent year; and

b. A risk factor of two (2) percent; and

2. Not be less than nine (9) percent nor exceed twelve (12) percent;

(c) The department shall determine the NF's capital cost-per-bed day by:

1. Dividing the NF's total patient days by the NF's available bed days to determine the NF's occupancy percentage;

2. If the NF's occupancy percentage is less than ninety (90) percent, multiplying ninety (90) percent by 365 days; and

3. If the NF's occupancy percentage exceeds ninety (90) percent, multiplying the NF's occupancy percentage by 365 days; and

(d) The department shall divide the sum of paragraphs (a) and (b) of this subsection by the NF's capital cost per bed day established in paragraph (c) of this subsection to determine an NF's capital rate component.

(3) The department shall utilize the R.S. Means Construction Index to annually adjust an NF's capital rate component.

(4) If a change of ownership occurs pursuant to 42 C.F.R. 447.253(d), the new owner shall:

(a) Receive the capital cost rate of the previous owner unless the NF is eligible for a reappraisal pursuant to Section 4(7) of this administrative regulation; and

(b) File an updated provider application with the Medicaid Program pursuant to Section 3(4) of 907 KAR 1:672.

(5) A new facility shall be:

(a) Classified as a new facility if the facility does not have a July 1, of the current state fiscal year, Medicaid rate;

(b) Determined to be urban or rural; and

(c) Reimbursed at its standard price which shall:

1. Be based on a case mix of 1.0;

2. Be adjusted prospectively based upon no less than one (1) complete calendar quarter of available MDS 2.0 data following the facility's Medicaid certification;

3. Utilize $40,000 as the facility's average licensed NF bed value until the facility is appraised in accordance with Section 4 of this administrative regulation; and

4. Be adjusted, if necessary, following the facility's appraisal if the appraisal determines the facility's average licensed NF bed value to be less than $40,000.

Section 7. Minimum Data Set (MDS) 2.0, Resource Utilization Group (RUG) III, and Validation. (1) A price-based NF's Medicaid MDS data shall be utilized to determine its case mix index each quarter.

(2) A price-based NF's case mix index shall be applied to its case mix adjustable portion of its standard price.

(3) To determine a price-based NF's case mix index, the department shall:

(a) Extract the required MDS data from the NF's MDS form:

1. Incorporated by reference in 907 KAR 1:755;

2. Transmitted by the NF to the Cabinet for Health Services, Office of Inspector General, Division of Long Term Care; and

3. On the last date of each calendar quarter and revised no later than the data revision cut-off date established in subsection (7)(b) of this section;

(b) Classify the data cited in paragraph (a) of this subsection through the RUG III, (M3 p1), version five point twelve B (5.12B) thirty-four (34) group model resident classification system; and

(c) Validate the data cited in paragraph (a) of this subsection as follows:

1. The department shall generate a random sample of twenty-five (25) percent of the price-based NF's Medicaid MDS assessments;

2. The department shall review medical records corresponding to the individuals included in the sample identified in subparagraph 1 of this paragraph to determine if the medical records accurately support the MDS assessments submitted for the sample residents; and

3. If a review of records cited in subparagraph 2 of this paragraph reveals that the price-based NF fails to meet the minimum accuracy threshold, the department shall review 100 percent of the price-based NF's Medicaid MDS assessments extracted in accordance with paragraph (a)3 of this subsection to determine whether the NF fails to meet the minimum accuracy threshold.

(4) If the department's review, in accordance with subsections (3)(c)2 and 3 of this section, of a price-based NF's MDS assessment data reveals that the NF fails to meet the MDS data minimum accuracy threshold, the department shall conduct another review of the same data utilizing an individual or individuals not involved in the initial validation process if the price-based NF requests a re-review within ten (10) business days of being notified of the findings of the review cited in subsection (3)(c)3 of this section.

(5) Only MDS data extracted in accordance with subsection (3)(a)3 of this section shall be allowed during a review or re-review.

(6) If a re-review of a price-based NF's MDS assessment data, in accordance with subsection (4) of this section, confirms that the NF fails to meet the minimum accuracy threshold, the department shall:

(a) Conduct a conference with the NF to review preliminary findings of the re-review; and

(b) Send the final results of the re-review to the NF within ten (10) business days of the conference.

(7) Following is a chart establishing:

(a) That an MDS extraction date shall be the last date of each quarter;

(b) That a final MDS assessment data revision cut-off date shall be the last date of the quarter following the date on which MDS data was extracted. For example, MDS data or revisions to MDS data extracted December 31, 2000 shall not be accepted after March 31, 2001;

(c) That a rate effective date shall be the first date of the second quarter following the MDS extraction date;

(d) That MDS audits shall be initiated in the same month containing the corresponding rate effective date;

(e) MDS assessment accuracy thresholds and corresponding rate sanctions. For example if a price-based NF's percentage of accurate MDS assessments is below fifty (50) percent for MDS data extracted March 31, 2002, then effective October 1, 2002, the price-based NF's rate shall be sanctioned by fifteen (15) cents per patient day; and

(f) Rate sanction effective dates:

| MDS Data Extraction Date | MDS Data Revision Cut-Off Date | Rate Effective Date | Audits Initiated | Required MDS Accuracy Threshold | Rate Sanction | Sanction Effective Date |
|---|---|---|---|---|---|---|
| 6/30/01 | 9/30/01 | 10/1/01 | 10/2001 | 40% | $0.10 per patient day (ppd) | 1/1/02 |
| 9/30/01 | 12/31/01 | 1/1/02 | 1/2002 | 40% | $0.10 ppd | 4/1/02 |
| 12/31/01 | 3/31/02 | 4/1/02 | 4/2002 | 50% | $0.15 ppd | 7/1/02 |
| 3/31/02 | 6/30/02 | 7/1/02 | 7/2002 | 50% | $0.15 ppd | 10/1/02 |
| 6/30/02 | 9/30/02 | 10/1/02 | 10/2002 | 65% | $0.20 ppd | 1/1/03 |
| 9/30/02 | 12/31/02 | 1/1/03 | 1/2003 | 65% | $0.20 ppd | 4/1/03 |
| 12/31/02 and forward | 3/31/02 and forward | 4/1/03 and forward | 4/2003 and forward | 65-79%<br>40-64%<br>Below 40% | $0.50 ppd<br>$0.60 ppd<br>$0.70 ppd | 7/1/03 and forward |

Section 8. Limitation on Charges to Residents. (1) Except for applicable deductible and coinsurance amounts, an NF that receives reimbursement for a resident pursuant to Section 6 of this administrative regulation shall not charge a resident or his representative for the cost of routine or ancillary services.

(2) An NF may charge a resident or his representative for an item pursuant to 42 C.F.R. 483.10 (c)(8)(ii) if:

(a) The item is requested by the resident;

(b) The NF informs the resident in writing that there will be a charge; and

(c) Medicare, Medicaid, or another third party does not pay for the item.

(3) An NF shall:

(a) Not require a resident, or responsible representative of the resident, to request any item or services as a condition of admission or continued stay; and

(b) Inform a resident, or responsible representative of the resident, requesting an item or service for which a charge will be made in writing that there will be a charge and the amount of the charge.

(4) Reserved bed days, per resident, for an NF or an NF-W shall be covered for a maximum of:

(a) Fourteen (14) days per temporary absence due to hospitalization, with an overall maximum of forty-five (45) days during a calendar year; and

(b) Fifteen (15) days during a calendar year for leaves of absence other than hospitalization.

(5) Except for oxygen therapy, durable medical equipment (DME) and supplies shall:

(a) Be furnished by an NF; and

(b) Not be billed to the department under a separate DMS claim pursuant to 907 KAR 1:479, Section 6(3).

Section 9. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR). (1) Prior to an admission of an individual, a price-based NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse an NF for services delivered to an individual if the NF complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of the NF's participation in the Medicaid Program.

Section 10. Price-Based NF Protection Period and Budget Constraints. (1) Effective January 1, 2003, a county-owned hospital-based nursing facility shall not receive a rate that is less than the rate that was in effect on June 30, 2002.

(2) For each year of the biennium, a price-based NF shall:

(a) Receive an increase pursuant to Section 5(8) and (9) of this administrative regulation; or

(b) Except for a county-owned hospital-based nursing facility pursuant to subsection (1) of this section, not receive an increase if the price-based NF's rate is greater than its standard price.

(3) Available price-based nursing facility funds shall be used to increase rates for facilities whose rates are less than their standard price.

(a) A facility receiving an increase shall receive an increase equal to a percentage of the difference between its existing rate and its standard price.

(b) The percentage shall be the same for each applicable facility.

(4) Available funds under this section shall be funds appropriated in a biennium budget less:

(a) Any reduction due to a programmatic change that affects nursing facility reimbursement; or

(b) Any reduction in the department's budget that affects nursing facility reimbursement.

Section 11. Cost Report. (1) [~~A price-based NF shall submit:~~

~~(a)~~] A Medicare cost report and **the Supplemental** Medicaid [~~supplemental~~] Schedules shall be submitted pursuant to time frames established in the HCFA Provider Reimbursement Manual - Part 2 (Pub. 15-11) Section 102, 102.1, 102.3, and 104, incorporated by reference into this administrative regulation; and

(2) [~~(b)~~] A copy of a [~~the~~] price-based NF's Medicare cost report shall be submitted for the most recent fiscal year end. [~~; and~~

~~(c) The supplemental schedules incorporated by reference into this administrative regulation.~~

~~(2) A cost report submitted to the department pursuant to this administrative regulation shall be used as follows:~~

~~(a) Financial data related to routine services shall be used for statistical purposes; and~~

~~(b) Financial data related to ancillary services shall be subject to cost settlement.~~]

Section 12. Ancillary Services. (1) Effective November 1, 2003:

(a) Except for oxygen therapy, the department shall reimburse for an ancillary service that meets the criteria established in 907 KAR 1:023 utilizing the corresponding outpatient procedure code rate listed in the Medicaid **Physician** [~~physicians resource-based relative value scale~~] Fee Schedule **established** [~~referenced~~] in 907 KAR 3:010, Section 3;

(b) The department shall reimburse for an oxygen therapy utilizing the **Medicaid DME Program** [~~durable medical equipment~~] fee schedule **established** [~~referenced~~] in 907 KAR 1:479;

(c) Respiratory therapy and respiratory therapy supplies shall be a routine service;

(d) The department shall calculate an add-on amount, to be in effect from November 1, 2003 through June 30, 2004, to a nursing facility's routine services per diem rate if the nursing facility incurred cost providing respiratory therapy or respiratory therapy supplies for the period July 1, 2003 through September 30, 2003; and

(e) The add-on referenced in paragraph (d) of this subsection shall be equal to a nursing facility's annualized Medicaid-allowed cost of respiratory therapy and respiratory supplies for the period July 1, 2003 through September 30, 2003 divided by the nursing facility's Medicaid days reported on the most recent cost report filed with the department as of November 1, 2003.

(2) A nursing facility shall apply for a routine services per diem add-on referenced in **subsection (1)(d)** [~~paragraph (d)~~] of this section by submitting a Schedule J Request for Reimbursement form to the department by December 1, 2003. [~~The reasonable, allowable and direct cost of an ancillary service shall be reimbursed by the department on a cost basis and as an addition to the standard price.~~

~~(2) Ancillary service:~~

~~(a) Reimbursement shall be subject to a year-end audit, retroactive adjustment, and final settlement; and~~

~~(b) Costs shall be subject to allowable cost limits pursuant to 42 C.F.R. 413.106.~~

~~(3) The department shall utilize an NF's prior year ancillary cost-to-charge ratio, based on the prior year's cost report as of May 31, as the percentage to be used for interim reimbursement purposes for the following year. For example if an NF's ancillary cost-to-charge ratio for SFY 2001 is seventy-five (75) percent, the department shall reimburse the NF, on an interim basis, seventy-five (75) percent of billed charges for SFY 2002.~~

~~(4) An NF without a prior year cost report may submit, to the department, a percentage to be used for interim reimbursement purposes.~~

~~(5) If an NF has been reimbursed at an interim percentage above its allowable ancillary cost-to-charge ratio for a given year, the department shall decrease the interim percentage for the following year by no more than twenty-five (25) percentage points unless:~~

~~(a) A retroactive adjustment of an NF's reimbursement for the prior year reveals an overpayment by the department exceeding twenty-five (25) percent of billed charges; or~~

~~(b) If an evaluation of an NF's current billed charges indicates that the NF's charges exceed, by greater than twenty-five (25) percent, average billed charges for other comparable facilities serving the same area.~~

~~(6) Regarding a fiscal year-end ancillary cost settlement, an NF shall:~~

~~(a) Include in its cost report the required schedules containing:~~

~~1. The actual ancillary service cost;~~

~~2. The total ancillary charges;~~

~~3. The total Medicaid charges; and~~

~~4. Payments made by the department to the NF;~~

~~(b) Submit documentation requested by the department in order to settle interim payments made by the department for the cost of ancillary services provided during an NF's reporting period; and~~

~~(c) Submit a settlement payment in conjunction with the cost report if the cost report indicates the settlement payment is due.~~]

Section 13. Reimbursement for State Fiscal Years [~~Year~~] (SFY) 2003 and 2004 (July 1, 2002 through June 30, 2004 [~~2003~~]). (1) The department shall not make an adjustment to a provider's rate using available funds as described in Section 10(4) of this administrative regulation except:

(a) For an adjustment resulting from a provider's case mix index established in accordance with Section 7 of this administrative regulation; or

(b) For funds realized through the ancillary reimbursement provisions established in Section 12(1) of this administrative regulation. [~~As established in subsection (3)(c) of this section.~~]

(2) The department shall make a supplemental payment in accordance with Section 15 of this administrative regulation.

(3) The department shall make adjustments to a provider's rate in accordance with subsections (4), (5), (6) and (7) [~~and (6)~~] of this section, and Section 10(1) of this administrative regulation subject to the availability of funds. Available funds under this subsection shall be:

(a) An amount during the expenditure period equal to fifty (50) percent of the payments received during the revenue period by nursing facilities under Section 15(3) of this administrative regulation after deducting the nonfederal share of the funds, less the funds retained by a facility required to bring its Medicaid rate to its standard price; and

(b) Matched with federal funds.

(4) Payments under subsection (3) of this section shall be distributed during the expenditure period.

(5) An inflationary adjustment of two and one-half (2.5) percent shall be made to the operating component of a provider's rate.

(6) An inflationary adjustment equal to the R.S. Means Construction Index shall be made to the capital component of a provider's rate.

(7) An NF receiving less than its standard price shall have its rate adjusted in accordance with Sections 5(9) and 10(3) of this administrative regulation.

Section 14. Appeal Rights. A price-based NF may appeal a department decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 15. Supplemental Payments to Nonstate Government-Owned or Operated Nursing Facilities. (1) Beginning July 1, 2001, subject to state funding made available for this provision by a transfer of funds from a governmental entity, the department shall make a supplemental payment to a qualified nursing facility.

(2) To qualify for a supplemental payment under this section, a nursing facility shall:

(a) Be owned or operated by a local unit of government pursuant to 42 C.F.R. 447.272(a)(2);

(b) Have at least 140 or more Medicaid-certified beds; and

(c) Have a Medicaid occupancy rate at or above seventy-five (75) percent.

(3) For each state fiscal year, the department shall calculate the maximum supplemental payment that it may make to qualifying nursing facilities in accordance with 42 C.F.R. 447.272.

(4) Using the data reported by a nursing facility on a Schedule NF-7 submitted to the department as of December 31, 2000, the department shall identify each nursing facility that meets the criteria established in subsection (2) of this section.

(5) The department shall determine a supplemental payment factor for a qualifying nursing facility by dividing the qualifying nursing facility's total Medicaid days by the total Medicaid days for all qualifying nursing facilities.

(6) The department shall determine a supplemental payment for a qualifying nursing facility by applying the supplemental payment factor established in subsection (5) of this section to the total amount available for funding under this section.

(7) Total payments made under this section shall not exceed the amount determined in subsection (3) of this section.

(8) Payments made under this section shall:

(a) Apply to services provided on or after April 1, 2001; and

(b) Be made on a quarterly basis.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Medicare Provider Reimbursement Manual - Part 2 (Pub. 15-11) Chapter 1. Cost Reporting - General (15-2-102) 102 and 104. Cost Reporting Period; April 2000 Edition";

(b) The "Instructions for Completing the Medicaid Supplemental Schedules, November 2003 [~~April 2000~~] Edition"; [~~and~~]

(c) The "Supplemental Medicaid Schedules, November 2003 [~~April 2000~~] Edition"; and

(d) The "Schedule J Request for Reimbursement, November 2003 Edition.

(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.

MIKE ROBINSON, Commissioner
MARCIA R. MORGAN, Secretary

APPROVED BY AGENCY: October 15, 2003
FILED WITH LRC: October 31, 2003 at 11 a.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES**
**Department for Medicaid Services**
**Division of Medicaid Services for**
**Mental Health/Mental Retardation**
**(As Amended at ARRS, February 10, 2004)**

**907 KAR 3:090. Acquired brain injury services.**

RELATES TO: KRS 205.8451, 205.8477, 42 C.F.R. 441 Subpart G, 455 Subpart B, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.030(2) [~~(1)~~], 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: **Executive Order 2003-64, effective December 16, 2003, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services under the Health and Family Services Cabinet. The Health and Family Services Cabinet,** [~~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 citizenry. 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.

Section 1. Definitions. (1) "ABI" means an acquired brain injury.

**(2) "ABI provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.**

**(3) "ABI recipient" means an individual who meets the criteria established in Section 3 of this administrative regulation.**

**(4)** "Acquired brain injury waiver service" or "ABI waiver service" [~~(ABI) waiver services~~"] means a home and community based waiver service for an individual [~~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.

[~~(3) "ABI provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.~~

~~(4) "ABI recipient" means an individual who meets the criteria established in Section 3 of this administrative regulation.~~]

(5) "Assessment of needs and plan of care" means a written assessment and individualized plan submitted on a MAP-011 form that is developed by:

(a) An ABI recipient and legal representative if appointed;

(b) A case manager;

(c) An ABI service provider; and

(d) Others as designated by the ABI recipient.

(6) "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for an ABI recipient.

(7) "BISU" or "brain injury service unit" means the brain injury service unit in the Division of Mental Health, Department for Mental Health and Mental Retardation.

(8) "Case manager" means an individual who manages the

overall development and monitoring of a recipient's assessment of needs and plan of care.

(9) "Crisis prevention and response plan" means a plan developed to identify any potential risk to a recipient and to detail a strategy to minimize the risk.

(10) "DCBS" means the Department for Community Based Services.

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

(12) "DMHMR" means the Department for Mental Health and Mental Retardation Services.

(13) "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, including:

(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;

(b) Death or incapacitation of the primary caregiver;

(c) Required paperwork and documentation for processing in accordance with Section 3 of this administrative regulation that has not been completed but is expected to be completed in two (2) weeks or less; or

(d) The individual or his or her legal representative has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period.

(14) "Human rights committee" means a group of individuals established to protect the rights and welfare of an ABI recipient.

(15) "Interdisciplinary team" means a group of individuals that assist in the development and implementation of an ABI's recipient's plan of care consisting of:

(a) The ABI recipient and legal representative if appointed;

(b) A chosen ABI service provider;

(c) A case manager; or

(d) Others as designated by the ABI recipient.

(16) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(17) "Occupational therapist" means an individual who is licensed in accordance with KRS 319A.010.

(18) "Psychologist" means an individual who is licensed in accordance with KRS 319.050.

(19) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(20) "Qualified mental health professional" means a qualified mental health professional as defined in KRS 202A.011(12).

(21) "Speech therapist" means an individual who is licensed in accordance with KRS 334A.030.

(22) "Transition plan" means a plan that is developed to aid an ABI recipient in transitioning from the ABI program into the community.

Section 2. Provider Participation. (1) In order to provide an ABI waiver service in accordance with Section 4 of this administrative regulation, an ABI provider shall:

(a) Be enrolled as a Medicaid provider in accordance with 907 KAR 1:671;

(b) Be certified by the department prior to the initiation of the service;

(c) Be recertified at least annually by the department; and

(d) Have an office within the Commonwealth of Kentucky.

(2) An ABI provider shall comply with 907 KAR 1:672, 907 KAR 1:673 and 902 KAR 20:078.

(3) An ABI provider shall have a governing body that shall:

(a) Be a legally-constituted entity within the Commonwealth of Kentucky; and

(b) Be responsible for the overall operation of the organization including establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety and welfare of an ABI recipient served by the agency.

(4) An ABI provider shall:

(a) Ensure that an ABI waiver service is not provided to an ABI recipient by a staff member of the ABI provider who has one (1) of the following blood relationships to the ABI recipient:

1. Child;

2. Parent;

3. Sibling; or

4. Spouse;

(b) Not enroll an ABI recipient for whom they cannot meet the service needs; and

(c) Have and follow written criteria that complies with this administrative regulation for determining the eligibility of an individual for admission to services.

(5) An ABI provider shall comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, **42 U.S.C. 1320d to 1320d-8.**

(6) An ABI provider shall meet the following requirements if responsible for the management of ABI recipient funds:

(a) Separate accounting shall be maintained for each ABI recipient or for his or her interest in a common trust or special account;

(b) Account balance and records of transactions shall be provided to the ABI recipient or legal representative on a quarterly basis; and

(c) The ABI recipient or legal representative shall be notified when a large balance is accrued that may affect Medicaid eligibility.

(7) An ABI provider shall have a written statement of its mission and values.

(8) An ABI provider shall have written policy and procedures for communication and interaction with a family and legal representative of an ABI recipient which shall:

(a) Require a timely response to an inquiry;

(b) Require the opportunity for interaction with direct care staff;

(c) Require prompt notification of any unusual incident;

(d) Permit visitation with the ABI recipient at a reasonable time and with due regard for the ABI recipient's right of privacy;

(e) Require involvement of the legal representative in decision-making regarding the selection and direction of the service provided; and

(f) Consider the cultural, educational, language and socioeconomic characteristics of the ABI recipient.

(9) An ABI provider shall ensure the rights of an ABI recipient by:

(a) Making available a description of the rights and the means by which they can be exercised which shall include:

1. The right to time, space, and opportunity for personal privacy;

2. The right to retain and use personal possessions including clothing, personal spending money and cigarettes; and

3. For a residential, personal care, companion or respite provider, the right to communicate, associate and meet privately with a person of the ABI recipient's choice, including:

a. The right to send and receive unopened mail; and

b. The right to private, accessible use of the telephone;

(b) Maintaining a grievance and appeals system;

(c) Establishing a human rights committee which shall:

1. Include an:

a. Individual with a brain injury or a family member of an individual with a brain injury;

b. Individual not affiliated with the ABI provider; and

c. Individual who has knowledge and experience in rights issues;

2. Review and approve each assessment of need and plan of care with rights restrictions at a minimum of every six (6) months; and

3. Review and approve, in conjunction with the ABI recipient's team, behavior intervention plans that include highly restrictive procedures or contain rights restrictions;

(d) Establishing a behavior intervention committee which shall:

1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;

2. Be separate from the human rights committee; and

3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the ABI recipient's team, an intervention plan that includes highly-restrictive procedures or contain rights restrictions; and

(e) Complying with the Americans with Disabilities Act (28

C.F.R. **Part** ~~[Chapter-]~~ 35).

(10) An ABI provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that a covered service is provided and all the records and reports shall be made available to:

(a) The department;

(b) DMHMR or its designee;

(c) The ABI recipient's selected case manager;

(d) The Commonwealth of Kentucky, **Health and Family Services** Cabinet ~~[for Health Services]~~, Office of Inspector General or its designee;

(e) The United States General Accounting Office or its designee;

(f) The Commonwealth of Kentucky, Office of the Auditor of Public Accounts or its designee;

(g) The Commonwealth of Kentucky, Office of the Attorney General or its designee; **or**

(h) ~~[The Commonwealth of Kentucky, Cabinet for Families and Children or its designee; or~~

~~(i)~~] The Centers for Medicare and Medicaid Services.

(11) An ABI provider shall cooperate with monitoring visits from monitoring agents.

(12) An ABI provider shall maintain a record for each ABI recipient served that shall:

(a) Be recorded in permanent ink;

(b) Be free from correction fluid;

(c) Have a strike through each error which is initialed and dated; and

(d) Contain no blank lines in between each entry.

(13) A record of each ABI recipient who is served shall:

(a) Be cumulative;

(b) Be readily available;

(c) Contain a legend that identifies any symbol and abbreviations used in making a record entry;

(d) Contain the following specific information:

1. The ABI recipient's name, Social Security number and Medicaid Identification Number (MAID);

2. An assessment summary relevant to the service area;

3. The assessment of needs and plan of care;

4. The crisis prevention and response plan that shall include:

a. A list containing emergency contact telephone numbers; and

b. The ABI recipient's history of any allergies with appropriate allergy alerts for severe allergies;

5. The transition plan that shall include:

a. Skills to be obtained from the ABI waiver program;

b. A listing of the on-going formal and informal community services available to be accessed; and

c. A listing of additional resources needed;

6. The training objective for any service which provides skills training to the ABI recipient;

7. The ABI recipient's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;

8. Legally-adequate consent for the provision of services or other treatment including a consent for emergency attention which shall be located at each service site;

9. The Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350 updated at recertification; and

10. Original and current level of care certification;

(e) Be maintained by the provider in a manner to ensure the confidentiality of the ABI recipient's record and other personal information and to allow the ABI recipient or legal representative to determine when to share **the** ~~[such]~~ information as provided by law;

(f) Have the safety from loss, destruction or use by an unauthorized person ensured by the provider; and

(g) Be available to the ABI recipient or legal guardian according to the provider's written policy and procedures which shall address the availability of the record.

(14) An ABI provider shall:

(a)1. Ensure that each staff, prior to providing direct care to a recipient, has tested negatively for tuberculosis within the past twelve (12) months; and

2. Maintain documentation of each staff person's negative tuberculosis test described in subparagraph 1 of this paragraph;

(b) For each potential employee, obtain a criminal record check from the Administrative Office of the Courts for each state in which the individual resided during the previous year:

1. Prior to employment; and

2. Prior to placement as a volunteer performing direct care staff or a supervisory function;

(c) Not employ or place an individual with a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction;

(d) Not employ an individual who has a conviction of Driving Under the Influence (DUI) during the past year to transport an ABI recipient;

(e) Not employ an individual who has a conviction of abuse or sale of illegal drugs;

(f) Not employ an individual who has a conviction of abuse, neglect or exploitation;

(g) Not employ an individual who has a substantiated fraud, abuse or neglect allegation;

(h) Evaluate the performance of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter; and

(i) Conduct periodic and regularly-scheduled supervisory visits of all professional and paraprofessional direct-service staff at the service site in order to ensure that high quality, appropriate services are provided to the ABI recipient.

(15) An ABI provider shall:

(a) Have an executive director who:

1. Is qualified with a bachelor's degree in administration or a human services field; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served an individual with a disability; **and**

(b) Have adequate direct-contact staff who:

1. Is eighteen (18) years or older;

2. Has a high school diploma or GED; **and**

3.**a.** Has a minimum of two (2) years experience in providing a service to an individual with a disability; or

**b.** ~~[4.]~~ Has successfully completed a formalized training program such as nursing facility nurse aide training.

(16) An ABI provider shall establish written guidelines that address the health, safety and welfare of an ABI recipient, which shall include:

(a) Ensuring the health, safety and welfare of the ABI recipient;

(b) The prohibition of firearms and ammunition at a provider-service site;

(c) Maintenance of sanitary conditions;

(d) Ensuring each site operated by the provider is equipped with:

1. Operational smoke detectors placed in strategic locations; and

2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic locations, one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;

(e) For a residential or structured day provider, ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by the ABI recipient not exceeding 110 degrees Fahrenheit;

(f) Ensuring that the nutritional needs of the ABI recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(g) Ensuring that staff administering medication:

1. Have specific training and documented competency on cause and effect and proper administration and storage of medication which shall be provided by a nurse, pharmacist or medical doctor; and

2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:

a. Be kept in a locked container;

b. If a controlled substance, be kept under double lock;

c. Be carried in a proper container labeled with medication, dosage, and time if administered to the ABI recipient or self-administered at a program site other than his or her residence; and

d. Be documented on a medication administration form and properly disposed of if discontinued; and

(h) Policy and procedures for on-going monitoring of medication administration.

(17) An ABI provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:

(a) Be readily accessible on site;

(b) Include an evacuation drill to be conducted and documented at least quarterly and for a residential setting, scheduled to include a time when an ABI recipient is asleep; and

(c) Mandate that the result of an evacuation drill be evaluated and modified as needed.

(18) An ABI provider shall:

(a) Provide orientation for each new employee which shall include the mission, goals, organization and policy of the agency;

(b) Require documentation of all training which shall include:

1. The type of training provided;

2. The name and title of the trainer;

3. The length of the training;

4. The date of completion; and

5. The signature of the trainee verifying completion;

(c) Ensure that each employee complete ABI training consistent with the curriculum that has been approved by DMHMR prior to working independently with an ABI recipient which shall include:

1. Sixteen (16) hours of orientation in brain injury;

2. Identifying and reporting abuse, neglect and exploitation;

3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

4. Coronary pulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

(d) Ensure that each employee completes six (6) hours of continuing education in brain injury annually;

(e) Not be required to receive the training specified in paragraph (c)1 of this subsection if the provider is a professional who has, within the prior five (5) years, 2000 hours of experience in serving a person with a primary diagnosis of a brain injury including:

1. An occupational therapist providing occupational therapy;

2. A psychologist or psychologist with autonomous functioning providing psychological services; or

3. A speech therapist providing speech therapy;

(f) Ensure that an individual, prior to volunteering, meets the requirements specified in subsection (14)(a), (b), (c), (d) (e), (f) and (g) of this section; **and**

(g) Ensure that an individual volunteer, prior to working, **receives** ~~[receive]~~ training which shall include:

1. Sixteen (16) hours of orientation in brain injury as specified in paragraph (c)1, 2, 3, and 4 of this subsection;

2. Orientation to the agency;

3. A confidentiality statement; and

4. Individualized instruction on the needs of the ABI recipient to whom the volunteer **will provide** ~~[provides]~~ services.

Section 3. ABI Recipient Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the ABI program, an individual shall:

(a) Be twenty-one (21) to sixty-five (65) years of age with an ABI that involves cognition, behavior, or a physical function which necessitates supervised and rehabilitative services;

(b) Be placed on the ABI waiting list in accordance with Section 7 of this administrative regulation;

(c) Submit an application packet to the department which shall contain:

1. A copy of the allocation letter received from BISU;

2. An Assessment of Needs and Plan of Care form - MAP-011;

3. A statement for the need for long term care services which shall be signed and dated by a physician on an Acquired Brain Injury Waivers Services Program Physician Certification form - MAP-4099; ~~[and]~~

4. A Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350; **and**

**5. MAP-552K, Department for Community Based Services Notice of Availability of Income for Long Term Care/Waiver Agency/Hospice form;**

(d) Submit the following information to the department:

1. An ABI Waiver Services Program **Applicant/Recipient** Memorandum of Understanding form - MAP-4096;

2. The ABI Recipient's Admission ~~[or]~~ Discharge DCBS Notification form - MAP-24B; and

3. A Freedom of Choice of **Home and Community Based Waiver Service** Providers form - MAP-4102;

(e) Receive notification of potential funding allocated for ABI services for the individual in accordance with Section 7 of this administrative regulation;

(f) Meet nursing facility level of care requirements established in 907 KAR 1:022 including nursing facility services for a brain injury;

(g) Meet the following conditions:

1. Have a primary diagnosis that indicates an ABI with structural, nondegenerative brain injury;

2. Be medically stable;

3. Meet Medicaid eligibility requirements established in 907 KAR 1:605;

4. Exhibit cognitive, behavioral, motor or sensory damage with an indication for rehabilitation and retraining potential; and

5. Have a rating of at least four (4) on the Rancho Los Amigos Level of Cognitive Function Scale; and

(h) Receive notification of approval from the department.

(2) An individual shall not remain in the ABI waiver program for an indefinite period of time.

(3) The basis of an eligibility determination for participation in the ABI waiver program shall be:

(a) The presenting problem;

(b) The assessment of needs and plan of care goal;

(c) The expected benefit of the admission;

(d) The expected outcome;

(e) The service required; and

(f) The cost effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.

(4) An ABI waiver service shall not be furnished to an individual if the individual 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 a service in another home and community based waiver program.

(5) The department shall make:

(a) An initial evaluation to determine if an individual meets the nursing facility level of care criteria established in 907 KAR 1:022; and

(b) A determination of whether to admit an individual into the ABI waiver program.

(6) To maintain eligibility as an ABI recipient:

(a) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 1:605; and

(b) A reevaluation shall be conducted at least once every six (6) months to determine if the individual continues to meet the nursing facility level of care criteria established in 907 KAR 1:022.

(7) An ABI case management provider shall notify the local DCBS office, BISU and the department via an ABI Recipient's Admission ~~[or]~~ Discharge DCBS Notification form - MAP-24B, if the ABI recipient is:

(a) Terminated from the ABI waiver program;

(b) Temporarily discharged;

(c) Admitted to a nursing facility; or

(d) Changing the primary provider.

(8) The department may exclude an individual from receiving an ABI waiver service for whom the aggregate cost of ABI waiver service would reasonably be expected to exceed the cost of a nursing facility service.

(9) Involuntary termination and loss of an ABI waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated **if** ~~[when]~~:

(a)[~~1.~~] An individual fails to initiate an ABI waiver service within sixty (60) days of notification of potential funding without good cause shown. [~~; and~~

~~2.~~] The individual or legal representative shall have the burden of providing documentation of good cause, including:

1. [~~a.~~] A statement signed by the recipient or legal representative;

2. [~~b.~~] Copies of letters to providers; and

3. [~~c.~~] Copies of letters from providers;

(b) An ABI recipient or legal representative fails to access the required service as outlined in the assessment of need and plan of care **for** [~~or~~] a period greater than sixty (60) consecutive days without good cause shown. [~~;~~]

1. The recipient or legal representative shall have the burden of providing documentation of good cause including:

a. A statement signed by the recipient or legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers; and

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; and

b. **For an individual who resides in a facility,** the length of the transition plan and contingent upon continued active participation in the transition plan [~~for an individual who does reside in a facility~~];

(c) An ABI recipient changes residence outside the Commonwealth of Kentucky; or

(d) An ABI recipient does not meet the nursing facility level of care criteria established in 907 KAR 1:022.

(10) Involuntary termination of a service to an ABI recipient by an ABI provider shall require:

(a) Simultaneous notice to BISU, the ABI recipient or legal representative and the case manager at least ten (10) days prior to the effective date of the action, which shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the action is taken; and

4. The ABI recipient's right to appeal the intended action through the provider's appeal or grievance process; and

(b) The case manager in conjunction with the provider to:

1. Provide the ABI recipient with the name, address and telephone number of each current ABI provider in the state;

2. Provide assistance to the ABI recipient in making contact with another ABI provider;

3. Arrange transportation for a requested visit to an ABI provider site;

4. Provide a copy of pertinent information to the ABI recipient or legal representative;

5. Ensure the health, safety and welfare of the ABI recipient until an appropriate placement is secured; and

6. Provide assistance to ensure a safe and effective service transition.

(11) Voluntary termination and loss of an ABI waiver program placement shall be initiated **if** [~~when~~] an ABI recipient or legal representative submits a written notice of intent to discontinue services to the service provider and to DMHMR. [~~:~~]

(a) **An** [~~No~~] action to terminate services shall **not** be initiated until thirty (30) calendar days from the date of the notice; and

(b) The ABI recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 4. Covered Services. (1) An ABI waiver service shall:

(a) Be prior-authorized by the department; and

(b) Be provided pursuant to the assessment of needs and plan of care.

(2) The following services shall be provided to an ABI recipient by an ABI waiver provider:

(a) Case management services, which shall:

1. Include initiation, coordination, implementation, and monitoring of the assessment, evaluation, intake and eligibility process;

2. Assist an ABI recipient in the identification, coordination, and facilitation of the interdisciplinary team and interdisciplinary team meetings;

3. Assist an ABI recipient and the interdisciplinary team to develop and update the assessment of needs and plan of care;

4. Include monitoring of the delivery of services and the effectiveness of the assessment of needs and plan of care, which shall:

a. Be initially developed with the ABI recipient and legal representative if appointed prior to the level of care determination;

b. Be updated within the first thirty (30) days of service and as changes or recertification occurs; and

c. Include the ABI [~~Assessment of Needs and~~] Plan of Care Modification form - MAP-4098 **being** [~~be~~] sent to the department or its designee prior to the implementation of the effective date the change occurs with the ABI recipient;

5. Include a transition plan that shall be developed within the first thirty (30) days of service and updated as changes or recertification occurs, and shall include:

a. The skills or service obtained from the ABI waiver program upon transition into the community; and

b. A listing of the community supports available upon the transition;

6. Assist an ABI recipient in obtaining a needed service outside those available by the ABI waiver;

7. Be provided by a case manager who:

a.(i) Is a registered nurse;

(ii) Is a licensed practical nurse; or

(iii) Is an individual who has a bachelor's or master's degree in a human services field who meets all applicable requirements of his or her particular field including a degree in psychology, sociology, social work, rehabilitation counseling, or occupational therapy;

b. Has completed case management training that is consistent with the curriculum that has been approved by **DMHMR** [~~DMH/MR~~] prior to providing case management services;

c. Shall provide an ABI recipient and legal representative with a listing of each available ABI provider in the service area;

d. Shall maintain documentation signed by an ABI recipient or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;

e. Shall provide a distribution of the crisis prevention and response plan, transition plan, assessment of needs and plan of care, and other documents within the first thirty (30) days of the service to the chosen ABI service provider and as information is updated;

f. Shall not provide case management to more than forty (40) individuals at a given time irrespective of the payor source;

g. Shall not be a provider of other direct services;

h. Shall provide twenty-four (24) hour telephone access to an ABI recipient and chosen ABI provider;

i. Shall work in conjunction with an ABI provider selected by an ABI recipient to develop a crisis prevention and response plan which shall be:

(i) Individual-specific; and

(ii) Updated as a change occurs and at each recertification;

j. Shall assist an ABI recipient in planning resource use and assuring protection of resources;

k. Shall conduct two (2) face-to-face meetings with an ABI recipient within a calendar month occuring at a covered service site no more than fourteen (14) days apart, with one (1) visit quarterly at the ABI recipient's residence [~~with one (1) occurring at a covered service site and one (1) at the ABI recipient's residence, to occur no more than fourteen (14) days apart~~];

l. Shall ensure twenty-four (24) hour availability of services;

m. Shall ensure that the ABI recipient's health, welfare and safety needs are met; and

n. Shall be supervised by an individual who is:

(i) A certified case manager, a certified disability management specialist, a certified rehabilitation registered nurse, or a certified life-care planner; and

(ii) Employed by or under contract with the case management provider agency; and

8. Be documented by a detailed staff note which shall include:

a. The ABI recipient's health, safety and welfare;

b. Progress toward outcomes identified in the approved assessment of needs and plan of care;

c. The date of the service;
d. Beginning and ending time; and
e. The signature, date of signature and title of the individual providing the service;
(b) Behavior programming which shall:
1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;
2. Include a functional analysis of the ABI recipient's behavior which shall include:
a. An evaluation of the impact of an ABI on cognition and behavior;
b. An analysis of potential communicative intent of the behavior;
c. The history of reinforcement for the behavior;
d. Critical variables that precede the behavior;
e. Effects of different situations on the behavior; and
f. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;
3. Include the development of a behavioral support plan which shall:
a. Be developed by the behavioral specialist;
b. Be implemented by another ABI provider;
c. Be revised as necessary;
d. Define the techniques and procedures used;
e. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;
f. Reflect the use of positive approaches; and
g. Prohibit the use of corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;
4. Include the provision of training to other ABI providers concerning implementation of the behavioral intervention plan;
5. Include the monitoring of an ABI recipient's progress which shall be accomplished through:
a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and
b. The reports of an ABI provider involved in implementing the behavioral service plan;
6. Be provided by a behavior specialist who shall:
a.(i) Be a licensed psychologist;
(ii) Be a certified psychologist with autonomous functioning;
(iii) Be a psychological associate or certified psychologist;
(iv) Be a psychiatrist;
(v) Be a licensed clinical social worker;
(vi) Be a clinical nurse specialist with a master's degree in psychiatric nursing or rehabilitation nursing; or
(vii) Be an advanced registered nurse practitioner (ARNP); and
b. Have at least one (1) year of behavior specialist experience or provide documentation of completed coursework regarding learning and behavior principles and techniques; and
7. Be documented by a detailed staff note which shall include:
a. The date of the service;
b. The beginning and ending time; and
c. The signature, date and title of the behavioral specialist;
(c) Companion services which shall:
1. Include a nonmedical service, supervision or socialization;
2. Include assisting with but not performing meal preparation, laundry and shopping;
3. Include light housekeeping tasks which are incidental to the care and supervision of an ABI waiver service recipient;
4. Include services provided according to the approved assessment of needs and plan of care which are therapeutic and not diversional in nature;
5. Include accompanying and assisting an ABI recipient while utilizing transportation services;
6. Include documentation by a detailed staff note which shall include:
a. Progress toward goal and objectives identified in the approved assessment of needs and plan of care;
b. The date of the service;
c. Beginning and ending time; and
d. The signature, date and title of the individual providing the service;
7. Not be provided to an ABI recipient who receives community residential services; and
8. Be provided by:
a. A home health agency licensed and operating in accordance with 902 KAR 20:081;
b. A community mental health center licensed and operating in accordance with 902 KAR 20:091;
c. A group home licensed and operating in accordance with 902 KAR 20:078;
d. A community habilitation program certified by the department; or
e. A staffed residence certified by the department;
(d) Community residential services which shall:
1. Include twenty-four (24) hour supervision in:
a. A staffed residence that is certified by the department which shall not have greater than three (3) ABI recipients in a home rented or owned by the ABI provider; or
b. A group home which shall be licensed and operating in accordance with 902 KAR 20:078;
2. Not include the cost of room and board;
3. Be available to an ABI recipient who:
a. Does not reside with a caregiver;
b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or
c. Demonstrates behavior that may result in potential legal problems if not ameliorated;
4. Utilize a modular home only if the:
a. Wheels are removed;
b. Home is anchored to a permanent foundation; and
c. Windows are of adequate size for an adult to use as an exit in [~~the event of~~] an emergency;
5. If provided via a modular home, have 180 days from the effective date of this administrative regulation to meet the modular home requirements;
6. Not utilize a motor home;
7. Provide a sleeping room which ensures that an ABI recipient:
a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;
b. Does not share a room with an individual who presents a potential threat; and
c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress and clean bed linens as required for the ABI recipient's health and comfort;
8. Provide assistance with daily living skills which shall include:
a. Ambulating;
b. Dressing;
c. Grooming;
d. Eating;
e. Toileting;
f. Bathing;
g. Meal planning, grocery shopping and preparation;
h. Laundry;
i. Budgeting and financial matters;
j. Home care and cleaning;
k. Social skills training;
l. Reduction or elimination of a maladaptive behavior;
m. Instruction in leisure skills; and
n. Instruction in self medication;
9. Provide service and training to obtain the outcomes of the ABI recipient as identified in the approved assessment of needs and plan of care;
10. Provide or arrange for transportation to services, activities and medical appointments as needed;
11. Include participation in medical appointments and follow-up care as directed by the medical staff; and
12. Be documented by a detailed staff note which shall include:
a. Progress toward goal and objectives identified in the approved assessment of needs and plan of care;
b. The date of the service;
c. Beginning and ending time; and

d. The signature, date and title of the individual providing the service;

(e) Counseling services which:

1. Shall be designed to help an ABI waiver service recipient resolve personal issues or interpersonal problems resulting from his or her ABI;

2. Shall assist a family member in implementing an ABI waiver service recipient's approved assessment of needs and plan of care;

3. In a severe case, shall be provided as an adjunct to behavioral programming;

4. Shall include substance abuse or chemical dependency treatment;

5. Shall include building and maintaining healthy relationships;

6. Shall develop social skills or the skills to cope with and adjust to the brain injury;

7. Shall increase knowledge and awareness of the effects of an ABI;

8. May include a group therapy service if **the service is: a.** Provided to a maximum of twelve (12) ABI recipients no more than two (2) times a week not to exceed ninety (90) minutes; and

**b.** [be] Included in the recipient's approved assessment of needs and plan of care for:

(i) [a.] Substance abuse or chemical dependency treatment;

(ii) [b.] Building and maintaining healthy relationships;

(iii) [c.] Developing social skills;

(iv) [d.] Developing skills to cope with and adjust to a brain injury, including the use of cognitive remediation strategies consisting of the development of compensatory memory and problem solving strategies, and the management of impulsivity; and

(v) [e.] Increasing knowledge and awareness of the effects of the acquired brain injury upon the ABI recipient's functioning and social interactions;

9. Shall be provided by:

a. A psychiatrist;

b. A licensed psychologist;

c. A certified psychologist with autonomous functioning;

d. A psychological associate or certified psychologist;

e. A licensed clinical 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; and

10. Shall be documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time; and

c. The signature, date of signature and title of the individual providing the service;

(f) Occupational therapy which shall be:

1. A physician-ordered evaluation of an ABI recipient's level of functioning by applying diagnostic and prognostic tests;

2. Physician-ordered services in a specified amount and duration to guide an ABI recipient in the use of therapeutic, creative, and self-care activities to assist the ABI recipient in obtaining the highest possible level of functioning;

3. Exclusive of maintenance or the prevention of regression;

4. Provided by an occupational therapist; and

5. Documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved assessment of needs and plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature, date and title of the individual providing the service;

(g) Personal care services which shall:

1. Include the retraining of an ABI waiver service recipient in the performance of an activity of daily living by using repetitive, consistent and ongoing instruction and guidance;

2. Be provided by:

a. An adult day health care center licensed and operating in accordance with 902 KAR 20:066; or

b. A home health agency licensed and operating in accordance with 902 KAR 20:081;

3. Include the following activities of daily living:

a. Eating, bathing, dressing or personal hygiene;

b. Meal preparation; and

c. Housekeeping chores including bed-making, dusting and vacuuming;

4. Be documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved assessment of needs and plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature, date and title of the individual providing the service; and

5. Not be provided to an ABI recipient who receives community residential services;

(h) A respite service which shall:

1. [a.] Be provided only to an ABI recipient unable to administer self-care;

2. [b.] Be provided in a variety of settings;

3. [c.] Be provided on a short-term basis due to absence or need for relief of an individual providing care to an ABI recipient;

4. [d.] Be limited to 168 hours in a six (6) month period unless an individual's normal caregiver is unable to provide care due to a:

a. Death in the family;

b. Serious illness; or

c. Hospitalization;

5. [; e.] Not be provided to an ABI recipient who receives community residential services;

6. [f.] Not include the cost of room and board if provided in a nursing facility; **and**

7. [g.] Be documented by a detailed staff note which shall include:

a. [(ii)] The date of the service;

b. [(ii)] The beginning and ending time; and

c. [(iii)] The signature, date of signature and title of the individual providing the service; [and

8. [h.] Not be provided to an ABI recipient who receives community residential services;]

(i) Speech, hearing and language services which shall be:

1. A physician-ordered evaluation of an ABI recipient with a speech, hearing or language disorder;

2. A physician-ordered habilitative service in a specified amount and duration to assist an ABI recipient with a speech and language disability in obtaining the highest possible level of functioning;

3. Exclusive of maintenance or the prevention of regression;

4. Provided by a speech therapist; and

5. Documented by a detailed staff note which shall include:

a. Progress toward goals and objectives identified in the approved assessment of needs and plan of care;

b. The date of the service;

c. The beginning and ending time; and

d. The signature, date and title of the individual providing the service;

(j) Structured day program services which shall:

1. Be provided by:

a. An adult day health care center which is certified by the department and licensed and operating in accordance with 902 KAR 20:066; or

b. An outpatient rehabilitation facility which is certified by the department and licensed and operating in accordance with 902 KAR 20:190;

2. Be to rehabilitate, retrain and reintegrate an individual into the community;

3. Not exceed a staffing ratio of five (5) ABI recipients per one (1) staff person, unless an ABI recipient requires individualized special service;

4. Include the following services:

a. Social skills training;

b. Sensory or motor development;

c. Reduction or elimination of a maladaptive behavior;

d. Prevocational; or

e. Teaching concepts and skills to promote independence including:

(i) Following instructions;

(ii) Attendance and punctuality;
(iii) Task completion;
(iv) Budgeting and money management;
(v) Problem solving; or
(vi) Safety;
5. Be provided in a nonresidential setting;
6. Be developed in accordance with an ABI waiver service recipient's overall approved assessment of needs and plan of care;
7. Reflect the recommendations of an ABI waiver service recipient's interdisciplinary team;
8. Be appropriate:
a. Given an ABI waiver service recipient's age, level of cognitive and behavioral function and interest;
b. Given an ABI waiver service recipient's ability prior to and since his or her injury; and
c. According to the approved assessment of needs and plan of care and be therapeutic in nature and not diversional;
9. Be coordinated with occupational, speech, or other rehabilitation therapy included in an ABI waiver service recipient's assessment of needs and plan of care;
10. Provide an ABI waiver service recipient with an organized framework within which to function in his or her daily activities;
11. Entail frequent assessments of an ABI waiver service recipient's progress and be appropriately revised as necessary; and
12. Be documented by a detailed staff note which shall include:
a. Progress toward goal and objectives identified in the approved assessment of needs and plan of care;
b. The date of the service;
c. The beginning and ending time; and
d. The signature, date and title of the individual providing the service;
(k) Supported employment which shall be:
1. Intensive, ongoing services for an ABI recipient to maintain paid employment in an environment in which an individual without a disability is employed;
2. Provided in a variety of settings;
3. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. **Parts 300 to 399** ~~[Subtitle B, Chapter III]~~), proof of which shall be documented in the ABI recipient's file;
4. Limited to forty (40) hours per week alone or in combination with structured day services;
5. An activity needed to sustain paid work by an ABI recipient receiving waiver services including supervision and training;
6. Exclusive of work performed directly for the supported employment provider; and
7. Documented by a time and attendance record with shall include:
a. The date of service;
b. The beginning and ending time; and
c. The signature, date and title of the individual providing the service;
(l) Specialized medical equipment and supplies which shall:
1. Include durable and nondurable medical equipment, devices, controls, appliances or ancillary supplies;
2. Enable an ABI recipient to increase his ability to perform daily living activities or to perceive, control or communicate with the environment;
3. Be ordered by a physician and submitted on a Request for Equipment MAP-95 form and include three (3) estimates for vision and hearing;
4. Include equipment necessary to the proper functioning of specialized items;
5. Not be available through the department's durable medical equipment, vision or hearing programs;
6. Not be necessary for life support;
7. Meet applicable standards of manufacture, design and installation; and
8. Exclude those items which are not of direct medical or remedial benefit to an ABI recipient; or
(m) Environmental modifications which shall:
1. Be provided in accordance with applicable state and local building codes;
2. Be provided to an ABI recipient if:
a. Ordered by a physician;
b. Prior-authorized by the department;
c. Submitted on a Request for Equipment MAP-95 form by a case manager;
d. Specified in an ABI recipient's approved assessment of needs and plan of care; ~~[and]~~
e. Necessary to enable an ABI recipient to function with greater independence within his or her home; and
f. Without the modification, **the ABI recipient** would require institutionalization;
3. Not include a vehicle modification or an electronic monitoring system; and
4. Be limited to no more than $1000 for an ABI recipient in a six (6) month period.
~~[(2) "Department" means the Department for Medicaid Services or its designated agent.]~~

Section 5. ~~[2.]~~ Exclusions of the Acquired Brain Injury Waiver Program. A condition included in the following list shall not be considered an acquired brain injury 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 intercranial 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 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 community.

~~[Section 3. General Coverage Provisions. (1) The aggregate cost of an individual receiving ABI waiver services shall not exceed the aggregate cost of care for the individual that would otherwise be provided in a nursing facility.~~
~~(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.~~
~~(4) The basis of an eligibility determination for participating 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 services required; and~~
~~(f) 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 regarding whether an individual meets the nursing facility level of care criteria established in 907 KAR 1:022;~~

~~(b) A periodic nursing facility level of care reevaluation at least once every six (6) months and more frequently if necessary depending upon an individual's progress; and~~

~~(c) A determination of whether to admit an individual into 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 recipient shall be terminated if the department determines that the individual does not have the potential for reentry into the community without the continued availability of ABI waiver services.~~

~~Section 5. Conditions for Agency and Service Provider Participation. (1) An ABI waiver service provider shall:~~

~~(a) Be enrolled as a Medicaid provider in accordance with 907 KAR 1:672;~~

~~(b) Be a legally constituted entity in the Commonwealth of Kentucky and have documenting 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:~~

~~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 1:671;~~

~~(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 dietary allowance of the Food and Nutrition Board of the National Research Council or as otherwise specified by a physician;~~

~~(j) Have written policies and procedures that comply with the conditions for participation established in the Acquired Brain Injury Services and Reimbursement Program Manual;~~

~~(k) Comply with applicable federal and state statutes and regulations relating to the provision of services under the Kentucky Medicaid Program;~~

~~(l) Meet the applicable certification requirements for providing ABI waiver services in accordance with 907 KAR 1:672, KRS 205.8477 and 42 C.F.R. 455 Subpart B;~~

~~(m) Comply with the conditions for participation established in the Acquired Brain Injury Services and Reimbursement Program Manual; and~~

~~(n) Prior to employing an individual to provide ABI waiver services, verify that all requirements of subsections (2) and (3) of this section have been met.~~

~~(2) 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 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;~~

~~(g) Be free of a communicable disease; and~~

~~(h) Meet other requirements pertinent to the service they shall provide as specified in the Acquired Brain Injury Services and Reimbursement Program Manual.~~

~~(3) All professional direct service staff shall meet:~~

~~(a) The requirements established in subsection (2) of this section; and~~

~~(b) Appropriate licensing, certification, and degree requirements necessary to practice in the Commonwealth of Kentucky.~~

~~(4) 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) A provider terminated from another Medicaid Program shall not be eligible for participation in the ABI Waiver Program in accordance with 907 KAR 1:672.~~]

Section 6. Incident Reporting Process. [~~Provider Incident Reporting Procedures.~~] (1) An incident shall be documented on an incident report form.

(2) There shall be three (3) classes of incidents as follows [~~Following are incident classifications and reporting requirements~~]:

(a) A Class I incident which shall:

1. Be minor in nature and not create a serious consequence;

2. Not require an investigation by the provider agency;

3. Be reported to the case manager within twenty-four (24) hours; [~~and~~]

4. Be reported to the guardian as directed by the guardian; and

5. Be retained on file at the provider and case manager agency [~~, as well as case management agency~~];

(b) A Class II incident which 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 which shall be 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 [~~followed by a complete written report of the incident investigation and follow-up within ten (10) calendar days of discovery~~]; and

c. BISU [~~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 followed by a complete written report of the incident investigation and follow-up within ten (10) calendar days of discovery; and

(c) A Class III incident which shall:

1. Be grave in nature; [~~including:~~

~~a. Death;~~

~~b. An event made controversial due to media exposure, even if unrelated to a specific incident; or~~

~~c. Suspected or actual abuse, neglect, or exploitation;~~]

2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager; and

3. Be reported to the following by the provider agency:

a. The case manager within eight (8) hours of discovery;

b. DCBS, immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209; [~~The Cabinet for Health Services, Department for Community Based Services within eight (8) hours of discovery;~~]

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. BISU, [~~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. If an incident occurs after 5 p.m. EST on a weekday or occurs on a weekend or holiday, notification to BISU shall occur on the following business day.

Section 7. ABI Waiting List. (1) An individual between the age of twenty-one (21) to sixty-five (65) years of age applying for an ABI waiver service shall be placed on a statewide waiting list which shall be maintained by the department.

(2) In order to be placed on the ABI waiting list, an individual shall submit to the department a completed Acquired Brain Injury Waiver Services Program Application form - MAP-26[B], and an Acquired Brain Injury Waiver Services Program Physician Certification form - MAP-4099.

(3) The order of placement on the waiting list shall be determined by chronological date of receipt of the Acquired Brain Injury Waiver Services Program Physician Certification form - MAP-4099 and by category of need of the individual as follows:

(a) Emergency. An immediate service is indicated as determined by:

1. The individual currently is demonstrating behavior related to his acquired brain injury that places the recipient or caregiver or others at risk of significant harm; or

2. The individual is demonstrating behavior related to his acquired brain injury which has resulted in his arrest; or

(b) Nonemergency.

(4) In determining chronological status, the original date of receipt of the Acquired Brain Injury Waiver Services Program Application form - MAP-26[B] and the Acquired Brain Injury Waiver Services Program Physician Certification form - MAP-4099 shall be maintained and not change **if** [~~when~~] an individual is moved from one (1) category of need to another.

(5) A written statement by a physician or other qualified mental health professional **shall be** [**is**] required to support the validation of risk of significant harm to a recipient or caregiver.

(6) Written documentation by law enforcement or court personnel **shall be** [**is**] required to support the validation of a history of arrest.

(7) If multiple applications are received on the same date, a lottery shall be held to determine placement on the waiting list within each category of need.

(8) A written notification of placement on the waiting list shall be mailed to the individual or his legal representative and case management provider if identified.

(9) Maintenance of the ABI waiting list shall occur as follows:

(a) The department shall, at a minimum, annually update the waiting list during the birth month of an individual;

(b) An individual or his legal representative and his case management provider shall be contacted in writing to verify the accuracy of the information on the waiting list and his continued desire to pursue placement in the ABI program; and

(c) The requested data shall be received by the department within thirty (30) days from the date on the written notice cited in subsection (8) of this section.

(10) Reassignment of category of need shall be completed based on the updated information and validation process.

(11) An individual or legal representative may submit a request for consideration of movement from one category of need to another at any time an individual's status changes.

(12) An individual shall be removed from the ABI waiting list if:

(a) After a documented attempt, the department is unable to locate the individual or his legal representative;

(b) The individual is deceased;

(c) The individual or his legal representative refuses the offer of ABI placement for services and does not request to be maintained on the waiting list; or

(d)[~~1.~~] An ABI placement for services offer is refused by the individual or legal representative and he or she does not, without good cause, complete the Acquired Brain Injury Waiver Services Program Application form - MAP-26[B] application within sixty (60) days of the placement allocation date.

1. The individual or his legal representative shall have the burden of providing documentation of good cause including:

a. A signed statement by the individual or the legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers.

2. Upon receipt of documentation of good cause, the department shall grant one (1) sixty (60) day extension in writing.

(13) If an individual is removed from the ABI waiting list, written notification shall be mailed by the department to the individual or his legal representative and the ABI case manager.

(14) The removal of an individual from the ABI waiting list shall not prevent the submittal of a new application at a later date.

(15) Potential funding allocated for services for an individual shall be based upon:

(a) The individual's category of need; and

(b) The individual's chronological date of placement on the waiting list. [~~Provider Participation Termination. A provider's participation shall be terminated by the provider or the department in accordance with 907 KAR 1:671.~~

~~Section 8. Covered Services. (1) Except as limited in Section 9 of this administrative regulation, the following shall be considered Medicaid covered services:~~

~~(a) Case management services;~~

~~(b) Personal care services;~~

~~(c) Respite care;~~

~~(d) Companion services;~~

~~(e) Structured day program services;~~

~~(f) Supported employment services;~~

~~(g) Behavior programming services;~~

~~(h) Counseling services;~~

~~(i) Occupational therapy, speech, hearing, and language services;~~

~~(j) Specialized medical equipment and supplies;~~

~~(k) Environmental modification; and~~

~~(l) Community residential services.~~

(2) ABI Waiver Program services and services established in 42 U.S.C. 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.

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 (CRRN), 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;

(j) Submitting an ABI waiver service recipient's updated plan of care to the department every six (6) months; and

(k) 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 retraining 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:

(a) Eating, bathing, dressing, or personal hygiene;

(b) Meal preparation (excluding meal cost); or

(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 1:672.

(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. Interest 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 via a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III). Documentation that a supported employment service is unavailable, via the Rehabilitation Act of 1973 or Pub.L. 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)1. Be a licensed psychologist;

2. Be a certified psychologist with autonomous functioning;

3. Be a psychological associate or certified psychologist;

4. Be a psychiatrist;

5. Be a licensed clinical social worker;

6. Be a clinical nurse specialist with a master's degree in psychiatric nursing or rehabilitation nursing; or

7. Be an advanced registered nurse practitioner (ARNP); and

(b)1. 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 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;

(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 in 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 behavior 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; and

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.

(5) 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.

(6) 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:

(a) Meet all applicable state licensure and certification requirements; and

(b) Be employed by or under contract with a participating ABI provider agency.

(2) Except for services over and above the Medicaid Program, occupational therapy or speech, hearing, and language services shall be provided and covered via the Medicaid Program.

(3) Occupational therapy or speech, hearing, and language services over and above the Medicaid Program shall be covered via the ABI Waiver Program.

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) Specified in the ABI waiver service recipient's plan of care; and

(c) Obtained from a Medicaid-certified pharmacy or Medicare- and Medicaid-certified medical equipment supplier; and

(d) 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

(b) The equipment's and supplies' necessity in regards to an ABI waiver service recipient's plan of care.

(3) A case manager shall be responsible for:

(a) Requesting prior authorization, using a MAP-95 form, for specialized medical equipment and supplies; and

(b) Arranging for and obtaining specialized medical equipment and supplies.

(4) All specialized medical equipment and supplies shall meet applicable standards of manufacture, design, and installation.

(5) 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)1. 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; and

(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) Shall include:

1. Supervision and oversight;

2. 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. Activities of daily living training;

4. Social skills training;

5. Home care tasks training; or

6. Home management tasks 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. Limits on Coverage. (1) Respite services shall be limited to no more than 168 units in a six (6) month period. An exception to this period shall be granted by the department if the individual's primary caregiver's 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 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 Applicant/Recipient Memorandum of Understanding" (MAP-4096);~~
~~(d) Upon receipt of the documentation listed in paragraph (c) of this subsection, the department shall render a decision regarding the individual's eligibility for ABI services;~~
~~(e) If the department's registered nurse or nurses reviewing an individual's documentation regarding ABI eligibility determine that an individual is not likely to qualify for ABI services, the nurse or nurses shall refer the matter to a physician who shall:~~
~~1.a. Be a physical medicine and rehabilitation physician; or~~
~~b. Be a physician who is qualified by virtue of rehabilitation training and experience;~~
~~2. Have two (2) years of full-time experience in managing rehabilitation services in a brain injury program; and~~
~~3. Determine whether the individual qualifies for ABI services and notify the department of his or her determination;~~
~~(f) In accordance with paragraph (e) of this subsection, upon receiving a physician's determination that an individual qualifies for ABI services, the department shall follow the procedures established in paragraph (c) of this subsection; and~~
~~(g) Upon receiving a physician's determination that an individual does not qualify for ABI services, the department shall notify the individual and the case management agency which initiated the request for ABI services.~~
~~(4) An individual determined to not qualify for ABI services may appeal the determination in accordance with 907 KAR 1:560 and 907 KAR 1:563.~~
~~(5) A modification of an ABI recipient's plan of care shall be authorized if:~~
~~(a) The recipient's case management agency notifies the department of the modification by submitting:~~
~~1. An ABI plan of Care Modification form (MAP-4098);~~
~~2. A Request for Equipment form (MAP-95), if applicable; and~~
~~3. A brief explanation of the need for the modification; and~~
~~(b) The department approves the modification.~~

~~Section 23. Recipient Choice. An individual eligible to receive acquired brain injury waiver services and his or her legal representative shall be given a choice to:~~
~~(1) Receive home and community based services or nursing facility services subject to the limitations established in Section 3 of this administrative regulation; and~~
~~(2) Select a participating ABI waiver provider from whom he or she wishes to receive a service.~~]

Section 8. Appeal [~~24. Appeals~~] Rights. (1) An appeal of a department decision [~~negative action taken by the department~~] regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision [~~negative action taken by the department~~] regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision [~~negative action taken by the department~~] regarding a [~~Medicaid~~] provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

Section 9. [~~25.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-011, Acquired Brain Injury Assessment of Needs and Plan of Care, **December** [~~May~~] 2003 edition";

(b) "MAP-24B, Acquired Brain Injury (ABI) Recipient's Admission [~~or~~] Discharge Department for Community Based Services (DCBS) Notification, May 2003 edition";

(c) "MAP-26, Acquired Brain Injury (ABI) Waiver Services Program Application, May 2003 edition";

(d) "MAP-95, Request for Equipment Form, September 2002 edition";

(e) "MAP-552K, Department for Community Based Services Notice of Availability **of Income** for Long Term Care/Waiver Agency/Hospice, January 2001 edition";

(f) "MAP-4096, Acquired Brain Injury Waiver Services Program **Applicant/Recipient** Memorandum of Understanding, May 2003 edition";

(g) "MAP-4098, Acquired Brain Injury Plan of Care Modification, May 2003 edition";

(h) "MAP-4099, Acquired Brain Injury (ABI) Waiver Services Program Physician Certification, May 2003 edition";

(i) "Incident Report, **December** [~~May~~] 2003 edition";

(j) "MAP-4102, Freedom of Choice of Home and Community Based Waiver [~~for Persons with Acquired Brain Injury (ABI)~~] Service Providers, **May 2003** [~~September 2002~~] edition"; [~~and~~]

(k) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form, January 2000 edition"; **and**

**(l) "Rancho Los Amigos Level of Cognitive Function Scale, November 1974**. [~~"Acquired Brain Injury Services and Reimbursement Program Manual", Department for Medicaid Services, "September 2001 edition", is incorporated by reference.~~]

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

MIKE ROBINSON, Commissioner
JAMES W. HOLSINGER, JR., Secretary
APPROVED BY AGENCY: December 30, 2003
FILED WITH LRC: January 14, 2004 at 11 a.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax(502) 564-7573.

## CABINET FOR HEALTH SERVICES
## Department for Medicaid Services
## Division of Physicians and Specialty Services
## (As Amended at ARRS, February 10, 2004)

### 907 KAR 3:170. Telehealth services and reimbursement.

RELATES TO: KRS 11.550, 194A.060, **205.559,** [~~194A.030(3),~~] 205.560, 422.317, 434.840 to 434 860, 42 C.F.R. 415.152, 415.174, 415.184, **431.300 to 431.307** [~~431 Subpart F~~], 440.50

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.559(7), 205.560

EFFECTIVE: December 1, 2003

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 citizenry. KRS 205.559 establishes the requirements regarding Medicaid reimbursement of telehealth providers **and KRS 205.559(2) and (7) require the cabinet to promulgate an administrative regulation relating to telehealth services and reimbursement**. This administrative regulation establishes the coverage provisions relating to telehealth services and the method of determining reimbursement for services by the Department for Medicaid Services in accordance with KRS 205.559.

Section 1. Definitions. (1) "Consultation" means a type of evaluation and management service as defined by **the most recent edition of the Current Procedural Terminology published**

annually by the American Medical Association. [Current Procedural Terminology, CPT 2003 [2001] edition or the annual replacement revision upon its adoption by the department.]

(2) "CPT code" means a code used for reporting procedures and services performed by physicians or other licensed medical professionals which is [and] published annually by the American Medical Association in Current Procedural Terminology[, CPT 2003 [2001] edition or the annual replacement revision upon its adoption by the department].

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

(4) "GT modifier" means a modifier that identifies a telehealth service which is approved by the healthcare common procedure coding system (HCPCS).

(5) "Health care provider" means a:

(a) Licensed physician;

(b) [, a] Licensed advanced registered nurse practitioner;

(c) [, a] Certified physician assistant working under physician supervision;

(d) [, or a] Licensed dentist or oral surgeon; or

(e) Licensed community mental health center [CMHC].

(6) [(5)] "Hub site" means a telehealth site where the medical specialist providing the telehealth service is located and is considered the place of service.

(7) [(6)] "KenPAC" means the Kentucky Patient Access and Care system.

(8) [(7)] "KenPAC PCCM" means a Medicaid provider who is enrolled as a primary care case manager in the Kentucky Patient Access and Care System.

(9) [(8)] "Legally-authorized representative" means a recipient's parent or guardian if a recipient is a minor child, or a person with power of attorney for a recipient.

(10) "Licensed community mental health center" or "licensed CMHC" means a facility that provides a comprehensive range of mental health services to recipients of a designated area in accordance with KRS 210.370 to 210.480.

(11) [(9)] "Medical necessity" or "medically necessary" means a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(12) [(10)] "Medical specialist" means a physician specialist, [or] an oral surgeon, or a CMHC as specified in Section 4(1) [2(1)] of this administrative regulation.

(13) [(11)] "Spoke site" means a telehealth site where the recipient receiving the telehealth service is located.

(14) [(12)] "Telehealth service" means a medical service provided through advanced telecommunications technology from a hub site to a recipient at a spoke site.

(15) [(13)] "Telehealth site" means a hub site or spoke site that has been approved as part of a telehealth network established in accordance with KRS 11.550.

(16) [(14)] "Transmission cost" means the cost of the telephone line and related costs incurred during the time of the transmission of a telehealth service.

(17) [(15)] "Two (2) way interactive video" means a type of advanced telecommunications technology that permits a real time service to take place between a recipient and a telepresenter at the spoke site and a medical specialist at the hub site.

Section 2. Covered Services. (1) Except as restricted in accordance with Section 3 of this administrative regulation, a telehealth service shall be covered if medically necessary.

(2) A telehealth service shall require:

(a) The use of two (2) way interactive video;

(b) A referral by a health care provider specified in Section 4(2) of this administrative regulation;

(c) A referral by a recipient's KenPAC PCCM if the comparable nontelehealth service requires a KenPAC PCCM referral; and

(d) A referral by a recipient's lock-in provider if the recipient is locked-in pursuant to 42 C.F.R. 431.54 and 907 KAR 1:677.

Section 3. Limitations. (1) Coverage of telehealth services for a non-CMHC shall be limited to a maximum of four (4) telehealth services per recipient per year if provided as follows [in accordance with paragraph (a) or (b) of this subsection]:

(a) For a recipient [recipients] age twenty-one (21) years and older, the evaluation and management consultation CPT codes 99241 through 99275 may be billed as a telehealth service if provided by a medical specialist specified in Section 4(1) of this administrative regulation; or[.]

(b) For a recipient [recipients] under the age of twenty-one (21) years:

1. The evaluation and management consultation CPT codes 99241 through 99275 may be billed as a telehealth service if provided by a medical specialist specified in Section 4(1) of this administrative regulation; and

2. Psychiatric diagnostic evaluation CPT code 90801 and individual psychotherapy CPT codes 90804 through 90809 may be billed as a telehealth service if provided by a psychiatrist.

(2) Coverage for a telehealth service for a licensed CMHC shall be limited to twelve (12) psychiatric services per recipient per year and shall be billed using the following diagnostic CPT service codes:

(a) [1.] 90801 for a diagnostic interview examination;

(b) [2.] 90862 for medication management;

(c) [3.] 90887 for an outpatient collateral;

(d) [4.] 90804 for an individual psychotherapy; or

(e) [5.] 90847 for an outpatient family therapy.

(3) Coverage shall not be provided for a service that requires face-to-face contact with a recipient in accordance with 42 C.F.R. 447.371.

Section 4. Eligible Providers. (1) A [The] medical specialist at a [the] hub site shall be enrolled as a Medicaid provider pursuant to 907 KAR 1:671 and 907 KAR 1:672 and shall be:

(a) For a non-CMHC, a licensed physician in one (1) of the following specialties or subspecialties:

1. Dermatology;
2. Emergency medicine;
3. An internal medicine subspecialty;
4. General surgery or a surgery subspecialty;
5. Neurology;
6. Obstetrics and gynecology;
7. A pediatric subspecialty;
8. Psychiatry; [or]
9. Radiology or radiation medicine; or
10. [(b)] A licensed oral surgeon; or

(b) For a licensed CMHC:

1. A psychiatrist; or
2. An advanced registered nurse practitioner.

(2) A [The] health care provider requesting a telehealth service shall be an enrolled Medicaid provider who is a:

(a) Licensed physician;

(b) Licensed advanced registered nurse practitioner;

(c) Certified physician assistant working under physician supervision; [or]

(d) Licensed dentist or oral surgeon; or

(e) A licensed CMHC.

Section 5. Reimbursement. (1) The department shall reimburse a medical specialist located at a [the] hub site for a telehealth service:

(a) An amount equal to the amount paid for a comparable in-person service in accordance with 907 KAR 3:010; or

(b) If a licensed CMHC, in accordance with 907 KAR 1:045.

(2) A medical specialist shall bill for a service using the appropriate evaluation and management CPT code as specified in Section 3 [4] of this administrative regulation with the addition of the two (2) letter "GT" modifier.

(3) The department shall not require the presence of a [the] health care provider requesting a [the] telehealth service at the time of the telehealth service unless it is requested by a [the] medical specialist at the hub site.

(4) Reimbursement shall not be made for transmission costs.

Section 6. Confidentiality and Data Integrity. (1) [Confidentiality laws and other requirements that apply to written medical records shall apply to electronic medical records and telehealth services.

(2)] A telehealth service shall be performed on a secure tele-

communications line or utilize a method of encryption adequate to protect the confidentiality and integrity of the telehealth service information.

(2) [~~(3)~~] Both a [~~the~~] hub site and a [~~the~~] spoke site shall use authentication and identification to ensure the confidentiality of a [~~the~~] telehealth service.

(3) [~~(4)~~] A provider of a telehealth service shall implement confidentiality protocols that include:

(a) Identifying personnel who have access to a telehealth transmission;

(b) Usage of unique passwords or identifiers for each employee or person with access to a telehealth transmission; and

(c) Preventing unauthorized access to a telehealth transmission.

(4) [~~(5)~~] A provider's protocols and guidelines shall be available for inspection by the department upon request.

Section 7. Informed Consent. (1) Before providing a telehealth service to a recipient, a [~~the~~] health care provider shall document written informed consent from the recipient and shall ensure that the following written information is provided to the recipient in a format and manner that the recipient is able to understand:

(a) The recipient shall have the option to refuse the telehealth service at any time without affecting the right to future care or treatment and without risking the loss or withdrawal of a Medicaid benefit to which the recipient is entitled;

(b) The recipient shall be informed of alternatives to the telehealth service that are available to the recipient;

(c) The recipient shall have access to medical information resulting from the telehealth service as provided by law;

(d) The dissemination, storage, or retention of an identifiable recipient image or other information from the telehealth service shall not occur without the written informed consent of the recipient or the recipient's legally-authorized representative;

(e) The recipient shall have the right to be informed of the parties who will be present at the spoke site and the hub site during the telehealth service and shall have the right to exclude anyone from either site; and

(f) The recipient shall have the right to object to the video taping of a telehealth service.

(2) A copy of the signed informed consent shall be retained in the recipient's medical record and provided to the recipient or the recipient's legally-authorized representative upon request.

(3) The requirement to obtain informed consent before providing a service shall not apply to an emergency situation if the recipient is unable to provide informed consent and the recipient's legally-authorized representative is unavailable.

Section 8. Medical Records. (1) A request for a telehealth service from a physician or other health care provider specified in Section 4(2) of this administrative regulation and the medical necessity for the telehealth service shall be documented in the recipient's medical record.

(2) A health care provider shall keep a complete medical record of a telehealth service provided to a recipient and follow applicable state and federal statutes and regulations for medical recordkeeping and confidentiality in accordance with KRS 194A.060, 422.317, 434.840 - 434.860, and 42 C.F.R. 431 **431.300 to 431.307 [~~Subpart F~~]**.

(3) A medical record of a telehealth service shall be maintained in compliance with 907 KAR 1:672.

(4) Documentation of a [~~the~~] telehealth service by the referring health care provider shall be included in the recipient's medical record and shall include:

(a) The diagnosis and treatment plan resulting from the telehealth service and a progress note by the referring health care provider if present at the spoke site during the telehealth service;

(b) The location of the hub site and spoke site;

(c) A copy of the signed informed consent form; and

(d) Documentation supporting the medical necessity of the telehealth service.

(5) A [~~The~~] medical specialist's diagnosis and recommendations resulting from a [~~the~~] telehealth service shall be documented in the recipient's medical record at the recipient's location. The medical specialist shall send a written report to the referring health care provider.

Section 9. Appeal Rights. (1) An appeal of a [~~negative action taken by the~~] department determination regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a [~~negative action taken by the~~] department determination regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) A provider may appeal a department decision as to the application of this administrative regulation [~~An appeal of a negative action taken by the department regarding a Medicaid provider shall be~~] in accordance with 907 KAR 1:671.

MIKE ROBINSON, Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: November 20, 2003
FILED WITH LRC: December 1, 2003 at 11 a.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR FAMILIES AND CHILDREN**
**Department for Community Based Services**
**Division of Policy Development**
**(As Amended at ARRS, February 10, 2004)**

**921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.**

RELATES TO: KRS 209.020(4), 216.557(1), 216.750(2), 216B.010 to 216B.131, Chapter 514, 20 C.F.R. 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, **EO 2003-064**

STATUTORY AUTHORITY: KRS 194B.050(1), 205.245, 42 U.S.C. 1382e-g

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) requires the Secretary of the Cabinet for **Health and Family Services [~~Families and Children~~]** to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. **EO 2003-064 reorganizes the executive branch of government and establishes the Cabinet for Health and Family Services.** 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind and Disabled Program as of December 13, 1973 and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement with the U.S. Department of Health and Human Services Commissioner in effect, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes 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) "Adult" is defined by KRS 209.020(4).

(3) "Department" means the Department for Community Based Services or its designee.

(4) [~~"Department for Mental Health and Mental Retardation Services" means a department within the Cabinet for Health Services.~~]

[~~(5)~~] [~~(2)~~] "Elder Shelter Network" means a temporary shelter for a victim of elder abuse.

**(5)** [~~(6)~~] [~~(3)~~] "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

[(7) "Office of Inspector General" means an office within the Cabinet for Health Services.]

(6) [(8)] [(4)] "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 921 KAR 2:006.

(7) [(9)] [(5)] "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.

**(8) "SSI Program" means the Supplemental Security Income Program.**

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for the Supplemental Security Income [or "SSI"] Program due to income but whose special needs entitled the recipient [him] to an Aid to the Aged, Blind and Disabled Program payment as of December[,] 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) 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; and

(b)1. The total of the SSI [Supplemental Security Income] Program payment; or

2. [(c)] The total of the SSI [Supplemental Security Income] Program payment and other income for the current month.

(4) A mandatory payment shall discontinue when:

(a) The needs of the recipient as recognized in December[,] 1973[,] have decreased; or

(b) Income has increased to the December[,] 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December[,] 1973[,] decreases;

(b) The SSI [Supplemental Security Income] Program payment is reduced but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 8 of this administrative regulation [utilized by the department in determining optional supplementation payments] for a class of recipients is increased.

(6) If a husband and wife are 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 Program. (1) Except as established in Sections 6, 7, and 8 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 1:011, Sections 1(4), 5(5), (6), (7), (13), 10, and 11;

(b) [,] 907 KAR 1:640, Sections 1(1), (6), (7), (10), 3(4);

(c) [,] 907 KAR 1:645;

(d) [,] 907 KAR 1:650, Section 1(6); [(5),] and

(e) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) A person applying for or receiving state supplementation shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for the SSI [a Supplemental Security Income] Program, an application for the SSI [Supplemental Security Income] Program shall be mandatory.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be made to an eligible individual who:

(a) Requires a full-time living arrangement; [and]

(b) Has insufficient income to meet the payment standards specified in Section 8 of this administrative regulation; and

(c)1. Resides in a personal care home and is sixteen (16) years of age or older in accordance with 902 KAR 20:036, Section 3(3)(a);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14); or

3. Receives caretaker services and is at least eighteen (18) years of age.

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

(a) Residence in a personal care home that:

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

2. Is licensed under KRS 216B.010 to 216B.131; or

(b) Residence in a family care home that:

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

2. Is licensed under KRS 216B.010 to 216B.131; or

(c) A situation in which a caretaker is required to be hired to provide care other than room and board.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

**(a)** Return the check to the Kentucky State Treasurer, the month after the month of:

**1.** [(a)] Discharge to a:

**a.** [1.] Nursing facility, unless the admission is for temporary medical care as specified in Section 9(1) of this administrative regulation; **or**

**b.** [2.] Residence; or

**2.** [(b)] Death of the state supplementation recipient; **and**

**(b) Notify a local county department office within five (5) working days of the death of the state supplementation recipient.**

(4) Failure to comply with subsection (3)**(a)** of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9(1) of this administrative regulation;

b. Another personal care or family care home; **or**

c. Residence; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department [for Community Based Services Office] within five (5) working days of the:

1. Death, or discharge of the state supplementation recipient; or

2. Voluntary relinquishment of a license to the [Cabinet for Health Services,] Office of Inspector General.

(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2 of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) and (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) A service by a caretaker shall be made to enable an adult [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) Eligibility for caretaker supplementation shall be verified by the cabinet 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.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

(a) Client is taken daily or periodically to the home of the caretaker; or

(b) 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.

Section 6. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (10), and 3(4);

(b) [,] 907 KAR 1:645;

(c) [,] 907 KAR 1:650, Section 1(6); [(5),] and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) An individual or couple shall not be eligible if countable resources exceed the limit of:

(a) $2000 for individual; or

(b) $3000 for couple.

Section 7. Income Considerations. (1) Except as noted in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (10), and 3(4);

(b) [,] 907 KAR 1:645;

(c) [,] 907 KAR 1:650, Section 1(6); [(5),] and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) The optional supplementation payment shall be determined by:

(a) Adding:

1. Total countable [net] income of the applicant or recipient, or applicant or recipient and spouse; and

2. A payment made to a third party on [in] behalf of an applicant or recipient; and

(b) Subtracting the total of paragraph (a)1 and 2 of this subsection from the standard of need in Section 8 of this administrative regulation.

(3) Income of an 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 SSI [Supplemental Security Income] Program standard for an individual for:

1. Himself; and

2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if 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 ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI [Supplemental Security Income] Program twenty (20) dollars general exclusion shall not be an allowable deduction from income.

(9)(a) 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 8. Standard of Need. (1) To the extent funds are available, the standard shall be based on the living arrangement of an eligibility determination as follows:

(a) A resident of a personal care home made on or after January 1, 2004, $1,004 [2003, $992];

(b) A resident of a family care home made on or after January 1, 2004, $736 [2003, $724]; or

(c) Caretaker:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability made on or after January 1, 2004, $626 [2003, $614];

2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care made on or after January 1, 2004, $915 [2003, $898]; or

3. An eligible couple, both aged, blind or have a disability and both requiring care made on or after January 1, 2004, $961 [2003, $944].

(2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.

(b) One-half (1/2) of the deficit shall be payable to each.

(3) A 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 9. Temporary Stay in a Medical Facility [Institution]. (1) An SSI recipient who receives [A recipient of] optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

(a) Social Security Administration notifies the department that the admission shall be temporary; and

(b) Purpose shall be to maintain a recipient's home or other living arrangement during a temporary admission to a health care facility.

(2) A temporary admission shall be limited to the following health care facilities:

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility [confinement if:

(a) Admitted to a:

1. Hospital;

2. Psychiatric hospital; or

3. Nursing facility;

(b) A recipient's physician certifies the recipient is expected to be medically confined for ninety (90) full consecutive days or less; and

(c) The recipient receives benefits from the Supplemental Security Income Program].

(3) [(2)] If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 10. Citizenship requirements. An applicant or recipient shall be a:

(1) Citizen of the United States; or

(2) Qualified alien.

Section 11. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 12. Persons with Mental Illness or Mental Retardation Supplement. (1) To the extent funds are available, a personal care home:

(a) May qualify for a quarterly supplement payment of fifty (50) cents per diem:

1. For a state supplementation recipient in their care; and

2. As of the first calendar day of a qualifying month; and

(b) Shall meet the following certification criteria:

1. [(a)] Be licensed in accordance with KRS 216B.010 to 216B.131;

2. [(b)] Care for a resident who has a:

a. [1.] Primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home;

b. [2.] Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

c. [3.] Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

3. [(c)] Care for a thirty-five (35) percent mental illness or mental retardation population in all of its occupied licensed personal care home beds;

4. [(d)] Not be eligible for a payment during the days it received a Type A citation in accordance with KRS 216.557(1) by the Office of Inspector General;

5. [(e)] Have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day;

6. [(f)] Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement; and

7. [(g)] File an "Application for MI or MR Supplement Program Benefits" with the department [for Community Based Services] by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter:

a. [1.] Quarters shall begin in January, April, July and October.

b. [2.] Unless mental illness or mental retardation supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department [for Community Based Services] with its tax identification number and address as part of the application process.

(3) The department [for Community Based Services] shall provide A "Notice of Decision to Personal Care Home" to a personal care home following approval or denial of an application.

(4) A personal care home shall:

(a) Provide the department [for Community Based Services] with a "Monthly Report Form" that:

[(a) The report shall list:]

1. Lists every resident of the personal care home who was a resident on the first day of the month; [and]

2. Lists the resident's Social Security number; and

3. Annotates the form, [,

(b)] in order to maintain confidentiality, [a personal care home shall annotate the monthly report] as follows with a:

a. [1.] Star indicating a resident has a mental illness or mental retardation diagnosis;

b. [2.] Check mark indicating a resident receives state supplementation; and

c. [3.] Star and a check mark indicating the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation; and

(b) Mail the "Monthly Report Form" to the department postmarked by the fifth working day of the month.

(5) [(c)] The monthly report shall be used by the department for:

**(a)** [1.] Verification as specified in subsection (4)(a) of this **section** [subsection];

**(b)** [2.] Payment; and

**(c)** [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].

(6)(a) [(5)] A personal care home shall notify the department within ten (10) working days [for Community Based Services] if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 13. Training. (1)(a) 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.

(b) 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 **effects** [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; and

(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:

(a) Include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator; and

(b) Be in the quarter during which the "Application for MI or MR Supplement Program Benefits" is filed with the department [for Community Based Services].

(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 maximum, in order to train another staff member.

(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician training; **and**

2.**a.** [who:

1.] Has received mental illness or mental retardation basic training; or

**b.** [3.] [2.] Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The [Cabinet for Health Services,] 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 a one (1) day workshop.

(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 an advanced level training workshop shall be optional.

(6) The [Cabinet for Health Services,] Department for Mental Health and Mental Retardation Services shall provide within five (5) working days a:

(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) Unless staff turnover occurs as [a] specified in subsection (4)(a) of this section, the department [for Community Based Services] shall pay twenty-five (25) dollars to a personal care home:

(a) Who has applied for the Persons with Mental Illness or Mental Retardation Supplement Program; and

(b) 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 14. Persons with Mental Illness or Mental Retardation Supplement Program Certification. (1) The [~~Cabinet for Health Services,~~] Office of the Inspector General[,] shall visit a 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:

1. May be separate from an annual survey; and

2. Shall be in effect until the next licensure survey that may be greater than or less than twelve (12) months. [:]

(b) 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~~]

(c) 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:

(a) Observe and interview residents and staff during the certification process; and

(b) Review records to assure the following criteria is met:

1. Except for a specialized personal care home, certification is on file at the personal care home to verify staff's attendance of basic training, as specified in Section 13(1) through (3) of this administrative regulation; [~~, provided by the Department for Mental Health and Mental Retardation Services.~~]

2. The personal care home:

a. Has [~~home's~~] certified staff [~~is~~] training 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; and

b. Maintains [~~. The personal care home shall maintain~~] documentation of attendance at the in-service training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training demonstrates a knowledge of psychotropic drug side affects; and

4. An activity is being regularly provided that [~~and~~] meets the needs of a resident.

a. If a resident does not attend a group activity, an activity shall also be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

b. An individualized care plan shall not be required for the criteria in clause a of this subparagraph. [~~to meet this criteria.~~

~~4. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training demonstrates a knowledge of psychotropic drug side affects.~~]

(3) The [~~Cabinet for Health Services,~~] Office of Inspector General[,] shall review the personal care home copy of the training certification prior to performing a [~~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, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification.

(5) If the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 12(6)(a) of this administrative regulation [~~for Community Based Services, within ten (10) working days~~].

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

(7) The [~~The Cabinet for Health Services,~~] Office of Inspector General[,] shall inform the department [~~for Community Based Services~~] of a personal care home that receives a Type A citation:

(a) Monthly; and

(b) By the fifth working day of each month for the prior month.

(8) 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, established in 921 KAR 2:050.

(9) If a criteria for certification is not met, a "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.

Section 15. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Notice of Decision to Personal Care Home, edition 3/99";

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

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

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

(2) This material may be inspected, copied, or obtained, 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.

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: December 8, 2003

FILED WITH LRC: December 8, 2003 at 4 p.m.

CONTACT PERSON: Becky Conner, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, phone (502) 564-7900, fax (502) 564-9126.

## ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

**EDUCATION, ARTS, AND HUMANITIES CABINET**
**Kentucky Board of Education**
**Department of Education**
**(Amended After Comments)**

**703 KAR 5:001. Assessment and accountability definitions.**

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 158.6457, 20 U.S.C. 6301 et seq.

STATUTORY AUTHORITY: KRS 156.070, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to promulgate administrative regulations to establish a system to create and implement a statewide assessment and accountability program. This administrative regulation establishes definitions for Kentucky's Assessment and Accountability Program.

Section 1. Definitions. (1) "A1 school" means a school under administrative control of a principal or head teacher and eligible to establish a school-based decision-making council. An A1 school is not a program operated by, or as a part of, another school.

(2) "A2 school" means a district-operated, totally vocational-technical school, where the membership is counted in other schools.

(3) "A3 school" means a district-operated, totally special education school.

(4) "A4 school" means a district-operated, totally preschool program (e.g., Headstart, Kentucky Education Reform Act (KERA) Preschool, or Parent And Child Education (PACE)).

(5) "A5 school" means an alternative school which is a district-operated and district-controlled facility with no definable attendance boundaries that is designed to provide services to at-risk populations with unique needs. Its population composition and characteristics change frequently and are controlled by the local school district student assignment practices and policies (i.e., the local district personnel have input with regard to the identification of students receiving services provided by the A5 school as opposed to unconditionally accepting court ordered placements). Students enrolled in A5 schools typically include:

(a) Actual dropouts returning to an alternate educational environment;

(b) Potential or probable dropouts;

(c) Drug abusers;

(d) Physically abused students;

(e) Discipline problem students;

(f) Nontraditional students (e.g., students who have to work during the school day); or

(g) Students needing treatment (e.g., emotional/psychological).

(6) "A6 school" means a district-operated instructional program in a nondistrict-operated institution or school.

(7) "A2-A6 school" means a school which is classified as A2, A3, A4, A5, or A6.

(8) "Academic index" means the summary statistic or index which describes school success on the academic goals one (1), two (2), five (5), and six (6) set forth in KRS 158.6451(1)(b).

(9) "Accountability index" means the statistic defined in KRS 158.6457(1).

(10) "Accountability level" means elementary (grades end of primary, four (4), and five (5)), middle (grades six (6), seven (7), and eight (8)), or high school (grades nine (9), ten (10), eleven (11), and twelve (12)).

(11) "Adequate yearly progress in both reading and mathematics" means required performance of each school or district in obtaining:

(a) Annual measurable objectives in reading and mathematics in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.;

(b) A prior year accountability index at the elementary and middle school levels that is eighty (80) or higher, equal to or greater than the corresponding biennial goal, or greater when compared to the accountability index from the year before.

(c) A prior year graduation rate at the high school level that exceeds that of the year before or meeting the annual goal established by the Kentucky Board of Education for graduation rate as follows:

| YEAR | GRADUATION RATE GOAL |
|---|---|
| 2002 | 71.00 |
| 2003 | 73.25 |
| 2004 | 75.50 |
| 2005 | 77.75 |
| 2006 | 80.00 |
| 2007 | 82.25 |
| 2008 | 84.50 |
| 2009 | 86.75 |
| 2010 | 89.00 |
| 2011 | 91.25 |
| 2012 | 93.50 |
| 2013 | 95.75 |
| 2014 | 98.00 |

; and

(d) The required ninety-five (95) percent participation rate in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.

(12) "Adequate yearly progress in mathematics" means required performance of each school or district in obtaining:

(a) Annual measurable objectives in mathematics in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.;

(b) A prior year accountability index at the elementary and middle school levels that is eighty (80) or higher, equal to or greater than the corresponding biennial goal, or greater when compared to the accountability index from the year before;

(c) A prior year graduation rate at the high school level that exceeds that of the year before or meeting the annual goal established by the Kentucky Board of Education for graduation rate as listed in Section 1(11)(c) of this administrative regulation; and

(d) The required ninety-five (95) percent participation rate in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.

(13) "Adequate yearly progress in reading" means required performance of each school or district in obtaining:

(a) Annual measurable objectives in reading in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.;

(b) A prior year accountability index at the elementary and middle school levels that is eighty (80) or higher, equal to or greater than the corresponding biennial goal, or greater when compared to the accountability index from the year before;

(c) A prior year graduation rate at the high school level that exceeds that of the year before or meeting the annual goal established by the Kentucky Board of Education for graduation rate as listed in Section 1(11)(c) of this administrative regulation; and

(d) The required ninety-five (95) percent participation rate in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.

(14) "Alternate portfolio" means that component of the assessment system designed for students with legally-identified disabilities who cannot with the assistance of available accommodations, modifications, or both participate in the regular curriculum.

(15) "Alternate portfolio scores" means the scores assigned by teachers, or scores reassigned through state scoring review procedures, to a collection of best pieces of student work assembled through the instructional process.

(16) "Assistance line" means that unique line for a school that starts in the biennium ending with the school year 2001-2002 at one (1) standard error of measurement below the school's baseline accountability index to a point that is one (1) standard error of measurement below eighty (80) on the accountability index scale in the biennium ending with the school year 2013-2014, with the cal-

culated points defining this line rounded to the nearest tenth. If a school's baseline is above eighty (80), the assistance line means a horizontal line at eighty (80) minus one (1) standard error of measurement.

(17) "Baseline accountability index" means the accountability index score that describes the school's average performance during the 1998-99 and 1999-2000 school years, and is that number against which progress on the accountability index shall be measured.

(18) "Comprehensive school improvement plan" means a data driven and research-based framework developed by the school which contains specific recommendations from the scholastic audit team for improving teaching and student learning and identifies priority needs for strengthening the school's instructional and organizational effectiveness.

(19) "Confidence interval" means a range of scores determined for which there is a designated percent confidence that a school or district score falls within this range.

(20) "District evaluation team" means one (1) or more scholastic audit teams as established in 703 KAR 5:120.

(21) "Full academic year for a district" means a district is accountable for any student who is enrolled in the district any 100 instructional days from the district's first instructional day of the school year through the first day of the testing window for the appropriate accountability level established by the district.

(22) "Full academic year for a school" means a school is accountable for any student who is enrolled in the school any 100 instructional days from the first instructional day of the school year through the first day of the testing window.

(23) "Gained population" means students in grades at which accountability assessments are administered who now attend a different school because of service area boundary changes or other local board of education policy changes affecting the school population served.

(24) "Goal line" means a fixed line that extends from a point that is one (1) standard error of measurement below school's baseline index to a point that is one (1) standard error of measurement below the state goal established for the target biennium. Points calculated defining this line shall be rounded to the nearest tenth. In any biennium, a school's growth accountability index shall be at or above this line in order to achieve a classification of meets goal in recognition of growth.

(25) "Graduation rate" means the quotient of: [number of current year grade 12 completers (standard diploma within four (4) years, including students with disabilities whose IEP's stipulate they will need more than four (4) years to obtain a standard diploma)] divided by [number of current year grade 12 completers (includes standard diplomas plus certificates of completion), plus the number of current year grade 12 dropouts, plus the number of dropouts from the current 12th grade that dropped out as 11th graders, plus the number of dropouts from the current 12th grade class that dropped out as 10th graders, plus the number of dropouts from the current 12th grade class that dropped out as 9th graders].

(26) "Growth accountability index" means the average accountability index that describes the school's performance every two (2) years beginning with the 2000-2001 and 2001-2002 school years.

(27) "In need of assistance" means the school's growth accountability index falls below its assistance point.

(28) "Level 1" means a classification assigned to a school that has an index score that places it in the highest one-third (1/3) of all schools below the assistance line.

(29) "Level 2" means a classification assigned to a school that has an index score that places it in the middle one-third (1/3) of all schools below the assistance line.

(30) "Level 3" means a classification assigned to a school that has an index score that places it in the lowest one-third (1/3) of all schools below the assistance line.

(31) "Lost population" means students in grades at which accountability assessments are administered who no longer can attend a particular school because of service area boundary changes or other local board of education policy changes affecting school population served.

(32) "No child left behind improvement school or district" means a school or district that fails to make adequate yearly progress for two (2) consecutive years in the same content area, reading or mathematics.

(33) "Nonacademic index" means the statistic which describes school success on the nonacademic goals set forth in KRS 158.6451(1)(c), (d), and (f).

(34) "Participation in state-required assessments" means making a good faith effort by completing four multiple-choice items or responding to at least one constructed-response item in the reading and mathematics assessments combined for the appropriate grade level.

(35) "Participation rate" means the percent of students who participated in the state-required assessments.

(36) "Progressing" means the school's growth accountability index falls below its goal point and meets or exceeds its assistance point.

(37) "Reward share" means the unit of money as appropriated by the General Assembly to be distributed to schools, and is determined by the total amount of the money available for rewards in a biennium and the total number of shares to be awarded.

(38) "Safe harbor" means for a school or district that has not met the reading or mathematics annual measurable objective, that the school or district is considered to have met the objective in reading or mathematics if the school or district reduces its percent of total students or subpopulation(s) (whichever group(s) did not meet the reading or mathematics annual measurable objective), scoring below proficient by ten (10) percent; and students in the same population or subpopulation(s) demonstrate improvement or obtain a 100 or higher on the prior year academic index.

(39) "Sample of schools" means a representation of schools, not to exceed five (5) percent, of those with an accountability index above the assistance line.

(40) "Scholastic audit" means a comprehensive review of a school's learning environment, efficiency, and academic performance of students to determine the level of support necessary to continuously improve student academic performance.

(41) "School classification" means the status of a school or school district, including meets goal, progressing, or in need of assistance based on measures of growth as defined in 703 KAR 5:020.

(42) "School portfolio" means a collection of documents pertinent to a school that is used to create a profile of the strengths and limitations of the school's instructional and organizational effectiveness, including:

(a) The comprehensive school improvement plan;
(b) State assessment results;
(c) Federal accountability results;
(d) Student achievement data;
(e) Portfolio writing analysis data;
(f) School survey data;
(g) The school report card;
(h) District technology inventory;
(i) School handbook and master schedule;
(j) School-based decision-making policies and meeting minutes;
(k) Teacher lesson plans;
(l) District evaluation plan;
(m) Curriculum alignment documents;
(n) Examples of student work; and
(o) A listing of professional development activities.

(43) "School recognition points" means accountability index scores of fifty-five (55), sixty-six (66), seventy-seven (77), eighty-eight (88), and 100 on the accountability index scale used to recognize school standing.

(44) "Stable population" means students in grades at which accountability assessments are administered who would have attended the school prior to and after any service area boundary changes or other local board of education policy changes affecting school population served.

(45) "Standard error of measurement" means, for purposes of the assistance line or the goal line, the statistic derived from the baseline calculations taking into account appropriate sources of measurement error and number of students assessed.

(46) "Standards and indicators for school improvement" means the evaluation tool used in the scholastic audit process to determine the appropriateness of the school's classification and to make recommendations to improve teaching and learning for inclusion in the existing comprehensive school and district improvement plans.

(47) "Standing of a school" means the actual performance of a school as measured by the accountability index.

(48) "State goal" means 100 on the accountability index scale which all schools are expected to meet by the target biennium.

(49) "Student achievement levels" means categories of student learning in each of the content areas, including nonperformance, medium novice, high novice, low apprentice, medium apprentice, high apprentice, proficient, or distinguished.

(50) "Student with limited English proficiency" means an individual who is an English language learner who has sufficient difficulty speaking, reading, writing, or understanding the English language and whose difficulties may deny the individual opportunity to meet the state's proficient level of achievement on state assessments and to successfully achieve in classrooms where the language of instruction is English or to participate fully in society. A "student with limited English proficiency" also means a student who:

(a) Is age three (3) to twenty-one (21);

(b) Is enrolled or preparing to enroll in an elementary school or secondary school;

(c) Was not born in the United States or, whose native language is a language other than English;

(d) Comes from an environment in which a language other than English has had a significant impact on the individual's level of English language proficiency;

(e) Is Native American, Alaska Native, or native resident of the outlying areas who comes from an environment in which a language other than English has had a significant impact on the student's level of English language proficiency; or

(f) Is migratory, whose native language is a language other than English, and comes from an environment in which a language other than English is dominant.

(51) "Sufficient size for calculating participation rates" means that a school or district has at least ten (10) students in a subpopulation in each grade in which NCLB assessments are administered and at least sixty (60) students in the subpopulation in these grades combined.

(52) "Sufficient size for making comparisons to annual measurable objectives" means that:

**(a)** A school or district has at least ten (10) students in a subpopulation in each grade in which NCLB assessments are administered; and

**(b)** At least **sixty (60)** **[**~~thirty (30)~~**]** students in the subpopulation in these grades combined **or the subpopulation constitutes at least fifteen (15) percent of the students in these grades combined**.

(53) "Target biennium" means the biennium by the end of which schools are expected to reach the state goal, which is the biennium ending with the 2013-2014 school year.

(54) "Testing window" means a period of time designated annually by the Kentucky Department of Education within which all state-required assessment shall be administered.

(55) "Title I school or district" means a school or district eligible for and receiving Title I funds.

(56) "Writing portfolio score" means the score assigned by teachers, or score reassigned through portfolio scoring audit procedures, to a collection of a student's best work.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

GENE WILHOIT, Commissioner
HELEN W. MOUNTJOY, Chairperson
APPROVED BY AGENCY: February 12, 2004
FILED WITH LRC: February 12, 2004 at 1 p.m.
CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for Kentucky's Assessment and Accountability Program.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.6453, 158.6455 and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides definitions for Kentucky's assessment and accountability program as required by KRS 158.6453, 158.6455 and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides common definitions for implementation of regulations included in 703 KAR Chapter 5 which will be applied in all schools and districts.

(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 is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: This is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, teachers, and students of local school districts in Kentucky, and supporting staff in the Kentucky Department of Education.

(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: Local school district staff will be provided common definitions for terms needed in the implementation of the state-required assessment and accountability programs.

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

(a) Initially: There will be no additional cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(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: Not applicable.

(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 fee.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and local school districts.

**EDUCATION, ARTS, AND HUMANITIES CABINET**
**Kentucky Board of Education**
**Department of Education**
**(Amended After Comments)**

**703 KAR 5:070. Procedures for the inclusion of special populations in the state-required assessment and accountability programs.**

RELATES TO: KRS 158.6451, 158.6453, 158.6455
STATUTORY AUTHORITY: KRS 156.070, 158.6455
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 provides the Kentucky Board of Education with the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and assistance for certified staff in schools and districts. This administrative regulation establishes procedures for the inclusion of special student populations in the state-required assessment and accountability programs.

Section 1. Incorporation by Reference. (1) "Procedures for Inclusion of Special Populations in the State-Required Assessment and Accountability Programs," **February 2004** ~~[September 2003]~~ ~~[June 2002]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Assessment and Accountability, 18th Floor, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

GENE WILHOIT, Commissioner
HELEN W. MOUNTJOY, Chairperson
APPROVED BY AGENCY: February 12, 2004
FILED WITH LRC: February 13, 2004 at 11 a.m.
CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation was written to assist local school districts in understanding how to include students with disabilities, students attending schools classified as A2 through A6, students with limited English proficiency, students receiving instruction in a home/hospital (homebound instruction) setting, and students who have temporary medical conditions that necessitate accommodations and/or modifications for participation in the state-required assessment and accountability programs.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.6455, 158.6453, and the "No Child Left Behind Act of 2001", U.S.C. 6301 et seq.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the specifics for the inclusion of students in special populations in the state-required assessment and accountability programs as required by KRS 158.6453, 158.6455 and the "No Child Left Behind Act of 2001", U.S.C. 6301 et seq.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists local school districts in how to include students in special populations in the state-required assessment and accountability programs as required by KRS 158.6453, 158.6455, and the "No Child Left Behind Act of 2001", U.S.C. 6301 et seq.

(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 reflects changes in the existing regulation as it relates to the inclusion of students with limited English proficiency in the state-required assessment and accountability programs as required by the "No Child Left Behind Act of 2001".

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order for Kentucky to comply with federal legislation.

(c) How the amendment conforms to the content of the authorizing statute: This amendment requires that students with limited English proficiency be included in the state-required assessment program when they are enrolled in a Kentucky public school on the first day of the testing window and included in the state-required accountability program when they have been enrolled in the same school or district for a full academic year.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist local education agencies in the inclusion of students with limited English proficiency in the state-required assessment and accountability programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, teachers, and students of local school districts in Kentucky, and supporting staff in the Kentucky Department of Education.

(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: Local school districts and schools will have to ensure that all students with limited English proficiency who are enrolled in a Kentucky public school on the first day of the testing window be assessed and those who are enrolled in the same school or district for a full academic year are included in the state-required accountability program.

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

(a) Initially: There may be some additional costs to local education agencies to implement this administrative regulation due to the need to provide additional resources for necessary accommodations for students with limited English proficiency. There will be a slight increase in state costs associated with the production and scoring of assessments, as more students are included in the assessments. This results from federal requirements.

(b) On a continuing basis: There may be some additional costs to local education agencies to continue the implementation of this administrative regulation due to the need to continue to provide additional resources for necessary accommodations for students with limited English proficiency. There will continue to be a slight increase in state costs associated with the production and scoring of assessments, as more students are included in the assessments. This results from federal requirements.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding must come from within existing state and federal funds already appropriated to the agency.

(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 federal NCLB assessment funds will be used to address the need.

(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 fee.

(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.

**CABINET FOR FAMILIES AND CHILDREN**
**Department for Community Based Services**
**Division of Policy Development**
**(Amended After Comments)**

**922 KAR 1:050. Approval of adoption assistance.**

RELATES TO: KRS 199.462 [~~194B.050(1)~~], 199.555, 199.557, 216B.450(4), 600.020(2), (48), 620.020(5), 45 C.F.R. 1355.40(b), 1355.41, 42 U.S.C. 673, **1382, EO 2003-064**

STATUTORY AUTHORITY: KRS 194B.050(1), 199.555(6), (10), 199.557(4)[~~, 42 U.S.C. 673~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) requires the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. agencies for the proper administration of the cabinet and its programs. **EO 2003-064 reorganizes the executive branch of government and establishes the Cabinet for Health and Family Services.** KRS 199.555(10) requires the cabinet to establish and promulgate by administrative regulation criteria to be followed for the adoption of special needs children. KRS 199.557(4) requires the cabinet to implement **federal Title IV-E** adoption assistance payments in accordance with the administrative regulations promulgated by the cabinet. This administrative regulation establishes guidelines for the implementation of the law on state funded adoption assistance and federal Title IV-E adoption assistance.

Section 1. Definitions. (1) "Entitlement" means a benefit received by a child from a biological parent to include:

(a) Social Security;

(b) Black Lung;

(c) Veterans Administration; or

(d) Railroad Retirement.

(2) "Extraordinary medical expenses" is defined by KRS 199.555(4).

(3) "Federal Title IV-E adoption assistance" is defined by KRS 199.557(1).

(4) "Nonrecurring adoption expenses" is defined by KRS 199.555(3).

(5) "Postadoptive subsidy" means a payment for a special needs child that begins at the finalization of a special needs adoption.

(6) "Preadoptive subsidy" means a payment for a special needs child that begins with a preadoptive placement agreement and if foster care per diem ceases.

(7) "Secretary" means the Secretary of the Cabinet for Families and Children or designee.

(8) "State or federal education program" means a primary, secondary, or postsecondary educational program accredited by the:

(a) Kentucky Department of Adult Education and Literacy;

(b) Kentucky Department of Education; or

(c) U.S. Department of Education.

(9) "State-funded adoption assistance" is defined by KRS 199.555(2).

**(10) "Supplemental Security Income" or "SSI" means a program established in 42 U.S.C. 1382.**

Section 2. Adoption Assistance Criteria. (1) The Secretary [~~of the Cabinet for Families and Children~~] shall make the decision to pay and provide adoption assistance [~~for the adoption of a particular child.~~

~~(2) The decision to provide adoption assistance shall be made~~] in the best interest of a [~~the~~] child.

(2) [~~(3)~~] Adoption assistance shall be:

(a) Primarily for the benefit of the child and not the adoptive parents; and

(b) Limited to a special needs child.

(3) [~~(4)~~] A special needs child shall include a child for whom adoptive placement without financial assistance is unlikely in accordance with KRS 199.555(1) or 42 U.S.C. 673(c), and because the child:

(a) Has a physical or mental disability;

(b) Has an emotional or behavioral disorder;

(c) Has a recognized risk of physical, mental or emotional disorder;

(d) Is a member of a sibling group in which the siblings are placed together;

(e) Has had previous adoption disruption or multiple placements;

(f) Is an African American child two (2) years old or older; or

(g)1. Is age seven (7) or older and has a significant emotional attachment or psychological tie to his foster family; and

2. The cabinet has determined that it would be in the child's best interest to remain with the family.

Section 3. [~~2.~~] Eligibility. (1) A special needs child considered for state-funded adoption assistance shall:

(a) Be committed to the Cabinet for Families and Children; and

(b) Not have a parent with a legal claim to his custody.

(2) A special needs child considered for federal title IV-E adoption assistance shall:

(a) Meet the eligibility criteria established in 42 U.S.C. 673 at the time the adoption proceedings are initiated; and

(b) Not have a parent with a legal claim to his custody.

Section 4. [~~3.~~] Parental Standards. Parents receiving a child eligible for adoption assistance shall meet the same standards as those applied to other adoptive applicants in accordance with:

(1) 922 KAR 1:350; or

(2) 922 KAR 1:310.

Section 5. [~~4.~~] Adoption Agreement. (1) An adoptive parent and the secretary:

(a) May sign a DPP-195, Adoptive Placement Agreement, to set forth the terms of a child's placement with the adoptive parent, if the child's adoption has not been finalized;

(b) May sign a DPP-1258A, Adoption Assistance Agreement Nonrecurring Adoption Expenses, to set forth nonrecurring adoption expenses, prior to finalization of the adoption, if such expenses will be incurred by the adoptive parent during the adoption of a special needs child, in accordance with KRS 199.555(6) or 45 C.F.R. 1355.41; and

(c) Shall sign an DPP-1258, Adoption Assistance Agreement, to set forth the scope and limits of the adoption assistance, prior to finalization of the adoption, in accordance with KRS 199.555(6) or 45 C.F.R. 1355.40(b).

(2)(a) The adoption assistance shall begin on the date that the:

1. DPP-195 indicates the child's date of placement; or

2. Order of adoption is entered; [~~.~~]

(b) **Be adjusted:**

**1. Before or after the adoption assistance is negotiated, if a child receives:**

**a. Adoption assistance and an entitlement from a biological parent; or**

**b. Adoption assistance and SSI; and**

**2. By subtracting the amount of the entitlement or SSI dollar for dollar from the negotiated adoption assistance; and**

**(c) Not be adjusted if a child receives an insurance settlement from a biological parent.**

**(3) State-funded or federal title IV-E adoption assistance, in accordance with KRS 199.555(8) or 42 U.S.C. 673(a)(4), shall:**

**(a) Discontinue upon notice of a change in circumstance as specified in subsection (5)(b)(3) of this section; or**

**(b) Continue until the child reaches:**

**1. Age eighteen (18);**

**2. The month of graduation from high school, if the child:**

**a. Graduates from high school by age nineteen (19); and**

**b. Receives state-funded adoption assistance; or**

**3. Age twenty-one (21), if the child is:**

**a. Disabled;**

**b. Receiving SSI; and**

**c. Enrolled in a state or federal education program. [~~If a~~**

~~child receives an entitlement from a biological parent and also receives adoption assistance, the amount of the entitlement shall be subtracted dollar for dollar from the negotiated adoption assistance.~~

~~(c) A child may receive an insurance settlement, from a biological parent after adoption, without reduction of the adoptive parent's subsidy. State-funded adoption assistance shall:~~

~~(a) Discontinue:~~

~~1. In accordance with KRS 199.555(8); or~~

~~2. Upon notice of a change in circumstance as specified in subsection (6)(b)3 of this section; and~~

~~(b) Continue until the child reaches:~~

~~1. Age eighteen (18);~~

~~2. The month of graduation from high school, if the child will graduate from high school by age nineteen (19); or~~

~~3. Age twenty-one (21), if the child is:~~

~~a. Disabled;~~

~~b. Receiving supplemental security income; and~~

~~c. Enrolled in a state or federal educational program.~~

~~(4) Federal Title IV-E adoption assistance shall discontinue:~~

~~(a) In accordance with:~~

~~1. KRS 199.557; and~~

~~2. 42 U.S.C. 673; or~~

~~(b) Upon notice of a circumstance provided in subsection (6)(b)3 of this section.~~]

**(4)** [~~(5)~~] The cabinet shall temporarily discontinue state-funded adoption assistance or federal title IV-E adoption assistance during the period of time the adopted child:

(a)1. Resides in:

a. Foster care as defined in KRS 620.020(5);

b. A residential treatment facility as defined in KRS 600.020(48);

c. A psychiatric residential treatment facility as defined by KRS 216B.450(4); or

d. Detention:

(i) As defined in KRS 600.020(2);

(ii) Outside the adoptive home; and

(iii) For a period of thirty (30) consecutive calendar days or more; or

2. Is absent from the home of the adoptive parent for a period of thirty (30) consecutive calendar days or more, unless the child is absent due to medical care or school attendance; and

(b) Receives care for the child's special needs from a local, state or federal entity.

**(5)** [~~(6)~~](a) If there is a change in the family situation or the special needs of the child, the adoption assistance may be changed accordingly.

(b) In accordance with KRS 199.555(9), an adoptive parent shall be responsible for notifying the cabinet of any circumstances which cause a change or discontinuance:

1. Pursuant to 42 U.S.C. 673;

2. To avoid overpayment in accordance with subsection (5) of this section; or

3. Due to:

a. An adoptive parent's request for discontinuance of adoption assistance, in accordance with KRS 199.555(9);

b. A child's death, marriage, full-time employment or induction into military service;

c. An adoptive parent's death;

d. The adoptive parent's failure to sign and return the DPP-1258, Adoption Assistance Agreement;

e. The adoptive parent's failure to sign and return the DPP-1258B, Adoption Assistance Annual Contact Form; or

f. The adoptive parent's voluntary or involuntary release from legal **or financial** responsibility for the support of the adopted child.

**(6)** [~~(7)~~](a) The amount of adoption assistance shall not exceed the amount which would be paid for foster care for the same child, in accordance with KRS 199.557(4), including the medically fragile, specialized medically fragile, and care plus resource home per diem reimbursements established by the Department for Community Based Services.

(b) **Federal Title IV-E and state-funded** adoption assistance may also include:

1. Payment for extraordinary medical expenses related to the child's special needs that:

a. Existed prior to the adoption; and

b. Are not reimbursable by another source;

2. Nonrecurring adoption expenses not to exceed $1,000 incurred in the adoption of a child who is considered a special needs child;

3. Preadoptive subsidy; or

4. Postadoptive subsidy.

**(7)** [~~(8)~~](a) An adoptive parent receiving the basic adoption assistance rate shall not be required to attend annual training.

(b) Except for the basic adoption assistance rate, as specified in paragraph (a) of this subsection, an adoptive parent shall meet annual training requirements for:

1. An advanced resource home as established in 922 KAR 1:350[~~, Section 13(1)(b)~~];

2. A medically-fragile resource home as established in 922 KAR 1:350[~~, Section 6(5)(a)~~];

3. A specialized medically-fragile resource home as established in 922 KAR 1:350[~~, Section 8(4)(a)~~]; or

4. A care plus resource home as established in 922 KAR 1:350[~~, Section 7(6)(a)~~].

**(8)** [~~(9)~~] If the adoptive parent fails to meet the annual training requirement specified in subsection (8)(b) of this section, the cabinet may reduce the amount of adoption assistance paid to an adoptive home to the basic adoption assistance rate.

**(9)** [~~(10)~~] Cabinet staff shall provide notice of a reduction or discontinuance of adoption assistance:

(a) Ten (10) calendar days in advance; and

(b) In accordance with 922 KAR 1:320, Section 6.

**(10)** [~~(11)~~] A child committed to the cabinet and placed in therapeutic foster care, as described in 922 KAR 1:310:

(a) May be considered for adoption assistance, if the child meets criteria established in 922 KAR 1:350, Section 7(1)(b); and

(b) Shall not be eligible to receive adoption assistance to exceed the care plus resource home per diem reimbursement, established by the Department for Community Based Services.

**(11)** [~~(12)~~] The adoption assistance shall not be changed by a move by the adoptive parents out of the state or country.

Section 6. Annual Family Contact. (1) Annual contact with the adoptive family shall be made by **mail or** home visit[~~, or if the adoptive family lives in another state, by mail,~~] to determine that:

(a) A child remains in the adoptive home;

(b) The adoption assistance continues to meet the special needs of the child;

(c) The adoptive family meets the annual training requirements as specified in Section 5(8) of this administrative regulation; and

(d) A plan is developed with the adoptive family for meeting the annual training requirements as specified in Section 5**(7)** [~~(8)~~](b) of this administrative regulation.

(2) The DPP-1258B, Adoption Assistance Annual Contact Form, shall be used in the effective administration of subsection (1) of this section.

**(3) The cabinet may conduct a home visit after an annual contact is completed by mail:**

**(a) If:**

**1. The adoptive parent requests a home visit;**

**2. The special needs of the child change, as indicated by the adoptive parent;**

**3.a. The DPP-1258B is not completed by the adoptive parent; and**

**b. Attempts to complete the form by additional mail or phone contact have failed; or**

**4. The cabinet receives information that is contrary to the information verified by the adoptive parent on the DPP-1258B; or**

**(b) In accordance with 922 KAR 1:330.**

Section 7. Adoption Assistance Renegotiation. (1) The cabinet may renegotiate adoption assistance before or after the adoption is finalized **in accordance with KRS 199.555(9) and 42 U.S.C. 673, and** if there is a change in the:

(a) Child's special needs; or

(b) Family's situation that negatively affects the stability of the placement.

(2) Extraordinary medical expenses may be reimbursed if conditions in KRS 199.555(6) are met.

Section 8. Service Appeal. An applicant for adoption assistance or an adoptive family shall be granted an administrative hearing in accordance with 922 KAR 1:320.

Section 9. Assistance Limitation. The number of adoption assistance cases and the amount of adoption assistance paid per case shall be limited by available funds for the Adoption Assistance Program.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-195, Adoptive Placement Agreement, edition 02/04";

(b) "DPP-1258, Adoption Assistance Agreement, edition 02/04";

(c) "DPP-1258A, Adoption Assistance Agreement Nonrecurring Adoption Expenses, edition 02/04"; and

(d) "DPP-1258B, Adoption Assistance Annual Contact Form, edition 02/04". [~~An agreement setting forth the scope and limits of the adoption assistance shall be signed by the adoptive parents and the Secretary of the Cabinet for Families and Children or his designated representative.~~

~~(2) The adoption assistance shall:~~

~~(a) Begin on the date the order of adoption is entered; and~~

~~(b) Continue until the child reaches:~~

~~1. The age of majority;~~

~~2. Age nineteen (19), if enrolled in a state or federal educational program; or~~

~~3. Age twenty-one (21), if disabled and receiving supplemental security income and enrolled in a state or federal educational program.~~

~~(3) If there is a change in the family situation or the needs of the child, the adoption assistance may be changed accordingly.~~

~~(4) The adoption assistance specified on the OOHC-1258, Adoption Assistance Agreement, shall not exceed the amount which would be paid for foster care for the same child, including the medically fragile and family treatment home rates established by the Department for Community Based Services. Adoption assistance may also include:~~

~~(a) Payment for extraordinary medical expense related to the child's special needs that:~~

~~1. Existed prior to the adoption; and~~

~~2. Are not reimbursable by another source; or~~

~~(b) Nonrecurring adoption expense incurred in the adoption of a child who is considered a special needs child.~~

~~(5) An adoptive parent who receives the:~~

~~(a) Advanced rate shall meet the annual requirement established in 922 KAR 1:350, Section 18(4)(c);~~

~~(b) Medically fragile rate shall meet the annual requirement established in 922 KAR 1:350, Section 6(5); or~~

~~(c) Family treatment home rate shall meet the annual requirement established in 922 KAR 1:350, Section 7(5).~~

~~(6) The adoption assistance shall not be changed by a move by the adoptive parents out of the state or country.~~

~~Section 5. Annual Family Contact. Annual contact with the adoptive family shall be made by mail or home visit to determine if the level of adoption assistance continues to be appropriate to the needs of the child.~~

~~Section 6. Assistance Limitation. The number of adoption assistance cases shall be limited by available funds for the adoption assistance program.~~

~~Section 7. Incorporation by Reference. (1) OOHC-1258, "Adoption Assistance Agreement", edition May 2000, is incorporated by reference.~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES W. HOLSINGER, JR., M.D., Secretary

APPROVED BY AGENCY: February 12, 2004

FILED WITH LRC: February 12, 2004 at 4 p.m.

CONTACT PERSON: Becky Conner, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, phone (502) 564-7900, fax (502) 564-9126.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge, (502) 564-7536

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes guidelines for the implementation of the law on state funded adoption assistance and federal title IV-E adoption assistance.

(b) The necessity of this administrative regulation: This administrative regulation specifies the guidelines to implement adoption assistance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 199.555(10), which requires the cabinet to establish and promulgate by administrative regulation criteria to be followed for the adoption of special needs children. This administrative regulation conforms to KRS 199.557(4), which requires the cabinet to implement adoption assistance payments in accordance with administrative regulations promulgated by the cabinet. This administrative regulation conforms to KRS 194B.050(1), which requires to cabinet to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state or federal agencies for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth criteria for the adoption of a special needs children and establishes guidelines for the implementation of the laws governing state funded adoption assistance and federal Title IV-E adoption 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: This administrative regulation adds a definition section. The amendment specifies and updates references made to applicable Kentucky Revised Statutes, United States Code, Code of Federal Regulations, and 922 KAR 1:350, Family preparation. The amendment revises forms; distinguishes the various types of adoption assistance; and clarifies the scope of adoption assistance and the circumstances under which adoption assistance can begin, or be discontinued, renegotiated, or reduced. The amendment outlines requirements pertaining to annual contact with an adoptive family receiving adoption assistance.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation distinguishes the various types of adoption assistance and, through greater specificity, strengthens the implementation guidelines for the adoption assistance program in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 199.555(10) by clarifying established criteria to be followed in the adoption of special needs children. The amendment conforms to KRS 199.557(4) by strengthening established guidelines for the implementation of state-funded adoption assistance and federal Title IV-E adoption assistance payments.

(d) How the amendment will assist in the effective administration of the statutes: Through updated or revised references to applicable state and federal laws and greater specificity, the amendment to this administrative regulation will assist in the effective administration of KRS 199.555(10) and 199.557(4), by distinguishing the various types of adoption assistance available in Kentucky for the adoption of special needs children, and strengthening guidelines for implementation of the adoption assistance

program in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects special needs children and adoptive parents seeking adoption assistance. Approximately 3200 children receive adoption assistance monthly.

(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: Adoptive parents, prospective adoptive parents and special needs children will benefit from the clarification provided in this amendment, because the amendment distinguishes the various types of adoption assistance available prior to and following the finalization of an adoption of a special needs child, and strengthens guidelines for implementing the adoption assistance program in Kentucky.

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

(a) Initially: There are no additional costs necessary to implement this administrative regulation.

(b) On a continuing basis: There are no additional costs necessary to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Title IV-E, general, and restricted funds are used to implement and enforce this administrative 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 associated with this regulation. No additional funding is required.

(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 policy is applied in a like manner to eligible members of a specific benefit group.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 673

2. State compliance standards. KRS 199.555(10) and 199.557(4)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 673

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. None

**CABINET FOR FAMILIES AND CHILDREN**
**Department for Community Based Services**
**Division of Policy Development**
**(Amended After Comments)**

**922 KAR 1:310. Standards for child-placing agencies.**

RELATES TO: KRS 17.165 [61.878], 158.135(1)(c), 194B.060, 199.011, 199.430(3), 199.470, 199.492, 199.493, 199.510, 199.520, 199.570, 199.572, 199.590, 199.640, 199.645, 199.650 to 199.670, 202A.011(12), 202B.010(12), 216.300, 273.161(7), 311.720(9), **311.840(3)**, 314.011(5), **(7)**, (9), 503.110(1), [271B.8,] 600.020, 605.090(1)(b), 610.110(6), 615.010 to 615.990, 620.020, 620.030, 620.140(1)(d), 625.040, 625.043, 42 U.S.C. 671(a)(23), 45 C.F.R. Parts 160, 164, [1355.34, 1355.35, 1357.15, 1357.16,] 42 U.S.C. 677**(a)(1)-(6), 14901-14954, EO 2003-064**

STATUTORY AUTHORITY: KRS 194B.050(1), 199.640(5)(a)[(d)], 615.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) provides that the Secretary of the Cabinet for Families and Children shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. **EO 2003-064 reorganizes the executive branch of government and establishes the Cabinet for Health and Family Services.** [, by administrative regulation, develop policies necessary to implement programs and fulfill the responsibilities vested in the cabinet.] KRS 199.640(5)(a) requires the Cabinet for Families and Children to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. This administrative regulation establishes basic standards for child-placing agencies.

Section 1. Definitions. (1) "Adoption" means the legal process by which a child becomes the child of a person or persons other than biological parents.

(2) "Aftercare" means services provided to the child after discharge from a child-placing agency.

(3) "Applicant" means an individual or a family subject to approval by the child-placing agency as a:

(a) Foster home; or

(b) Adoptive home.

(4) ["Approved adoptive home" means a home that has had an adoptive home study completed and the adoptive parent has completed orientation and preparation required by the cabinet.

(4) "Approved foster home" means a home that has had a foster home study completed and the foster parent has completed orientation and preparation required by the cabinet.

(5)] "Board of directors" is defined at KRS 273.161(7).

(5) "Case management" means a process whereby a state agency or child-placing agency assesses the individualized needs of a child or family, arranges for the provision of services, and maintains documentation of actions and outcomes.

(6) "Child" means a person who has not reached:

(a) Eighteen (18) years of age, unless there is an extended commitment for purposes in accordance with KRS 610.110(6) or 620.140(1)(d); or

(b) Twenty-one (21) years of age for a child committed to the Department of Juvenile Justice.

[(6) "Cabinet" means the Cabinet for Families and Children.]

(7) "Child-placing agency" is defined at KRS 199.011(7).

(8) "Community resource" means a service or activity available in the community that shall supplement those provided by the child-placing agency in the care and treatment of a child.

(9) ["Division" means the Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(10)] "Executive director" means the person employed by the board of directors to be responsible for the overall administration and management of a child-placing agency.

(10) [(11)] "Home study" means an assessment done on a prospective foster or adoptive [or foster] home by a social services worker.

(11) [(12)] "Independent living program" means a planned program that:

(a) Is licensed and designed to teach a child age sixteen (16) or older life skills that enable a child to become self-sufficient; and

(b) Meets requirements specified in Section 17**(1)** [(2)] of this administrative regulation.

(12) "Independent living services" means services provided to an eligible child, as described in Section 16 of this administrative regulation, to assist the child in the transition from dependency of childhood to living independently. [designed to teach youth life skills that shall enable the youth to become self-sufficient.]

(13) "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(14) "Licensed health care professional" is defined at KRS 216.300.

(15) "Medically-fragile child" means a child who is determined to have a medical condition as specified in 922 KAR 1:350[, Section 6(1)(b)].

(16) "Mental health treatment" means [psychological or psychiatric] services provided to an individual determined to have emotional, mental, or behavioral problems.

(17) "Permanence" is defined at KRS 620.020(8)[(7)].

(18)[(16)] "Placement" means a foster or adoptive home that has been approved by completing an [the] application process, home study and required preparation.

(19) [(17)] "Placement services" is defined at KRS 199.011(13).

(20) [(18)] "Program director" means the person responsible for supervising the day-to-day operation of the program [for a child served by the child-placing agency].

(21) [(19)] "Respite care" means temporary care provided by another individual or family to:

(a) Provide relief to a foster care parent, therapeutic foster care parent, or medically-fragile foster parent; or

(b) Allow an adjustment period for the child placed in out-of-home care [a temporary interlude of care which gives relief to the person who normally gives care for a child or providing for an adjustment period for the child. This care is provided by a person who has received the preparation required for placement of a child into a foster or adoptive home].

(22) [(20)] "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and the individual's [his] environment.

(23) [(21)] "Social services worker" means a person who meets the qualifications as specified in Section 2(4)(c) of this administrative regulation.

(24) "Therapeutic foster care" means a remedial care program:

(a) For a child whose severe emotional or behavioral needs cannot be met in the child's own home or in a traditional foster home; and

(b) That meets requirements specified in Section 8(1) through (9) of this administrative regulation.

(25) "Therapeutic services" means **clinical or** [intensive clinical and] supportive services provided to a child with severe emotional or behavioral needs.

(26) "Treatment director" means an individual who meets the qualifications as specified in Section 2(4)(d) of this administrative regulation. [the person:

(a) Responsible for social work, counseling or planning and coordinating services to a child; and

(b) Who has at least a bachelors degree in social work or the human services field.

(22) "Therapeutic foster care" is defined at KRS 158.135(1)(c).

(23) "Treatment director" means an individual who:

(a) Oversees the day-to-day operation of the treatment program;

(b) Holds at least a master's degree in a human services discipline; and

(c) Has at least five (5) years' experience in mental health treatment of children with emotional or behavioral disabilities and their families.]

Section 2. Administration and Operation. (1) Licensing procedures.

**(a)** Licensing procedures for a child-placing agency shall be administered pursuant to 922 KAR 1:305.

**(b) An independent living program is an optional component of the child-placing agency's license.**

(2) Board of directors. The child-placing agency shall have a board of directors, or an advisory board if the child-placing agency is a privately-held for-profit organization, that [pursuant to KRS Chapter 271B.8. The board of directors] shall:

(a) Consist of a minimum of seven (7) members;

(b) Meet at least quarterly;

(c) Cause minutes of the meeting to be taken and kept in written form;

(d) Be responsible for and have the authority to ensure the continuing compliance with the requirements established by [of] this administrative regulation;

(e) [and relevant federal, state or local law.

(e) Obtain a criminal records check of the executive director prior to employment;

(f)] Approve a mission statement delineating the:

1. Purpose;

2. Objective;

3. Scope of services to be provided; and

4. Intake policy specifying the type of child to be accepted for care;

(f) Hire, supervise, and annually evaluate the executive director of the child-placing agency; and

(g) Delineate in writing the duties of the executive director.

(3) Executive director.

(a) The executive director shall:

1. Be responsible for the child-placing agency and its affiliates, pursuant to the child-placing agency's written policies and procedures;

2. Oversee all aspects of the child-placing agency; and

3. Report to the board, on a quarterly basis, the following:

a. Evaluation of program services;

b. Measure of goals;

c. Staff training; and

d. Incident reports.

(b) [The duties of the executive director shall be determined by the board of directors.

(b) The executive director shall be responsible for the child-placing agency and its affiliates, pursuant to the child-placing facility's written policy.

(c) The executive director shall oversee.

(d) The executive director shall report to the board, on a quarterly basis, evaluation of program services, addressing measurable goals, staff training, and incident reports.

(e)] The criteria and process of this evaluation shall be approved by the board annually.

(c) [(f)] If the executive director is not available, a designated staff person shall be responsible for the day-to-day operation of the child-placing agency [program].

(4) Staff qualifications.

(a) An executive director shall possess the following qualifications:

1. A master's degree in any of the following human services fields:

a. Social work;

b. Sociology;

c. Psychology;

d. Guidance and counseling;

e. Education;

f. Religious education;

g. Business administration;

h. Criminal justice;

i. Public administration;

j. Child-care administration;

k. Nursing;

l. Family studies; or

m. Another human service field related to working with a family or child; and

n. Two (2) years of work experience in a human services program; or

2. A bachelor's degree with a major in a discipline designated in subparagraph 1 of this paragraph, and four (4) years work experience in a human services program.

(b) A licensed child-placing agency shall have one (1) member of the social work staff designated as program director who shall hold:

1. A master's degree in social work or in a discipline designated in paragraph (a)1 of this subsection; or

2.a. A bachelor's degree in social work or in a discipline designated in paragraph (a)1 of this subsection; and

b. At least two (2) years professional experience in working with a child or family.

(c) A social services worker shall:

1. Be responsible for social work, counseling or planning and coordinating services to a child; and

2. Have at least a bachelor's degree in social work or a human services field.

(d) A treatment director shall:

1. Oversee the day-to-day operation of the treatment program;

2. Hold at least a master's degree in a human services discipline; and

3. Have at least five (5) years total experience in mental health

treatment, with a minimum of three (3) years experience in mental health treatment of children with emotional or behavioral disabilities and their families.

(e)1. A child-placing agency contracting for the service of a [~~social worker or~~] social services worker not on the staff of the child-placing agency shall document that the [~~social worker or~~] social services worker meets the qualifications in paragraph (c) or the subsection.

2. [~~described in Section 1(22) of this administrative regulation.~~] An agreement for this provision of service shall be on file at the child-placing agency and shall specify the qualifications of the [~~social worker or~~] social services worker.

(f) [~~(d)~~] The program director shall supervise social service staff.

(g) [~~(e)~~] In a therapeutic foster care program, **approval and evaluation** [~~supervision~~] of services [~~a foster parent~~] shall be carried out by a person meeting the qualifications of a treatment director.

(h) [~~(f)~~] Social services staff shall not carry a caseload of more than twenty (20) children.

(5) Personnel policy.

(a) A child-placing agency shall have written personnel policies and procedures [~~policy and procedure~~].

(b) An employee shall:

1. Be at least eighteen (18) years of age; and

2. Submit to a criminal background check in accordance with KRS 17.165 and a central registry check in accordance with 922 KAR 1:470.

(c) The employment of an individual shall be governed by KRS 17.165, with regard to a criminal record check.

(d)1. A person with a substantiated allegation of abuse, neglect, or exploitation of a child shall not be employed in a position involving direct contact with a child.

2. The cabinet shall respond to allegations in accordance with 922 KAR 1:330 and 922 KAR 1:480. [~~The following shall not be employed in a position involving direct contact with a child:~~

~~1. A person listed on the Nurse's Aide Abuse Registry of the Kentucky Board of Nursing; or~~

~~2. A person with a substantiated allegation of exploitation of a child. Cabinet response to allegations is regulated by 922 KAR 1:320 and 922 KAR 1:330.~~]

(e) A current personnel record shall be maintained for an employee that includes the following:

1. Name, address, Social Security number, date of employment, and date of birth;

2. Evidence of qualifications, including degree, current registration, certification, or licensure;

3. Record of participation in staff development;

4. Record of performance evaluation;

5. Criminal records check pursuant to paragraph (b)2 [~~(c)~~] of this subsection;

6. [~~Record of a check with the cabinet pursuant to paragraph (d) of this subsection;~~

~~7.~~] Record of a physical exam related to employment, as specified in the child-placing agency's policies and procedures [~~agency~~];

7. [~~8.~~] Personnel action;

8. [~~9.~~] Application for employment and resume or contract; and

9. [~~10.~~] Evidence of personnel orientation.

(f) The child-placing agency shall have an ongoing staff development program under the supervision of a designated staff member.

(g) An employee under indictment, [~~or~~] legally charged with felonious conduct, or subject to a cabinet investigation in accordance with 922 KAR 1:330 shall [~~be~~]:

1. **Be** immediately removed from contact with a child; and

2. Not be allowed to work with the child:

a. Unless a safety plan has been written and approved by a designated regional cabinet staff;

b. Until the person is cleared of the charge; or

c. Until a [~~records search of the~~] cabinet **investigation** reveals an unsubstantiated **finding** [~~investigation~~], if the charge resulted from an allegation of **child**:

(i) [~~Child~~] Abuse;

(ii) Neglect; or

(iii) Exploitation.

(h) Unless the volunteer is a practicum student, [~~until the person is cleared of the charge and, if the charge resulted from an allegation of child abuse, neglect or exploitation, a records search of the cabinet shall reveal an unsubstantiated investigation before the employee shall be allowed to work with a child.~~

~~(h)~~] a volunteer who performs a similar function as paid staff shall meet the same requirements and qualifications.

Section 3. Interstate Placement. (1) Prior to accepting a child from another state or prior to placing a child outside Kentucky, the child-placing agency shall comply with:

(a) KRS 615.030 to 615.040, Interstate Compact on Placement of Children; [~~and~~]

(b) KRS 615.010, Interstate Compact on Juveniles; and

(c) 42 U.S.C. 671(a)(23).

(2) If a child committed to the cabinet makes a brief visit out of state, not accompanied by child-placing agency personnel, the child-placing agency shall obtain prior consent of designated regional cabinet staff.

(3) A child-placing agency shall comply with subsection (1) of this section, if a child placed with the child-placing agency visits or receives respite care in another state for a period to exceed:

(a) Thirty (30) days; or

(b) The child's school vacation period.

(4) If an emergency placement of a child into a licensed child-placing agency is made, compliance with KRS 615.030 to 615.040 shall be the responsibility of the placement source.

Section 4. Evaluation of an Applicant. (1) The child-placing agency social services staff shall recruit a prospective foster or adoptive home.

(2) A child-placing agency shall:

(a) Complete a home study; and

(b) Approve the home prior to the placement of a child.

(3) Documentation of the home study shall include the following:

(a) A personal interview[~~, both joint and separate,~~] with each member of the applicant's household;

(b) An assessment of the attitude of each member of the applicant's household toward the placement of a [~~foster~~] child into the home or adoption;

(c) Observations of the functioning of the applicant's household, including interpersonal relationships and patterns of interaction;

(d) The applicant's ability to accept a [~~the~~] child's relationship with the child's family of origin;

(e) Proof of the applicant's:

1. Identity; and

2. Age of twenty-one (21) years or older;

(f) A statement for each member of the applicant's household that:

1. Shall be signed by a licensed health care professional; and

2. The household member is free of illness or condition that presents a health or safety risk to a child placed in the applicant's home;

(g) A signed statement by a licensed physician or licensed health professional[~~, current within the last twelve (12) months and annually thereafter,~~] regarding the applicant's physical ability to provide necessary care for a child;

(h) Verification that the applicant has a source of income separate from:

1. Foster care reimbursement; or

2. Adoption assistance;

(i) The name of three (3) personal references who:

1. Are not related to the applicant; and

2.a. Shall be interviewed by the child-placing agency staff in person or by telephone; or

b. Shall provide letters of reference for the applicant;

(j) Two (2) credit references for the applicant;

(k) If applicable, documentation of an interview with adult children of the applicant, who do not live in the applicant's home, regarding the applicant's parenting history;

(l) If applicable, verification from the applicant regarding:
1. Previous divorce;
2. Death of a spouse; and
3. Present marriage;
(m) If the applicant does not have custody of the applicant's own child:
1. A copy of the visitation order**, if applicable**;
2. A copy of the child support **order** [~~decree~~]; and
3. Proof of current payment of child support;
(n) Proof that the applicant and any member of the applicant's household submitted to background checks in accordance with 922 KAR 1:490;
(o) Proof that the child-placing agency performed background checks on the applicant and any member of the applicant's household in accordance with criteria established in 922 KAR 1:490;
(p) Documentation that the applicant has access to:
1. Reliable transportation;
2. School;
3. Recreation;
4. Medical care;
5. Community facilities; and
6. Faith-based organization;
(q) If an applicant or household member will be transporting a foster child, proof that the individual [~~possesses~~]:
1. **Possesses** a valid driver's license;
2. **Possesses** proof of liability insurance; and
3. **Agrees to abide by passenger restraint laws** [~~Age-appropriate passenger restraints for all passengers~~];
(r) Documentation that the applicant's home:
1. Does not present a hazard to the health and safety of a child;
2. Is well heated and ventilated;
3. Complies with state and local health requirements regarding water and sanitation; and
4. Provides in- or out-of-door recreation space appropriate to the developmental needs of a [~~the~~] child placed in the applicant's home;
(s) Verification that:
**1.** No more than four (4) children, including the **applicant's** [~~foster parent's~~] own children, share a bedroom; **and**
**2. A foster parent shall not share a bedroom with a child in the custody of a state agency, unless prior approval is obtained from the state agency;**
(t) Verification that an individual bed, crib, playpen, or cot:
1. Is provided for each child in the home;
2. Meets the Consumer Products Safety Commission Standards; **and**
3. Is age and size appropriate for the child; [~~and~~
~~4. Is at least three (3) feet away from another bed;~~]
(u) Verification that:
**1. Medication is locked;**
**2. Alcoholic beverages and poisonous or hazardous materials are inaccessible to the child;**
**3. Ammunition and firearms are locked and stored separately; and**
**4. A dangerous animal is inaccessible to a child that is placed in an applicant's home;** [~~the following are:~~
~~1. Locked:~~
~~a. Medication;~~
~~b. Alcoholic beverages; and~~
~~c. Poisonous or cleaning materials;~~
~~2. Locked and stored separately:~~
~~a. Ammunition; and~~
~~b. Firearms;~~
~~(v) Verification that a dangerous animal is inaccessible to a child placed in an applicant's home;~~]
(v) [~~(w)~~] Proof that the applicant shall have:
1. First aid supplies **with unexpired dates** available and stored in a place easily accessible by the foster parent;
2. A working telephone; and
3. A working smoke alarm within ten (10) feet of each bedroom; and
(w) [~~(x)~~] If a business open to the public adjoins the applicant's household, consideration of potential negative impacts on the child and family, including:
1. Hours of operation;
2. Type of business; and
3. Clientele.
(4) Exception to subsection (3)(e)2 of this section may be granted if the applicant is:
(a) Between eighteen (18) and twenty-one (21) years of age;
(b) A relative to the child to be placed in the applicant's home; and
(c) Able to meet the needs of the child to be placed in the applicant's home.
(5) For each potential applicant evaluated, the child-placing agency shall keep a written record of the findings of the home study and the evidence on which the findings are based.
(6)(a) Following approval as a foster home, the foster home or the approving child-placing agency may request written approval from the state agency, with custody of the child, for the foster home to provide services as a certified:
1. Provider of Supports for Community Living in accordance with 907 KAR 1:145;
2. Therapeutic foster care provider for adults in accordance with 907 KAR 3:030; or
3. Family child care home in accordance with 922 KAR 2:100.
(b) **Except as provided in paragraph (a) of this subsection,** an approved foster home shall not **simultaneously**:
1. Provide day care center services in accordance with 922 KAR 2:090; and
2. Be used [~~simultaneously~~] as a licensed or certified health care or social service provider[~~, except as provided in paragraph (a) of this subsection~~].
(c) The written approval specified in paragraph (a) of this subsection shall be required upon the effective date of this administrative regulation.
(7) An employee of the department who provides protection and permanency services shall be prohibited from becoming a foster parent **or respite care provider** for a child in the custody of the cabinet, unless the:
(a) Employee was a foster parent **or respite care provider** for the child at the time employment with the department in protection and permanency services began; and
(b) Commissioner approves, in writing, the employee to be a foster parent **or respite care provider** for the child.
(8) An employee of the department who provides protection and permanency services may apply to adopt a child in the custody of the cabinet if the:
(a) Employee had:
1. No relationship with the child or a parent of the child prior to the termination of parental rights in accordance with KRS Chapter 625, unless the employee is a relative of the child; or
2. Adopted a sibling of the child available for adoption; and
(b) Commissioner approves, in writing, the employee to adopt.
(9)(a) A child-placing agency shall develop written policies and procedures regarding employees of the child-placing agency serving as a:
1. Foster parent;
2. Adoptive parent; or
3. Respite **care** provider.
(b) Policies and procedures developed in accordance with paragraph (a) of this subsection shall address the prevention or appearance of:
1. A conflict of interest; and
2. Misuse of influence.

Section 5. Orientation and Preparation of a Foster Home. A child-placing agency shall:
(1) Develop and maintain an orientation and preparation curriculum to be kept on file;
(2) Provide a minimum of twenty-four (24) hours of orientation and preparation to a prospective foster parent to include the following:
(a)1. Child-placing agency program description with mission statement;
2. Information about the rights and responsibilities of the home; and

3. Background information about the foster child and the child's family, including information in accordance with KRS 605.090(1)(b);

(b) An example of an actual experience from a foster parent that has fostered a child;

(c) Information regarding:

1. The stages of grief;

2. Identification of the behavior linked to each stage;

3. The long-term effect of separation and loss on a child;

4. Permanency planning for a child, including independent living services;

5. The importance of attachment on the growth and development and how a child may maintain or develop a healthy attachment;

6. Family functioning, values, and expectations of a foster home;

7. ~~[Attachment disorder and associated behavior; and~~

~~8.~~] Cultural competency;

**8. How a child enters and experiences foster care, and the importance of achieving permanency; and**

**9. The importance of birth family and culture and helping children leave foster care;**

(d) Identification of changes that may occur in the home if a placement occurs, to include:

1. Family adjustment and disruption;

2. Identity issues; and

3. Discipline issues **and child behavior management**; and

(e) Specific requirements and responsibilities of a foster parent.

(3) Maintain an ongoing foster home preparation and training program that:

(a) Provides a minimum of six (6) hours foster home training annually; and

(b) Maintains a record of preparation and training completed.

Section 6. Placement and Case Management of a Child in a Foster Home, Medically-fragile Foster Home, or Therapeutic Foster Care Home. (1) The child-placing agency shall place a child only in an approved foster home.

(2) The child-placing agency shall select a foster home for a child based upon the:

(a) Individual needs of the child; and

(b) Child's ITP.

(3) A child shall participate in the intake process and in the decision that placement is appropriate, to the extent that the child's age, maturity, adjustment, family relationships, and the circumstance necessitating placement justifies the child's participation.

(4)(a) The number of children residing in a foster home by a child-placing agency shall not exceed six (6), including the foster parent's own children.

(b) The number of children residing in a foster home that cares for a child in the custody of the cabinet shall not exceed five (5), including the foster parent's own children.

(5) A child-placing agency shall have a maximum of two (2) children under two (2) years of age placed in the same foster home at the same time, with the exception of a sibling group, who may remain together.

(6)(a) Justification for an exception to subsection (4)(a) or (5) of this section shall be:

1. Documented in the foster parent file; and

2. Authorized by the program director.

(b) For a foster home that cares for a child in the custody of the cabinet, the child-placing agency shall submit a written justification for an exception to subsection (4)(b) or (5) of this section in accordance with 922 KAR 1:350, Section 2(2).

(7) The child-placing agency shall:

(a) Assess a child to be placed in foster care and develop an ITP individualized for the child prior to or within thirty (30) days of placement;

(b) Have a written agreement with the foster home stating the:

1. Responsibilities of the:

a. Child-placing agency; and

b. Foster home; and

2. Terms of each placement;

(c) Require a foster home to certify, in writing, that supervision from the child-placing agency or the state agency, which has custody of the child, shall be allowed;

(d) Document a placement in the foster home file;

(e) Report immediately to the state agency, which has custody of the child, if there is:

1. A life-threatening accident or illness;

2. An absence without official leave;

3. A suicide attempt;

4. Criminal activity by the child requiring notification of law enforcement; or

5. Death;

(f) Report, if applicable, within two (2) business days to the state agency, which has custody of the child, if there is a:

1. Change in address;

2. Change in the number of people living in the home; or

3. Significant change in the foster home;

(g) Establish policies and procedures for supervision of a foster home by a worker other than the social services worker assigned to the foster home, **who meets qualifications specified in section 2(4)(c) of this administrative regulation** to:

1. Include:

a. Frequency of an in-home visit with the foster parent;

b. Means of supervision;

c. Methods of supervision; and

d. Personnel conducting the supervision;

2. Ensure a foster child's placement stability and safety; and

3. Be individualized, as needed, for the:

a. Child; or

b. Foster home;

(h) Identify and make available necessary supports to a foster home, including:

1. A plan for respite care in accordance with Section 13 of this administrative regulation;

2. Twenty-four (24) hour crisis intervention; and

3. A foster home support group;

(i) Assure that a child receives care and services, including independent living services:

1. In accordance with Section 16 of this administrative regulation; and

2. As prescribed by the child's needs as assessed in the child's ITP;

(j) Provide information to a foster parent regarding the behavior and development of the child placed by the child-placing agency;

(k) Inform the foster parent, in accordance with KRS 605.090(1)(b), of:

1. Inappropriate sexual acts or sexual behavior of the child as specifically known to the child-placing agency; and

2. Any behaviors of the child that indicate a safety risk for the placement;

(l) Document each effort to:

1. Protect the legal rights of the family and the child; and

2. Maintain the bond between the child and the child's family, in accordance with the child's permanency plan;

(m) Assure that a child shall have, for the child's exclusive use, clothing comparable in quality and variety to that worn by other children with whom the child may associate;

(n) Be responsible for monitoring the child's school progress and attendance;

(o) Secure psychological and psychiatric services, vocational counseling, or other services if indicated by the child's needs;

(p) Reassess and document, in the child's ITP, placement and permanency goals every ninety (90) calendar days, including independent living services, in accordance with Section 16 of this administrative regulation;

(q) Conduct and document a face-to-face visit with the child at least once per month; and

(r) Maintain foster care records in accordance with Section 18 of this administrative regulation.

(8) Without prior notification to and written authorization from the Kentucky Interstate Compact Administrator, a child shall not be:

(a) Placed with a family that normally resides in another state; or

(b) Permitted to go with a person to take up residence in another state.

(9)(a) An approved foster home in use shall be evaluated on an annual basis for compliance with responsibilities listed in the written agreement described in subsection (7)(b) of this section.

(b) Results shall be recorded in the foster parent file.

**(10) Factors that shall result in a review of a foster home shall include:**

**(a) Death or disability of a family member;**

**(b) Sudden onset of a health condition that impair a foster parent's ability to care for a child placed in the home;**

**(c) Change in marital status;**

**(d) Sudden, substantial decrease in, or loss of, income;**

**(e) Child birth;**

**(f) Use of a form of punishment that includes:**

**1. Cruel, severe, or humiliating actions;**

**2. Corporal punishment inflicted in any manner;**

**3. Denial of food, clothing, or shelter;**

**4. Withholding implementation of the child's treatment plan;**

**5. Denial of visits, telephone or mail contacts with family members, unless authorized by court of competent jurisdiction; and**

**6. Assignment of extremely strenuous exercise or work;**

**(g) A report of abuse, neglect, or dependency that results in a finding that is:**

**1. Substantiated; or**

**2. Reveals concern regarding the care of the child;**

**(h) If the foster parent is cited with, charged with, or arrested due to a violation of law other than a minor traffic offense; or**

**(i) Other factor identified by child-placing agency staff that jeopardize the physical, mental, or emotional well being of the child.**

**(11) The narrative of a review, specified in subsection (10) of this section, shall contain:**

**(a) Identifying information;**

**(b) Current composition of the household;**

**(c) Description of the situation that initiated the review;**

**(d) An assessment of the family functioning to determine if the child's needs are met; and**

**(e) A plan for corrective action that may include a recommendation for closure of the foster home.**

~~[(a) For a child in the custody of the cabinet, a child-placing agency shall provide two (2) weeks advance notice to the cabinet prior to physically relocating the child to another foster home placement.~~

~~(b) Exception to paragraph (a) of this subsection shall require the approval of designated regional cabinet staff.~~

~~(11) A child-placing agency shall conduct a meeting, prior to or within ten (10) days of a placement change, as described in subsection (10) of this section, and invite:~~

~~(a) The cabinet worker assigned to the child;~~

~~(b) Community resource providers;~~

~~(c) The child's parents, if the parental rights have not been terminated in accordance with KRS Chapter 625; and~~

~~(d) The child's foster parent.]~~

Section 7. Orientation and Preparation of a Therapeutic Foster Care Home. (1) A child-placing agency shall:

(a) Maintain the orientation and preparation curriculum on file; and

(b) Provide a minimum of thirty-six (36) hours of orientation and preparation for a prospective therapeutic foster care parent that shall incorporate the following topic areas:

1.a. Child-placing agency program description with mission statement;

b. Information about the rights and responsibilities of the therapeutic foster care home; and

c. Background information about a foster child and the child's family;

2. An example of an actual experience of a therapeutic foster care parent that has fostered a child;

3. Stages of grief;

4. Behaviors linked to each stage of grief;

5. Long-term effects on a child from separation and loss;

6. Permanency planning for a child, including independent living services;

7. Importance of attachment on a child's growth and development and the way a child maintains and develops a healthy attachment, including attachment disorder and associated behaviors;

8. Family functioning, values and expectations of a therapeutic foster care home;

9. Changes that may occur in the home with placement of a child regarding:

a. Family functioning;

b. Family adjustment;

c. Identity issues;

d. Discipline **issues and child behavior management**; and

e. Family disruption;

10. Specific requirements and responsibilities of a therapeutic foster care home;

11. Behavior management;

12. Communication skills;

13. Skill teaching;

14. Cultural competency;

15. Behavior management deescalation techniques;

16. The dynamics of the sexually-abused child; and

17. The effect of chemical abuse or dependence by the child or the child's biological parent.

(2) A therapeutic foster care home shall receive a minimum of twenty-four (24) hours of annual training.

(3) A child-placing agency that provides therapeutic foster care shall maintain an ongoing therapeutic foster care preparation and training program that:

(a) Provides a minimum of twenty-four (24) hours of annual training; and

(b) Maintains a record of preparation and training completed.

Section 8. Additional Requirements for Therapeutic Foster Care. (1) A therapeutic foster care home shall accommodate the needs of a child who is unable to live with the child's own family and who:

(a) May benefit from care in a family setting; and

(b)1. Has clinical or behavioral needs that exceed supports available in a foster home; or

2. Is transitioning from group care as part of the process of returning to family and community.

(2) The number of children residing in a therapeutic foster care home shall be limited to a total of six (6) children, including no more than two (2) therapeutic foster care children.

(3) Justification for an exception to subsection (2) of this section shall be:

(a) Documented in the therapeutic foster care parent's file; and

(b) Authorized by the treatment director.

(4) The number of children residing in a therapeutic foster care home that cares for a child, in the custody of the cabinet, shall be limited to a total of four (4) children, including no more than two (2) therapeutic foster care children.

(5) The child-placing agency shall submit a justification for an exception to subsection (4) of this section in accordance with 922 KAR 1:350, Section 2(2).

(6) A treatment director shall supervise a treatment team and shall participate in the development of the ITP and the quarterly case consultation.

(7) A child-placing agency shall provide or contract, as specified in KRS 199.640(5)(a)(2), for therapeutic services individualized for the child, as needed, at least two (2) times per month.

(8) A therapeutic foster care parent shall be responsible for:

(a) Participation in the development of an assessment and ITP that includes visitation, health, education and permanency goals;

(b) Facilitation of in-home services provided by a social services worker at least two (2) times per month;

(c) Supervision of the child and implementation of components of the treatment plan, including daily log documentation as specified in the treatment plan;

(d) Working with the child-placing agency to promote stability and avoid disruption for a child;

(e) Working with the child-placing agency in the development of a plan for the smooth transition of the child to a new placement, in the event of a disruption; and

(f) Providing independent living services for a child twelve (12) years of age or older consistent with a child's ITP.

(9) Except for a child who is the legal responsibility or in the custody of the cabinet or the Department of Juvenile Justice, the child-placing agency shall be responsible for:

(a) A preplacement conference, in a nonemergency placement, for the purpose of:

1. Developing permanency goals and a discharge plan for the child, including independent living services;

2. Developing a plan for the implementation of services;

3. Identifying the treatment goals; and

4. Developing a behavior management plan if applicable; and

(b) Inviting and encouraging attendance to the preplacement conference of:

1. The prospective therapeutic foster care home;

2. A respite care provider approved in accordance with section 13(4) of this administrative regulation;

3. The child, if appropriate; and

4. The child's family.

(10) The social services worker shall:

(a) Have a first face-to-face visit with a child and therapeutic foster care parent on the day of placement;

(b) Have another face-to-face visit with the therapeutic foster care parent or child within ten (10) calendar days **of placement**;

(c) Telephone or visit, on a weekly basis, at least one (1) of the therapeutic foster care parents of each child on the therapeutic foster care worker's caseload;

(d) Visit a therapeutic foster care parent a minimum of two (2) times a month with at least one (1) visit being in the foster home;

(e) Visit the foster child face-to-face a minimum of two (2) times a month with at least one (1) visit in the therapeutic foster care home and one (1) visit outside the foster home;

(f) Carry a caseload of not more than twelve (12) therapeutic foster care children, taking into account:

1. Required responsibilities other than the case management of a child in foster care;

2. Additional support, contact and preparation needed by a therapeutic foster care home, due to the extent of the needs of the child served; and

3. The extent of intensive services provided to the child and the child's family;

(g) Conduct a quarterly case consultation, including the:

1. Foster home;

2. Child's public agency worker;

3. Child-placing agency treatment director and social services worker; and

4. Child and the child's family of origin, to the extent possible;

(h) Provide or contract for therapeutic services individualized for a child at least two (2) times each month based on the child's needs assessed in the child's ITP;

(i) Identify the support needed by the foster family, including a:

1. Plan for respite care as provided in section 13 of this administrative regulation;

2. Plan for twenty-four (24) hour on-call crisis intervention; and

3. Foster home support group;

(j) Recommend and prepare an aftercare plan for a child, prior to discharge from therapeutic foster care, to ensure a successful transition; and

(k) Document a quarterly case consultation and revision to a child's ITP as determined by the case consultations.

(11) The child-placing agency shall:

(a) Meet requirements specified in Section 6(1) through (3) and (7) through **(9)** **[**~~(11)~~**]** of this administrative regulation; and

(b) Annually reevaluate a therapeutic foster care home in accordance with Section 15 of this administrative regulation.

Section 9. Medically-fragile Child. (1) A medically-fragile child shall be:

(a) A child in the custody of the cabinet; and

(b) Determined by the cabinet to meet **the medically-fragile requirements of 922 KAR 1:350** **[**~~criteria specified in 922 KAR 1:350, Section 6(1)(b)~~**]**.

(2) The decision to accept a medically-fragile child shall be optional to a child-placing agency.

Section 10. Preparation of a Medically-fragile Foster Home. (1) A child-placing agency shall create a medically-fragile foster home only with the approval of the cabinet.

(2) A foster home may be approved to care for a medically-fragile child by a child-placing agency if the:

(a) Cabinet approves of the creation of the medically-fragile foster home, based on the needs of the geographical area; and

(b) Foster home:

1. Includes a primary caregiver who is not employed outside the home, unless approved in writing by designated cabinet staff;

2. Completes, in addition to training specified in Section 5 of this administrative regulation:

a. Twenty-four (24) hours of cabinet training; or

b. Training approved in advance by the cabinet, in the areas of:

(i) Growth and development;

(ii) Nutrition; and

(iii) Medical disabilities;

3. Maintains certification in:

a. Cardiopulmonary resuscitation or "CPR"; and

b. First aid;

4. Is located within a:

a. One (1) hour drive of a medical hospital with an emergency room; and

b. Thirty (30) minute drive of a local medical facility; and

5. Is evaluated in accordance with Section 4(2) through (9) of this administrative regulation.

(3) Professional health care experience related to the care of a medically-fragile child may substitute for the training requirement as specified in subsection (2)(b)2 of this section:

(a) Upon the approval by a designated cabinet staff; and

(b) If the foster parent is a licensed health care professional, to include a:

1. Physician as defined in KRS 311.720(9);

2. Registered nurse as defined in KRS 314.011(5); **[**~~or~~**]**

3. Licensed practical nurse as defined in KRS 314.011(9);

**4. Physician's assistant as defined in KRS 311.840(3); or**

**5. Advanced registered nurse practitioner as defined in KRS 314.011(7).**

(4) If the cabinet determines that a child currently in the care of a foster parent approved by the child-placing agency is a medically-fragile child in accordance with Section 9 of this administrative regulation, then the cabinet shall prioritize the foster home's enrollment in training as specified in subsection (2)(b)2 of this section.

(5) An approved medically-fragile foster home shall receive annual reapproval, if the:

(a) Foster home:

1. Annually completes:

a. Twenty-four (24) hours of ongoing cabinet training; or

b. Training approved in advance:

(i) By the cabinet; and

(ii) Before the anniversary date of approval as a medically-fragile foster home; and

2. Continues to meet the requirements in Section 15 of this administrative regulation; and

(b) Cabinet determines and provides documentation that a need for the medically-fragile foster home continues to exist.

(6) Except for a sibling group or unless approved by designated cabinet staff, no more than four (4) children, including the medically-fragile foster parent's own children, shall reside in a medically-fragile foster home.

(7) Unless approved by designated cabinet staff, a:

(a) One (1) parent medically-fragile foster home shall not care for more than one (1) medically-fragile child; and

(b) Two (2) parent medically-fragile foster home shall not care for more than two (2) medically-fragile children.

(8) A child-placing agency shall submit a justification for an exception to subsection (6) or (7) of this section, in accordance with 922 KAR 1:350, Section 2(2).

Section 11. Placement of a Medically-fragile Child. (1)(a) An approved medically-fragile foster parent shall receive training on how to care for the specific needs of a medically-fragile child placed in the home.

(b) The training shall be conducted by a licensed health care professional, **as specified in Section 10(3)(b) of this administrative regulation.** ~~[including a:~~

~~1. Physician as defined in KRS 311.720(9);~~

~~2. Registered nurse as defined in KRS 314.011(5); or~~

~~3. Licensed practical nurse as defined in KRS 314.011(9).]~~

(2) A medically-fragile child shall be placed in an approved medically-fragile foster home.

(3) A child-placing agency shall:

(a) Submit a justification for an exception to subsection (2) of this section in accordance with 922 KAR 1:350, Section 2(2);

(b) Provide case management services:

1. As described in Section 6(1) through (3) and (7) through (9) **[**~~(11)~~**]** of this administrative regulation; and

2. In accordance with the child's:

a. Health plan developed by designated cabinet staff; and

b. ITP;

(c) Support the child's health plan developed by designated cabinet staff; and

(d) Conduct a face-to-face visit with the child at least two (2) times per month.

Section 12. Expectations for a Foster Home or Therapeutic Foster Care Home. An approved foster parent or therapeutic foster care parent shall:

(1) Provide a child placed by the child-placing agency with a family life, including:

(a) **Nutritious** food;

(b) Clothing **comparable in quality and variety of that worn by other children with whom the child may associate**;

(c) Affection;

(d) Training;

(e) Recreational opportunities;

(f) Education opportunities;

(g) Nonmedical transportation;

(h) Opportunities for development consistent with the child's religious, ethnic, and cultural heritage; and

(i) Independent living services for a child twelve (12) years of age or older;

(2) Permit a child-placing agency and, if applicable, staff of a state agency, which has custody of the child, to visit the home;

(3) Share with the child-placing agency and, if applicable, staff of the state agency which has custody of the child, information about the child placed by the child-placing agency;

(4) Notify the child-placing agency ten (10) days prior if the home is approved to provide foster or adoptive services through another private child-placing agency or the cabinet**[**~~, in accordance with 922 KAR 1:350, Section 12(12)~~**]**;

(5) Notify the child-placing agency prior to:

(a) Leaving the state with a child placed by the child-placing agency for more than two (2) nights; or

(b) A child placed by the child-placing agency being absent from the foster home, except for regular school attendance;

(6) Report immediately to the child-placing agency through which the child is placed, if there is:

(a) A life-threatening accident or illness;

(b) An absence without official leave;

(c) A suicide attempt;

(d) Criminal activity by the child requiring notification of law enforcement; or

(e) Death;

(7) Report, if applicable, within two (2) business days to the child-placing agency if there is a:

(a) Change in address;

(b) Change in the number of people living in the home; or

(c) Significant change **in circumstance** in the foster home;

(8) Cooperate with the child-placing agency if child-placing agency staff arranges for a child, placed in the foster home by the child-placing agency, and the child's birth family regarding:

(a) Visits;

(b) Telephone calls; or

(c) Mail;

(9) Surrender a child or children to the authorized representative of the child-placing agency or the state agency, which has custody of the child, upon request;

(10) Keep confidential all personal or protected health information as shared by the cabinet or child-placing agency, in accordance with KRS 194B.060 and 45 C.F.R. Parts 160 and 164, concerning a child placed in a home or the child's birth family;

(11) Support an assessment of the service needs, **including respite care,** and the development of an ITP of a child placed by the child-placing agency;

(12) Participate in a case planning conference concerning a child placed by the child-placing agency;

(13) Cooperate with the implementation of the permanency goal established for a child placed by the child-placing agency;

(14) Ensure that a child in the custody of the cabinet receives the **child's** designated per diem allowance;

(15) Provide medical care to a child placed by the child-placing agency as needed, including:

(a) Administration of medication to the child and daily documentation of the administration; and

(b) Annual physicals and examinations for the child;

(16) Treat a child placed by the child-placing agency with dignity;

(17) Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.030; and

(18) Comply with general supervision and direction of the child-placing agency or, if applicable, the state agency which has custody of the child, concerning the care of the child placed by the child-placing agency.

Section 13. Respite For Foster Care, Medically-fragile Foster Care, or Therapeutic Foster Care. (1) The child-placing agency shall develop written policies and procedures to address the respite care needs of a child or a foster parent.

(2) Respite care shall not be used as a means of placement for a child.

(3) Respite care shall be in accordance with Section 3(3) of this administrative regulation.

(4) The child-placing agency shall approve a respite care provider in accordance with Section 4**[**~~(2) and~~**]** (3)**(e), (g), and (n) through (w)** of this administrative regulation.

(5) A respite care provider shall:

(a) Receive preparation for placement of a child, including information in accordance with KRS 605.090(1)(b); and

(b)1. Give relief to a foster parent caring for a child; or

2. Provide for an adjustment period for a child.

Section 14. Private Placement Process. Except for a child in the custody of, or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice, the following shall be the responsibility of the child-placing agency if a private placement is conducted.

(1) For a child being placed with a child-placing agency, the child-placing agency shall obtain an:

(a) Agreement for voluntary care signed by the custodian; or

(b) Order from a court of competent jurisdiction placing the child into the custody of the child-placing agency.

(2) The child-placing agency shall:

(a) Complete an intake assessment of the strengths and needs of the child and the child's family of origin; and

(b) Ascertain the appropriateness of the referral for the child.

(3)(a) The child-placing agency shall be responsible for developing an ITP individualized for a child and the child's family based on an individualized assessment of the child's and family's needs.

(b) The assessment shall be revised as needed.

(c) The assessment and ITP shall include the type and extent of services to be provided to the child and the child's family.

(4) Unless not in the best interest of the child, the child, parent, and foster parent shall be included in developing the assessment and ITP.

(5)(a) The foster home selected for placement shall be the most appropriate home based on the child's needs and the

strengths of the foster family.

(b) The foster home shall be located as close as possible to the home of family of origin, in order to facilitate visiting and reunification.

(6)(a) The social services worker and the foster parent shall work collaboratively to prepare the child prior to the placement.

(b) Unless a circumstance precludes preparation and the circumstance is documented in the case record, a child shall have a period of preparation prior to the placement in the foster home.

(7) The child-placing agency shall:

(a) Provide or arrange for services to support reunification for a child for whom family reunification is the goal;

(b) Assess and document the parent's capacity for reunification quarterly;

(c) Provide for review of the child in order to evaluate the progress toward achieving the child's permanency goal every six (6) months; and

(d) Assure that foster care continues to be the best placement for the child.

(8)(a) Services to the family of origin and to the child shall be adapted to their individual capacities, needs, and problems.

(b) A reasonable effort shall be made to return the child to the family of origin.

(9) Planning for the child regarding treatment program matters, including visitation, health, education, and permanency goals, shall be developed in collaboration with the:

(a) Family of origin;

(b) Treatment director;

(c) Social services worker; and

(d) Foster home.

(10)(a) The child-placing agency shall work with a foster home to promote stability and avoid disruption for a child, to include:

1. Services specified in Section 6(1) through (3) and (7) through **(9)** ~~[(11)]~~ of this administrative regulation; and

2. Annual reevaluation of the foster home in accordance with Section 15 of this administrative regulation.

(b) A request for the removal of a child from a foster home shall be explored immediately and shall be documented by the social services worker.

(c) If disruption is unavoidable, the child-placing agency and foster home shall develop a plan for the smooth transition of the child to a new placement.

(11)(a) Preparation for the return of a child to the family of origin shall be supervised by a social services worker.

(b) The family shall participate in planning for the child's return.

(c) If regular contact with the child's family does not occur, a plan for the child's return shall include at least one (1):

1. Prior visit between the child and the family; and

2. Preliminary visit of the child to the child's family home.

(12) The child-placing agency shall recommend a plan for aftercare services for a child and the child's family.

Section 15. Annual Reevaluation of an Approved Adoptive Home Awaiting Placement or an Approved Foster Home. Annually, a child-placing agency shall:

(1) Conduct a personal interview in the home with an approved:

(a) Adoptive home awaiting placement; or

(b) Foster home; and

(2) Assess:

(a) Any change in the home;

(b) The ability of the home to meet the needs of a child placed in the home; and

(c) The home's continued compliance with the requirements of this administrative regulation in:

1. Section 4(3)~~[(g),]~~ (h), and (l) through (x) and (6) through (8) of this administrative regulation, with regard to evaluation, if the home is approved as a foster or adoptive home;

2. Sections 6(9)(a) and 12 of this administrative regulation, with regard to case management and expectations, if the home is approved as a foster home;

3. Sections 5(3)(a), 7(2), or 10(5)(a) of this administrative regulation, with regard to annual training, if the home is approved as a foster home; and

4. Section 19(3) of this administrative regulation, with regard to annual training, if the home is approved as an adoptive home.

**(3) If a child-placing agency requests a statement regarding the foster parent's general health and medical ability to care for a child, the foster home parent shall comply with the request.**

Section 16. Independent Living Services. A child-placing agency shall:

(1) Provide independent living services:

**(a)** ~~[(1)]~~ To a child:

**1.** ~~[(a)]~~ In the custody of **a state agency** ~~[the cabinet]~~;

**2.** ~~[(b)]~~ That is twelve (12) to twenty-one (21) years of age; and

**3.** ~~[(c)]~~ Directly or indirectly through a foster parent with whom the child is placed; ~~[and]~~

**(b)** ~~[(2)(a)]~~ As prescribed in the child's ITP; and

**(c)** ~~[(b)]~~ In accordance with 42 U.S.C. 677**(a)(1) through (6); and**

**(2) Teach an independent living curriculum:**

**(a) To a child:**

**1. In the custody of a state agency; and**

**2. Sixteen (16) years of age and older; and**

**(b) Developed in accordance with Section 17(1)(e) of this administrative regulation.**

Section 17. Independent Living Programs. (1) ~~[A child-placing agency shall teach an independent living curriculum, developed in accordance with subsection (2)(e) of this section, to a child sixteen (16) years of age and older.~~

~~(2)~~] A child-placing agency providing independent living programming shall:

(a) Conduct and document an assessment of the child's skills and knowledge:

1. Within thirty (30) days of the child's placement with the child-placing agency; and

2. Using a tool approved by the cabinet, including:

a. Money management and consumer awareness;

b. Job search skills;

c. Job retention skills;

d. Use of and access to:

i. Community resources;

ii. Housing; and

iii. Transportation;

e. Educational planning;

f. Emergency and safety skills;

g. Legal knowledge;

h. Interpersonal skills, including communication skills;

i. Health care knowledge, including knowledge of nutrition;

j. Human development knowledge, including sexuality;

k. Management of food, including food preparation;

l. Ability to maintain personal appearance;

m. Housekeeping; and

n. Leisure activities;

(b) Develop and update quarterly a written ITP within thirty (30) calendar days of a child's placement with a child-placing agency in an independent living program, to include:

1. Educational, job training, housing, and independent living goals;

2. Objectives to accomplish a goal;

3. Methods of service delivery necessary to achieve a goal and an objective;

4. Person responsible for each activity;

5. Specific timeframes to achieve a goal and an objective;

6. Identification of a discharge plan;

7. Plan for aftercare services; and

8. Plan for services from a cooperating agency;

(c) Maintain written policies and procedures for the independent living program;

(d) Train and document the training provided to designated independent living staff within thirty (30) days of employment on:

1. Content of the independent living curriculum;

2. Use of the independent living materials;

3. Application of the assessment tool; and

4. Documentation methods used by the child-placing agency;

and

(e) Maintain and teach an independent living curriculum:

1. In accordance with 42 U.S.C. 677(a)(1) through **(6)** [~~(5)~~]; and

2. Approved in advance by the cabinet, including:

a. Money management and consumer awareness;

b. Job search skills;

c. Job retention skills;

d. Educational planning;

e. Community resources;

f. Housing;

g. Transportation;

h. Emergency and safety skills;

i. Legal skills;

j. Interpersonal skills, including communication skills;

k. Health care, including nutrition;

l. Human development, including sexuality;

m. Food management, including food preparation;

n. Maintaining personal appearance;

o. House-keeping;

p. Leisure activities;

q. Voting rights and registration;

r. Registration for selective service, if applicable;

s. Self-esteem;

t. Anger and stress management;

u. Problem-solving skills; and

v. Decision-making and planning skills.

**(2)** [~~(3)~~] A social services worker from an independent living program shall:

(a) Be responsible for a child sixteen (16) to eighteen (18) years of age in an independent living program; and

(b) Be available for twenty-four (24) hours, seven (7) days a week crisis support for a child in the independent living program, regardless of the child's age; and

(c) Have:

1. Daily face-to-face contact with a child:

a. Sixteen (16) to eighteen (18) years of age; and

b. In the independent living program;

2. A minimum of one (1) face-to-face, in-home contact per week for a child:

a. Eighteen (18) to twenty-one (21) years of age; and

b. In the independent living program;

(d) Conduct a visual and exploratory review of a child's living unit at least monthly, to include a review for:

1. Safety;

2. Use of alcohol; and

3. Illegal contraband;

(e) Maintain a caseload of no more than ten (10) children; and

(f) Document annual compliance with fire and building codes for any living unit in which the agency places a child.

**(3)** [~~(4)~~](a) A living unit for a child in an independent living program shall be occupied by only a child or children approved to occupy the living unit by the child-placing agency.

(b) Nonresidents shall be asked to vacate the living unit.

**(4)** [~~(5)~~] The child-placing agency shall assure and document that the living unit of a child in an independent living program:

(a) Does not present a hazard to the health and safety of the child;

(b) Is well ventilated and heated; and

(c) Complies with state and local health requirements regarding water and sanitation.

**(5)** [~~(6)~~] The child-placing agency shall maintain documentation for each child concerning:

(a) Assistance to the child in finding and keeping in touch with family, if possible;

(b) Health care and therapeutic services received by a child;

(c) Progress each child has made in the independent living program, including independent living services received;

(d) Progress in an educational program, including vocational education;

(e) An assessment of the child's readiness to live independently; and

(f) The social services worker's contacts with the child, including observation of the child's living arrangement.

Section 18. Maintenance of a Foster Care, Medically-fragile Foster Care, or Therapeutic Foster Care Record. (1)(a) The child-placing agency shall maintain a record on each child and foster home, including medically-fragile foster homes and therapeutic foster care homes.

(b) The child's record and the foster home record shall show the reason for placement change and steps taken to ensure success.

(c) A case record shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, pursuant to KRS 199.430(3), 199.640, and 45 C.F.R. Parts 160 and 164.

(2) The record of the child, including information of the child's family, shall include:

(a) Identifying information for child, parent, and foster home;

(b) Commitment order or custodian's consent for admission;

(c) Birth and immunization certificate;

(d) Educational record;

(e) Medical and dental record since placement;

(f) Social history and assessment;

(g) ITP and review;

(h) Permanency goals, including independent living services;

(i) Incident reports;

(j) Monthly progress notes based on the ITP;

(k) Quarterly revisions to the child's ITP;

(l) Correspondence with the:

1. Court;

2. Family;

3. Department for Community Based Services; or

4. Department of Juvenile Justice;

(m) Discharge report; and

(n) Aftercare plan.

(3) The foster home's record shall include documentation relating to the:

(a) Orientation and preparation of the home, including all adult caregivers in the household;

(b) Required preparation hours and the topics covered;

(c) Placement of the child;

(d) Narrative summary of the initial and annual foster home's home study;

(e) Supervision of the foster home, including critical incidents;

(f)1. Annual training requirements that are met in accordance with Section 5(3) of this administrative regulation by the foster parent and all adult caregivers in the household; or

2. If applicable, annual training requirements in accordance with Section 7(2) or 10(5)(a) of this administrative regulation; and

(g) Background checks in accordance with Section 4(3)(o) of this administrative regulation.

Section 19. Orientation and Preparation of an Adoptive Home. A child-placing agency shall:

(1) Prepare and maintain the orientation and preparation curriculum on file;

(2) Provide orientation and preparation to a prospective adoptive home in accordance with the child-placing agency's policies and procedures to include the following:

(a) An example of an actual experience from a parent that has adopted a child;

(b) Challenging behavior characteristics of an adoptive older child;

(c) Referral resources for a developmental delay;

(d) Transition issues with focus on stages of grief, and a honeymoon period;

(e) Loss and the long-term effects on a child;

(f) Attachment and identity issues of the child;

(g) Cultural competency;

(h) Medical issues including referral resources;

(i) Family functioning, family values, and expectations of an adoptive home;

(j) Identification of changes that may occur in the family unit upon the placement of a child to include:

1. Family adjustment and disruption;

2. Identity issues; and

3. Discipline; and

(k) Financial assistance available to an adoptive home; and

(3) Ensure that an approved adoptive home awaiting the placement of a child receives adoptive home training annually in accordance with the child-placing agency's established policies and procedures.

Section 20. Adoption Placement Process. (1) A child shall not be placed for adoption until the:

(a) Adoptive home has been approved;

(b) Parental rights of the mother, legal or birth father, and putative father of the child, if not the same person as the legal father, are terminated by a circuit court order entered pursuant to KRS Chapter 625; and

(c) **Child** ~~[Child's custody]~~ is placed with the child-placing agency for the purpose of adoption placement.

(2) A child's parent shall not be induced to terminate parental rights by a promise of financial aid or other consideration.

(3)(a) The authority granted to a child-placing agency licensed by the cabinet authorizing the agency to place a child for adoption shall not be used to facilitate an adoptive placement planned by a doctor, lawyer, clergyman, or person or entity outside the child-placing agency.

(b) The child-placing agency shall comply with provisions of 922 KAR 1:010.

(4) The following shall be obtained by the child-placing agency:

(a) A developmental history of the adoptive child to include:

1. Birth and health history;

2. Early development;

3. Characteristic ways the child responds to people and situations;

4. Any deviation from the range of normal development;

5. The experiences of the child prior to the decision to place the child for adoption;

6. Maternal attitude during pregnancy and early infancy;

7. Continuity of parental care and affection;

8. Out-of-home placement history;

9. Separation experiences; and

10. Information about the mother, legal father, and putative father, if not the same person as the legal father, and family background:

a. That may affect the child's normal development in order to determine the presence of a significant hereditary factor or pathology; and

b. Including an illness of the biological mother or father;

(b) A social history of the biological or legal parent, to include:

1. Name;

2. Age;

3. Nationality;

4. Education;

5. Religion or faith; and

6. Occupation;

(c) Information obtained from direct study and observation of the child by a:

1. Social services worker;

2. Physician or other licensed health care professional, and, if indicated;

3. Foster home;

4. Nurse;

5. Psychologist; and

6. Other consultants; and

(d) Information from the mother, if possible, identifying the biological father, or legal father, if different from the biological father, for the purpose of:

1. Determining the father's parental rights; and

2. Establishment of possible hereditary endowments.

(5) Exception to subsection (4)(a)1 and 2 of this section may be granted, if the adoption involves a child born in a country other than the United States.

(6) If either biological or legal parent is unavailable, unwilling, or unable to assist with the completion of information necessary to comply with KRS 199.520 and 199.572, the child-placing agency shall document information, to the extent possible, from the existing case record.

(7) Prior to finalization of the adoptive placement, a medical examination shall be made by a licensed physician or other licensed health professional to determine:

(a) The state of the child's health;

(b) Any significant factor that may interfere with normal development; and

(c) The implications of any medical problem.

(8) The condition under which an adoptive home agrees to accept the child shall be decided upon, prior to placement of the child. The written agreement between the child-placing agency and the adoptive home shall embody the following provisions:

(a) The adoptive home shall agree to:

1. Comply with KRS 199.470;

2. File an adoptive petition at a time agreeable to them and the child-placing agency; and

3. Permit supervision by the child-placing agency in accordance with the child-placing agency's policies and procedures:

a. After placement; and

b. Preceding a final judgment of adoption by the circuit court;

(b) The child-placing agency shall be responsible for providing the adoptive home with written information regarding the child's:

1. Background;

2. Medical history;

3. Current behavior; and

4. Medical information necessary to comply with KRS 199.520(4)(a); and

(c) The adoptive home and the child-placing agency shall agree that the child may be removed from the placement, at the request of either party, before the filing of the adoptive petition.

(9)(a) Preplacement visits shall be arranged for the adoptive home and a child. (b) The pattern and number of visits shall be based on the:

1. Age;

2. Development; and

3. Needs of the child.

(10) During preparation, the child-placing agency shall discuss the child's readiness to accept the selected placement with the child, in accordance with the child's age and ability to understand.

(11)(a) Unless the child-placing agency and, if applicable, the state agency which has custody of a child belonging to a sibling group, determines that it is more beneficial for siblings to be placed in separate adoptive homes, siblings who have had a relationship with each other shall be placed together.

(b) If siblings have been separated in placements:

1. The case record shall reflect a valid basis for the separation;

2. The decision to separate siblings shall be made by the executive director of the child-placing agency; and

3. Continued contact between siblings shall be maintained, if possible.

Section 21. Supervision of an Adoptive Placement. (1) The child-placing agency placing a child shall remain responsible for the child until the adoption has been granted. This responsibility involves the following:

(a) Two (2) meetings by the social services worker with the child and the adoptive home, including both adoptive parents if not a single parent adoption, one (1) visit of which shall be in the adoptive home before filing of the adoption petition;

(b) The continuation of case management, visits, and telephone contacts based upon the needs of the child until the adoption is legally granted; and

(c) Awareness of a change in the adoptive home including health, education, or behavior.

(2) Upon request of the cabinet, the child-placing agency shall:

(a) Provide information pursuant to KRS 199.510, as necessary to report to the court to proceed with adoption;

(b) Prepare and provide the original confidential report to the court; and

(c) Forward to the cabinet a copy of:

1. The confidential report that was provided to the court; and

2. Information required by KRS 199.520 and 199.572.

(3) If the court finds the adoptive home to be unsuitable and refuses to grant a judgment, the child-placing agency shall remove the child from the home.

Section 22. Maintenance of Adoptive Case Record. (1) The child-placing agency shall maintain a case record from the time of the application for services through the completed legal adoption and termination of child-placing agency services for:

(a) A child accepted for care, and the child's family; and

(b) An adoptive applicant.

(2) The case record shall contain material on which the child-placing agency decision may be based and shall include or preserve:

(a) Information and documents needed by the court;

(b) Information about the child and the child's family;

(c) A narrative or summary of the services provided with a copy of legal and other pertinent documents; and

(d) Information gathered during the intake process including the following:

1. A description of the situation that necessitated placement of the child away from the child's family, or termination of parental rights;

2. A certified copy of the order of the circuit court terminating parental rights and committing the child to the child-placing agency for the purpose of adoption;

3. Verification of the child's birth record and the registration number;

4. A copy of the child's medical record up to the time of placement;

5. A copy of the required evaluation of the adoptive placement;

6. Date of adoptive placement;

7. A statement of the basis for the selection of this adoptive home for the child;

8. A record of after-placement services with dates of:

a. Visits;

b. Contacts;

c. Observations;

d. Filing of petition;

e. Granting of judgments; and

f. Other significant court proceedings relative to the adoption;

9. Child's adoptive name; and

10. Verification of preparation and orientation and annual training in accordance with Section 5 of this administrative regulation.

(3) If there is need to share background information with a party to a completed adoption, or to have the benefits of information from a closed adoption record to offer services following completion of an adoption, the child-placing agency shall comply with KRS 199.570.

(4) Records on adoption that contain pertinent information shall be:

(a) Maintained indefinitely following final placement of a child; and

(b) Sealed and secured from unauthorized scrutiny.

(5) A child-placing agency shall submit adoptive case records to the cabinet, if:

(a) The child-placing agency closes; and

(b) No other [~~existing~~] operational governing entity exists.

Section 23. Closure of an Approved Foster or Adoptive Home. (1) A foster or adoptive home shall be closed if:

(a) Sexual abuse or exploitation by a resident of the household is substantiated;

(b) Physical abuse or neglect of a child by a resident of the household occurs that is serious in nature or warrants the removal of a child;

(c) A serious physical or mental illness develops that may impair or preclude adequate care of the child by the home; or

(d) The home fails to meet requirements of this administrative regulation in:

1. Section 4(3)(g), (h), and (l) through (x) and (6) through (8) of this administrative regulation, with regard to evaluation, if the home is approved as a foster or adoptive home;

2. Sections 6(7)(q) and 12 of this administrative regulation, with regard to placement and case management, if the home is approved as a foster home;

3. Sections 5(3)(a), 7(2), or 10(5)(a) of this administrative regulation, with regard to annual training, if the home is approved as a foster home; and

4. Section 19(3) of this administrative regulation, with regard to annual training, if the home is approved as an adoptive home.

(2) A foster or adoptive home may be closed:

(a) In accordance with the terms specified in the written agreement between the child-placing agency and the foster or adoptive home; or

(b) In accordance with the terms specified in the written contract between the cabinet and the child-placing agency.

Section 24. Foster Care Registry. (1) Upon the effective date of this administrative regulation, a child-placing agency shall register a foster home with the cabinet, approved by the child-placing agency, to include medically-fragile foster homes and therapeutic foster care homes.

(2) Information shall be provided to the cabinet in a format prescribed by the cabinet, to include:

(a) The foster parents:

1. Full name;

2. Social Security number; and

3. Address, including county of residence;

(b) The child-placing agency's:

1. Name; and

2. Mailing address;

(c) The date the foster home was approved; and

(d) Whether the foster home is active or inactive.

[~~Section 25. Federal Outcomes. For a child-placing agency that cares for a child in the custody of the cabinet, the cabinet may request consultation or support from the child-placing agency to assist the cabinet in its efforts to meet:~~

~~(1) Goals and objectives as specified in Kentucky's child and family services plan developed pursuant to 45 C.F.R. 1357.15;~~

~~(2) Goals and objectives as specified in Kentucky's annual progress and services report developed pursuant to 45 C.F.R. 1357.16;~~

~~(3) Criteria established in 45 C.F.R. 1355.34; and~~

~~(4) Action steps as specified in Kentucky's program improvement plan developed pursuant to 45 C.F.R. 1355.35.~~] [~~from the social services worker in the Department for Community Based Services who has case responsibility.~~

~~(3) If an emergency placement of a child into a licensed child-placing agency is made, compliance with KRS 615.030 to 615.040 shall be the responsibility of the placement source.~~

~~Section 4. Orientation and Preparation of an Adoptive Home for a Child Under One (1) Year of Age. A child-placing agency shall:~~

~~(1) Maintain the orientation and preparation curriculum on file;~~

~~(2) Provide orientation and preparation to a prospective adoptive parent to include the following:~~

~~(a)1. Child-placing agency program description with mission statement;~~

~~2. Information about the rights and responsibilities of the adoptive parent; and~~

~~3. Background information about the adopted child and his family.~~

~~(b) Example of an actual experience from a parent who has adopted a child;~~

~~(c) Information regarding:~~

~~1. The stages of grief;~~

~~2. Identification of the behavior linked to each stage; and~~

~~3. The long-term effect of separation and loss on a child;~~

~~4. Attachment; and~~

~~5. Family functioning, values, and expectations of the adoptive parent;~~

~~(d) Identification of a change that may occur in the family unit when a placement occurs, to include:~~

~~1. Family adjustment and disruption;~~

~~2. Identify issues; and~~

~~3. Discipline.~~

~~(3) The requirements of this section shall apply if an infant is placed into foster care with the immediate intent of adoption.~~

Section 5. Orientation and Preparation of the Adoptive Home for a Child Older than One (1) Year. A child-placing agency shall:

(1) Maintain the orientation and preparation curriculum on file;

(2) Provide orientation and preparation to a prospective adoptive parent to include the following:

(a) Example of an actual experience from a parent who has adopted a child;

(b) Challenging behavior characteristic of an adoptive older child;

(c) Referral resources for a developmental delay;

(d) Transition issues with focus on stages of grief, and a honeymoon period;

(e) Loss and the long-term effect on a child;

(f) Attachment issues;

(g) Medical issues including referral resources;

(h) Family functioning, family values, and expectations of the adoptive parent; and

(i) Identification of change that may occur in the family unit upon the placement of a child to include:

1. Family adjustment and disruption;

2. Identity issues; and

3. Discipline.

Section 6. Orientation and Preparation of a Foster Home. A child-placing agency shall:

(1) Maintain the orientation and preparation curriculum on file;

(2) Provide a minimum of twenty-four (24) hours of orientation and preparation to a prospective foster parent to include the following:

(a)1. Child-placing agency program description with mission statement;

2. Information about the rights and responsibilities of the foster parent; and

3. Background information about the foster child and his family;

(b) Example of an actual experience a foster family who has fostered a child;

(c) Information regarding:

1. The stages of grief;

2. Identification of the behavior linked to each stage;

3. The long-term effect of separation and loss on a child;

4. Permanency planning for a child;

5. The importance of attachment on the growth and development and how a child may maintain or develop a healthy attachment; and

6. Family functioning, values, and expectations of the foster family;

(d) Identification of change that may occur in the family unit when a placement occurs, to include:

1. Family adjustment and disruption;

2. Identity issues; and

3. Discipline issues;

(e) Specific requirements and responsibilities of a foster family; and

(3) Maintain an ongoing foster parent preparation program that:

(a) Provides a minimum of six (6) hours foster parent preparation annually; and

(b) Maintains a record of preparation completed.

Section 7. Evaluation of a Potential Foster Home. (1) The child-placing agency social service staff shall perform the function of recruitment of prospective foster parents.

(2) A foster home evaluation shall be completed and the home approved prior to the placement of a child. Documentation shall include the following information:

(a) A personal interview, both joint and separate, with each member of the household;

(b) An assessment of the attitude of each household member toward the placement of a foster child into the home;

(c) Observations of the foster family functioning, including interpersonal relationships and patterns of interaction;

(d) The foster parents' ability to accept the child's relationship with the child's family of origin;

(e) Information regarding the foster family's support system;

(f) The family's ability to meet financial needs of the child;

(g) A signed statement by a licensed physician or licensed health professional, current within the last twelve (12) months, regarding the family's physical ability to provide necessary care for the child;

(h) Acceptability of the standards of household safety, housekeeping, and cleanliness;

(i) Compliance with state and local health requirements regarding water supply and sanitation;

(j) Suitability of in- and out-of-door play space according to the age and need of the child;

(k) For each adult residing in the household:

1. A criminal record check, including an out-of-state check if the applicant resided out of state within the past ten (10) years;

2. Child and adult abuse registry check; and

3. Nurse's aide registry check;

(l) Verification of current marriage and any prior divorce or death of a spouse of the prospective foster parent; and

(m) At least three (3) written personal references indicating the suitability of the home and of the potential foster parent.

(3) The child-placing agency shall keep a written record of the findings of the home study and the evidence on which the findings are based.

(4) A foster home shall be selected for a particular child based upon the individual need of the child.

(5) A home providing care of a foster child shall not be used simultaneously for any other social service, including a day care center or a home for the elderly, except for a home certified as a provider of Supports for Community Living, as established in 907 KAR 1:145, if determined by the cabinet to be in the best interest of the child. An exception shall be approved, before continuing foster care services in the home, by the child-placing agency and the state agency with custody of the child. This shall not preclude a foster parent being approved for adoption or an adoptive parent being approved as a foster parent.

(6) Each approved foster home in use shall be evaluated on an annual basis. The results of the evaluation shall be recorded in the case record.

(7) A child shall participate in the intake process and in the decision that placement is appropriate, to the extent that the child's age, maturity, adjustment, family relationships, and the circumstance necessitating placement justifies the child's participation.

(8) The child-placing agency shall maintain an ongoing orientation and preparation program for its foster families. A record of orientation and preparation shall be maintained.

Section 8. Placement of Foster Child. (1) The child-placing agency shall place a child only in an approved foster home.

(2) A child-placing agency shall have a maximum of two (2) children under two (2) years of age placed in the same foster home at the same time, with the exception of:

(a) A sibling group, who may remain together; or

(b) A foster home where three (3) or more adult caregivers reside, in which case the maximum number of children one (1) year of age and younger shall not exceed three (3) at one (1) time; and

(c) Justification for an exception shall be documented in the foster parent file.

(3) The child-placing agency shall:

(a) Have a written agreement with the foster parent stating:

1. The responsibilities of the child-placing agency;

2. The responsibilities of the foster parent; and

3. Explains the terms of each placement;

(b) Require the foster parent to certify, in writing, that supervision from the child-placing agency shall be allowed; and

(c) Document the placement in the foster parent file.

(4) The total number of children residing in the foster home shall not exceed six (6), including the foster parent's own children. Justification for an exception shall be documented in the foster parent file.

(5) Without prior notification to and written authorization from the Kentucky Interstate Compact Administrator, a child shall not be:

(a) Placed with a family that normally resides in another state; or

(b) Permitted to go with a person to take up residence in another state.

(6) A foster home providing care of a foster child shall not be used simultaneously for any other social service, including a day care center or home for the elderly. This shall not preclude a foster parent being approved for adoption or an adoptive parent being approved as a foster parent.

(7)(a) An approved foster home in use shall be evaluated on an annual basis for compliance with:

1. Responsibilities listed in the written agreement described in subsection (3)(a) of this section; and

2. The preparation requirements described in Section 6(2) of this administrative regulation.

(b) Results shall be recorded in the foster parent file.

Section 9. Orientation and Preparation of a Therapeutic Foster Family Care Home. (1) A child-placing agency shall:

(a) Maintain the orientation and preparation curriculum on file; and

(b) Provide a minimum of thirty-six (36) hours of orientation and preparation for a prospective therapeutic foster care parent that shall incorporate the following topic areas:

1. Child-placing agency program description with mission statement, information about the rights and responsibilities of the foster parent, and background information about a foster child and his family;

2. Cardiopulmonary resuscitation and first aid;

3. Example of an actual experience of a foster family who has fostered a child;

4. Stages of grief;

5. Behaviors linked to each stage of grief;

6. Long-term effects on a child from separation and loss;

7. Permanency planning for a child;

8. Importance of attachment on a child's growth and development and the way a child maintains and develops a healthy attachment;

9. Family functioning, values and expectations of the foster family;

10. Change that may occur in the family unit with placement of a child regarding:

a. Family functioning;

b. Family adjustment;

c. Identifying a potential issue;

d. Discipline; and

e. Family disruption;

11. Specific requirements and responsibilities of a therapeutic foster family;

12. Behavior management;

13. Communication skills;

14. Skill teaching;

15. Behavior management de-escalation techniques;

16. The dynamics of the sexually abused child; and

17. The effect of chemical abuse or dependence by the child or the child's biological parent.

(2) A therapeutic foster parent shall receive a minimum of twenty-four (24) hours of annual preparation.

Section 10. Therapeutic Foster Care. (1) A therapeutic foster home shall have a limit of two (2) therapeutic foster children, and four (4) minor children of their own, in the home at the same time. Justification for an exception with a therapeutic basis shall be documented in the therapeutic foster parent file.

(2) A treatment director shall supervise therapeutic services to a foster parent and shall participate in the development of the ITP and the quarterly case conference.

(3) A child-placing agency shall provide or arrange for individualized therapeutic services for the child or foster parent, as needed, on at least a semimonthly basis.

(4) A therapeutic foster care parent shall be responsible for:

(a) Participation in the development of an assessment and ITP that includes visitation, health, education and permanency goals;

(b) Participation with weekly in-home services by a social service worker;

(c) Supervision of the child and implementation of components of the treatment plan, including daily documentation when specified in the treatment plan; and

(d) Working with the child-placing agency to promote stability and avoid disruption for a child; and

(e) In the event of a disruption, working with the child-placing agency in the development of a plan for the smooth transition of the child to a new placement.

(5) Except for a committed child or a child who is the legal responsibility of the cabinet or the Department for Juvenile Justice, the child-placing agency shall be responsible for:

(a) A preplacement conference, in a nonemergency placement, for the purpose of:

1. Developing permanency goals and a discharge plan for the child;

2. Developing a plan for the implementation of services;

3. Identifying the treatment goals; and

4. Developing a behavior management plan when applicable;

(b) Inviting and encouraging attendance to the preplacement conference of:

1. The prospective therapeutic foster care parent;

2. A respite care parent;

3. The child, if appropriate; and

4. The child's family.

(6) The social services worker shall:

(a) Telephone or visit, on a weekly basis, at least one (1) of the therapeutic foster parents of each child on the therapeutic foster care worker's caseload;

(b) Visit the foster parent a minimum of two (2) times a month with at least one (1) visit being in the foster home;

(c) Visit the foster child face-to-face a minimum of two (2) times a month with at least one (1) visit in the therapeutic foster home and one (1) visit outside the foster home; and

(d) Carry a caseload of not more than twelve (12) children, taking into account:

1. Required responsibilities other than the case management of a child in foster care;

2. Additional support, contact and preparation needed by a therapeutic foster parent, due to the extent of the needs of the child served; and

3. The extent of intensive services provided to the child and the child's family;

(e) Conduct a quarterly case consultation, including the foster parent, the child's public agency worker, the child-placing agency treatment director and social services worker and, to the extent possible, the child and his family of origin;

(f) Identify the support needed by the foster family, including a plan for respite care, a plan for twenty-four (24)-hour on-call crisis intervention, and a foster family support group.

Section 11. Private Placement Process. The following shall be the responsibility of the child-placing agency when a private placement is conducted, except for a child committed or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice. Services for an excepted child shall be coordinated by the cabinet, the Department of Juvenile Justice, and child-placing agency staff. Final casework shall be the responsibility of the cabinet or the Department of Juvenile Justice.

(1) For a child entering into care, the child-placing agency shall obtain an:

(a) Agreement for voluntary care signed by the custodian; or

(b) Order from a court of competent jurisdiction placing the child into child-placing agency custody.

(2) The child-placing agency shall:

(a) Complete an intake assessment of the strengths and needs of the child and his family of origin; and

(b) Ascertain the appropriateness of the referral for the child.

(3) The child-placing agency shall be responsible for developing an ITP for a child and his family based on an individualized assessment of the child's and family's needs. The assessment shall be revised as needed. The assessment and ITP shall include the type and extent of service to be provided to the child and his family.

(4) The child, his parent, and caregiver shall be included in developing the assessment and ITP, unless not in the best interest

of the child.

(5) The foster home selected for placement shall be the most appropriate family based on the child's needs and the strengths of the foster family. The foster home shall be located as close as possible to the home of family of origin, in order to facilitate visiting and reunification.

(6) The social services worker and the foster parent shall work collaboratively to prepare the child for placement. A child shall have a period of preparation for the placement unless a circumstance precludes preparation and the circumstance is documented in the case record.

(7) A preplacement visit shall be scheduled before final placement in the foster home, unless a circumstance, that shall be documented in the case record, precludes a preplacement visit.

(8) There shall be a semiannual review of the child's family home of origin.

(9) The child-placing agency shall:

(a) Provide or arrange for basic support for the family of a child for whom family reunification is the goal;

(b) Quarterly assess the parent's capacity for reunification;

(c) Provide for review of the child in order to evaluate the progress toward achieving the child's permanency goal; and

(d) Assure that foster care continues to be the best placement for the child.

(10) Services to the family of origin and to the child shall be adapted to their individual capacities, needs, and problems. A reasonable effort shall be made to return the child to the family of origin.

(11) Planning for the child regarding treatment program matters, including visitation, health, education, and permanency goals, shall be developed in collaboration with the:

(a) Family of origin;

(b) Treatment director;

(c) Social services worker; and

(d) Foster parent.

(12) The child-placing agency shall work with a foster parent to promote stability and avoid disruption for a child. A request for the removal of a child from a foster home shall be explored immediately and shall be documented by the social services worker. If disruption is unavoidable, the child-placing agency and foster parent shall develop a plan for the smooth transition of the child to a new placement.

(13) Preparation for the return of a child to the family of origin shall be supervised by a social services worker. The family shall participate in planning for the child's return. If the child has not had regular contact with his family, a plan for the child's return shall include:

(a) At least one (1) prior visit between the child and the family; and

(b) At least one (1) preliminary visit of the child to his family's home.

(14) The child-placing agency shall:

(a) Provide for aftercare service to a child and his or her family, if supportive service is needed; and

(b) Document each aftercare service provided.

Section 12. Supervision of a Child in a Foster Home. The child-placing agency shall:

(1) Make a supervisory visit to the foster home at least one (1) time per month;

(2) Document, in the child's placement plan, each supervisory contact and the reason for the contact;

(3) Identify and make available necessary support to the foster family, including a plan for respite care, twenty-four (24) hour crisis intervention and a foster family support group;

(4) Assure that the child is receiving care in accordance with his needs;

(5) Provide information to a foster parent regarding the child's behavior and development;

(6) Document each effort to:

(a) Protect the legal rights of the family and the child; and

(b) Maintain the bond between the child and his family, in accordance with the child's permanency plan;

(7) Assure that a child shall have, for his exclusive use, clothing comparable in quality and variety to that worn by other children with whom he will associate;

(8) Be responsible for monitoring the child's school attendance;

(9) Secure psychological and psychiatric services, vocational counseling, or other service if indicated by the child's needs; and

(10) Assess the child's placement and permanence goal semiannually.

Section 13. Maintenance of the Foster Care Record. (1) The child-placing agency shall maintain a record for each child, his family, and the foster parent. The record shall show the reason for placement change and steps taken to insure success. A case record shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, pursuant to KRS 61.878, 199.430(3), 199.640, and 200 KAR 1:020.

(2) The record of the child shall include:

(a) Identifying information for child, parent, and foster parent;

(b) Commitment order or custodian's consent for admission;

(c) Birth and immunization certificate;

(d) Educational record;

(e) Medical and dental record since placement;

(f) Social history and assessment;

(g) ITP and review;

(h) Permanency goals;

(i) Incident reports;

(j) Monthly progress notes based on the ITP;

(k) Correspondence with the court, family, Department for Community Based Services, or Department for Juvenile Justice; and

(l) Discharge report.

(3) The foster parent's record shall include documentation relating to the:

(a) Orientation and preparation of the parent, including a narrative summary of the foster home evaluation;

(b) Required preparation hours and the topics covered;

(c) Placement of the child;

(d) Narrative summary of the annual foster home evaluation; and

(e) Supervision of the foster home, including critical incidents.

Section 14. Evaluation of Potential Adoptive Placement. (1) The child-placing agency shall assess as an adoptive parent, an applicant who:

(a) Is capable of providing for the child's care, support, education, and character development; and

(b) Has the ability to understand and accept the child's characteristics, potential, and limitations.

(2) The child-placing agency shall complete a written study of the adoptive placement containing the following information:

(a) At least one (1) adoptive home visit by the adoption worker;

(b) A face-to-face interview, both joint and separate, conducted with each member of the household;

(c) Social services worker's evaluation of the adoptive home;

(d) The functioning of the entire adoptive family considered in determining the suitability of the placement;

(e) Three (3) written personal references indicating the suitability of the adoptive home and of the potential adoptive parent;

(f) Attitude of each household member toward sharing the home with an adoptive child;

(g) Observation of the functioning of the potential adoptive family, including interpersonal relationships and patterns of interaction;

(h) The nonfamilial relationship;

(i) Certification by a licensed physician or other licensed health care professional, current within the last twelve (12) months, regarding the physical and mental ability of the adoptive family to provide necessary care for the child;

(j) Acceptable standards of household safety, housekeeping, and cleanliness;

(k) Water supply and sanitation compliance with state and local health requirements;

(l) Suitability of indoor and out-of-door play space according to the age and needs of the child;

(m) Accessibility of the adoptive home to necessary community

resources;

(n) A criminal record check, including an out-of-state check if the parent has lived outside the state within the past ten (10) years, a child abuse and neglect registry check, adult protective services registry check and a nurse's aide registry check on each adult residing in the household;

(o) Verification of a current marriage and a prior divorce or death of a spouse of the potential adoptive parent, as appropriate;

(p) At least three (3) written references; and

(q) The sufficiency of the economic circumstance of the potential adoptive parent.

(3) A child-placing agency shall clearly define the qualifications required of the potential adoptive applicant.

Section 15. Adoption Placement Process. (1) A child shall not be placed for adoption until the:

(a) Adoptive home has been approved;

(b) Parental rights of the mother, legal father, and putative father of the child, if not the same person as the legal father, are terminated by a circuit court order entered pursuant to KRS Chapter 625; and

(c) Child's custody is placed with the child-placing agency for the purpose of adoption placement.

(2) A parent shall not be induced to terminate parental rights by a promise of financial aid or other consideration.

(3) The authority granted to a child-placing agency licensed by the cabinet authorizing the agency to place a child for adoption shall not be used to facilitate an adoptive placement planned by a doctor, lawyer, clergyman, or person or entity outside the child-placing agency. The child-placing agency shall comply with provisions of 922 KAR 1:010.

(4) The following shall be obtained by the child-placing agency:

(a) A developmental history of the adoptive child to include:

1. Birth and health history;

2. Early development;

3. Characteristic ways the child responds to people and situations;

4. Any deviation from the range of normal development;

5. The experiences of the child prior to the decision to place him for adoption;

6. Maternal attitude during pregnancy and early infancy;

7. Continuity of parental care and affection;

8. Out-of-home placement history;

9. Separation experiences; and

10. Information about the mother, legal father, and putative father, if not the same person as the legal father, about family background that may affect the child's normal development in order to determine the presence of a significant hereditary factor or pathology, including an illness of the biological mother or father.

(b) A social history of the biological or legal parent, to include:

1. Name;

2. Age;

3. Nationality;

4. Education;

5. Religion; and

6. Occupation.

(c) Information obtained from direct study and observation of the child by a:

1. Social services worker;

2. Physician or other licensed health care professional, and, if indicated;

3. Foster parent;

4. Nurse;

5. Psychologist; and

6. Other consultants.

(d) Information from the mother, if possible, identifying the biological father, or legal father, if different from the biological father, for the purpose of:

1. Determining the father's parental rights; and

2. Establishment of possible hereditary endowments.

(5) If either biological or legal parent is unavailable, unwilling, or unable to assist with the completion of information necessary to comply with KRS 199.520 and 199.572, the child-placing agency shall document information, to the extent possible, from the existing case record.

(6) A medical examination shall be made by a licensed physician or other licensed health professional to determine:

(a) The state of the child's health;

(b) Any significant factor that may interfere with normal development; and

(c) The implications of any medical problem.

(7) The condition under which an adoptive parent agrees to accept the child shall be decided upon, prior to placement of the child. The written agreement between the child-placing agency and the adoptive parent shall embody the following provisions:

(a) The adoptive parent shall agree to:

1. Comply with KRS 199.470;

2. File an adoptive petition at a time agreeable to them and the child-placing agency; and

3. Permit supervision by the child-placing agency during the period of time:

a. After placement; and

b. Preceding a final judgment of adoption by the circuit court;

(b) The child-placing agency shall be responsible for providing the adoptive parents with written information regarding the child's:

1. Background;

2. Medical history;

3. Current behavior; and

4. Medical information necessary to comply with KRS 199.520(4)(a).

(c) The adoptive parent and the child-placing agency shall agree that the child may be removed from the placement, at the request of either party, before the filing of the adoptive petition.

(8) Preplacement visits shall be arranged for the adoptive parent and a child. The pattern and number of visits shall be based on the age, development, and needs of the child.

(9) During preparation the child-placing agency shall discuss with the child his readiness to accept the selected placement, in accordance with the child's age and ability to understand.

(10) Siblings who have had a relationship with one another shall be placed together unless it is determined to be more beneficial for them to be placed in separate adoptive homes. If siblings have been separated in placements:

(a) The case record shall reflect a valid basis for the separation;

(b) The decision to separate siblings shall be made by the executive director of the child-placing agency; and

(c) Continued contact between siblings shall be maintained, if possible.

Section 16. Supervision of an Adoptive Placement. (1) The child-placing agency placing a child shall remain responsible for him until the adoption has been granted. This responsibility involves the following:

(a) Two (2) meetings by the social services worker with the child and the adoptive family, including both adoptive parents if not a single parent adoption, one (1) visit of which shall be in the adoptive home before filing of the adoption petition.

(b) The continuation of supervisory visits and contacts until the adoption is legally granted.

(c) Awareness of a change in the adoptive family including health, education, or behavior.

(2) Upon request of the cabinet the child-placing agency shall:

(a) Provide information pursuant to KRS 199.510, as necessary to report to the court to proceed with adoption;

(b) Prepare a confidential report to the court; and

(c) Forward to the cabinet:

1. A copy of the confidential report to the court; and

2. A copy of information required by KRS 199.520 and 199.572.

(3) If the court finds the adoptive parent to be unsuitable and refuses to grant a judgment, the child-placing agency shall remove the child from the home.

Section 17. Maintenance of Adoptive Case Record. (1) The child-placing agency shall maintain a case record from the time of the application for services through the completed legal adoption and termination of child-placing agency service for:

~~(a) A child accepted for care;~~
~~(b) His family; and~~
~~(c) An adoptive applicant.~~
~~(2) The case record shall contain material on which the child-placing agency decision may be based and shall include or preserve:~~
~~(a) Information and documents needed by the court;~~
~~(b) Information about the child and his family;~~
~~(c) A narrative or summary of the services provided with a copy of legal and other pertinent documents; and~~
~~(d) Information gathered during the intake study including the following:~~
~~1. A description of the situation that necessitated placement of the child away from his family, or termination of parental rights;~~
~~2. A certified copy of the order of the circuit court terminating parental rights and committing the child to the child-placing agency for the purpose of adoption;~~
~~3. Verification of the child's birth record and the registration number;~~
~~4. A copy of the child's medical record up to the time of placement;~~
~~5. A copy of the required evaluation of the adoptive placement;~~
~~6. Date of adoptive placement;~~
~~7. A statement of the basis of the selection of this adoptive home for the child;~~
~~8. A record of after-placement services with dates of visits, contacts and observations;~~
~~9. Dates of filing of petition and granting of judgments and other significant court proceedings relative to the adoption; and~~
~~10. Child's adoptive name.~~
~~(3) If there is need to share background information with a party to a completed adoption, or to have the benefits of information from a closed adoption record to offer services following completion of an adoption, the child-placing agency shall comply pursuant to KRS 199.570.~~
~~(4) Records on adoption, that contain pertinent information, shall be:~~
~~(a) Maintained indefinitely following final placement of a child; and~~
~~(b) Sealed and secured from unauthorized scrutiny.~~

~~Section 18. Independent Living. The following additional requirements apply to a child-placing agency providing independent living programming.~~
~~(1) The child-placing agency shall develop and implement written policy and procedure that addresses the agency's independent living program, including a:~~
~~(a) Curriculum for teaching and practice of the following independent living skills:~~
~~1. Employment;~~
~~2. Education;~~
~~3. Money management;~~
~~4. Housing and home management;~~
~~5. Use of community resources including:~~
~~a. Transportation;~~
~~b. Voting rights and registration; and~~
~~c. Personal and legal documents;~~
~~6. Interpersonal skills;~~
~~7. Communication;~~
~~8. Self-esteem;~~
~~9. Anger management;~~
~~10. Problem-solving;~~
~~11. Decision-making and planning; and~~
~~12. Basic knowledge of:~~
~~a. Nutrition;~~
~~b. Food preparation;~~
~~c. Health; and~~
~~d. Sexuality issues;~~
~~(b) Written ITP developed within twenty-one (21) days of placement to include:~~
~~1. Goals;~~
~~2. Objectives;~~
~~3. Method of service delivery;~~
~~4. Person responsible for each activity;~~
~~5. Specific time frames; and~~
~~6. Identification of a discharge plan.~~
~~(c) Written plan for aftercare services; and~~
~~(d) Written plan for services from a cooperating agency.~~
~~(2) independent living services shall be tailored to meet the needs of the individual.~~
~~(3) A child-placing agency shall document compliance with fire and building codes for any independent living program in which the agency places a child.~~
~~(4) A staff person shall be responsible for, and have daily contact with, each child in the independent living program.~~
~~(5) The child-placing agency shall maintain documentation for each child concerning:~~
~~(a) An assessment of the child's readiness to live independently;~~
~~(b) Progress each child has made in independent living skills training;~~
~~(c) Assistance to the child in finding and keeping in touch with family, if possible;~~
~~(d) Staff observation of the living arrangement; and~~
~~(e) Progress in an educational program.]~~

JAMES W. HOLSINGER, M.D., Secretary
APPROVED BY AGENCY: February 12, 2004
FILED WITH LRC: February 12, 2004 at 4 p.m.
CONTACT PERSON: Becky Conner, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, phone (502) 564-7900, fax (502) 564-9126.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge, (502) 564-7536
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes standards of services for child-placing agencies.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards and serves as requirements for operation and licensure compliance for the child-placing agencies.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 199.640(5)(a) which requires the cabinet to promulgate administrative regulations with respect to establishing standards of services for child-placing agencies. This administrative regulation conforms to KRS 194B.050(1) that the cabinet shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth standards designed to ensure that child-placing agencies comply with regulatory requirements in order to operate as a child-placing agency within the Commonwealth of Kentucky.
(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: In a settlement agreement between the Office of Civil Rights, United States Department of Health and Human Services; Copper Care, Inc.; and the Department for Community Based Services, Kentucky Cabinet for Families and Children (or OCR Complaint Nos. 04-01-3146 and 04-01-3131), the Kentucky cabinet agreed "to review its regulations related to foster parents, both those contracting directly with the cabinet and those contracting with private child-placing agencies, to determine the appropriate standards relating to each and to determine whether there is a reasonable basis for any difference in standards." In September 2001, the Children's Alliance submitted a comparison of the administrative regulations governing state and private foster care, in which there were a number of inconsistencies. The cabinet has amended the

administrative regulations governing state and private foster care concurrently in a good faith effort to comply with the settlement agreement and decrease noted inconsistencies. The amendment adds definitions for an applicant, case management, child, independent living services, medically fragile child, mental health treatment, and therapeutic services. This amendment clarifies home study requirements for an applicant subject to approval as a foster or adoptive parent or respite care provider, to include background checks, home environment inspection, references, health evaluation, income, interviews, and minimum age requirements. The regulation amends the orientation and preparation requirements of a foster care, therapeutic foster care, or medically fragile foster care home, or adoptive home. The amendment strengthens recordkeeping; staff qualifications; and requirements for services and supervision provided by the child-placing agency for the various types of foster care, independent living programming, and adoption. This amendment adds new provisions pertaining to: annual reevaluation of a foster home or adoptive home awaiting placement of a child, respite care, closure of an approved foster or adoptive home, and registration of approved foster care homes.

(b) The necessity of the amendment to this administrative regulation: The amendment will ensure the standards of child-placing agencies are consistent with the practice and services of the cabinet's foster and respite care, and adoption services, and support placement stability and safety for a child in the care of the child-placing agency. The amendment to this administrative regulation will ensure greater consistency and continuity of standards and services for children in foster care or under adoption in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 199.640 by ensuring child-placing agencies adhere to standards required by administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: By providing greater specificity and through reformatting, the amendment to this administrative regulation will assist in the effective administration of KRS 199.640 by clarifying and strengthening the adoption and foster care standards for child-placing agencies.

(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: As of September 16, 2003, there were 147 child-placing agencies licensed by the Office of Inspector General, Division of Licensed Child Care.

(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: Child-placing agencies and their customers will benefit from the clarifications and strengthened guidance provided in this amendment. The amendment to this administrative regulation will ensure greater consistency and continuity of standards and services for children in foster care or under adoption in Kentucky. The Department for Community Based Services has consulted with or invited comments from the child-placing agencies or their representatives throughout the drafting process of this administrative regulation.

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

(a) Initially: There are no additional costs to implement this regulation.

(b) On a continuing basis: There are no additional costs to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding sources are State General Funds, Restricted State Funds from Title V Medicaid Agreement, Title IV-E Foster Care Grant, and Chafee Foster Care Independent Living 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: This administrative regulation does not establish fees. No increase in funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not required. The Cabinet for Health and Family Services will implement this policy statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 671(a)(23), 677(a)(1) through (6), 14901-14954, and 45 C.F.R. Parts 160 and 164.

2. State compliance standards. KRS 199.640

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 671(a)(23), 677(a)(1) through (6), 14901-14954, and 45 C.F.R. Parts 160 and 164.

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. None

**CABINET FOR FAMILIES AND CHILDREN**
**Department for Community Based Services**
**Division of Policy Development**
**(Amended After Comments)**

**922 KAR 1:350. Family preparation.**

RELATES TO: KRS Chapter 45A, 61.870-61.884, 194B.060, 199.011(7), 199.462, 199.471, 202A.011(12), 311.720(9), 314.011(5)(9), 600.020, 605.090-605.110, 605.120-605.130, 605.160, 620.050, Chapter 625, 45 C.F.R. Parts 160, 164, 42 U.S.C. 671, Olmstead v. L.C. and E.W., 119 S. Ct. 2176 (1999), **EO 2003-064**

STATUTORY AUTHORITY: KRS 194B.050(1), 199.472, 605.100(1), 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) authorizes the Secretary for the Cabinet for **Health and Family Services** [~~Families and Children~~] to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. **EO 2003-064 reorganizes the executive branch of government and establishes the Cabinet for Health and Family Services.** KRS 605.100(1) authorizes the cabinet to arrange programs designed to provide for classification, segregation, and specialized treatment of children according to their respective problems, needs, and characteristics. KRS 199.472 and 605.150 authorize the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood. In addition, Olmstead v. L.C. and E.W., 119 S. Ct. 2176 (1999), held that unnecessary institutionalization of a person with a disability may be a violation of the Americans with Disabilities Act and that, given certain exceptions, services should be delivered in the most integrated setting appropriate to the treatment needs of a person with a disability. This administrative regulation establishes criteria for resource homes caring for foster or adoptive children.

Section 1. Definitions. (1) "Applicant" means an individual or family, subject to approval by the cabinet as a resource home;

(2) "Commissioner" means commissioner of the Department for Community Based Services.

(3) "Department" means Department for Community Based Services.

(4) "Health professional" means a person actively licensed in Kentucky as a:

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse practitioner; or

(d) Nurse clinician under the supervision of a physician.

(5) "Independent living services" means services provided to youth to assist them in the transition from the dependency of childhood to living independently.

(6) "Medically-fragile child" means a child who has a medical condition as defined in Section 6(1)(b) of this administrative regulation.

(7) **"Professional experience" means paid or volunteer employment in a setting where there is supervision and periodic evaluation.**

**(8)** "Resource home" means a home in which a parent is approved by the cabinet to provide services as specified in Section 3(12) of this administrative regulation.

**(9)** [~~(8)~~] "Respite care" means temporary care provided by another individual or family to:

**(a)** Provide relief to the resource foster home parents; **or**

**(b) Allow for an adjustment period for the child in out-of-home care.**

**(10)** [~~(9)~~] "Specialized medically-fragile child" means a child determined by the cabinet to have a medical condition, documented by a physician, that is severe enough to require placement with a resource home parent who is a:

(a) Health professional;

(b) Registered nurse as defined in KRS 314.011(5); or

(c) Licensed practical nurse as defined in KRS 314.011(9).

[~~Definition. "Resource home" means a home in which a parent has been certified to:~~

~~(1) Provide foster care services for a child placed in out-of-home care by the cabinet;~~

~~(2) Adopt a child:~~

~~(a) Whose parental rights have been terminated; and~~

~~(b) Is under the custodial control of the cabinet;~~

~~(3) Provide respite service for a family approved to care for a child under the custodial control of the cabinet; or~~

~~(4) Provide any combination of the services described in subsections (1) through (3) of this subsection.~~]

Section 2. Out-of-home Placement in a Resource Home Providing Only Foster Care Services. (1) [~~Except in the placement of a sibling group or approval by the service region administrator,~~] No more than five (5) [~~six (6)~~] children, including children under the custodial control of the cabinet and the parent's own children living at home, shall reside in a resource home that provides only foster care services.

(2)(a) Exceptions to subsection (1) of this section may be approved by designated regional cabinet staff if the following forms are submitted within ten (10) working days of placement:

1. DPP-112-A, Placement Exception Request; and

2. DPP-112-B, Resource Foster Exception Plan, documenting the:

a. Reason the placement is in the best interest of the child; and

b. Specific support services to be provided.

(b) A resource home that provides only foster care services with the current number of children before the effective date of this administrative regulation shall not be required to comply with paragraph (a)1 and 2 of this subsection until December 31, 2004. [~~If more than six (6) children are placed in a resource home that provides only foster care services, a plan shall be established within ten (10) working days of placement. The plan shall document the:~~

~~(a) Reason the placement is in the best interest of the child; and~~

~~(b) Provision of specific support services by the cabinet.~~]

(3) No more than two (2) [~~three (3)~~] children under age two (2), including children placed in out-of-home care by the cabinet and the parent's own children, may reside at the same time in a resource home that provides only foster care services, unless an exception is approved pursuant to subsection (2) of this section.

(4) Cabinet staff shall inform the resource home parent in accordance with:

(a) KRS 605.090(1)(b); and

(b) KRS 605.090(6).

Section 3. General Requirements for a Resource Home Parent. (1) Unless approved by designated regional cabinet staff [~~the service region administrator~~], a resource home applicant shall be at least twenty-one (21) years of age.

(2) A resource home applicant between eighteen (18) to twenty-one (21) years of age may be approved as a resource home parent if:

(a) The resource home applicant [~~individual~~] is related to a child under the custodial control of the cabinet;

(b) The resource home applicant [~~relative~~] can meet the needs of the child; and

(c) Cabinet staff determines the [~~relative~~] placement is in the best interest of the child.

(3) A department employee who provides protection and permanency services may apply to adopt a child in the care and custody of the cabinet if the:

(a) Department employee:

1. Had no relationship with the child or a parent of the child prior to the termination of parental rights in accordance with KRS Chapter 625; or

2. Has adopted a sibling of the child available for adoption; and

(b) Commissioner approves the employee to adopt.

(4) A department employee who provides protection and permanency services shall be prohibited from becoming a **respite care provider or** resource home parent who provides foster care services **or respite care** for a child in the care and custody of the cabinet, regardless of the child's residence, unless the:

(a) Department employee was a resource home parent **or a respite care provider** for the child at the time employment with the department began; and

(b) Commissioner approves the employee to be a **respite care provider or** resource home parent who provides foster care services **or respite care** for the child.

(5) A married couple may apply to become resource home parents.

(6) A single unmarried person may apply to become a resource home parent. [~~Except pursuant to approval by the service region administrator of a resource home applicant that has been married for more than one (1) year but less than two (2) years and whose relationship has been continuous for at least a two (2) year period, a married applicant shall be married for at least two (2) years prior to approval.~~

~~(4) If related to a child under the custodial control of the cabinet, a resource home applicant who has been married for less than one (1) year may be approved if the family services office supervisor determines relative placement is in the best interest of the child.~~

~~(5) A single unmarried person may apply to become a resource home parent.~~

~~(6) A cabinet worker who provides protection and permanency services may become a resource home parent upon approval of the Commissioner of the Department for Community Based Services.~~]

(7) The decision to foster or adopt a child shall be agreed to by each adult member of the applicant's household.

(8)(a) Each adult member of the applicant family shall submit a DPP-107, Health Information Required for Resource Home Applicant or Adult Household Members [~~form OOHC-107~~], completed by a health professional, stating that the individual is free of:

1. Communicable or infectious disease; or

2. [~~illness or~~] A condition that presents a health or safety risk to a child placed in the applicant's home.

(b) Each parent applicant shall submit a DPP-107, Health Information Required for Resource Home Applicants or Adult Household Members, current within one (1) year [~~form OOHC-107~~], completed by a health professional, attesting to the parent applicant's:

1. General health; and

2. Medical ability to care for a child placed in the applicant's home.

(9) Each parent applicant shall submit a DPP-108, Health Information Required for Resource Home Applicants Regarding Dependent Children, current within one (1) year, for each child member of the applicant family.

(10) A resource home applicant shall have a source of income separate from:

(a) Foster or resource home care reimbursement; or

(b) Adoption assistance.

(11) [~~(10)~~] Unless specified in a contract between the cabinet and a child welfare agency that provides foster care services [~~service~~], a resource home parent shall accept a child for foster care only from the cabinet.

(12) [~~(11)~~] An approved resource home parent shall be willing

to:

(a) Provide foster care services for a child placed in out-of-home care by the cabinet;

(b) Adopt a child;

1. Whose parent's parental rights have been terminated; and

2. Who is under the custodial control of the cabinet; [~~or~~]

(c) Provide respite services by caring for a child under the custodial control of the cabinet; or

(d) Provide any combination of the services described in paragraphs (a) through (c) of this subsection.

(13) [~~(12)~~] A resource home applicant shall provide to the cabinet:

(a) The names of three (3) personal references who:

1. Are not related to the applicant; and

2.a. Shall be interviewed by cabinet staff in person or by telephone; or

b. Shall provide letters of reference for the applicant; and

(b) [~~name of two (2) personal references;~~

~~(b) The name of a neighbor who shall be interviewed by cabinet staff in person or by telephone; and~~

~~(c)~~] Two (2) credit references.

(14) [~~(13)~~] Adult children of the resource home applicant who do not live in the home shall be contacted by cabinet staff regarding applicant's parenting history.

(15) [~~(14)~~] If applicable, verification shall be obtained from the resource home applicant regarding:

(a) Previous divorce;

(b) Death of a spouse; and

(c) Present marriage.

(16) [~~(15)~~] A resource home applicant **who** [~~that~~] does not have custody of his own biological child shall provide:

(a) A copy of the visitation order, if applicable;

(b) A copy of the child support order [~~decree~~]; and

(c) Proof of current payment of child support.

(17) [~~(16)~~] A resource home applicant and any adult [~~residing in the~~] household member shall submit to the background checks in accordance with 922 KAR 1:490.

(18) The cabinet shall perform background checks in accordance with criteria established in 922 KAR 1:490.

Section 4. Home Environment. (1)**(a) Following approval as a resource home, the resource home may request written approval from designated regional cabinet staff to provide services as a certified:**

**1. Provider of supports for community living in accordance with 907 KAR 1:145; or**

**2. Family child care home in accordance with 922 KAR 2:100.**

**(b) Except as provided in paragraph (a) of this subsection, an approved resource home shall not simultaneously:**

**1. Provide day care center services in accordance with 922 KAR 2:090; and**

**2. Be used as a licensed or certified health care or social service provider.** [~~The operation of a certified family child care home shall be in accordance with 922 KAR 2:100.~~] [~~shall authorize the release of criminal records to the cabinet.~~

~~(17) A resource home applicant shall not be selected for approval if an adult residing in the household has a:~~

~~(a) Criminal conviction, as evidenced by FBI, state, and local criminal record checks for a crime against a child;~~

~~(b) Criminal conviction, as evidenced by FBI, state, and local criminal record checks for a crime involving violence, including rape, sexual assault, and murder; or~~

~~(c) Felony conviction for physical assault, battery, or a drug-related offense.~~

~~(18) Approval of a resource home applicant with a conviction of a nonviolent felony or misdemeanor or substantiated record of child or spouse abuse shall be handled on a case-by-case basis with consideration given to the:~~

~~(a) Nature of the offense;~~

~~(b) Length of time that has elapsed since the event; and~~

~~(c) Applicant's life experiences during the ensuing period of time.~~

~~(19) If the resource home applicant has lived in another community or in another state, a request for a records search of those locations shall be made prior to approval. Court records shall be checked for the disposition of an arrest record.~~

~~Section 4. Home Environment. (1) Except for the operation of a certified family day care home, a resource home parent that provides only foster care services shall not be licensed to provide commercial day care services for an unrelated child or adult at the same time the resource home parent is approved to provide twenty-four (24) hour care for a child.~~]

(2) If the resource home adjoins a place of business open to the public, potential negative impact on the family and the child shall be examined including the:

(a) Hours of operation;

(b) Type of business; and

(c) Clientele.

(3) The resource home parent shall have access to:

(a) Reliable transportation;

(b) School;

(c) Recreation;

(d) Faith organization [~~Church~~];

(e) Medical care; and

(f) Community facilities.

(4) A resource home parent who drives shall [~~possess~~]:

(a) **Possess** a valid driver's license; [~~and~~]

(b) **Possess** proof of liability insurance; and

**(c) Abide by passenger restraint laws** [~~Age-appropriate passenger restraints~~].

(5) Up to four (4) children, including the resource home parent's own children, may share a bedroom.

(6) Each child shall have his own separate bed**, or if the child is under age one (1), a crib, that:**

**(a) Meets Consumer Products Safety Commission standards; and**

**(b) Is age- and size-appropriate for the child**.

(7) [~~Each child under age (1) [infant] shall have a crib that meets consumer safety standards~~.

~~(8)~~] Except as approved by designated regional [~~for approval by~~] cabinet staff, a resource home parent shall not share a bedroom with a child under the custodial control of the cabinet.

**(8)** [~~(9)~~] A bedroom used by [~~The bedroom of~~] a child under the custodial control of the cabinet shall be comparable to each bedroom in the house.

**(9)** [~~(10)~~] The physical condition [~~standard~~] of the resource home shall:

(a) Not present a hazard to the safety and health of a child; [~~and~~]

(b) Be well heated and ventilated;

**(c) Comply with state and local health requirements regarding water and sanitation; and**

**(d) Provide indoor and out-of-door recreation space appropriate to the developmental needs of a child placed in the resource home**.

**(10)** [~~(11)~~] The following shall be inaccessible to a child:

(a) Medication;

(b) Alcoholic beverage;

(c) Poisonous or cleaning material;

(d) Ammunition; and

(e) Firearms.

**(11)** [~~(12)~~] Ammunition and firearms shall not be stored together and each shall be locked away.

**(12)** [~~(13)~~] A dangerous animal shall not be allowed near the child.

**(13) Medication shall be locked.**

(14) [~~(13)~~] First aid supplies with unexpired dates shall be available and stored in a place easily accessible to an adult.

(15) [~~(14)~~] A working telephone [~~or other means for immediate access to communication with the outside community~~] shall be available.

(16) [~~(15)~~] The home shall be equipped with a working smoke alarm within ten (10) feet of each bedroom.

Section 5. Emergency Shelter Resource Home. (1) An applicant may be approved as an emergency shelter resource home

[and the resource home parent shall be eligible to receive the emergency shelter rate] if the parent:

(a) Meets the requirements of Sections 3 and 4 of this administrative regulation;

(b) Cares for a child age twelve (12) and above who needs immediate, unplanned care for less than fourteen (14) days, unless designated regional cabinet staff approve:

1. An exception to the minimum age of twelve (12) for a child between [over] age eight (8) and twelve (12) [shall not be placed in an emergency shelter resource home]; or

2. An extension to the fourteen (14) days of unplanned care, not to exceed a period of sixteen (16) days; [thirty (30) days. An exception to the minimum age of twelve (12) or an extension shall be approved by the service region administrator;]

(c) Completes ten (10) hours of cabinet-sponsored training or training approved in advance by the cabinet beyond the required preservice as required by Section 9 of this administrative regulation; and

(d) Has a working telephone in the home.

(2) An approved emergency shelter resource home parent shall receive reapproval as an emergency shelter resource home [for the emergency shelter rate] if the parent completes ten (10) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet:

(a) Beyond the annual requirement; and

(b) Before the anniversary date of approval as an emergency shelter home.

Section 6. Medically-fragile Resource Home. (1) An applicant may be approved as a medically-fragile resource home [and the resource home parent shall be eligible to receive a medically-fragile rate consistent with the parent's level of training and experience and child's medical acuity level] if the resource home parent:

(a) Meets the requirements in Sections 3 and 4 of this administrative regulation;

(b) Cares for a child approved by cabinet staff as medically-fragile because of a:

1. Medical condition documented by a physician that may become unstable and change abruptly resulting in a life-threatening situation;

2. Chronic and progressive illness or medical condition;

3. [Severe disability that requires technological assistance;

4.] Need for a special service or ongoing medical support; or

4. [5. Need for twenty-four (24) hour care by a physician or licensed nurse for the child to survive; or

6.] Health condition stable enough to be in a home setting only with [frequent] monitoring by an attending:

a. Health professional

b. Registered nurse as defined in KRS 314.011(5); or

c. Licensed practical nurse as defined in KRS 314.011(9);

(c) Is a primary caretaker who is not employed outside the home, except as approved by designated regional cabinet staff;

(d) Completes: [physician or care of a licensed nurse;

(c) Except for approval by cabinet staff, is a primary caretaker who is not employed outside the home;

(d) Has completed:]

1. A medically-fragile curriculum approved by the cabinet; or

2. An additional twenty-four (24) hours of cabinet-sponsored training or training approved in advance by the cabinet beyond the preservice requirement in the areas of:

a. Growth and development;

b. Nutrition; and

c. Medical disabilities;

(e) Receives [Has received] training from a health professional in how to care for the specific medically-fragile child who shall be placed;

(f) Maintains current certification in:

1. Cardiopulmonary resuscitation or "CPR"; and

2. First aid; and

(g) Has a home within:

1. One (1) hour of a medical hospital with an emergency room; and

2. Thirty (30) minutes of a local medical facility.

(2) Health care professional experience related to the care of a medically-fragile child may substitute for the training requirement specified in subsection (1)(d) of this section:

(a) Upon the approval of designated regional cabinet staff; and

(b) If the resource parent is a:

1. Health professional;

2. Registered nurse as defined in KRS 314.011(5); or

3. Licensed practical nurse as defined in KRS 314.011(9).

(3) Except for a sibling group or unless approved by designated regional cabinet staff [the service region administrator], no more than four (4) children, including the parent's own children, shall reside in a medically-fragile resource home.

(4) Unless an exception is approved pursuant to Section 2(2) of this administrative regulation and [by a service region administrator or] if a medically-fragile resource home has [live-in or] daily support staff to meet the needs of a medically-fragile child:

(a) A one (1) parent medically-fragile resource home shall:

1. Not care for more than one (1) medically-fragile child; and

2. Demonstrate access to available support services; and

(b) A two (2) parent medically-fragile resource home shall:

1. Not care for more than two (2) medically-fragile children; and

2. Demonstrate access to available support services [, including the resource parent's own children].

(5) An approved medically-fragile resource home parent shall receive annual reapproval by the cabinet as a medically-fragile resource home [for a medically-fragile rate consistent with the parent's level of training and experience and child's medical acuity level] if the parent:

(a) Annually completes twenty-four (24) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet before the anniversary date of approval as a medically-fragile home; and

(b) Continues to meet the requirements of [subsections (1) and (3) of] this section.

(6) An approved medically-fragile resource home parent shall cooperate in carrying out the child's health plan.

Section 7. Care Plus Resource [Family Treatment] Home. (1) An applicant may be approved as a care plus resource home parent [family treatment home and the parent shall be eligible to receive a family treatment home rate consistent with the parent's level of training and experience] if the resource home parent:

(a) Meets the requirements of Sections 3 and 4 of this administrative regulation;

(b) Cares for a child who:

1. Has an emotional or behavioral [a serious emotional] problem;

2. Is due to be released from a treatment facility;

3. Displays aggressive, destructive, or disruptive behavior;

4. Is at risk of being placed in a more restrictive setting;

5. Is at risk of institutionalization; or

6. Has experienced numerous placement failures;

(c) [Except for approval by the service region administrator,] Is a primary caretaker who is not employed outside the home, except as approved by designated regional cabinet staff;

(d) Completes and receives a certificate of completion for the twenty-four (24) hour care plus resource home [family treatment] training beyond the preservice requirement as required in Section 9 of this administrative regulation;

(e) Maintains a daily record [log] of the child's activities and [,] behaviors[, and intervention techniques]; and

(f) Attends all case [treatment] planning conferences.

(2) Upon the effective date of this administrative regulation, a family treatment home, in which a child described in subsection (1)(b) of this section was placed by the cabinet within the twelve (12) months preceding the effective date of this administrative regulation, shall be classified as a care plus resource home.

(3) Unless an exception is approved pursuant to Section 2(2) of this administrative regulation, [Except for a sibling group or unless approved by the service region administrator,] no more than four (4) children, including the parent's own children, shall reside in a care plus resource [family treatment] home.

(4) [(3)] Unless approved by designated regional cabinet staff and the care plus resource home has [the service region administrator or if a family treatment home has live-in or] daily support staff

to meet the needs of a child described in subsection (1)(b) of this section:

(a) A one (1) parent care plus resource [~~family treatment~~] home shall:

1. Not care for more than one (1) child as described in subsection (1)(b) of this section; and

2. Demonstrate access to available support services; and

(b) A two (2) parent care plus resource [~~family treatment~~] home shall:

1. Not care for more than two (2) children as described in subsection (1)(b) of this section, including the care plus resource [~~family treatment~~] home parent's own child; and

2. Demonstrate access to available support services.

(5) [~~(4)~~] A care plus resource [~~family treatment~~] home shall have access to respite care provided by an individual who **meets criteria established in Section 13(5) of this administrative regulation.** [~~is verified by cabinet staff to have completed care plus resource [has completed family treatment] training.~~]

(6) Unless the resource home is closed pursuant to Section 18 of this administrative regulation, [~~(5)~~] an approved care plus resource [~~family treatment~~] home parent may [~~shall~~] receive annual reapproval by the cabinet as a care plus resource home, [~~for the family treatment home rate consistent with the parent's level of training and experience,~~] if the parent:

(a) Annually completes twenty-four (24) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet before the anniversary date of approval as a care plus resource [~~family treatment~~] home; and

(b) Submits to review of:

1. The care plus resource [~~family treatment~~] home parent's strengths and needs [~~intervention skills and techniques~~];

2. Records kept by the care plus resource [~~family treatment~~] home parent; and

3. Ability to meet the goals established for the child; and

(c) Continues to meet the requirements of this section.

(7) Professional experience related to the care of a child described in subsection (1)(b) of this section may substitute for the training requirement specified in subsection (6)(a) of this section, if the care plus resource parent is a qualified mental health professional as defined in KRS 202A.011(12).

Section 8. Specialized Medically-fragile Resource Home. (1) An applicant may be approved as a specialized medically-fragile resource home if the applicant:

(a) Meets the requirements in Sections 3 and 4 of this administrative regulation;

(b) Cares for a child approved by cabinet staff as a specialized medically-fragile child;

(c) Is a primary caretaker who is not employed outside the home, except as approved by designated regional cabinet staff;

(d) Completes:

1. A medically-fragile curriculum approved by the cabinet; or

2. An additional twenty-four (24) hours of cabinet-sponsored training or training approved in advance by the cabinet beyond the preservice requirement in the areas of:

a. Growth and development;

b. Nutrition; and

c. Medical disabilities;

(e) Receives individual documented training from a health professional in how to care for the specific specialized medically-fragile child who shall be placed in the resource foster home;

(f) Maintains certification in:

1. CPR; and

2. First aid; and

(g) Has a home within:

1. One (1) hour of a medical hospital with an emergency room; and

2. Thirty (30) minutes of a local medical facility.

(2) Unless an exception is approved pursuant to Section 2(2) of this administrative regulation, no more than four (4) children, including the parent's own children, shall reside in a specialized medically-fragile resource home.

(3) Unless an exception is approved pursuant to Section 2(2) of this administrative regulation or if a specialized medically-fragile resource home has daily support staff to meet the needs of a medically-fragile child:

(a) A one (1) parent specialized medically-fragile resource home shall:

1. Not care for more than one (1) specialized medically-fragile child; and

2. Demonstrate access to available support services; and

(b) A two (2) parent specialized medically-fragile resource home shall:

1. Not care for more than two (2) specialized medically-fragile children; and

2. Demonstrate access to available support services.

(4) An approved specialized medically-fragile resource home parent shall receive annual reapproval as a specialized medically-fragile resource home if the parent:

(a) Annually completes twenty-four (24) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet before the anniversary date of approval as a medically-fragile home; and

(b) Continues to meet the requirements of this section.

(5) Health care professional experience related to the care of a medically-fragile child may substitute for the training requirement specified in subsection (1)(d) of this section, upon the approval of designated regional cabinet staff if the resource parent is a:

(a) Health professional;

(b) Registered nurse as defined in KRS 314.011(5); or

(c) Licensed practical nurse as defined in KRS 314.011(9).

(6) An approved specialized medically-fragile resource home parent shall cooperate with the cabinet in carrying out the child's health plan.

Section 9. Preparation and Selection of a Resource Home Parent [~~Family~~]. (1) **The cabinet shall recruit a resource home and approve the resource home prior to the placement of a child.**

**(2)** A resource home [~~An~~] applicant shall complete a:

(a) Minimum of thirty (30) hours of initial family preparation; and

(b) Curriculum approved by designated cabinet staff, including the following topics:

1. Orientation to the cabinet's resource home program;

**2. An example of an actual experience from a resource home parent that has fostered a child; and**

**3. Information regarding:**

**a. The stages of grief;**

**b. Identification of the behavior linked to each stage;**

**c. The long-term effect of separation and loss on a child;**

**d. Permanency planning for a child, including independent living services;**

**e. The importance of attachment on the growth and development and how a child may maintain or develop a healthy attachment;**

**f. Family functioning, values, and expectations of a foster home;**

**g. Cultural competency;**

**h. How a child comes into the care and custody of the cabinet, and the importance of achieving permanency;**

**i. Types of maltreatment and experiences in foster care and adoption;**

**j. The importance of birth family and culture and helping children leave foster care;**

**k. Identification of changes that may occur in the home if a placement occurs, to include:**

**(i) Family adjustment and disruption;**

**(ii) Identity issues; and**

**(iii) Discipline issues and child behavior management; and**

**(iv) Specific requirements and responsibilities of a resource home parent.** [~~, how a child comes into the care and custody of the cabinet, and the importance of achieving permanency;~~

~~2. Types of maltreatment and experiences in foster care and adoption;~~

~~3. Losses and gains;~~

~~4. Attachment;~~

~~5. Child behavior management;~~

~~6. Understanding the importance of birth family and culture;~~
~~7. Helping children leave foster care;~~
~~8. Understanding the impact of fostering or adopting; and~~
~~9. Perspectives in adoptive parenting and foster parenting~~ [~~used statewide and approved by the cabinet~~].]

(3) [~~(2)~~] Except for a cabinet-approved individualized preparation program, family preparation for placement of a child under the custodial control of the cabinet shall be completed in a group setting by each adult who resides in the household and provides care.

(4) [~~(3)~~] If a new adult moves into an approved resource home where a child is already placed by the cabinet, the child may remain and additional children may be placed, if the new adult:

(a) Completes training within six (6) months of entering the home; and

(b) Meets the requirements specified in Sections 3 and 4 of this administrative regulation.

(5) [~~(4)~~] An adult child or elderly person who resides in the resource home shall not be required to complete family preparation if that individual shall not be responsible for routine daily care of a child placed in the home by the cabinet.

(6) [~~(5)~~] [~~(4)~~] The cabinet shall not be [~~is not~~] obligated to grant resource home approval or placement of a specific child to **an individual or** [**a**] family that completes family preparation.

(7) [~~(6)~~] [~~(5)~~] The purpose of family preparation shall be to:

(a) Orient the applicant to the philosophy and process of the cabinet's family foster **care or adoption programs** [~~and adoption care program~~];

(b) Develop greater self-awareness on the part of the applicant to determine strengths and needs;

(c) Sensitize the applicant to the kinds of situations, feelings, and reactions that are apt to occur with a child **in the custody of** [~~committed to~~] the cabinet; and

(d) Effect behavior so that an applicant may better fulfill the role as **a resource home** parent of a [~~foster or adopted~~] child.

(8) [~~(7)~~] [~~(6)~~] The family preparation process shall emphasize:

(a) Self-evaluation;

(b) Participation in small group exercises; and

(c) Discussion with experienced **resource home** [~~foster and adoptive~~] parents.

(9) [~~(8)~~] [~~(7)~~] In addition to completion of the family preparation curriculum, at least two (2) family consultations shall be conducted by cabinet staff in the home of an applicant**, to include:**

**(a) Documentation that the requirements in Sections 3 and 4 of this administrative regulation have been met;**

**(b) Documentation that a personal interview with each member of the applicant's household has been completed;**

**(c) Discussion of the attitude of each member of the applicant's household toward placement of a child;**

**(d) Observation of the functioning of the applicant's household, including interpersonal relationships and patterns of interaction; and**

**(e) Assurance that the applicant is willing to accept a child's relationship with the child's family of origin**. [~~and the applicant shall be informed during the consultation of his right to request an administrative review if a difference arises that cannot be resolved through a supervisory channel.~~

~~(8) A child already placed by the cabinet in the home of an approved resource parent who marries may remain and additional children may be placed, if the new spouse completes the family preparation process within six (6) months of the marriage.~~]

(10) [~~(9)~~] An applicant approved as a **foster or adoptive parent or respite care provider** [~~resource foster parent~~] by another state, or by a child-placing agency as described in KRS 199.011(7) [~~An approved foster parent who moves to Kentucky from another state~~] shall:

(a) Be assessed by cabinet staff to ascertain the **applicant's** [~~parent's~~] level of skill as a potential Kentucky resource [~~foster~~] home parent; and

(b) Not be required to complete the family preparation process for approval as a Kentucky resource [~~foster~~] home parent if cabinet staff:

1. Determine that the **applicant** [~~parent~~] possesses the necessary skills for fostering; and

2. Obtain records and recommendation from the other state or child-placing agency.

(11) [~~(10)~~] If cabinet staff determine that an applicant described in subsection (9) of this section [~~approved foster parent who has moved to Kentucky from another state~~] lacks necessary foster parent skills, an individualized preparation curriculum shall be developed to fulfill unmet training needs.

(12) [~~(11)~~](a) A resource [~~foster~~] home parent shall request the recommendation of cabinet staff prior to enrolling in training specified in Section 5(1)(c), 6(1)(d), 7(1)(d), or 8(1)(d) of this administrative regulation.

(b) Cabinet staff may recommend the resource [~~foster~~] home parent to receive training specified in Section 5(1)(c), 6(1)(d), 7(1)(d), or 8(1)(d) of this administrative regulation if the resource [~~foster~~] home parent possesses the aptitude **to care** for [~~fostering~~] a:

1. Child described in Section 5(1)(b) of this administrative regulation;

2. Medically-fragile child;

3. Child described in Section 7(1)(b) of this administrative regulation; or

4. Specialized medically-fragile child.

Section 10. [~~9.~~] Completion of the Resource Home **Approval** [~~Certification~~] Process. (1) Designated regional cabinet staff in a supervisory role [~~A family services office supervisor~~] may approve a resource home applicant if:

(a) The applicant provides written and signed information pertaining to family history and background; [~~A complete family profile signed by the applicant has been received;~~]

(b) The applicant completes [~~has completed~~] family preparation as specified in Section 9**(2)** [~~(1)~~] [~~8(1)~~] of this administrative regulation;

(c) The information required in Section 3(13) through (15) [~~(12) through (14)~~] of this administrative regulation has been obtained;

(d) Designated regional cabinet staff [~~The recruitment and certification worker~~] recommends approval; and

(e) The applicant's ability to provide a foster, adoptive, or respite **care** service is consistent with the:

1. Cabinet's minimum resource home requirements; and

2. Needs of the families and children served by the cabinet.

(2) If the designated regional cabinet staff [~~family services office supervisor~~] determines that an applicant does not meet the minimum requirements for approval as a resource home parent, the cabinet shall recommend that the applicant withdraw the request [~~his application~~].

Section 11. [~~10.~~] Denial of a Resource Home Request [~~Application~~]. (1) Designated regional cabinet staff [~~The family services office supervisor~~] shall notify an applicant, in writing, if the request to become a resource home parent is not recommended [~~application is denied~~] for one (1) of the following reasons:

(a) The applicant is unwilling to withdraw the request to become a resource home parent [~~his application~~] after receiving a recommendation to withdraw; or

(b) The applicant desires to adopt, but is unwilling to adopt a child under the custodial control of the cabinet.

(2) If the resource home applicant disagrees with the cabinet's recommendation to not accept the applicant as a resource home, designated regional cabinet staff shall review the request to become a resource home parent and issue a final written determination regarding the cabinet's recommendation.

Section 12. Expectations of Resource Homes Providing Foster Care Services. A resource home providing foster care services shall:

(1) Provide a child placed by the cabinet with a family life, including:

(a) Nutritious food;

(b) Clothing comparable in quality and variety to that worn by other children with whom the child may associate;

(c) Affection;

(d) Training;

(e) Recreational opportunities;

(f) Educational opportunities;

(g) Nonmedical transportation;
(h) Independent living services, for a child age twelve (12) and older; and
(i) Opportunities for development consistent with their religious, ethnic and cultural heritage;
(2) Permit cabinet staff to visit;
(3) Share with the worker pertinent information about a child placed by the cabinet;
(4) Comply with the general supervision and direction of the cabinet concerning the care of a child placed by the cabinet;
(5) Report immediately to the cabinet if there is a:
(a) Change of address;
(b) Medical condition, accident or death of a child placed by the cabinet;
(c) Change in the number of people living in the home; **[**~~or~~**]**
(d) Significant change in circumstances in the resource foster home;
**(e) An absence without official leave;**
**(f) A suicide attempt; or**
**(g) Criminal activity by the child requiring notification of law enforcement**.
(6) Notify the cabinet if:
(a) Leaving the state with a child placed by the cabinet for more than two (2) nights; or
(b) A child placed by the cabinet is to be absent from the resource foster home for more than three (3) days;
(7) Cooperate with the cabinet when a contact is arranged by cabinet staff between a child placed by the cabinet and the child's birth family including:
(a) Visits;
(b) Telephone calls; or
(c) Mail;
(8) Surrender a child or children to the authorized representative of the cabinet upon request;
(9) Keep confidential all personal or protected health information as shared by the cabinet, in accordance with KRS 194B.060, 620.050 and 45 C.F.R. Parts 160 and 164, concerning a child placed by the cabinet or the child's birth family;
(10) **Support** **[**~~Facilitate~~**]** an assessment of the service needs of a child placed by the cabinet;
(11) Participate in case-planning conferences concerning a child placed by the cabinet;
(12) Cooperate with the implementation of the permanency goal established for a child placed by the cabinet;
(13) Notify the cabinet at least ten (10) calendar days in advance of the home becoming certified to provide foster care or adoption services through a private child-placing agency in accordance with 922 KAR 1:310; **[**~~and~~**]**
(14) Treat a child placed by the cabinet with dignity;
**(15) Arrange for respite care services in accordance with Section 13(5) of this administrative regulation;**
**(16) Ensure that a child in the custody of the cabinet receives the child's designated per diem allowance;**
**(17) Facilitate the delivery of medical care to a child placed by the cabinet as needed, including:**
**(a) Administration of medication to the child and daily documentation of the medication's administration; and**
**(b) Annual physicals and examinations for the child; and**
**(18) Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.030.**

Section 13. Reimbursements for Resource Homes Providing Foster Care Services. (1) Types of per diem reimbursement. The cabinet shall approve a resource home as specified in Section 3 of this administrative regulation and authorize a per diem reimbursement as follows:
(a) A basic per diem reimbursement shall be:
1. Based on the age of a child placed by the cabinet in the resource home; and
2. Made to the resource home parent that:
**a.** Does not meet criteria specified in paragraphs (b) through (j) of this subsection; **and**
**b. Meets annual training required in Section 15(1)(a) of this administrative regulation.**
(b) An advanced per diem reimbursement shall be:
1. Made to a resource home who:
a. Has completed twenty-four (24) hours of advanced training, including training on child sexual abuse, beyond the preservice training, specified in Section 9(1) of this administrative regulation; and
b. Completes twelve (12) hours of ongoing cabinet-sponsored training or cabinet-approved training each year; and
2. Based on the age of the child placed by the cabinet in the resource home.
(c) An emergency shelter per diem reimbursement shall:
1. Be made to a resource home parent who:
a. Meets criteria specified in Section 5 of this administrative regulation; and
b. Cares for a child, described in Section 5(1)(b) of this administrative regulation, who is placed by the cabinet; and
2.a Be reimbursed for no more than fourteen (14) days, unless an extension is granted in accordance with Section 5(1)(b)**2** **[**~~3~~**]** of this administrative regulation; or
b. After fourteen (14) days revert to:
(i) A basic per diem reimbursement, described in paragraph (a) of this subsection; or
(ii) An advanced per diem reimbursement, if the resource foster parent meets training requirements specified in paragraph (b)1a and b of this subsection.
(d) A basic medically-fragile per diem reimbursement shall be made to a resource home parent who:
1. Meets criteria specified in Section 6 of this administrative regulation; and
2. Provides for the care of a medically-fragile child.
(e) An advanced medically-fragile per diem reimbursement shall be made to a resource home parent who:
1. Meets criteria specified in Section 6 of this administrative regulation; and
2. Maintains a current license as a licensed practical nurse in accordance with KRS 314.011(9); and
3. Provides for the care of a medically-fragile child.
(f) A degreed medically-fragile per diem reimbursement shall be made to a resource home parent who:
1. Meets criteria specified in Section 6 of this administrative regulation; and
2. Maintains a current license as a:
a. Registered nurse in accordance with KRS 314.011(5); or
b. Health professional; and
3. Provides for the care of a medically-fragile child.
(g) A basic care plus resource home per diem reimbursement shall be made to a resource home parent who:
1. Meets criteria specified in Section 7 of this administrative regulation; and
2. Provides for the care of a child described in Section 7(1)(b) of this administrative regulation.
(h) An advanced care plus resource home per diem reimbursement shall be made to a resource foster home parent who:
1. Meets criteria specified in Section 7 of this administrative regulation;
2. Completes ongoing cabinet-sponsored or cabinet-approved training as specified in Section 9**(2)** **[**~~(1)~~**]** of this administrative regulation;
3. Has one (1) year of experience as a care plus resource home; and
4. Provides for the care of a child described in Section 7(1)(b) of this administrative regulation.
(i) An advanced specialized medically-fragile per diem reimbursement shall be made to a resource home parent who:
1. Meets criteria specified in Section 8 of this administrative regulation; and
2. Maintains a current license as a licensed practical nurse in accordance with KRS 314.011(9); and
3. Provides for the care of a specialized medically-fragile child.
(j) A degreed specialized medically-fragile per diem reimbursement shall be made to a resource home parent who:
1. Maintains a current license as a:
a. Licensed registered nurse in accordance with KRS 314.011(5); or

b. Physician in accordance with KRS 311.720(9); and

2. Meets criteria specified in Section 8 of this administrative regulation; and

3. Provides for the care of a specialized medically-fragile child.

(k) Upon placement of a child by the cabinet, a per diem reimbursement shall:

1. Be specified in a contract between an approved resource foster home and the cabinet; and

2. Provide for the care of a child placed by the cabinet, to include:

a. Housing expenses;

b. Food-related expenses;

c. Nonmedical transportation;

d. Clothing;

e. Allowance;

f. Incidentals;

g. Babysitting, excluding childcare authorized in subsection (4)(b) of this section;

h. Sports, recreation and school activities;

i. One (1) twenty-four (24) hour period of respite care per child per month; and

j. School expenses.

(2) Medical coverage.

(a) Cabinet staff may authorize payment for medical expenses for a child in the custody of the cabinet after verification is provided that the child is not covered by health insurance, Medicaid or the Kentucky Children's Health Insurance Program ("K-CHIP").

(b) Designated regional cabinet staff shall approve authorization of payment for a medical treatment greater than $500.

(3) Child care services.

(a) The cabinet shall review requests for child care services every six (6) months for a working resource home **parent** that provides foster care services.

(b) Designated regional cabinet staff may approve requests for child care services for a nonworking resource home parent who provides foster care services:

1. If a medical crisis affects the resource home parent; or

2. To allow for an adjustment period for the child.

(c) Designated regional cabinet staff shall review approved requests for child care services for a nonworking resource home parent every three (3) months.

(4) Training. To the extent funds are available and in accordance with Section 15(4) of this administrative regulation, the cabinet shall provide a reimbursement to an approved resource home that provides foster care services for ongoing training expenses commensurate with the resource home parent's training needs, including:

(a) Mileage;

(b) Babysitting; and

(c) Tuition or fees.

(5) Respite care.

(a) Except for a child in an emergency shelter resource home, respite care is available for a child placed by the cabinet in a resource home that provides foster care services.

(b) A resource home that provides foster care services shall be eligible for a twenty-four (24) hour period of respite care per month per child.

(c) A resource home that cares for a child in the custody of the cabinet and meets criteria established in Sections 6 through 8 of this administrative regulation shall be eligible for three (3) days of respite care per month per child.

(d) Designated regional cabinet staff may extend respite care up to fourteen (14) days, if designated regional cabinet staff document that the:

1. Resource home parent requires the additional respite care to stabilize the child's placement in the resource home that provides foster care services; or

2. Child placed in the resource home requires additional respite care to allow for a period of adjustment.

(e) The cost of respite care shall not exceed the per diem for the child.

(f) A respite care provider shall be approved **in accordance with Section 21** [~~as a resource home by the cabinet in accordance with Sections 3 and 4~~] of this administrative regulation.

(6) Appeals. A resource parent may appeal the timeliness of reimbursement in accordance with 922 KAR 1:320.

Section 14. [~~family services office supervisor's decision to deny approval as a resource home, the service region administrator shall review the application and issue a final written determination regarding approval.~~

~~Section 11.~~] Home Study Requests. (1) Upon receipt of a request from another [~~Except for a request received from the sending~~] state's Interstate Compact on the Placement of Children Administrator in the interest of a child in the legal custody of that [~~the sending~~] state's public agency, the cabinet shall [~~not~~] complete a home study as specified in 922 KAR 1:100, Section 6(6).

(2) The cabinet shall [~~, or~~] share a previously approved home study in accordance with the Kentucky Open Records Act, KRS 61.870-61.884 and 42 U.S.C. 671(a)(23).

(3) An individual may request an administrative hearing in accordance with 922 KAR 1:320 for failure of the cabinet to act in accordance with subsections (1) and (2) of this section. [~~for a family who attempts to receive a child for foster care or adoption through a public agency or licensed private adoption agency in another state or country.~~]

Section 15. [~~12.~~] Annual Resource Home [~~and Adoptive Parent~~] Training Requirement. (1)(a) A resource home [~~parent or waiting adoptive~~] parent shall be required to complete, before the anniversary date of approval, at least six (6) hours of annual cabinet-sponsored training or training approved in advance by the cabinet.

(b) Training necessary to obtain certifications required by Sections 6(1)(f) and 8(1)(f) of this administrative regulation shall count towards the annual training requirement.

[~~(c) A resource home described in subsection (1)(a) of this section shall be reimbursed a basic per diem as described in Section 13(1)(a) of this administrative regulation.~~]

(2) An individualized curriculum may be developed for a resource home [~~or adoptive~~] parent who is unable to participate in annual group training because of employment or other circumstances.

(3)(a) Except for a resource home parent with whom a child [~~family that~~] has developed a significant emotional attachment and is approved by designated regional cabinet staff, the resource home [~~to a child placed with the family, the home of a resource parent~~] that fails to meet the annual training requirement shall be closed.

(b) Additional children shall not be placed in the home until the training requirement has been satisfactorily met.

(4) Designated regional cabinet staff [~~The family services office supervisor~~] shall approve reimbursement, to the extent that funds are available, for the following expenses of a resource home parent who is participating in ongoing cabinet-sponsored or cabinet-approved training:

(a) Mileage;

(b) Babysitting; and

(c) Tuition or fees up to [~~in~~] the amount of $100 per family per year or $200 per year for a:

1. Medically-fragile resource [~~foster~~] home; [~~or~~]

2. Specialized medically-fragile resource home; or

3. Care plus resource home. [~~family treatment home.~~

~~(5) If the resource parent's request to attend training is denied, the cabinet shall provide written notice of the resource parent's right to a fair hearing.~~]

Section 16. [~~13.~~] Resource Home Annual Reevaluation. (1) A cabinet staff member shall conduct a personal, in-home interview with a resource home parent [~~family~~] during the anniversary month of initial approval. The interviewer shall assess:

(a) Any [A] change in the **home** [~~family~~];

(b) The ability of the **individual** family to meet the needs of a child placed in the home; and

(c) Continuing compliance with the requirements of Sections 3 and 4 of this administrative regulation.

(2) The interviewer shall complete a DPP-1289, Annual

Strengths/Needs Assessment for Resource Home Families [~~form OOHC-1289~~] during the interview.

Section 17. Resource Home Reviews. [~~14. Resource Family Reviews.~~] (1) Cabinet staff shall complete a review within thirty (30) days of notification of a factor that may place unusual stress on the **resource home** [~~family~~] or create a situation that may place a child at risk.

(2) Factors that shall result in a review of a resource home [~~parent~~] shall include:

(a) Death or disability of a family member;

(b) Sudden onset of a health condition that would impair a parent's ability to care for a child placed in the home by the cabinet;

(c) Change in marital status;

(d) Sudden, substantial decrease in, or loss of, income;

(e) Childbirth;

(f) [~~Both resource home parents have reached the age of seventy (70);~~

~~(g)~~] Use of a form of punishment that includes: [~~;~~]

1. Cruel, severe, [~~bizarre,~~] or humiliating actions;

2. Corporal punishment inflicted in any manner;

3. Denial of food, clothing, or shelter;

4. Withholding implementation of the child's treatment plan;

5. Denial of visits, telephone or mail contacts with family members, unless authorized by a court of competent jurisdiction; and

6. Assignment of extremely strenuous exercise or work;

(g) [~~(h)~~] A report of abuse, neglect, or dependency that results in a finding that is:

1. Substantiated; or

2. Reveals [~~potential~~] concern regarding the care of the child;

(h) If [~~(i)~~] The parent is cited with, charged with, or arrested due to [~~with~~] a violation of law other than a minor traffic offense; or

(i) [~~(j)~~] Other factor identified by cabinet staff that jeopardizes the physical, mental, or emotional well being of the child.

(3) The narrative of the review shall contain:

(a) Identifying information;

(b) Current composition of the household;

(c) Description of the situation that initiated the review;

(d) An evaluation of the family functioning to determine if the child's needs are met; and

(e) A plan for corrective action that may include a recommendation for closure of the resource home.

Section 18. [~~15.~~] Closure of an Approved Resource Home. (1) [~~An approved adoptive home shall be closed pursuant to 922 KAR 1:100, Section 10.~~

~~(2)~~] A resource home shall be closed if:

(a) Cabinet staff determine that the family does not meet the general requirements for a resource home [~~family~~];

(b) A situation exists that is not in the best interest of a [~~the~~] child;

(c) [~~Substantiated~~] Sexual abuse or exploitation by the resource home parent or by another resident of the resource home is substantiated [~~occurs~~];

(d) Substantiated physical abuse or neglect of a child by a resident of the household [~~or spouse~~] occurs that is serious in nature or warrants removal of a child [~~the victim~~];

(e) A serious physical or mental illness develops that may impair or preclude adequate care of the child by the parent; or

(f) The cabinet has not placed a child in the home within the preceding two (2) year period.

(2) A resource home may be closed according to the terms of the contract between the cabinet and the resource home.

(3) An approved adoptive home shall be closed pursuant to 922 KAR 1:100.

(4) [~~The parent is convicted of a felony offense.~~

~~(3)~~] If it is necessary to close an approved resource home, the reason shall be stated by cabinet staff in a personal interview with the family.

(5) [~~(4)~~] The cabinet shall confirm, in a written notice to the parent, the decision to close a home. The notice shall be delivered[~~:~~

~~(a)~~] within thirty (30) days of the interview with a resource home parent. [~~; and~~

~~(b) No later than ten (10) days prior to the closing of a resource home.~~]

(6) [~~(5)~~] The written notice for closure of a resource [~~or adoptive~~] home shall include:

(a) Notice that the cabinet shall not place a child in the home; and

(b) The reason why the resource home is being closed[~~; and~~

~~(c) Notice of the parent's right to request an appeal of the decision~~].

Section 19. [~~16.~~] Reapplication. (1) A former resource home parent whose home was closed pursuant to Section 18(1)(a) through (f) of this administrative regulation [~~without a deficiency may reapply.~~

~~(2) If a deficiency led to closure, a former resource home parent~~] may be considered for reapproval if the cause of closure [~~deficiency~~] has been resolved.

(2) [~~(3)~~] To reapply, a former resource home parent shall:

(a) Attend an information meeting;

(b) Submit the:

1. [~~Application;~~

~~2.~~] Names of references specified in Section 3(13) [~~(12)~~] of this administrative regulation; and

2. [~~3.~~] Authorization for criminal records release specified in Section 3(17) [~~(16)~~] of this administrative regulation.

(3) [~~(4)~~] A reapplying former resource home parent shall reenroll and complete family preparation, **as specified in Section 9 of this administrative regulation,** unless the former resource home parent:

(a) Has previously completed [~~attended~~] family preparation, as specified in Section 9(1) [~~8(1)~~] of this administrative regulation; and

(b) Is considered a placement resource for children.

(4) [~~(5)~~] An adoptive family may be reconsidered for adoptive placement pursuant to 922 KAR 1:100, Section 9.

Section 20. Resource Home [~~17. Foster~~] Parent Adoption. (1) A resource home [~~foster~~] parent may adopt a child for whom parental rights have been terminated if:

(a) Resource home [~~Foster~~] parent adoption is determined by cabinet staff to be in the best interest of the child; [~~and~~]

(b) The child resides in the resource [~~home~~] [~~foster~~] home**; and**

**(c) Criteria in 922 KAR 1:100 are met**.

(2) If a resource home [~~foster~~] parent expresses interest in adopting a foster child currently placed in the home and an alternative permanent placement is in the child's best interest, cabinet staff shall meet with the resource home [~~foster~~] parent prior to selection of an adoptive home to explain:

(a) Why an alternative permanent placement is in the child's best interest; and

(b) The resource home [~~foster~~] parent's right to submit a request to the cabinet to reconsider the recommendation.

(3) If a resource home [~~foster~~] parent is not approved for adoptive placement of a child currently placed in the home, cabinet staff shall meet with the resource home [~~foster~~] parent to explain the[~~:~~

~~(a)~~] reason resource home [~~foster~~] parent adoption is not in the best interest of the foster child.

**Section 21. Requirements for Respite Care Providers. (1) A respite care provider shall:**

**(a) Be:**

**1. An approved resource home; or**

**2. Approved in accordance with subsection (2) of this section; and**

**(b) Receive preparation for placement of a child, including information in accordance with:**

**1. KRS 605.090(1)(b); and**

**2.a. Section 6(1)(e) of this administrative regulation, if the child is a medically-fragile child; or**

**b. Section 8(1)(e) of this administrative regulation, if the child is a specialized medically-fragile child.**

**(2) If a resource home chooses a respite provider who is not an approved resource home, the respite care provider shall:**

(a) Meet criteria established in Sections 3(1), (2), (8), (9), (17), (18) and 4 of this administrative regulation; and

(b) Complete initial family preparation in accordance with Section 9 of this administrative regulation; or

(c)1. Have professional experience working directly with children, if providing respite for a child in basic or advanced resource home;

2. Have professional experience or training in the mental health treatment of children or their families, if providing respite for a child in a care plus resource home; or

3. Be a health professional, if providing respite care for a child in a medically-fragile or specialized medically-fragile resource home.

(3) A respite care provider shall not care for more children than is allowed by Section 2 of this administrative regulation. [; and

~~(b) Foster parent's right to request an administrative review.~~

~~Section 18. Resource Home Payments. (1) Forms OOHC-111 and OOHC-111A shall be signed by the resource home parent prior to the placement of a child under the custodial control of the cabinet.~~

~~(2) The cabinet shall, to the extent funds are available, pay an approved resource home parent a daily rate for care of a child placed in the home by the cabinet.~~

~~(3) The basic rate received by an approved resource home parent shall be:~~

~~(a) Specified in the contract, form OOHC-111; and~~

~~(b) Received by a parent who has not completed advanced training.~~

~~(4) The advanced rate received by an approved resource home parent shall be:~~

~~(a) Specified in the contract, form OOHC-111;~~

~~(b) 100 percent of the current USDA estimate of the cost of raising a child in the urban south; and~~

~~(c) Received by a parent who:~~

~~1. Has completed twenty-four (24) hours of advanced training beyond the required preservice training; and~~

~~2. Completes twelve (12) hours of ongoing cabinet-sponsored or cabinet-approved training each year.~~

~~(5) A resource home parent who has been approved as an emergency shelter home parent shall receive an emergency shelter rate specified in the contract, form OOHC-111, for the care of a child described in Section 5(1)(b) of this administrative regulation.~~

~~(6) A resource home parent who has been approved as a medically-fragile home parent and who meets the requirements of Section 6 of this administrative regulation shall receive the:~~

~~(a) Basic medically-fragile rate specified in form OOHC-111 for care of a medically-fragile child;~~

~~(b) Advanced medically-fragile rate specified in form OOHC-111 for care of a medically-fragile child, if the parent maintains a current license as a licensed practical nurse; and~~

~~(c) Degreed medically-fragile rate specified in form OOHC-111 for care of a medically-fragile child, if the parent maintains a current license as a registered nurse or physician.~~

~~(7) A resource home parent who has been approved as a family treatment home parent for the care of a child as described in Section 7(1)(b) of this administrative regulation shall receive the:~~

~~(a) Basic family treatment home rate specified in form OOHC-111 during the first year of approval as a family treatment home; and~~

~~(b) Advanced family treatment home rate of reimbursement upon:~~

~~1. Completion of ongoing cabinet-sponsored or approved training; and~~

~~2. One (1) year of experience as a family treatment home.~~

~~(8) An approved resource home parent who refers an applicant that becomes an approved resource or adoptive parent may be paid a bonus.~~]

Section 22. [~~21.~~] [~~19.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-107, Health Information Required for Resource Home Applicants or Adult Household Members, edition 1/04";

(b) "DPP-108, Health Information Required for Resource Home Applicants Regarding Dependent Children, edition 1/04";

(c) "DPP-112A, Placement Exception Request, edition 1/04";

(d) "DPP-112B, Resource Home Exception Plan, edition 1/04";

(e) "DPP-1289, Annual Strengths/Needs Assessment for Resource Home Families, edition 1/04". [~~"Family Profile", edition 10/16/91;~~

~~(b) OOHC-107, "Health Information Required on Foster and Adoptive Applicant", edition 7/00;~~

~~(c) OOHC-111, "Foster Home Contract", edition 7/00;~~

~~(d) OOHC-111A, "Foster Home Contract Supplement", edition 7/00;~~

~~(e) OOHC-1289, "Annual Strength/Needs Assessment for Foster Families", edition 3/2000.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES W. HOLSINGER, JR. M.D., Secretary
APPROVED BY AGENCY: February 12, 2004
FILED WITH LRC: February 12, 2004 at 4 p.m.
CONTACT PERSON: Becky Conner, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, phone (502) 564-7900, fax (502) 564-9126.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process of determining an applicant's capacity for foster and adoptive parenthood, and the requirements for resource homes caring for foster or adoptive children.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide standards for resource homes that care for foster or adoptive children.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 605.100(1) by providing for the specialized treatment of children according to their respective problems, needs and characteristics and to KRS 199.472 and 605.150 by establishing the process of determining an applicant's capacity for foster or adoptive parenthood.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the process of determining an applicant's capacity for foster or adoptive parenthood, as required by KRS 199.472 and 605.150; and provides for the specialized treatment of children according to their respective problems, needs and characteristics, as required by KRS 605.100(1).

(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: This amendment reduces the limit on the number of children who may be placed in a resource home that provides foster care services for children in the custody of the Cabinet for Health and Family Services; and establishes a process for granting exceptions to these limits. The amendment restricts the duration of the placement of a child in an emergency shelter home to 14 days, unless an extension of 16 days is granted. This amendment renames family treatment resource homes as care plus resource homes and establishes new criteria. Current family treatment resource homes in which a child has been placed within the last year will be reclassified as care plus resource homes. This amendment includes specialized medically-fragile resource homes as a classification previously referenced only in contracts. This amendment includes resource foster home expectations.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to establish criteria for resource homes caring for foster or adoptive children.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 605.100(1) authorizes the cabinet to arrange programs designed to provide for classification, segregation and specialized treatment of children according to their respective problems, needs and characteristics. KRS 199.472 and 605.150 authorize the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood. The amendment to this administrative regulation makes revisions to resource home programs that provide foster care for children in the custody of the cabinet, and specifies in further detail the criteria and acceptance process for becoming a resource home parent.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the process of determining an applicant's capacity for foster or adoptive parenthood, as required by KRS 199.472 and 605.150.

(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: The number of families approved for foster and adoptive placement totals 2,539, as of October 29, 2003. This includes 1,361 homes approved for foster care services, 259 homes approved for adoption, and 2,539 homes approved for foster care and adoption.

(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 reduces the limit on the number of children who may be placed in a resource home that provides foster care services. The number of children limit should enhance care and safety for foster children. For foster homes caring for more than the newly established limitation upon the effective date of this administrative regulation, the limitation provision will not be effective until December 31, 2004. In addition, the amended regulation establishes a limitation exception approval process for specific situations and when in the best interest of the child or children. The amendment also restricts the duration of the placement of a child in an emergency shelter home to 14 days, unless an extension of 16 days is granted by the Cabinet for Health and Family Services. This amendment renames family treatment resource homes to care plus resource homes and establishes new criteria. Current family treatment resource homes in which a child has been placed within the last year will be automatically reclassified as care plus resource homes. This amendment establishes resource foster home expectations. The Kentucky Foster/Adoptive Parent Association reviewed this regulation during the development process.

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

(a) Initially: There are no additional costs necessary to implement this administrative regulation.

(b) On a continuing basis: There are no additional costs necessary to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Title IV-B, federal Title IV-E, agency funds, and state general 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: No increase in fees or additional funding will be necessary 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 neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied since policy is applied in a like manner to all resource homes and resource home applicants.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 671; 45 C.F.R. Parts 160 and 164.

2. State compliance standards. KRS 199.472

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 671; 45 C.F.R. Parts 160 and 164.

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. NA

## KENTUCKY BOARD OF VETERINARY EXAMINERS (Amendment)

**201 KAR 16:015. Fees.**

RELATES TO: KRS 321.193, 321.195, 321.201, 321.207, 321.211, 321.221

STATUTORY AUTHORITY: KRS 321.193(2), 321.211

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.193(2) and 321.211 require the Board of Veterinary Examiners to establish the application, examination, and renewal fees for veterinarians. This administrative regulation establishes the application, examination, and renewal fees.

Section 1. Application Fees. (1) The application fee for a licensed veterinarian shall be fifty (50) dollars.

(2) The application fee for a veterinary technician or a veterinary technologist shall be twenty-five (25) dollars.

Section 2. Examination Fees. (1) The fee for the North American Veterinary Licensing Examination [~~National Board Examination for Veterinary Medicine~~] shall be paid directly to the National Board of Veterinary Medical Examiners [~~$165~~].

(2) [~~The fee for the Clinical Competency Test in Veterinary Medicine shall be $140.~~

~~(3)~~] The fee for the state examination shall be $100.

(3) [~~(4)~~] The fee for the veterinary technician or technologist examination shall be $100.

Section 3. Renewal Fees and Penalties for a Veterinarian, Veterinary Technician, and Veterinary Technologist. No person holding a license shall practice in this state after November 30 of the year in which their license is to be renewed unless such license has been renewed as provided by KRS 321.211 and payment of the renewal fee has been made. All licenses not renewed by November 30 following the expiration date shall be deemed expired and no person holding an expired license shall engage in the practice of veterinary medicine. The following fees and penalties shall be paid in connection with licensure renewals and penalties:

(1) The renewal fee for licensure as a veterinarian shall be fifty (50) dollars.

(2) The late renewal fee, including penalty, for the grace period extending from October 1 to November 30 for licensure as a veterinarian shall be $150.

(3) The renewal fee for reinstatement of licensure as a veterinarian after November 30 shall be $300.

(4) The renewal fee for renewal of licensure as a veterinary technologist or technician shall be thirty (30) dollars.

(5) The late renewal fee, including penalty, for the grace period extending from October 1 to November 30 for renewal of licensure as a veterinary technologist or technician shall be forty (40) dollars.

(6) The renewal fee for reinstatement of licensure as a veterinary technician or technologist after November 30 shall be fifty (50) dollars.

Section 4. Special Permit Fee. The fee for a special permit shall be fifty (50) dollars.

Section 5. Fee for Issuance of Certification for a Certified Animal Control Agency and a Certified Animal Euthanasia Specialist. (1) The fee for issuance of a certificate to an animal control agency shall be fifty (50) dollars.

(2) The fee for issuance of a certificate to a certified animal euthanasia specialist shall be fifty (50) dollars.

Section 6. Renewal of Certification for a Certified Animal Control Agency and a Certified Animal Euthanasia Specialist. (1) Each certified animal control agency and certified animal euthanasia specialist shall annually, on or before March 1, pay to the board a renewal fee of fifty (50) dollars for the renewal of the certificate. A certificate not renewed by March 1 of each year shall expire based on the failure to renew in a timely manner.

(2) A sixty (60) day grace period shall be allowed after March 1, during which time the animal control agency or certified animal euthanasia specialist may continue to function and may renew the certificate upon payment of a late fee of sixty (60) dollars.

(3) A certificate not renewed before May 1 shall terminate based on the failure to renew in a timely manner. Upon termination, the certificate is no longer valid in the Commonwealth.

(4) After the sixty (60) day grace period, a certificate that has been terminated may be reinstated upon payment of a reinstatement fee of seventy-five (75) dollars.

(5) The renewal fee for the first renewal shall be waived for a certificate received within 120 days prior to the renewal date.

HOWARD RENNECKER, DVM, Chairman

APPROVED BY AGENCY: January 21, 2004

FILED WITH LRC: February 12, 2004 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2004, at 1 p.m., at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 15, 2004, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kristen Webb, Executive Director, Kentucky Board of Veterinary Examiners, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for licensees of the Kentucky Board of Veterinary Examiners.

(b) The necessity of this administrative regulation: KRS 321.193(2) and 321.211 authorize the Board of Veterinary Examiners to establish the application, examination, and renewal fees for veterinarians. This administrative regulation establishes the application, examination, and renewal fees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.193(2) and 321.211 authorizes the Board of Veterinary Examiners to establish the application, examination, and renewal fees for veterinarians.

(d) How this administrative regulation will assist in the effective administration of the statutes: The regulation specifies the fees which are used to operate the board.

(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 to this administrative regulation makes clear that the fee for the licensing examination is to be paid directly to the national firm that provides the examination.

(b) The necessity of the amendment to this administrative regulation: Presently, the National Board of Veterinary Medical Examiners sets and collects the fee for the North American Veterinary Licensing Examination. This amendment will notify applicants of the requirement for examination fees.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.193(2) and 321.211 authorize the Board of Veterinary Examiners to establish the application, examination, and renewal fees for veterinarians.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation informs applicants of the requirements for paying the examination fee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board licenses 1,850 veterinarians in the Commonwealth. Approximately 40 applicants take the national examination from Kentucky each year.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: All applicants for the examination currently pay the examination fee directly to the national firm that provides the examination. The regulation specifies that requirement in regulatory form.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No costs are associated with the amendment.

(b) On a continuing basis: There are no continuing costs associated with implementation of this regulation.

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment are funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees collected by the board will be necessary to implement this administrative regulation.

(8) This administrative regulation establishes fees in accordance with KRS Chapter 321.

(9) TIERING: Is tiering applied? Tiering is not required as all applicants for a veterinarian license take the same examination and take the same fee.

## KENTUCKY BOARD OF LICENSED VETERINARY EXAMINERS (Amendment)

**201 KAR 16:050. Continuing education.**

RELATES TO: KRS 321.211(7), 321.235(6), 321.441(2)

STATUTORY AUTHORITY: KRS 321.211(7), 321.235(1), (3), (5), (6), (7), 321.441(2)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 321.211(7) the board may require that a person applying for renewal or reinstatement to show evidence of completion of continuing education. This administrative regulation establishes the requirements for continuing education hours relating to the practice of veterinary medicine.

Section 1. (1)(a) A veterinarian shall be required to annually complete fifteen (15) hours of continuing education to be eligible for renewal of his license.

(b) Of the required hours, at least ten (10) hours shall be directly related to the practice of veterinary medicine and no more than five (5) hours may be in related areas such as practice management.

(c) A veterinarian may acquire no more than two (2) hours of continuing education in each renewal period by the completion of audio or video recordings, electronic, computer or interactive materials or programs on scientific subjects prepared or approved by any of the organizations identified in Section 2(1) and (2) of this administrative regulation.

(2) A veterinary technician and veterinary technologist shall annually complete six (6) hours of continuing education to be eligible for renewal of his registration.

(3) Continuing education shall be earned [be] from October 1 of each year until September 30 of the following year.

Section 2. Approved Courses. (1) All scientific programs of all organizations of the American Veterinary Medical Association, its constituent organizations and its recognized specialty groups and accredited veterinary medical institutions whose meetings impart educational material directly relating to veterinary medicine, [; and]

(2) Programs which are approved by the Registry of Approved Continuing Education (RACE) of the American Association of Veterinary State Boards (AAVSB).

(3) All programs approved by the board, not associated with RACE or the American Veterinary Medical Association and its suborganizations.

(4) [(3)] Those programs shall impart knowledge directly relating to the practice of veterinary medicine to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievement of research may assure expansive and comprehensive care to the public.

Section 2. (1) A licensee and a registrant shall:

(a) Secure documentation of attendance at a course; and

(b) Annually, list on "Licensed Veterinarian Annual Renewal Form" or "Veterinary Technician Annual Renewal Form", as appropriate, each course he attended.

(2) The board may require documentation of attendance at continuing education courses to be submitted to it.

Section 3. (1) The board may, in individual cases involving medical disability or illness, grant waivers of the continuing education requirements or extensions of time within which to fulfill the same or make the required reports.

(a) [(2)] A written request for medical disability or illness waiver or extension of time shall be:

1. [(a)] Submitted by the licensee and registrant; and

2. [(b)] Accompanied by a verifying document signed by a licensed physician.

(b) [(3)] A waiver of the minimum continuing education requirements or an extension of time within which to fulfill the same may be granted by the board for a period of time not to exceed one (1) calendar year.

(c) [(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 or registrant shall reapply for another extension.

(2) The board may grant a waiver to a licensee who is unable to meet the continuing education requirements of this administrative regulation because of obligations arising from military duty.

(a) A licensee engaged in active military duty and deployed outside the United States for more than eight (8) months shall not be required to have completed the continuing education requirement for licensure periods during which such status exists.

(b) A licensee who is called to active duty in the armed forces, shall not be required to have completed the continuing education requirement for licensure periods during which such status exists.

(c) The licensee requesting an extension or waiver under this provision shall submit the appropriate military assignment form, deployment orders, or a statement from the licensee's unit commander confirming the call-up or deployment.

Section 4. (1)(a) A license or registration that has been terminated shall be reinstated if a licensee or registrant submits proof that he has completed the required number of continuing education hours within the twelve (12) month period immediately preceding the date on which the application is submitted.

(b) The board may permit the immediate reinstatement of a terminated license or registration if the licensee or registrant agrees to complete the required number of continuing education hours within six (6) months of the date of reinstatement.

(2) Prior to renewal of a license or registration for the licensure period following the licensure period during which the license or registration was reinstated, a reinstated licensee or registrant shall have completed the number of continuing education hours required for renewal of a license or registration by Section 1 of this administrative regulation.

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

(a) "Licensed Veterinarian Annual Renewal Form (95)"; and

(b) "Veterinary Technician Annual Renewal Form (95)".

(2) These forms may be inspected, copied, or obtained at Kentucky Board of Veterinary Examiners, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30

p.m., or by sending a request to the board at P.O. Box 1360, Frankfort, Kentucky 40602.

HOWARD RENNECKER, DVM, Chairman
APPROVED BY AGENCY: January 22, 2004
FILED WITH LRC: February 12, 2004 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2004, at 1 p.m., at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 15, 2004, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kristen Webb, Executive Director, Kentucky Board of Veterinary Examiners, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes continuing education requirements for licensees.
(b) The necessity of this administrative regulation: KRS 321.211(7) the board may require that a person applying for renewal or reinstatement to show evidence of completion of continuing education. This administrative regulation establishes the requirements for continuing education hours relating to the practice of veterinary medicine.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.211(7) gives the board the authority to require continuing education.
(d) How this administrative regulation will assist in the effective administration of the statutes: The regulation specifies the continuing education requirements for renewal which is the responsibility of the board. The board has determined that continuing education helps promote good veterinary medical practices, and thus furthers the board mandate of protecting the public.
(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 to this administrative regulation allows licensees to acquire a portion of their continuing education from electronic media. It also provides that the board will accept courses that are approved by the Registry of Approved Continuing Education. The amendment stipulates that the board can waive the continuing education requirements for licensees who are on active military duty.
(b) The necessity of the amendment to this administrative regulation: The board details the requirements for continuing education in accordance with the statutes.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.211(7) gives the board the authority to require continuing education.
(d) How the amendment will assist in the effective administration of the statutes: The board has determined that continuing education helps promote good veterinary medical practices, and thus furthers the board mandate of protecting the public.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board licenses 1,850 veterinarians in the Commonwealth and 300 veterinary technologists and technicians.
(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: The amendment to the administrative regulation will make the acquisition of continuing education easier for licensees.
(5) Estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No costs are associated with the amendment.
(b) On a continuing basis: There are no continuing costs associated with implementation of this regulation.
(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment are funded by licensure fees paid by licensees.
(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees collected by the board will be necessary to implement this administrative regulation.
(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Tiering was applied to require that veterinary technicians and technologist, who work only under the supervision of licensed veterinarians, obtain a lower number of continuing education credits.

## KENTUCKY BOARD OF ARCHITECTS
## (Amendment)

**201 KAR 19:315. Qualifications for certification.**

RELATES TO: KRS 323.400, 323.406(1), 323.408, 323.410(1), (3), (4)
STATUTORY AUTHORITY: KRS 323.210(2), 323.406(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.410(1)(c) requires the board issue a certificate as a certified interior designer to persons who meet the standards of education, experience, and testing established by the board. This administrative regulation establishes the requirements for obtaining certification as a certified interior designer.

Section 1. Definitions. (1) "Board" is defined at KRS 323.010(1) and 323.400(1).
(2) "FIDER" means the Foundation for Interior Design Education Research.
(3) "NAAB" means the National Architectural Accrediting Board.

Section 2. Accredited Degrees. (1) The board shall determine if an applicant's education and experience in the field of interior design are sufficient to establish eligibility for certification.
(2) The board shall certify an applicant who has obtained:
(a) A four (4) or five (5) year professional accredited degree;
(b) At least two (2) years of acceptable full-time employment in the performance of interior design services, in accordance with Section 3 of this administrative regulation; and
(c) A passing score on the NCIDQ examination.

Section 3. Degrees From Programs Not Accredited by FIDER or NAAB. (1)(a) In lieu of the education and experience requirements of Section 1(2)(a) and (b) of this administrative regulation, the board may deem an applicant eligible for certification if, prior to January 1, **2012** [~~2009~~], the applicant:
1. Has received a degree from a program not accredited by FIDER or NAAB; and
2. Otherwise meets the requirements of this section.
(b) An applicant seeking to qualify under this section shall obtain a passing score on the NCIDQ examination.
(2) To qualify under this section, the applicant shall be a graduate of a nonaccredited program of:
(a) Five (5) years or more which included at least 150 semester credits, of which ninety (90) or more are interior design related, or 225 quarter credits, of which 135 or more are interior design related, and who has completed at least two (2) years of acceptable interior design experience;
(b) Four (4) years or more which included at least 120 semester credits, of which sixty (60) or more are interior design related, or

180 quarter credits, of which ninety (90) or more are interior design related, and who has completed at least three (3) years of acceptable interior design experience;

(c) Three (3) years or more which included at least sixty (60) semester credits of interior design related coursework, or ninety (90) quarter credits of interior design related coursework, and who has completed at least four (4) years of acceptable interior design experience; or

(d) Two (2) years or more which included at least forty (40) semester credits of interior design related coursework, or sixty (60) quarter credits of interior design related coursework, and who has completed five (5) years of acceptable interior design experience.

(3) The experience required by subsection (2) of this section shall meet the criteria established in Section 3 of this administrative regulation.

Section 4. (1) Full-time employment shall include at least thirty-five (35) hours per week in the performance of interior design services.

(2) To be deemed acceptable, experience shall be obtained under the supervision of:

(a) An interior designer who has passed the NCIDQ examination;

(b) A licensed architect; or

(c) An interior designer who is licensed, certified, or registered by a state or provincial regulatory agency.

Section 5. The board shall certify any architect licensed in the Commonwealth of Kentucky upon application and payment of the fee prescribed in 201 KAR 19:335, Section 1(3).

JILL SMITH, President

APPROVED BY AGENCY: February 11, 2004

FILED WITH LRC: February 13, 2004 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 26, 2004, at 1 p.m., Eastern Time in the Board Conference Room, 301 East Main Street, Suite 860, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 19, 2004, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Jerry Herndon, Executive Director, 301 East Main Street, Suite 860, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 246-2431.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jerry Herndon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the educational, experience, and testing criteria for certification as a certified interior designer.

(b) The necessity of this administrative regulation: KRS 323.410 provides that the board shall issue a certificate as a certified interior designer to persons who meet the standards of education, experience, and testing established by the board. This administrative regulation sets forth the requirements for obtaining certification as a certified interior designer.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 323.406 authorizes the board to establish by administrative regulation the criteria for education, experience, and testing for those persons seeking certification as a certified interior designer.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of determining the qualification of applicants by identifying the criteria for certification.

(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 to this administrative regulation extends the period for applicants that do not possess a degree from an accredited college.

(b) The necessity of the amendment to this administrative regulation: KRS 323.410 provides that the board shall issue a certificate as a certified interior designer to persons who meet the standards of education, experience, and testing established by the board. This administrative regulation sets forth the requirements for obtaining certification as a certified interior designer.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 323.410 authorizes the board to establish the standards for education.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of determining the qualification of applicants by identifying the criteria for certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board expects approximately 200 persons in the Commonwealth to apply for the certification.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: This administrative regulation specifies criteria for experience, experience, and testing for persons seeking to be certified, thus ensuring that applicants know what is required by the board to obtain certification.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The board estimates that no additional costs will be incurred by this amendment.

(b) On a continuing basis: The board estimates that no additional costs will be incurred by this amendment

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this regulation will be funded by application fees and by certification fees paid by certificate holders.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in the fees is presently anticipated.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation applies to all licensees who seek certification.

## BOARD OF NURSING
## (Amendment)

### 201 KAR 20:215. Continuing competency requirements.

RELATES TO: KRS 314.011(12), 314.073, 314.991(1) to (3)

STATUTORY AUTHORITY: KRS 314.073, 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1), (2), and 314.073 authorize the Board of Nursing to promulgate administrative regulations that shall establish continuing competency requirements for nurses. This administrative regulation establishes the fees, procedures, and requirements for continuing competency for nurses.

Section 1. Definition. (1) "Contact hour" means fifty (50) minutes of an approved, organized learning experience.

(2) "Earning period" means November 1 through October 31 of a current licensure period.

(3) "Preceptor" means an experienced and competent nurse who assumes responsibility to assist with the clinical practice experience of a nursing student or new employee by serving as a role model, teacher, and resource.

Section 2. (1) A licensee shall choose a method from Section 3 of this administrative regulation to validate their continued compe-

tency in nursing for each earning period.

(2) A licensee shall maintain the documentation of the method chosen.

(3) A licensee shall provide the documentation if directed by the board.

Section 3. Methods for continued competency validation are as follows:

(1) Thirty (30) contact hours of continuing education earned during the licensure period which shall include the continuing education required by Section 5 of this administrative regulation;

(2) Current national certification or recertification and the continuing education required by Section 5 of this administrative regulation. The certification shall be related to the nurse's practice role and shall:

(a) Have been initially attained during the licensure period;

(b) If issued for a period of time as evidenced by an expiration date, have been in effect during the entire licensure period;

(c) Have been recertified during the licensure period; or

(3) Fifteen (15) contact hours of continuing education earned during the licensure period which shall include the continuing education required by Section 5 of this administrative regulation and at least one (1) of the following during the licensure period:

(a) Completion of a research project that is nursing-related:

1. As principal investigator, coinvestigator, or project director;

2. That is qualitative or quantitative in nature;

3. That utilizes a research methodology;

4. That increases knowledge, causes an improved outcome, or changes behavior, and that is evidenced by an abstract of the project which includes a summary of the findings;

(b) Publication of a nursing-related article;

(c) A nursing continuing education presentation that is:

1. A presentation that is designed and developed by the presenter;

2. Presented to nurses or other health professionals; and

3. Evidenced by a program brochure, course syllabi, or a letter from the offering provider identifying the licensee's participation as the presenter of the offering;

(d) A nursing employment evaluation that is satisfactory for continued employment; or

(e) A successfully completed employment competency validation.

(f) Participation as a preceptor for at least one (1) nursing student or new employee undergoing orientation.

1. The preceptorship shall be for at least 120 hours.

2. There shall be a one-to-one relationship between the preceptor and the student or employee.

3. The preceptor may precept more than one (1) student or employee during the 120 hours.

4. The preceptorship shall be evidenced by written documentation from the educational institution or preceptor's supervisor.

Section 4. (1) A licensee shall provide documentation of the methods used to validate continued competency if the licensee is the subject of a disciplinary complaint.

(2) A licensee shall provide documentation of the methods used to validate continued competency if requested by the board pursuant to a random audit of licensees.

Section 5. (1) A licensee may complete thirty (30) contact hours of continuing education activities from a provider approved by the board, pursuant to 201 KAR 20:220, during the earning period.

(2) Registered nurses and licensed practical nurses shall earn a minimum of two (2) contact hours of HIV/AIDS education:

(a) Approved by the Cabinet for Health Services pursuant to KRS 214.610; or

(b) Offered by a provider approved pursuant to 201 KAR 20:220.

(c) These contact hours shall be earned at least one (1) time every ten (10) years.

(3)(a) Partial credit for attendance at a continuing education activity shall not be given.

(b) A licensee who attends continuing education activities, whether as a teacher, participant or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

(4) A licensee shall determine whether a continuing education activity is offered by an approved provider.

(5) Advanced registered nurse practitioners shall earn a minimum of five (5) contact hours in pharmacology.

(6) Sexual assault nurse examiners shall earn the continuing education required by 201 KAR 20:411, Section 8.

Section 6. (1)(a) A licensee shall maintain records to substantiate methods used to validate competency.

(b) All records shall be retained for at least five (5) years following the current licensure period, except for HIV/AIDS education records which shall be maintained for twelve (12) years.

(2)(a) A licensee shall, upon request, furnish to the board or its staff, legible copies of the records required to be maintained by subsection (1) of this section.

(b) Copies shall be furnished within thirty (30) days of the date a written request is mailed by first class to the last known address of the licensee or applicant.

(c) Failure to furnish records as required by this administrative regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).

(3)(a) Except as provided by paragraph (b) of this subsection, if the board determines that a licensee has failed to comply with continuing competency requirements, he shall be allowed to cure the noncompliance if he:

1. Meets continuing competency requirements within ninety (90) days of notification of noncompliance;

2. Enters a consent decree with the board; and

3. Pays a civil penalty imposed by the board pursuant to KRS 314.991.

(b) The board shall issue a complaint pursuant to 201 KAR 20:161 if:

1. A licensee fails to furnish records as requested pursuant to subsection (2) of this section; or

2. There is evidence of fraud or deceit in procuring or attempting to procure a license to practice nursing.

Section 7. (1) Successful completion of a postlicensure academic course at a college, university, or postsecondary vocational institution shall qualify as a continuing education activity obtained from an approved provider if relevant to nursing practice.

(2) Contact hours shall be calculated as follows:

(a) One (1) semester or trimester hour of academic credit shall equal fifteen (15) contact hours.

(b) One (1) quarter hour of academic credit shall equal twelve (12) contact hours.

(3) The following courses shall be relevant to nursing practice:

(a) A nursing course, designated by a nursing course number, and beyond the prelicensure curriculum of the individual licensee.

(b) An academic course that is applicable to the nurse's role and beyond the prelicensure curriculum of the individual licensee.

(4) A licensee may request course review for approval of applicable nursing content pursuant to Section 8 of this administrative regulation.

Section 8. (1) A licensee may request an individual review of a nonapproved continuing education activity completed during the earning period if, within thirty (30) days after the expiration of the immediate past licensure period, he has:

(a) Requested the review by submitting an "Application for Individual Review"; and

(b) Paid a fee of ten (10) dollars.

(2) The review shall be based on the standards established by:

(a) Sections 2 through 7 of this administrative regulation; and

(b) 201 KAR 20:220.

(3) Approval by the board of a nonapproved continuing education activity shall:

(a) Qualify it as having been obtained from an approved provider for the licensee requesting the review; and

(b) Be limited to the particular offering upon which the request for individual review is based.

Section 9. Incorporation by Reference. (1) "Application for Individual Review (1992)" is incorporated by reference.

(2) This document may be reviewed, inspected, or copied, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m.

M. SUSAN JONES, President
APPROVED BY AGENCY: February 5, 2004
FILED WITH LRC: February 13, 2004 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2004 at 9 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2004, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2004. 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: Nathan Goldman, General Counsel Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300 Louisville, Kentucky 40222, phone (502) 329-7009, fax (502) 696-3938, e-mail nathan.goldman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets continued competency requirements.

(b) The necessity of this administrative regulation: The board is required by statute to set continued competency requirements.

(c) How this administrative regulation conforms to the content of the authorizing statute: By setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting 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: It will add another option for showing continued competency: acting as a preceptor.

(b) The necessity of the amendment to this administrative regulation: This amendment will encourage nurses to act as preceptors for students and new employees and recognize the continuing educational benefit of this act to the nurse.

(c) How the amendment conforms to the content of the authorizing statute: By setting a continued competency requirement.

(d) How the amendment will assist in the effective administration of the statutes: By setting a continued competency requirement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed nurses, approximately 65,000.

(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: It will provide another option to show continued competency upon renewal of licensure.

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

(a) Initially: There is no cost to implement this administrative regulation.

(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: General 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: No increase in fees or funding will be needed.

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

(9) TIERING: Is tiering applied? Tiering was not used as the amendment applies to all equally.

## JUSTICE AND PUBLIC SAFETY CABINET
## (Amendment)

### 500 KAR 8:020. Breath alcohol analysis instruments.

RELATES TO: KRS 189A.300
STATUTORY AUTHORITY: KRS 15A.160, 189A.103(3)(a)
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes procedures for providing breath alcohol analysis instruments as mandated by KRS 189A.300.

Section 1. (1) The Forensic Services Division [~~Laboratory Section~~], Department of State Police, shall be responsible for the purchase of breath alcohol analysis instruments and related units.

(2) All breath alcohol analysis instruments and related units owned by the state used pursuant to KRS Chapter 189A shall be assigned to the Forensic Services Division, Department of State Police[~~, Forensic Laboratories Section~~].

Section 2. (1) A breath alcohol instrument shall be accurate within plus or minus 0.005 or plus or minus five (5) percent, whichever is greater, alcohol concentration units reading to be certified. To determine accuracy of instruments, a technician trained or employed by the Forensic Services Division, [~~Laboratory Section of the~~] Department of State Police shall perform analyses using a certified reference sample at regular intervals.

(2) All breath alcohol analysis instruments shall be examined by a technician trained or employed by the Forensic Services Division, [~~Laboratory Section of the~~] Department of State Police prior to being placed into operation and after repairs of any malfunctions.

RODNEY BREWER, Lt. Colonel, Acting Deputy Commissioner
APPROVED BY AGENCY: January 28, 2004
FILED WITH LRC: February 13, 2004 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 24, 2004 at 10 a.m. EST in Room 105, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 17, 2004, five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Kentucky State Police needs to provide accommodation, please notify us of this requirement by March 17, 2004. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2004. 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: Terry D. Edwards, Legal Counsel, Office of Legal Services, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 695-6318, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Terry D. Edwards

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the procedures for providing breath alcohol analysis instruments as mandated by KRS 189A.300.

(b) Necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for providing breath alcohol analysis instruments as mandated by KRS 189A.300 and to establish how to determine the accuracy of such instruments.

(c) How this regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirements of KRS 189A.300 and 189A.103(3)(a), which authorizes the Justice and Public Safety Cabinet to promulgate administrative regulations regarding the procedures for the provision and accuracy of breath alcohol analysis instruments.

(d) How this regulation currently assists in the effective administration of the statutes: KRS 189A.300 was enacted to establish the procedures for providing breath alcohol analysis instruments to each county in the Commonwealth. This administrative regulation establishes the procedures for the provision of such breath alcohol analysis instruments.

(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 amendment reflects changes in the organization of the Justice and Public Safety Cabinet. Additionally, it revises language concerning the accuracy of the breath alcohol analysis instruments to current equipment specifications and tolerances.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reflect organizational changes within the Justice and Public Safety Cabinet. Additionally, these changes are necessary to equate manufacturer's standards, tolerances and specifications to KAR requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to the administrative regulation complies with the requirements of KRS 15A.160, 189A.103 and 189A.300.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will revise language in the existing regulation concerning the accuracy of the breath alcohol analysis instruments to current equipment specifications and tolerances.

(3) Type and number of individuals affected: This administrative regulation affects all persons who operate or are in physical control of a motor vehicle or a vehicle that is not a motor vehicle in the Commonwealth of Kentucky and who are asked to take a breath test pursuant to KRS 189A.103.

(4) How the aforementioned individuals will be impacted by the implementation of this administrative regulation: This administrative regulation is necessary to establish the procedures for providing breath alcohol analysis instruments for the administration of breath alcohol tests in order to ensure that persons who drive in the Commonwealth of Kentucky are not under the influence of alcohol or other substance which may impair their driving ability.

(5) Cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) Source of funding to be used for implementation and enforcement of administrative regulation: General fund.

(7) Assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation: No

(8) Does this administrative regulation directly or indirectly increase any fees: No

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

**JUSTICE AND PUBLIC SAFETY CABINET**
**(Amendment)**

**500 KAR 8:030. Administration of chemical analysis tests.**

RELATES TO: KRS 189A.103

STATUTORY AUTHORITY: KRS 15A.160, 189A.103

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes procedures for administering chemical analysis tests pursuant to KRS 189A.103.

Section 1. The following procedures shall apply to breath alcohol tests:

(1) A certified operator shall have continuous control of the person by present sense perception for at least twenty (20) minutes prior to the breath alcohol analysis. During that period the subject shall not have oral or nasal intake of substances which will affect the test.

(2) A breath alcohol concentration test shall consist of the following steps in this sequence:

(a) Ambient air analysis;

(b) Alcohol simulator analysis;

(c) Ambient air analysis;

(d) Subject breath sample analysis; and

(e) Ambient air analysis.

(3) Each ambient air analysis performed as part of the breath alcohol testing sequence shall be less than 0.01 [~~0.010~~] alcohol concentration units.

Section 2. The following procedures shall apply regarding chemical tests of blood for alcohol or other substances:

(1) The blood sample shall be collected in the presence of a peace officer, or [~~another person~~] at the direction of the officer, another person who can authenticate the sample.

(2) The blood sample shall be collected by a person authorized to do so by KRS 189A.103(6).

(3) [~~Collection of~~] The blood sample shall be collected by the following method:

(a) No ethyl alcohol (ethanol) [~~or other volatile organic substance~~] shall be used to clean the skin where a blood sample is to be collected.

(b) [~~All samples shall be collected with needles and syringes or vacuum-type collecting containers approved by the licensing agency of the collector.~~

~~(c)~~] Blood collecting containers shall not contain an anticoagulant or preservative which will interfere with the intended analytical method.

(4) [~~(d)~~] Individual blood collecting containers shall be [~~appropriate and securely~~] labeled to provide the following information:

(a) The name of the person from which the blood sample is collected;

(b) The date and time the blood sample is collected;

(c) The name of the person and agency collecting the blood sample;

(d) The name of the officer and agency requesting the collection of the blood sample; and

(e) The [~~1. Name of person giving sample;~~

~~2. Date and time of collection;~~

~~3. Collector's name and agency identification;~~

~~4. Requesting officer's name and agency identification;~~

~~5.~~] complete uniform citation number if available [~~; and~~

~~6. Officer present during collection of sample~~].

(5) [~~(4)~~] The blood sample shall be delivered to a Branch of the Forensic Services Division, Department of State Police or other clinical laboratory as designated by the State Police [~~Kentucky State Police Forensic laboratory or a clinical laboratory certified by the Cabinet for Human Resources for analysis for the presence of alcohol or other drugs in the sample~~].

Section 3. The following procedures shall apply regarding chemical analysis of urine for substances of abuse including alcohol [~~or other substances~~]:

(1) A urine sample [~~samples~~] shall be collected [~~at two (2) separate times~~] in the presence of a peace officer, or [~~another~~

~~person~~] at the direction of the officer, another person who can authenticate the samples. The witnessing person shall be of the same sex as the person providing the urine sample.

(2) The urine sample shall be collected from the subject person's voiding of their bladder. This urine sample may [~~subject person shall empty his bladder and this first sample shall~~] be tested for substances of abuse or impairment including [~~other than~~] alcohol.

(3) The urine sample [~~Thirty (30) minutes following the initial emptying of the bladder, the subject person shall be requested to again empty his bladder and this second sample shall be tested for alcohol and may be tested for substances of abuse other than alcohol.~~

~~(4) Samples~~] shall be collected in clean, dry containers. No preservatives shall be used. [~~Each container shall be securely sealed.~~]

(4) The urine sample [~~(5) Each~~] container shall be [~~appropriately and securely~~] labeled to provide the following information:

(a) The name of the person from whom the urine sample is collected [~~giving the sample~~];

(b) The date and time the urine sample is collected [~~of collection~~];

(c) The name of the person and agency collecting the urine sample;

(d) The name of the officer and agency requesting the collection of the urine sample; and

(e) The complete uniform citation number if available.

(5) The urine sample shall be delivered to a Branch of the Forensic Services Division, Department of State Police or other clinical laboratory as designated by the State Police. [~~Collecting attendant's name and agency identification;~~

~~(d) Complete uniform citation number; and~~

~~(e) Requesting officer's name and agency identification.~~

~~(6) The urine samples shall be delivered to a Kentucky State Police Forensic laboratory or a clinical laboratory certified by the Cabinet for Human Resources for analysis for the presence of alcohol or other drugs in the sample.~~]

RODNEY BREWER, Lt. Colonel, Acting Deputy Commissioner

APPROVED BY AGENCY: January 28, 2004

FILED WITH LRC: February 13, 2004 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 24, 2004 at 10 a.m. EST in Room 105, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 17, 2004, five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Kentucky State Police needs to provide accommodation, please notify us of this requirement by March 17, 2004. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2004. 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: Terry D. Edwards, Legal Counsel, Office of Legal Services, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 695-6318, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Terry D. Edwards

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the procedures for administering chemical analysis tests pursuant to KRS 189A.103.

(b) Necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for administering chemical analysis tests for persons who operate or are in physical control of a vehicle in the Commonwealth of Kentucky and who may be under the influence of alcohol or other substance which may impair their ability to properly and safely operate a motor vehicle on the public roads, streets, and highways.

(c) How this regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirements of KRS 189A.103(3)(a), which authorizes the Justice and Public Safety Cabinet to promulgate administrative regulations establishing the procedures by which to test a person's breath, blood or urine.

(d) How this regulation currently assists in the effective administration of the statutes: KRS 189A.103 was enacted to provide chemical analysis testing of those persons who operate, or are in physical control, of a motor vehicle on the roads, streets, and highways of the Commonwealth and who may be under the influence of alcohol or other substance which may impair their ability to properly and safely operate a vehicle. This administrative regulation establishes the procedures for administering those tests.

(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 amendment reflects organizational changes in the Justice and Public Safety Cabinet. It also clarifies language and deletes unnecessary and confusing language. It deletes the requirement to procure a second urine sample. Additionally, it revises numerical specifications to current equipment specifications and tolerances and clarifies numerical specifications for instrumentation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reflect organizational changes within the Justice and Public Safety Cabinet. Additionally, it is necessary to clarify and specify language in the existing regulation and to revise the ambient air analysis number to equate established manufacturer's standards, tolerances and specifications to KAR requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to the administrative regulation complies with the requirements of KRS 15A.160 and 189A.103.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify the procedures to be used in the administration of chemical analysis tests.

(3) Type and number of individuals affected: This administrative regulation affects all persons who operate or are in physical control of a motor vehicle or a vehicle that is not a motor vehicle in the Commonwealth of Kentucky and who are asked to take a breath, blood or urine test pursuant to KRS 189A.103.

(4) How the aforementioned individuals will be impacted by the implementation of this administrative regulation: This administrative regulation is necessary to establish the procedures to administer chemical analysis tests in order to ensure that persons who drive in the Commonwealth of Kentucky are not under the influence of alcohol or other substance which may impair their driving ability.

(5) Cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) Source of funding to be used for implementation and enforcement of administrative regulation: General fund.

(7) Assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation: No

(8) Does this administrative regulation directly or indirectly increase any fees: No

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

**JUSTICE AND PUBLIC SAFETY CABINET**
**Department of Corrections**
**(Amendment)**

**501 KAR 6:020. Corrections policies and procedures.**

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

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

[~~(a)~~] "Department of Corrections Policies and Procedures[~~, Volume I, June 10, 2003~~"]:

1.1 Legal Assistance for Corrections Staff (Effective 7/28/92)
1.2 News Media (Effective 1/13/98)
1.4 The Monitoring and Operation of Private Prisons (Effective 1/16/03)
1.9 Institutional Duty Officer (Effective 7/28/92)
1.11 Population Counts and Reporting Procedures (Amended 4/15/03)
1.12 Operation of Motor Vehicles by Department of Corrections Employees (Effective 3/15/01)
2.1 Inmate Canteen (Effective 12/17/98)
2.2 Warden's Fund (Effective 7/28/92)
2.10 Surplus Property (Effective 7/28/92)
3.1 Code of Ethics (Amended 2/13/04)
3.3 Holding of Second Jobs by Corrections' Employees (Effective 11/12/98)
3.4 Equal Employment Opportunity Complaint Procedure (Effective 7/15/02)
3.5 Sexual Harassment (Effective 11/12/98)
3.6 Criminal History Checks on All Personnel and the Employment of Exoffenders (Effective 11/12/98)
3.7 Shifts, Posts and Days Off Assignment (Effective 6/16/99)
3.12 Institutional Staff Housing (Effective 8/15/01)
3.15 Antiharassment Policy (Effective 5/14/01)
3.18 Employee Insurance Coverage (Effective 11/17/00)
3.20 Communication and Recording Devices (Effective 3/18/99)
3.22 Staff Sexual Misconduct (Amended 2/13/04) [~~(Added 6/10/03)~~]
4.2 Staff Training and Development (Effective 8/15/01)
4.3 Firearms and Chemical Agents Training (Effective 8/15/01)
4.6 Operation and Safety of Corrections Firing Ranges (Effective 11/17/00)
4.7 Uniformed Employee Dress Code (Effective 2/10/97)
5.1 Research and Survey Projects (Effective 7/15/02)
6.1 Open Records Law (Effective 1/16/03)
6.5 E-mail (Effective 6/28/01)
7.2 Asbestos Abatement (Effective 8/15/01)
8.1 Occupational Exposure to Bloodborne Pathogens (Effective 1/21/93)
8.2 Fire Safety (Effective 2/15/01)
8.6 Extraordinary Occurrence Report (Amended 6/10/03)
8.7 Notification of Extraordinary Occurrence (Effective 9/16/99)
9.5 Execution (Effective 12/17/98)
9.6 Contraband (Effective 4/15/97)
9.8 Search Policy (Effective 4/15/97)
9.18 Informants (Effective 9/15/97)
9.19 Found Lost or Abandoned Property (Effective 9/15/97)
9.20 Electronic Detection Equipment (Effective 1/16/03)
10.2 Special Management Inmates (Effective 8/15/01)
10.3 Safekeepers (Effective 7/28/92)
11.2 Nutritional Adequacy of the Diet (Effective 7/15/01)
11.4 Alternative Dietary Patterns (Effective 7/15/02)
13.1 Pharmacy Policy and Formulary (Effective 7/28/92)
13.2 Health Maintenance Services (Effective 1/17/00)
13.3 Medical Alert System (Effective 1/16/03)
13.4 Health Program Audits (Effective 7/22/96)
13.6 Sex Offender Treatment Program (Effective 11/17/00)
13.7 Involuntary Psychotropic Medication Policy (Effective 12/7/95)
13.8 Substance Abuse Treatment Program (Effective 12/17/98)
13.9 Dental Services (Effective 1/16/03)
13.10 Serious Infectious Disease (Amended 4/15/03)
13.11 Employee Tuberculosis Program (Amended 6/10/03)
14.1 Investigation of Missing Inmate Property (Effective 9/15/97)
14.2 Personal Hygiene Items (Effective 9/15/97)
14.3 Marriage of Inmates (Effective 4/15/97)
14.4 Legal Services Program (Added 2/13/04)
14.5 Board of Claims (Effective 2/15/01)
14.6 Inmate Grievance Procedures (Amended 2/13/04) [~~(Amended 4/15/03)~~]
15.1 Hair, Grooming and ID Card Standards (Effective 2/19/01)
15.2 Offenses and Penalties (Amended 4/15/03)
15.3 Meritorious Good Time (Effective 1/16/03)
15.5 Restoration of Forfeited Good Time (Effective 9/16/99)
15.6 Adjustment Procedures and Programs (Amended 4/15/03)
15.7 Inmate Account Restriction (Amended 4/15/03)
15.8 Unauthorized Substance Abuse Testing (Effective 1/16/03)
16.1 Inmate Visits (Amended 2/13/04)
16.2 Inmate Correspondence (Amended 2/13/04)
16.3 Inmate Access to Telephones (Effective 11/17/00)
16.4 Inmate Packages (Amended 2/13/04)
17.1 Inmate Personal Property (Amended 2/13/04) [~~(Amended 4/15/03)~~]
17.2 Assessment Center Operations (Amended 4/15/03)
17.3 Controlled Intake of Inmates (Amended 4/15/03)
17.4 Administrative Remedies: Sentence Calculations (Effective 1/16/03)

[~~(b) "Department of Corrections Policies and Procedures, Volume II, April 15, 2003"~~:]

18.1 Classification of the Inmate (Amended 4/15/03)
18.2 Central Office Classification Committee (Effective 9/14/99)
18.5 Custody and Security Guidelines (Amended 4/15/03)
18.7 Transfers (Effective 9/16/99)
18.9 Out-of-state Transfers (effective 8/15/01)
18.11 Placement for Residential Mental Health Treatment (Effective 12/19/01)
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Effective 11/17/00)
18.13 Population Categories (Effective 8/15/01)
18.15 Protective Custody (Effective 6/14/96)
18.16 Information to the Parole Board (Effective 12/19/01)
18.17 Interstate Agreement on Transfers (Effective 2/17/95)
18.18 International Transfer of Inmates (Effective 8/15/01)
19.1 Government Services Program (Amended 4/15/03)
19.2 Sentence Credit for Work (Added 2/11/04)
19.3 Inmate Wage Program (Amended 4/15/03)
20.1 Educational Programs and Educational Good Time (Effective 1/16/03)
22.1 Privilege Trips (Effective 7/28/92)
23.1 Religious Programs (Effective 1/16/03)
25.1 Gratuities (Effective 7/28/92)
25.2 Public Official Notification of Release of an Inmate

(Amended 4/15/03)
25.3 Prerelease Program (Effective 7/28/92)
25.4 Institutional Inmate Furloughs (Amended 2/13/04) [(Amended 4/15/03)]
25.6 Community Center Program (Effective 12/19/01)
25.8 Extended Furlough (Effective 7/15/02)
25.10 Administrative Release of Inmates (Effective 11/1/96)
25.11 Victim Notification (Effective 12/19/01)

[(c) "Department of Corrections Policies and Procedures, Volume III, April 15, 2003":]

27-01-01 Probation and Parole Procedures (Effective 12/19/01)
27-02-01 Duties of Probation and Parole Officers (Effective 11/17/00)
27-03-01 Workload Formula (Effective 12/19/01)
27-05-01 Testimony, Court Demeanor and Availability of Legal Services (Effective 8/15/01)
27-06-01 Availability of Supervision Services (Effective 9/16/99)
27-06-02 Equal Access to Services (Effective 8/15/01)
27-07-01 Cooperation with Law Enforcement Agencies (Effective 5/14/01)
27-08-01 Use of Force (Amended 4/15/03)
27-09-01 Kentucky Community Resources Directory (Effective 8/15/01)
27-10-01 Pretrial Diversion (Effective 5/14/01)
27-11-02 Prerelease Probation (Effective 6/16/99)
27-12-01 Supervision: Case Classification (Effective 5/14/01)
27-12-02 Risk Assessment (Effective 8/15/01)
27-12-03 Initial Interview (Effective 9/16/99)
27-12-04 Conditions of Supervision and Request for Modification (Effective 9/16/99)
27-12-05 Releasee's Report (Effective 9/16/99)
27-12-06 Grievance Procedures for Offenders (Effective 11/17/00)
27-12-07 Employment, Educational and Vocational Referrals (Effective 9/16/99)
27-12-08 Supervision Plan (Effective 8/15/01)
27-12-09 Casebook (Effective 12/19/01)
27-12-11 Guidelines for Monitoring Financial Obligations (Effective 8/15/01)
27-12-13 Community Service Work (Effective 12/19/01)
27-12-14 Offender Travel (Effective 9/16/99)
27-13-01 Drug and Alcohol Testing of Offenders (Effective 12/19/01)
27-13-02 Alcohol Detection (Effective 9/16/99)
27-14-01 Interstate Compact Transfers (Effective 5/14/01)
27-14-02 Interstate Compact Out-of-state Probation and Parole Violation (Effective 2/15/01)
27-15-01 Supervision Reports, Violations and Unusual Incidents (Effective 8/15/01)
27-16-01 Search; Seizure; Chain of Custody; Disposal of Evidence (Effective 5/14/01)
27-17-01 Absconder Procedures (Effective 9/16/99)
27-18-01 Probation and Parole Issuance of Detainer or Warrant (Effective 9/16/99)
27-19-01 Preliminary Revocation Hearing (Effective 8/15/01)
27-20-01 Division of Probation and Parole Controlled Intake Program (Effective 11/17/00)
27-20-02 Prisoner Intake Notification (Effective 12/17/98)
27-20-03 Prisoner Status Change (Effective 8/15/01)
27-21-01 Apprehension and Transportation of Probation and Parole Violators (Effective 12/17/98)
27-23-01 In-state Transfer (Effective 1/16/03)
27-24-01 Closing Supervision Report (Effective 8/15/01)
27-24-02 Reinstatement of Offenders to Active Supervision (Effective 1/16/03)
27-26-01 Assistance to Former Offenders and Dischargees (Effective 7/15/02)
27-27-01 Restoration of Civil Rights (Effective 12/19/01)
27-28-01 Firearms or Explosives Restoration (Effective 5/14/01)
27-30-01 Offender Registration (Effective 11/17/00)
27-30-02 Conditional Discharge of Sex Offenders (Effective 5/14/01)
27-31-01 Use of Chemical Agents in Probation and Parole (Effective 9/16/99)
28-01-01 Probation and Parole Investigation Reports, Introduction, Definitions, Confidentiality, Timing, and General Comments (Effective 8/15/01)
28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities) (Effective 2/15/01)
28-01-03 Presentence, Postsentence, Supplemental and Partial Investigations (Effective 12/17/98)
28-01-08 Probation Parole Investigation Reports, Partial Investigation Reports and Submission Schedule (Effective 8/15/01)
28-01-09 Release of Information of Factual Content on Presentence or Postsentence Investigation Reports (Effective 5/14/01)
28-03-01 Parole Plans, Halfway Houses, Extended Furlough, Sponsorship, and Gradual Release (Effective 5/14/01)
28-03-02 Expedient Release Parole Plans (Effective 8/15/01)
28-04-01 Furlough Verifications (Effective 5/14/01)
28-05-01 Out-of-state Investigations (Effective 7/1/88)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Justice and Public Safety Cabinet [General Counsel], Department of Corrections, PO Box 2400 [2439 Lawrenceburg Road], Frankfort, Kentucky 40602-2400 [40601], (502) 564-2024, facsimile (502) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REES, Commissioner
APPROVED BY AGENCY: February 12, 2004
FILED WITH AGENCY: February 13, 2004 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2004 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2004, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2004. 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: Amy V. Barker, Staff Attorney, Office of Legal Services, Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker (502) 564-4795, ext. 260

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Department of Corrections including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, 197.025(6) and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation governs the operations of the Department of Corrections.

(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 Corrections employees as to their duties, rights, and responsibilities.

(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 Corrections in compliance with ACA Standards; show compliance with current practices; and, show actual practice of the penal institutions.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035; 197.020; and, 197.025(6).

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How the amendment will assist in the effective administration of the statutes: This will assist in informing staff on the effective and orderly management of the penal institutions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections 3,620 employees and 17,609 inmates, 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 regulation, if new, or by the change if it is an amendment: None

(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 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: 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? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**JUSTICE AND PUBLIC SAFETY CABINET**
**Department of Corrections**
**(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, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. 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, February 13, 2004 [~~May 14, 2003~~]".

| | |
|---|---|
| BCC 08-04-02 | Immediate Release of Inmates from Locked Areas |
| BCC 09-04-01 | Construction Crew Entry, Exit and Regulations |
| BCC 09-04-02 | Complex Entry and Exit |
| BCC 09-05-01 | Key Control (Amended 5/14/03) |
| BCC 09-06-02 | Transportation to Courts |
| BCC 09-07-01 | Drug Abuse and Intoxicants Testing (Amended 5/14/03) |
| BCC 09-08-01 | Weapons and Related Security Device Control |
| BCC 09-08-02 | Use of Restraints (Amended 5/14/03) |
| BCC 09-17-01 | Institutional Supervisor Inspections |
| BCC 09-20-01 | Inmate Death |
| BCC 09-21-01 | Tool Control (Amended 5/14/03) |
| BCC 09-22-01 | Emergency Power and Communication System |
| BCFC 08-01-01 | Bell County Forestry Camp's Institutional Emergency Plan |
| BCFC 08-09-02 | OSHA Hazard Communication Program |
| BCFC 08-10-01 | Bell County Forestry Camp Emergency Response Team |
| BCFC 09-07-01 | Key Control |
| BCFC 09-11-01 | Guidelines for Contractors |
| BCFC 09-16-01 | Inmate Death |
| BCFC 09-19-01 | Tool Control |
| BCFC 09-20-01 | Weapons, Chemical Agents, and Related Security Device Control |
| BCFC 09-21-01 | Transportation of Inmates |
| CPP 8.3 | Emergency Planning (Amended 2/13/04) |
| CPP 8.4 | Emergency Preparedness (Effective 9/16/02) |
| CPP 8.5 | Emergency Squads (Effective 5/18/98) |
| CPP 9.1 | Use of Force (Amended 2/13/04) [~~(Amended 5/14/03)~~] |
| CPP 9.3 | Security Threat Groups (Effective 9/16/99) |
| CPP 9.7 | Storage, Issue, and Use of Weapons Including Chemical Agents (Amended 2/13/04) [~~(Amended 5/14/03)~~] |
| CPP 9.9 | Transportation of Inmates (Effective 6/14/96) |
| CPP 9.10 | Security Inspections (Effective 9/15/97) |
| CPP 9.11 | Tool Control (Amended 2/13/04) |
| 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 Plan |
| GRCC 08-05-01 | Emergency Squad: Selection, Training and Evaluation |
| GRCC 08-07-01 | Natural Disaster or Earthquake |
| 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 09-09-01 | Contraband Control; Collection, Preservation, Disposition of Contraband and Identification of Physical Evidence |
| GRCC 09-10-01 | Emergency Release from Locked Areas |
| GRCC 09-11-01 | Tool and Equipment Control |
| GRCC 09-12-01 | Key Control |
| GRCC 09-15-01 | Radio Assignment |
| KCIW 08-01-01 | Institutional Emergency Plan |
| KCIW 08-01-02 | Emergency Squad (E-Squad) |
| KCIW 09-01-01 | Inmate Counts |
| KCIW 09-02-01 | Transportation of Inmates |
| KCIW 09-02-02 | Use of Restraints |
| KCIW 09-03-01 | Use of Force |
| KCIW 09-03-02 | Weapons and Chemical Agents |
| KCIW 09-03-03 | Forced Cell Entry in a Housing Unit or Special Management Unit (SMU) |
| KCIW 09-04-01 | Portable Radios and Mobile Units |
| KCIW 09-06-01 | Tool Control |
| KCIW 09-06-02 | Key Control |
| KCIW 09-06-03 | Flammable, Hazardous, Toxic and Caustic |

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| | Materials |
| KCIW 09-07-01 | Weekly Security Inspections of Security Devices |
| KCIW 09-07-03 | Quarterly Security Inspections |
| KCIW 09-09-01 | Perimeter Security Plan and Daily Inspections |
| KCIW 09-12-01 | Collection, Preservation and Identification |
| KCIW 09-15-01 | Post One and Sallyport Post Four |
| KSP 08-02-05 | Storage of Flammables and Dangerous Chemicals and Their Use |
| KSP 08-03-01 | Emergency Plans and General Policy |
| KSP 08-03-02 | General Procedures and Plans for Riots and Disturbances |
| KSP 08-03-03 | Master Riot Control Plan |
| KSP 08-03-04 | Hostage Plans |
| KSP 08-03-05 | Work Slowdown, Work Stoppage, Work Strikes, by Correctional Employees |
| KSP 08-03-06 | Escape Procedure |
| KSP 08-03-08 | Bomb Plans |
| KSP 08-05-01 | Corrections Emergency Response Team |
| KSP 09-01-01 | Use of Force |
| KSP 09-07-01 | Weapons Control |
| KSP 09-08-01 | Searches and Preservation of Evidence |
| KSP 09-09-01 | Transportation of Inmates |
| KSP 09-10-01 | Institutional Security Inspections |
| KSP 09-10-02 | Security Inspection Guidelines for Cellhouse Officers |
| KSP 09-11-01 | Tool Control |
| KSP 09-12-01 | Key Control |
| KSP 09-13-05 | Outside Hospital Duty, Inpatient and Outpatient Care for Inmates |
| KSP 09-14-01 | Count Procedures |
| KSP 09-15-01 | Entry and Exit Procedures |
| KSP 09-15-04 | Institutional Limited Access |
| KSP 09-24-01 | Western Kentucky Correctional Complex |
| KSR 08-01-01 | Control of Flammable, Hazardous, Toxic and Caustic Chemical and Materials |
| KSR 08-01-02 | Corrections Emergency Response Team |
| KSR 08-01-03 | Emergency Medical Transportation |
| KSR 08-01-04 | Escape Response Procedure |
| KSR 09-00-04 | Box 1 Entry and Exit Procedure |
| KSR 09-00-09 | Contraband, Dangerous Contraband and Search Policy |
| KSR 09-00-27 | Construction Crew Entry and Exit |
| KSR 09-01-01 | Count Procedures |
| KSR 09-01-02 | Gate 1 Entrance and Exit Procedure |
| KSR 09-01-03 | Tunnel Gate Entrance and Exit Procedure |
| KSR 09-01-04 | Outside Stockade Gate (Box 01) |
| KSR 09-01-05 | Tool Control |
| KSR 09-01-06 | Security Inspection Plan |
| KSR 09-01-07 | Key Control |
| KSR 09-01-08 | Issuance of Firearms and Chemical Weapons From Arms Vault |
| KSR 09-01-09 | Officers Daily Housing Security and Safety Log, Security Index, Correctional Security Guide and Post Orders |
| KSR 09-01-10 | Issuance of Institutional Portable Radios |
| KSR 09-01-11 | Transportation of Inmates |
| KSR 09-01-12 | Collection, Preservation and Identification of Physical Evidence |
| KSR 09-01-13 | Forced Cell Move in Medium or Maximum Area |
| KSR 10-01-011 | Special Management - Behavior Problem Control |
| LLCC 08-03-01 | Emergency Squad: Selection, Training and Evaluation |
| LLCC 09-01-02 | Priority Posts and Emergency Security Posts Assignments for Daily Operation |
| LLCC 09-06-01 | Central Control Center Operating Procedure (Entry Into Institutional Compound) |
| LLCC 09-07-01 | Count Procedure and 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 - Entry and Exit Procedures |
| LLCC 09-09-02 | Entry and Exit Control |
| LLCC 09-11-01 | Standards for Maintaining Perimeter Security |
| LLCC 09-11-04 | Outside Detail |
| LLCC 09-12-02 | Monitoring Staff and Visitors Movement |
| LLCC 09-13-01 | Outside Hospitals |
| LLCC 09-14-01 | Security Procedures for Print Shop |
| LLCC 09-15-01 | Emergency Redlight Response |
| LLCC 09-17-01 | Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power |
| LLCC 09-18-04 | Monitoring of Inmate Telephone Calls |
| LLCC 09-20-01 | Weapons and Related Security Device Control |
| LLCC 09-20-02 | Key Control |
| LLCC 09-20-03 | Tool and Equipment Control |
| LLCC 09-21-03 | Cell Entry in a Dorm or Special Management Unit |
| LLCC 09-22-01 | Application of Restraints |
| LLCC 09-24-01 | Weekly Inspection and Maintenance of All Security Devices |
| 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 |
| RCC 08-03-01 | 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 |
| 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 |

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| RCC 09-25-01 | Procedure for Operation in Inclement Weather |
| RCC 09-26-01 | Use of State Vehicles and Staff Owned Vehicles |
| WKCC 08-03-01 | Emergency Planning |
| WKCC 08-04-01 | Escape |
| WKCC 08-04-02 | Riots And Disturbances |
| WKCC 08-04-03 | Hostage |
| WKCC 08-04-04 | Hunger Strike |
| WKCC 08-04-05 | Inmate Work Stoppage |
| WKCC 08-04-06 | Hazardous Material Spill |
| WKCC 08-04-07 | Natural Disaster and Adverse Weather |
| WKCC 08-04-08 | Food Poisoning |
| WKCC 08-04-09 | Bomb Threat |
| WKCC 08-04-10 | Employee Work Slow-Down, Stoppage, or Strikes |
| WKCC 08-05-01 | Emergency Response Team |
| WKCC 09-00-02 | Radio Communication |
| WKCC 09-00-03 | Video Equipment |
| WKCC 09-00-04 | LINK/NCIC Security |
| WKCC 09-07-01 | Weapons, Chemical Agents, and Related Security Equipment |
| WKCC 09-08-01 | Searches and Preservation of Evidence |
| WKCC 09-09-01 | Transportation of Inmates |
| WKCC 09-10-01 | Security Inspection and Staff Accessibility |
| WKCC 09-12-01 | Key Control |
| WKCC 09-13-01 | Post Orders |
| WKCC 09-13-02 | Post Logs |
| WKCC 09-14-01 | Counts |
| WKCC 09-15-01 | Inmate Movement, Entry & Exit, and Perimeter Control |

(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.

JOHN D. REES, Commissioner

APPROVED BY AGENCY: February 12, 2004

FILED WITH AGENCY: February 13, 2004 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2004 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2004, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2004. 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: Amy Barker, Staff Attorney, Office of Legal Services, Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker, Staff Attorney (502-564-2024)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the secured policies and procedures governing the Department of Corrections including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, 197.025(6) and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation governs the operations of the Department of Corrections through secured procedures.

(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 Corrections employees as to their duties, rights, and responsibilities.

(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 bring Corrections in compliance with ACA Standards, show compliance with current practices, and show actual practice of the penal institutions.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and 197.025(6).

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How the amendment will assist in the effective administration of the statutes: This will assist in informing staff on the effective and orderly management of the penal institutions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections 3,620 employees and 17,609 inmates, 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 regulation, if new, or by the change if it is an amendment: None

(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 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: 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? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

## JUSTICE AND PUBLIC SAFETY CABINET
### Department of State Police
### (Amendment)

**502 KAR 45:055. Oral interview.**

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050 requires the State Police Personnel Board to establish open competitive examination of applicants for employment as officers. This administrative regulation establishes the oral interview component of the examination.

Section 1. (1) Eligibility for the oral interview shall be determined by the commissioner.

(2) Except as provided by subsection (3) of this section, eligibility for the oral interview shall be based upon:

(a) An applicant's score on the Content Based Task Test; and

(b) The number of positions required to be filled.

(3) The commissioner may deviate from the order of Content Based Task Test score if a manifest imbalance of minorities or women exists in the pool of qualified applicants or in the depart-

ment.

Section 2. (1) The oral interview shall be validated by an independent outside source with expertise in law enforcement training or employee selection.

(a) An oral interview panel shall consist of three (3) members.

(b) One (1) of the members shall be a:

1. Female; or

2. Member of a minority group.

(c) One (1) of the members shall be a sworn officer.

(2)(a) A member of an oral interview panel shall disclose each instance in which the member is personally acquainted with an applicant eligible for an oral interview, or with a member of the applicant's immediate family.

(b) A member of an oral interview panel shall not interview an applicant with whom he is personally acquainted.

Section 3. (1) Prior to the oral interview, an applicant shall have completed and submitted to the department the "Cadet Trooper Background Profile".

(2) Each interview shall be conducted as prescribed by the commissioner.

(3) A panel member shall score each applicant in job related categories.

(4) For each category, an applicant shall be scored on a range from zero to five (5) [~~six (6)~~] with five (5) [~~six (6)~~] being the highest score and zero being the lowest score.

(5) The oral interview score shall constitute sixty (60) percent of an applicant's score.

(6) As soon as practicable after the oral interview, each applicant shall be advised of his score.

(5) The oral interview score shall constitute sixty (60) percent of an applicant's score.

(6) As soon as practicable after the oral interview, each applicant shall be advised of his score.

Section 4. Incorporation by Reference. (1) "Kentucky State Police Cadet Trooper Background Profile 02-97" is incorporated by reference.

(2) It may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, Recruitment Office, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RODNEY BREWER, Lt. Colonel, Acting Deputy Commissioner

APPROVED BY AGENCY: January 15, 2004

FILED WITH LRC: February 13, at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 24, 2004 at 10 a.m. EST in Room 105, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 17, 2004, five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Kentucky State Police needs to provide accommodation, please notify us of this requirement by March 17, 2004. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2004. 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: Terry D. Edwards, Legal Counsel Office of Legal Services, 919 Versailles Road, Frankfort, Kentucky 40601 phone (502) 695-6318, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Terry D. Edwards

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the oral interview component of the open competitive examination of applicants for employment as Kentucky State Police officers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the scoring system used for the oral interview component of the open competitive examination of applicants for employment as Kentucky State Police officers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirements of KRS 16.050 which requires the Department of State Police Personnel Board to establish open competitive examination of applicants for employment as officers.

(d) How this regulation currently assists in the effective administration of the statutes: This administrative regulation provides public notice of the scoring system used for the oral interview component of the open competitive examination of applicants as required by KRS 16.050.

(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 amendment revises the scoring range from zero to 6 to zero to 5.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reflect the scoring system used by examiners.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to the administrative regulation complies with the requirements of KRS 15.050.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides interviewees and the public notice of the scoring system used by the department in its selection of officers.

(3) Type and number of individuals affected: This administrative regulation affects all applicants.

(4) How the aforementioned individuals will be impacted by the implementation of this administrative regulation: This amendment will ensure that all applicants receive proper notice of the scoring system used in the selection process.

(5) Cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) Source of funding to be used for implementation and enforcement of administrative regulation: General fund.

(7) Assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation: No

(8) Does this administrative regulation directly or indirectly increase any fees: No

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

## CABINET FOR HEALTH AND FAMILY SERVICES
## Department for Medicaid Services
## Division of Long Term Care and Disability Services
## (Amendment)

**907 KAR 1:022. Nursing facility and intermediate care facility for an individual with mental retardation or a developmental disability [~~the mentally retarded and developmentally disabled~~] level of care criteria.**

RELATES TO: 42 C.F.R. 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 U.S.C. 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s

STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3), 205.558

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 citizenry. This administrative regulation establishes the nursing facility (NF) and intermediate care facility for an individual with mental retardation or a developmental disability (ICF MR DD) level of care criteria as well as establishes the provisions relating to NF and ICF MR DD services [~~nursing facility and intermediate care facility for the mentally retarded and developmentally disabled level of care criteria~~] for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy recipients.

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

(2) "Intermediate care facility for an individual with mental retardation or a developmental disability [~~the mentally retarded and developmentally disabled~~]" or "ICF-MR-DD" means a licensed intermediate care facility for an individual with mental retardation or a developmental disability [~~the mentally retarded and developmentally disabled~~] certified to the Department for Medicaid Services as meeting all standards for an intermediate care facility for an individual with mental retardation or a developmental disability [~~facilities for the mentally retarded and developmentally disabled~~].

(3) "Intermediate care for an individual with mental retardation or a developmental disability [~~the mentally retarded and developmentally disabled~~] services" means care provided that is consistent with a combination of the services listed in Section 5 of this administrative regulation.

(4) "Intermittent skilled nursing care services" means services for an individual who requires skilled nursing care services at regular or irregular intervals, but not on a twenty-four (24) hour-per-day basis and not less than three (3) days per week.

(5) "Medical condition" means a usually-defective state of health relative to a clinical diagnosis made by a licensed physician, physician assistant, or advanced registered nurse practitioner.

(6) "Nursing care services" means care provided that is consistent with a combination of the services listed in Section 4 of this administrative regulation and that is provided by or under the supervision of technical or professional staff in an institutional setting.

(7) "Nursing facility" or "NF" means:

(a) A facility:

1. To which the state survey agency has granted an NF license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), (d), 42 C.F.R. 447.280 and 482.66.

(8) "Nursing facility level of care" means that care that meets the criteria established in this administrative regulation for inpatient treatment of an individual in a nursing facility and that is based on a medical condition requiring professional or technical nursing care services to be ordered and supervised by a physician, physician assistant, or advanced registered nurse practitioner on an ongoing basis.

(9) "Nursing facility with Medicaid waiver" or "NF-W" means a facility:

(a) To which the state survey agency has granted an NF license;

(b) For which the state survey agency has recommended to the department certification as a Medicaid provider;

(c) To which the department has granted a waiver of the nursing staff requirement; and

(d) To which the department has granted certification for Medicaid participation.

(10) "Skilled nursing care services" means care that is consistent with a combination of the services listed in Section 4(2) of this administrative regulation and that is provided on a daily basis by, or under the supervision of, a registered nurse, licensed practical nurse, or certified therapist in an institutional setting.

(11) "Skilled rehabilitative services" means those therapy services which:

(a) Are expected to improve an individual's condition while the individual possesses reasonable potential for improvement in functional capability; and

(b) Do not include restorative and maintenance nursing procedures, including routine range of motion exercises and application of splints or braces by nurses and staff.

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

Section 2. Participation Requirements. A facility desiring to participate as a nursing facility, nursing facility with waiver, or ICF-MR-DD shall meet the following requirements:

(1) An application for participation shall be made in accordance with 907 KAR 1:671 and 907 KAR 1:672.

(2) A nursing facility shall have at least twenty (20) percent of all Medicaid certified beds, but not less than ten (10) beds, also certified to participate in Medicare unless the facility has obtained a Medicaid waiver of the nurse staffing requirement. If a nursing facility has less than ten (10) beds certified for Medicaid, all Medicaid certified beds shall also be certified to participate in Medicare.

(3) If a nursing facility which has obtained a Medicaid waiver of the nurse staffing requirements chooses to participate in Medicare, the facility shall have at least twenty (20) percent of all Medicaid certified beds, but not less than ten (10) beds, also certified to participate in Medicare. If less than ten (10) beds are certified for Medicaid, all Medicaid beds shall also be certified to participate in Medicare.

(4) A nursing facility or a nursing facility with waiver shall be required to comply with the preadmission screening and resident review requirements specified in 42 U.S.C. 1396r and 907 KAR 1:755. A facility failing to comply with these requirements shall be subject to disenrollment, with exclusion from participation to be accomplished in accordance with 907 KAR 1:671, 42 C.F.R. 431.153 and 431.154.

(5) A facility shall be required to be certified by the state survey agency as meeting NF, NF-W, or ICF-MR-DD status.

(6) In order to provide specialized rehabilitation services to an individual with a brain injury in accordance with Section 7 of this administrative regulation, a facility shall be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF).

(7) A participating nursing facility shall be certified in accordance with standards and conditions specified in the Medicaid Nursing Facility Services Manual before the facility may operate a unit that provides:

(a) Preauthorized specialized rehabilitation services for a person with a brain injury; or

(b) Care for a person who is ventilator dependent.

Section 3. Payment Provisions. (1) Payment for nursing care services and ICF-MR-DD services shall be limited to those services meeting the care definitions established in Section 1 of this administrative regulation.

(2) An NF or NF-W shall receive payment for nursing care services provided to a Medicaid-eligible individual meeting nursing facility level of care criteria if the services are provided in a Medicaid-certified bed.

(3) An ICF-MR-DD shall receive payments for ICF-MR-DD services only.

Section 4. Determining Nursing Facility Level of Care. The department shall review and evaluate the health status and care needs of an individual in need of inpatient care giving consideration to the medical diagnosis, age-related dependencies, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or noninstitutional services.

(1) An individual shall not qualify for Medicaid nursing facility level of care unless the individual is qualified for admission, and

continued stay as appropriate, under the preadmission screening and resident review criteria specified in 42 U.S.C. 1396r and 907 KAR 1:755.

(2) An individual shall qualify for skilled nursing care services if:

(a) On a daily basis:

1. The individual's needs mandate:

a. Skilled nursing care services; or

b. Skilled rehabilitative services; and

2. The care can only be provided on an inpatient basis;

(b) The inherent complexity of a service prescribed for an individual exists to the extent that it can be safely or effectively performed only by or under the supervision of technical or professional personnel; or

(c) The individual has an unstable medical condition manifesting a combination of care needs in the following areas:

1. Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;

2. Nasogastric or gastrostomy tube feedings;

3. Nasopharyngeal and tracheotomy aspiration;

4. Recent or complicated ostomy requiring extensive care and self-help training;

5. In-dwelling catheter for therapeutic management of a urinary tract condition;

6. Bladder irrigations in relation to previously indicated stipulation;

7. Special vital signs evaluation necessary in the management of related conditions;

8. Sterile dressings;

9. Changes in bed position to maintain proper body alignment;

10. Treatment of extensive decubitus ulcers or other widespread skin disorders;

11. Receiving medication recently initiated, which requires skilled observation to determine desired or adverse effects or frequent adjustment of dosage; or

12. Initial phases of a regimen involving administration of medical gases.

(3) An individual with a stable medical condition manifesting a combination of at least two (2) [~~three (3)~~] of the following care-need categories shall be determined to meet nursing facility level of care:

(a) Mobility. To demonstrate a care need in this category, an individual shall meet at least one (1) of the three (3) conditions listed below to satisfy this one (1) care-need category:

1. Assistance with wheelchair. The individual is incapable of propelling a manual wheelchair using upper or lower extremities or incapable of operating a powered wheelchair independently;

2. Changes in bed position or transfer. The individual is incapable of turning in bed or transferring to or from bed, chair or toilet without physical assistance being provided by another on an ongoing basis (at least three (3) times weekly); or

3. Ambulation. The individual requires standby assistance from at least one (1) person while walking;

(b) Physical or environmental management for confusion or agitation. The individual requires staff intervention due to an established pattern of aggressive or disruptive behavior that presents a substantial physical risk to self or others;

(c) Must be fed. The individual is incapable of taking food from a plate to his or her mouth without assistance of another person. Assistance includes the actual feeding of the individual or verbal assistance to the extent that, without continuous presence and repetitive verbal instructions to the individual, he or she would require to be fed;

(d) Assistance with going to bathroom or using bedpan for elimination. The individual requires the physical assistance of another person for elimination or to use a bedpan or to perform incontinence care, ostomy care, or catheter care on an ongoing basis (three (3) or more times each week);

(e) Administration of stabilized dosages of medication. The individual is not mentally or physically capable of self-administration of prescribed medications despite the availability of limited assistance of another person. Limited assistance shall include reminding when to take medications, filling a medication box, encouragement to take medications, reading labels, and opening bottles;

(f) Requires restorative and supportive nursing care to maintain the individual and prevent deterioration of his or her condition by means of a planned program administered by nursing staff, such as range of motion exercises and application of splints, when prescribed, that the patient is unable to apply by him or herself;

(g) Administration or preparation of injections by licensed personnel, either due to the nature of the injection or due to the inability of the individual. An individual shall have a physical or mental limitation that prevents him or her from preparing or self-administering injections even with appropriate training;

(h) Services that could ordinarily be provided or administered by the individual but due to the individual's physical or mental condition, the individual is incapable of providing self-care. This shall include daily total hands-on assistance with bathing, dressing, or grooming by a person other than the individual; or

(i) Cognition and communication. The individual is disoriented as to self or place or is incapable of communicating basic needs and wants (such as need for assistance with toileting, presence of pain) using oral or written language. Illiteracy shall not meet this requirement.

(4) An individual shall not be considered to meet nursing facility level of care criteria if care needs are limited to:

(a) Limited assistance with activities of daily living, for example, bathing, dressing, or grooming;

(b) Independent use of mechanical devices; for example, assistance in mobility by means of a wheelchair, walker, crutch or cane;

(c) A limited diet, for example, low salt, low residue, reducing or another minor restrictive diet;

(d) Medications or therapies that can be self-administered or the individual requires minimal supervision;

(e) General supervision;

(f) Routine use of oxygen (as needed, continuous, or at night); or

(g) Limited ability to perform instrumental activities of daily living (IADL), for example, meal preparation, homemaking, or doing laundry.

(5) An individual with a mental illness, mental retardation, or a developmental disability meeting the health status and care needs specified in this section shall:

(a) Be considered to meet nursing facility level of care criteria; and

(b) Be specifically excluded from coverage in the following situations:

1. If the department determines that in the individual case the combination of care needs are beyond the capability of the facility, and that placement in the facility is inappropriate due to potential danger to the health and welfare of the individual, other patients in the facility, or staff of the facility;

2. If the nursing care needs result directly and specifically from a mental illness, mental retardation, or a developmental disability; or

3. If the individual does not meet the preadmission screening and resident review criteria specified in 42 U.S.C. 1396r and 907 KAR 1:755 for entering or remaining in a facility.

(6) Transfer trauma criteria. A Medicaid recipient who does not meet the nursing facility level of care criteria established in subsection (3) of this section shall not be discharged from an NF if:

(a) The recipient has resided in an NF for at least eighteen (18) consecutive months;

(b) The recipient's attending physician determines that the recipient would suffer transfer trauma in that his or her physical, emotional or mental well being would be compromised by a discharge action as a result of not meeting NF level of care criteria; and

(c) The department confirms the recipient's attending physician's assessment regarding the trauma caused by possible discharge from the NF.

(7) A Medicaid recipient who meets transfer trauma criteria in accordance with subsection (6) of this section:

(a) Shall remain in an NF and continue to be covered by the department for provider reimbursement at least until his or her subsequent transfer trauma assessment; and

(b) Be reassessed for transfer trauma every six (6) months.

Section 5. Determining ICF-MR-DD Level of Care. An individual shall be determined to meet ICF-MR-DD level of care for an ICF-MR-DD if the individual requires physical or environmental management or rehabilitation for moderate to severe retardation. In making the decision as to ICF-MR-DD level of care, the following criteria shall apply:

(1) An individual with significant developmental disabilities or significantly subaverage intellectual functioning who requires a planned program of active treatment to attain or maintain the individual's optimal level of functioning but does not necessarily require NF or NF-W services, shall be considered to meet ICF-MR-DD level of care.

(2) An individual requiring a protected environment while overcoming the effects of developmental disabilities or subaverage intellectual functioning shall be considered to meet ICF-MR-DD level of care while:

(a) Learning fundamental living skills;

(b) Learning to live happily and safely within his or her own limitations;

(c) Obtaining educational experiences that will be useful in self-supporting activities; or

(d) Increasing his or her awareness of his or her environment.

(3) An individual with a psychiatric primary diagnosis or needs shall be considered to meet ICF-MR-DD level of care if:

(a) The individual also has care needs as described in subsection (1) or (2) of this section;

(b) His or her mental care needs can be adequately handled in an ICF-MR-DD; and

(c) He or she does not require psychiatric inpatient treatment.

(4) An individual who does not require a planned program of active treatment to attain or maintain his or her optimal level of functioning shall not be considered to meet ICF-MR-DD level of care.

(5) An individual shall not be denied ICF-MR-DD level of care solely due to advanced age, length of stay in an institution, or history of previous institutionalization, if the individual qualifies for ICF-MR-DD level of care on the basis of all other factors.

(6) Excluding an individual with mental retardation, for an individual with a developmental disability, the disability shall have manifested itself prior to the individual's 22nd birthday.

Section 6. Reevaluation of Need for Service. (1) Nursing facility, nursing facility with waiver, or ICF-MR-DD services shall continue to be provided to an individual if his or her health status and care needs are within the scope of program benefits as described in Sections 3, 4 and 5 of this administrative regulation.

(2) The nursing facility or ICF-MR-DD level of care status of an individual shall be reevaluated at least once every six (6) months.

Section 7. Requirements, Standards and Preauthorization of Specialized Rehabilitation Services for Individuals with Brain Injuries. An individual who is brain injured and meets the nursing facility level of care criteria or is qualified under subsection (5) of this section shall be provided care in a certified unit providing specialized rehabilitation services for persons with brain injuries (i.e., brain injury unit) if the care is preauthorized by the department using criteria specified in this section. For coverage to occur, authorization of coverage shall be granted prior to admission of the individual with the brain injury into the certified brain injury unit, or if previously admitted to the unit with other third party coverage, authorization shall be granted prior to exhaustion of those benefits.

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

(a) Central nervous system injury from physical trauma;

(b) Central nervous system damage from anoxia or hypoxic episodes; or

(c) Central nervous system damage from an allergic condition, toxic substance or another acute medical or clinical incident.

(2) The following items shall be indicators for admission and continued stay:

(a) The individual sustained a traumatic brain injury with structural, nondegenerative brain damage and is medically stable;

(b) The individual shall not be in a persistent vegetative state;

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

(d) The individual requires coma management; or

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

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

(a) The presenting problem;

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

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

(d) The services needed.

(4) The following list of conditions shall not be considered brain injuries requiring specialized rehabilitation under this section:

(a) A stroke treatable in a nursing facility providing routine rehabilitation services;

(b) A spinal cord injury in which there is no known or obvious injury to the intercranial central nervous system;

(c) Progressive dementia or other mentally impairing condition;

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

(e) Mental retardation or birth defect related disorder of long standing; or

(f) Neurological degenerative, metabolic or other medical condition of a chronic, degenerative nature.

(5) An individual may qualify for coverage under the brain injury program if:

(a) He or she has a stable medical condition with complicating care needs which prevent the individual from caring for him or herself in an ordinary manner outside an institution;

(b) The individual has sufficient neurobehavioral sequelae resulting from the brain injury which when taken in combination require specialized rehabilitation services; and

(c) if the following criteria are met:

1. The individual shall not have previously received specialized rehabilitation services (an individual discharged for the purpose of transfer to another brain injury facility shall not be considered to have "previously received specialized rehabilitation services") as established in this section;

2. The individual shall have the potential for rehabilitation;

3. The care shall be prior authorized on an individual basis by the department; and

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

Section 8. Requirements, Standards and Preauthorization of Certified Distinct-part Nursing Facility Ventilator Services. An individual who is ventilator dependent and requires the skilled nursing care services established in Section 4(2) of this administrative regulation criteria shall be provided care in a certified distinct-part ventilator nursing facility unit providing specialized ventilator services if the care is preauthorized using criteria specified in this section and the Medicaid Nursing Facility Services Manual.

(1) To participate in the Medicaid Program as a distinct-part nursing facility ventilator service provider:

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

(b) A certified distinct-part nursing facility unit shall:

1. Not have less than twenty (20) beds certified for the provision of ventilator care;

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

3. Have a ventilator machine owned by the facility for each certified bed with an additional backup ventilator machine required for every ten (10) beds; and

4. Have an appropriate program for discharge planning and weaning from the ventilator.

(2) The following items shall be the patient criteria and treatment characteristics for a distinct-part ventilator nursing facility:

(a) An individual shall be considered ventilator (or respiration stimulating mechanism) dependent if the individual:

1. Requires:

a. This mechanical support for twelve (12) or more hours per day; and

b. Twenty-four (24) hours per day skilled specialty nursing care; or

2. Is in an active weaning program ordered by and under the management of a physician and reviewed and approved by the department; and

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

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

c. The individual requires twenty-four (24) hours per day skilled specialty nursing care.

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

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

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

(c) An admission from hospitalization or other location shall demonstrate two (2) weeks clinical and physiologic stability including applicable weaning attempts prior to transfer.

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

(3) A nursing facility level of care determination shall be made taking into consideration the following factors and those defined in the Medicaid Nursing Facility Services Manual, Section IV-B, C and D:

(a) Alternative care possibilities;

(b) Goals for patient care;

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

(d) Nonhospital management factors and needs;

(e) Patient treatment characteristics;

(f) Home care potential;

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

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

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

Section 9. Denial of Nursing Facility and ICF-MR-DD Level of Care. If an individual does not meet Medicaid criteria for admission or continued stay in a nursing facility or ICF-MR-DD, the individual may appeal the denial in accordance with 907 KAR 1:563.

Section 10. Reserved Bed Days. The department shall cover reserved bed days in accordance with the following criteria.

(1) In accordance with subsection (3) of this section, reserved bed days, per resident, for an NF or an NF-W shall be covered for a maximum of:

(a) Fourteen (14) days per temporary absence due to hospitalization, with an overall maximum of forty-five (45) days during a calendar year; and

(b) Fifteen (15) days during a calendar year for leaves of absence other than hospitalization.

(2) In accordance with subsection (3) of this section, for an ICF-MR-DD:

(a) Reserved bed days, per resident, for an ICF-MR-DD shall:

1. Be covered for a maximum of forty-five (45) days per provider within a calendar quarter; and

2. Not exceed fifteen (15) days per stay due to hospitalization; and

(b) More than thirty (30) consecutive reserved bed days due to hospitalization plus leave of absence or due to leave of absence shall not be approved for coverage.

(3) Coverage during an individual's absence due to hospitalization or due to leave of absence shall be contingent upon the following conditions being met:

(a) The individual shall:

1. Be in Medicaid payment status in the level of care he or she is authorized to receive; and

2. Have been a resident of the facility at least overnight;

(b) An individual for whom Medicaid is making Medicare coinsurance payments shall not be considered to be in Medicaid payment status for purposes of this policy;

(c) The individual shall be reasonably expected to return to the same level of care;

(d) Due to demand at the facility for beds at that level, there shall be a likelihood that the bed would be occupied by another patient were it not reserved;

(e) The hospitalization shall be for treatment of an acute condition, and not for testing, brace-fitting, or another noncovered service;

(f) For a leave of absence other than for hospitalization, the individual's plan of care shall include a physician's order providing for leave; and

(g) A leave of absence shall include a visit with a relative or friend, or a leave to participate in a state-approved therapeutic or rehabilitative program.

Section 11. Preadmission Screening and Resident Review. (1) Prior to admission of an individual, an NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

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

Section 12. Incorporation by Reference. (1) "Medicaid Nursing Facility Services Manual", Department for Medicaid Services, January 2004 [~~April 2003~~] edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained, subject to applicable 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.

MIKE ROBINSON, Commissioner
JAMES W. HOLSINGER, JR, MD, Secretary
APPROVED BY AGENCY: January 30, 2004
FILED WITH LRC: January 30, 2004 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 22, 2004, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 15, 2004, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business March 31, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health and Family Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Teresa Goodrich (564-6204)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the nursing facility (NF) and intermediate care facility for an individual with mental retardation or a developmental disability (ICF MR DD) level of care criteria as well as the establishes the provisions relating to NF and ICF MR DD services for which payment shall be made by the Medicaid Program on

behalf of both the categorically needy and medically needy recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish the NF and ICF MR DD level of care criteria as well as to establish the provisions relating to NF and ICF MR DD services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy recipients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by establishing the NF and ICF MR DD level of care criteria as well as by establishing the provisions relating to NF and ICF MR DD services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of statutes by establishing the NF and ICF MR DD level of care criteria as well as by establishing the provisions relating to NF and ICF MR DD services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy 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: The qualifying requirements regarding NF level of care are being relaxed. An individual will now need to meet 2 of 9 rather than 3 of 9 NF level of care criteria and an individual who is determined to meet transfer trauma criteria shall not be discharged from an NF. This action is being taken to enable DMS to maximize the number of medically needy recipients to be served by the nursing facility and home and community based (HCB) waiver service programs with the limited resources available to DMS.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to enable DMS to maximize the number of medically needy recipients to be served by the nursing facility and home and community based HCB waiver service programs with the limited resources available to DMS.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of authorizing statues by revising qualifying requirements regarding NF level of care in order to enhance recipient access to services within the limited resources available to DMS.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by revising qualifying requirements regarding NF level of care in order to enhance recipient access to services within the limited resources available to DMS.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Approximately 275 nursing facilities serving over 16,000 Medicaid recipients currently participate in the Medicaid nursing facility program and approximately 115 home and community based waiver providers serve over 15,000 individuals via the Medicaid home and community based waiver program.

(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: It is difficult to determine the number of individuals who will be impacted by the amendment to this administrative regulation; however, DMS estimates that nursing facility denials will drop from approximately 20 a month to approximately 5 a month as a result of this amendment. Home and community based waiver denials are estimated to drop from approximately 220 a month to approximately 70 a month.

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

(a) Initially: DMS estimates that the amendment to this administrative regulation will result in a cost of approximately $5.77 million annually ($4.21 million federal funds; $1.56 million state funds).

(b) On a continuing basis: DMS estimates that the amendment to this administrative regulation will result in a cost of approximately $5.77 million annually ($4.21 million federal funds; $1.56 million state funds).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of revenue to be utilized to implement and enforce this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(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 the amendments to 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 any fees nor 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.

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. This administrative regulation revises the Department for Medicaid Services qualifying requirements regarding nursing level of care.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation revises the Department for Medicaid Services qualifying requirements regarding nursing level of care.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

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

**BOARD OF EMBALMERS AND FUNERAL DIRECTORS**
**(New Administrative Regulation)**

**201 KAR 15:110. Funeral establishments.**

RELATES TO: KRS 316.010(5), 316.125
STATUTORY AUTHORITY: KRS 316.210(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.125(1) requires a license from the board for the operation of a funeral establishment. KRS 316.010(5) defines the term funeral establishment. KRS 316.210(1) authorizes the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. This administrative regulation establishes the types of license for funeral establishments and the minimum requirements for the licensing and operation of a funeral establishment.

Section 1. Definitions. (1) "Embalming services establishment" means a fixed place of business where dead human bodies are embalmed or otherwise prepared or held for burial including the transportation from the place of death.

(2) "Full service establishment" means a fixed place of business where both embalming services and visitation and ceremonial funeral services occur.

(3) "Holding room" means a room which is:

(a) Used exclusively for the holding of dead human bodies if arterial embalming is not a function of the funeral home establishment; and

(b) Distinct from the viewing room, chapel, or any other part of a funeral home establishment.

(4) "Preparation room" means an area with a minimum of 120 square feet which is used exclusively to prepare dead human bodies for final disposition if arterial or cavity injection is a function of the funeral home establishment, and which is separate and distinct from the viewing room, chapel, or any other part of a funeral establishment.

(5) "Viewing room" means an area in which a dead human body is placed on display in a casket and which is a separate and distinct area from the preparation and holding room.

(6) "Visitation and ceremonial funeral services establishment" means a fixed place of business for visitation and ceremonial funeral services and the transportation from the place of death.

Section 2. Licensed use of a funeral establishment. (1) A funeral establishment shall limit its operations to the categories of services identified in its application and on its license.

(2) The categories for a funeral establishment include:

(a) Embalming services establishment limited license;

(b) Visitation and ceremonial funeral services establishment limited license; or

(c) Full service establishment.

(3) A licensed funeral establishment shall not provide services related to a category for which it is not licensed without first submitting a new application that shows the exact categories for which the funeral establishment will be used and being issued a new funeral establishment license.

(4) A funeral establishment may reduce the categories for which it is licensed by surrendering the right to use a category in a letter to the board.

Section 3. General requirements. (1) The interior and exterior of the funeral establishment shall be kept free and clean of litter, dirt, debris and clutter or other objects or conditions which present a potential or actual hazard to the health, safety or welfare of the public.

(2) The interior and exterior of the funeral establishment shall be maintained in a manner which does not present a potential or actual hazard to the health, safety or welfare of the public.

(3) No person shall be permitted in a preparation room during the course of embalming a dead human body except employees of the funeral establishment in which the human body is being embalmed, members of the family of the deceased, and persons authorized by the members of the family of the deceased or by law.

(4) Each funeral establishment must maintain the following documents for a minimum of one (1) year:

(a) Embalming logs;

(b) Purchase agreements;

(c) Authorizations to embalm; and

(d) Accurate copies of the casket price list, the outer burial container price list, the general price lists, and the statement of funeral goods and service selected as required by the Federal Trade Commission in 16 C.F.R. Sections 453.2(b)(2) through (5), as applicable.

(5) No license for a new funeral establishment shall be granted for establishments located in any public storage, mini-storage, mini-warehouse, multi-unit storage complex or similar facility used by members of the general public for the storage of goods.

(6) Each funeral establishment shall display, in a location that is visible from adjacent public road, a sign which identifies the name of the establishment.

(7) A funeral establishment must ensure that the operations and services meet the requirements of KRS Chapter 316 and the administrative regulations promulgated pursuant thereto.

(8) Funeral establishments shall have adequate rest room facilities for members of the public if there will be public funeral services conducted in the establishment.

Section 4. Limited License - Visitation and Ceremonial Funeral Services Establishment. (1) After December 31, 2004, a funeral establishment licensed as visitation and ceremonial funeral services establishment shall have facilities which, at a minimum, meet the following requirements:

(a) The establishment shall have a viewing room in which funeral services may be conducted which shall:

1. Be at least 400 square feet (inside-wall-to-inside-wall) in size; and

2. Have the capacity for seating not less than fifty (50) persons and for the proper display of a casket containing the deceased;

(b) The establishment shall have an area:

1. Devoted to the display of caskets or casket sections which are available to the public with; and

2. At least two (2) full sized caskets;

(c) The funeral establishment shall have a holding room for sheltering dead human bodies which shall be:

1. Equipped with sanitary flooring of tile or other suitable hard, impervious surface;

2. Equipped with necessary lighting and ventilation;

3. Entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors; and

4. Equipped with an aspirator;

(d) The establishment shall have a separate room or office for arranging funerals; and

(e) The establishment shall have the equipment necessary for conducting and arranging funeral services, such as tables or desks and chairs for arrangement conferences, file cabinets for the confidential storage of funeral records, seating for viewing room, casket bier, register book stand, officiate stand, flower display stands, organ, piano, music-producing equipment, or any suitable combination of these items.

Section 5. Limited License - Embalming Services Establishment. (1) After December 31, 2004, a funeral establishment licensed as a embalming services establishment shall have facilities which, at a minimum, meet the following requirements.

(a) A preparation room which has:

1. At least one (1) approved embalming table and all professional instruments necessary for embalming and the preparation of dead human bodies;

2. Walls and floors that are non-porous for easy cleaning;

3. Hot and cold running water, a ventilation fan, container or receptacles for soiled linen or clothing, a sufficient supply of a suitable and effective disinfectant to provide for the cleansing and

disinfection of the facility, and devices for proper drainage and waste disposal;

4. All contents or items shall be kept clean of blood when not in use;

5. At no time will the preparation room be used as a storage area; and

6. Proper ventilation.

(b) Every licensed funeral establishment that holds unembalmed human remains for a period longer than 24 hours shall cause the body to be refrigerated at an approved facility with sufficient capacity.

(2) If embalming services are offered to the public, the establishment shall have a separate room or office for arranging embalming services.

(3) Human remains shall not be in any way prepared for disposition by a licensee except in a proper preparation room which meets the requirements of this administrative regulation.

(4) All opening windows and outside doors shall have opaque glass.

(5) Each hydro-aspirator shall be equipped with at least one air breaker.

(6) Each preparation room entrance shall be lockable and shall display a sign indicating private or restricted entry.

(7) Any other equipment or feature required by state or federal law.

Section 6. A full service establishment shall meet the requirements for both the embalming services establishment and the visitation and ceremonial funeral services establishment which are set forth in Sections 4 and 5 of this administrative regulation except it shall not be required to have a holding room required by Section 4(1)(c).

Section 7. Inspections. (1) Each funeral establishment shall be subject to inspection at the convenience of the board's inspectors.

(2) The inspector shall inspect the funeral establishment to see if it has suitable and dignified quarters appropriate for the category of services for which it is licensed.

(3) A funeral establishment licensed for embalming services must have available in the preparation room an embalming log which sets out the name of each body embalmed, the date and time that the embalming took place, the name and signature of the embalmer who performs the service and his license number noted.

(4) The following forms shall be available for inspection, with a copy available to the inspector for the inspector's records:

(a) A general price list of charges for services to the public;

(b) A completed and duly signed funeral service contract with any invoices attached;

(c) A price list of caskets as charged to the public;

(d) A price list of outer containers, as charged to the public; and

(e) An authorization to release the body to the establishment.

Section 8. Supervisor. (1) Each facility shall have a Kentucky licensed funeral director and a Kentucky licensed embalmer as required by KRS 316.125(2)(b)4.

(2) The funeral establishment licensee shall notify the board of a change of the funeral director or the embalmer supervisor in the form of an affidavit signed by the licensed owner and the new supervisor within five (5) working days of the change.

Section 9. Transferability. (1) Establishment licenses shall not be transferable either from one (1) owner to another or from one (1) location to another.

(2) When a sale, lease, relocation, or name change occurs:

(a) A funeral establishment license may remain in force by mutual consent of the parties for a period of thirty (30) days or until the next regularly scheduled board meeting, whichever comes first.

(b) During the transition period, the funeral establishment shall be operated under the name shown on the pre-existing license until a new license is issued.

(3)(a) Following the death of a Kentucky licensed owner, the funeral establishment may operate for ninety (90) days while under temporary supervision by a licensed funeral director or embalmer.

(b) The temporary supervisor identified to the board may supervise more than one (1) funeral establishment for the limited ninety (90) day period granted in this subparagraph.

Section 10. (1) No funeral establishment shall be operated or be opened for business prior to the issuance of a funeral establishment license by the board for that establishment.

(b) Violation of this section shall be grounds for denial of the application for a license by the board.

Section 11. (1) Funeral establishment shall use the exact name of the facility as listed on the license for the facility in advertisements.

(2)(a) Descriptive terms shall be distinctly separated from the name of the facility in an advertisement.

(b) Examples of descriptive terms that can be used if separated from the name of the facility include:

1. Family-owned;
2. Family-operated;
3. Committed to caring; or
4. Full-service.

CHARLES E. STRODE, President

APPROVED BY AGENCY: February 10, 2004

FILED WITH LRC: February 13, 2004 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2004 at 1 p.m., in Room 114 of the Capitol Building, 700 Capitol Avenue, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 16, 2004, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Emma Lou Hartledge, Executive Director, 7025 W. Highway 22, Suite 7, Crestwood, Kentucky 40014, phone (502) 241-3918, fax (502)241-4297.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: James J. Grawe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the operation and licensure of a funeral establishment.

(b) The necessity of this administrative regulation: KRS 316.125(1) requires a license from the board for the operation of a funeral establishment. KRS 316.010(5) defines the term funeral establishment. KRS 316.210(1) authorizes the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. This administrative regulation establishes the mechanism for obtaining a license for a funeral establishment and the minimum requirements for the licensing and operation of a funeral establishment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 316.125 gives the board the authority to regulate funeral establishments.

(d) How this administrative regulation will assist in the effective administration of the statutes: The board issues licenses to and enforces the laws for the operation of funeral establishments. This administrative regulation specifies the requirements for the licensure and operation of a funeral establishment.

(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: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative

regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to a regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to a regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board licenses approximately 500 funeral establishments.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: This administrative regulation will ensure that applicants know what is required by the board for the licensure and operation of a funeral establishment.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The board estimates that no additional costs will be incurred in the implementation of this administrative regulation.

(b) On a continuing basis: The board estimates that no additional costs will be incurred on a continuing basis for the implementation of this administrative regulation.

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this regulation will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in the fees is anticipated.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? The board has determined that there are 3 classes of funeral establishments for which a license is necessary, embalming services establishments, visitation and ceremonial funeral services establishments, and full service establishments. In order to reduce disproportionate impacts on certain classes of these regulated entities, the administrative regulation specifies the requirements separately for each class.

## BOARD OF EMBALMERS AND FUNERAL DIRECTORS
## (New Administrative Regulation)

**201 KAR 15:120. Requirements for applicants holding a license in another state.**

RELATES TO: KRS 316.140(1)

STATUTORY AUTHORITY: KRS 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.140(1) authorizes the Board of Embalmers and Funeral Directors to issue a license to an applicant that is licensed in another state and who has met the same or similar requirements for a license as the standards set out in KRS 316.030. This administrative regulation establishes the criteria for determining whether applicants who are licensed in another state qualify for a Kentucky embalmer's or a Kentucky funeral director's license.

Section 1. (1) The board shall accept an applicant licensed in another state as eligible to apply for an embalmer's license who has:

(a) A diploma from a school of mortuary science that is accredited by the American Board of Funeral Service Education or its predecessor; and

(b) Either:

1. Thirty (30) semester or forty-five (45) quarter hours of college credit from an accredited college or university as shown on an official transcript, or

2. Engaged in the full-time practice of embalming under licensure for ten (10) years immediately preceding the date of the application as demonstrated by the submission of W-2 forms or an affidavit from two (2) licensed embalmers or funeral directors in his state of original licensure which verify that he has been so engaged in practice full-time.

(2) An applicant from another state must:

(a) Submit a copy of his or her current license from the state in which he is licensed;

(a) Pass the current Kentucky examination or examinations for a funeral director license or embalmer license or both, as applicable;

(b) Inform the board of any disciplinary actions in states where they held a license; and

(c) Pay the examination fee and the fees required by 201 KAR 15:030.

CHARLES E. STRODE, President

APPROVED BY AGENCY: February 10, 2004

FILED WITH LRC: February 13, 2004 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2004 at 1 p.m., in Room 114 of the Capitol Building, 700 Capitol Avenue, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 16, 2004, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Emma Lou Hartledge, Executive Director, 7025 W. Highway 22, Suite 7, Crestwood, Kentucky 40014, phone (502) 241-3918, fax (502)241-4297.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for applicants who have been licensed in other states to demonstrate that they meet the requirements for licensure.

(b) The necessity of this administrative regulation: KRS 316.140(1) authorizes the Board of Embalmers and Funeral Directors to issue a license to an applicant that is licensed in another state and who has met the same or similar requirements for a license as the standards set out in KRS 316.030. This administrative regulation establishes the criteria for determining whether applicants who are licensed in another state qualify for a Kentucky embalmer's or a Kentucky funeral director's license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 316.140 gives the board the authority to issue licenses to applicants who are licensed in another state.

(d) How this administrative regulation will assist in the effective administration of the statutes: The administrative regulation sets for the criteria for determining whether persons licensed in another state have obtained the same or similar credentials as persons applying under KRS 316.030(3).

(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: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to a regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to a regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board receives approximately 25 applications per year from persons who are licensed in another state.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: This administrative regulation will ensure that applicants who are licensed in

another state know what is required by the board to qualify under KRS 316.140.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The board estimates that no additional costs will be incurred in the implementation of this administrative regulation.

(b) On a continuing basis: The board estimates that no additional costs will be incurred on a continuing basis for the implementation of this administrative regulation.

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this regulation will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in the fees is anticipated.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied as all applicants will be required to demonstrate that they meet the requirements for licensure.

**EDUCATION, ARTS, AND HUMANITIES CABINET**
**Kentucky Board of Education**
**Kentucky Department of Education**
**(Repealer)**

**704 KAR 3:402. Repeal of 704 KAR 3:401, Principal Assessment Centers.**

RELATES TO: KRS 156.105

STATUTORY AUTHORITY: KRS 156.105

NECESSITY, FUNCTION, AND CONFORMITY: This is to repeal administrative regulation 704 KAR 3:401, Principal Assessment Centers. This administrative regulation is no longer needed, since the statute KRS 156.105 was repealed by the legislature in July 1996, and the program was subsequently discontinued.

Section 1. 704 KAR 3:401, Principal Assessment Centers, is hereby repealed.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

GENE WILHOIT, Commissioner
HELEN W. MOUNTJOY, Chairperson

APPROVED BY AGENCY: February 12, 2004

FILED WITH LRC: February 13, 2004 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 26, 2004, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2004. 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: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502)564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 704 KAR 3:401.

(b) The necessity of this administrative regulation: This administrative regulation being repealed was necessary to implement original statutory requirements for Principal Assessment Centers. That statute, KRS 156.105, has since been repealed.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation is no longer needed because of statutory program changes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is repealed.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

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

(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: None as this is a repealer regulation.

(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 as this is a repealer regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: None

(a) Initially: There will be no additional costs to the agency to implement this administrative regulation.

(b) On a continuing basis: None as this is a repealer regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None as this is a repealer 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: None as this is a repealer regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None as this is a repealer regulation.

(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.

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**
**Office of Housing, Buildings and Construction**
**Office of State Fire Marshal**
**(New Administrative Regulation)**

**815 KAR 35:050. Licensing of electrical contractors, electricians, and master electricians.**

RELATES TO: KRS 227A.010; 227A.060; 227A.080

STATUTORY AUTHORITY: KRS 227A.040(1), (8); 227A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 227A requires the Office of Housing, Buildings and Construction to promulgate administrative regulations by June 24, 2003, establishing a process for the licensing of electrical contractors, electricians, and master electricians. Executive Order No. 2003-064 filed December 23, 2003 created the Environmental and Public Protection Cabinet. Executive Order No. 2004-031 filed January 6, 2004 changed the Department of Housing, Buildings and Construction to the Office of Housing, Buildings and Construction and changed the title of commissioner to executive director. This proposed administrative regulation complies with the directive of KRS Chapter 227A.

Section 1. Application Procedure. An applicant for licensure pursuant to Section 8 of HB 115 shall:

(1) Complete an application as described in Section 2 of this administrative regulation;

(2) Pay the application fee required by Section 3 of this administrative regulation; and

(3) Provide verifiable evidence of experience by:

(a) Submitting a copy of a current electrical contractor's, master electrician's or electrician's license issued by a Kentucky city, county, urban-county or consolidated local government;

(b) Submitting a copy of a current license issued by another state or jurisdiction whose standards have been determined by the Office of Housing, Buildings and Construction to be substantially equal to those required by Section 6 of HB 115; or

(c) Submitting verification of the required years of experience as an electrical worker in a form specified in Section 4 of this administrative regulation.

Section 2. Application Requirements. The applicant shall complete an application form which shall include the following information:

(1) Applicant's name;

(2) Applicant's home address;

(3) Applicant's business address;

(4) Applicant's home and business telephone numbers;

(5) Applicant's date of birth;

(6) Applicant's Social Security number and/or employer identification number;

(7) Applicant's e-mail address;

(8) Licenses applied for;

(9) A listing of the applicant's experience in the electrical industry, including business name and address, job title and supervisor's name;

(10) A listing of all approved training or apprenticeship programs the applicant has completed;

(11) A statement confirming that the applicant is not in default on any educational loan guaranteed by the KHEAA;

(12) For master electrician and electrician licenses, passport sized photograph of the applicant;

(13) For electrical contractor licenses, the name and license number of the master electrician who will be affiliated with the applicant; and

(14) For electrical contractor licenses, the name of the insurer providing the applicant's liability and worker's compensation coverage and the policy number of each coverage.

Section 3. Application and Renewal Fees. The application fee for an electrical contractor's license shall be $200. The application fee for a master electrician's license shall be $100. The application fee for an electrician's license shall be fifty (50) dollars. Application fees shall not be refundable. License renewal fees shall be the same as the relevant application fee.

Section 4. Verification of Experience.

(1) An applicant shall submit verification of experience for licensure as an electrical contractor, master electrician or electrician.

(2) Verification shall be submitted in the form of:

(a) Tax returns or other official tax documents which indicate the applicant's occupation or the nature of the applicant's business activities, including but not limited to Federal Schedule C, Form W-2, Form 1099, or local occupational tax returns;

(b) Copies of business licenses issued by a county or municipal government which does not issue electrical contractor's, master electrician's or electrician's licenses if the business license indicates the applicant operated as an electrical contractor or worker;

(c) For licensure as an electrical contractor, a sworn affidavit, on the affiant's letterhead, certifying that the author of the letter has personal knowledge that the applicant has operated as an electrical contractor from at least one (1) of the following:

1. An electrical workers union;

2. An electrical industry organization, including but not limited to the National Electrical Contractors Association, the Association of Builders and Contractors, the Associated General Contractors, the International Association of Electrical Inspectors, or the Independent Electrical Contractors Association;

3. A certified electrical inspector;

4. A Kentucky licensed insurance agent who has provided liability or other business coverage for the applicant's electrical contracting business; or

5. A Kentucky county judge executive, state representative or state senator.

(d) For licensure as a master electrician or an electrician, a sworn affidavit, on the affiant's letterhead, certifying that the author of the letter has personal knowledge that the applicant has worked as a master electrician or an electrician from at least one (1) of the following:

1. An electrical workers union;

2. A certified electrical inspector;

3. An employer which employed the applicant as an electrician or a master electrician;

4. A Kentucky licensed insurance agent who has provided liability or other business coverage for the applicant's electrical contracting business; or

5. A Kentucky county judge executive, state representative or state senator.

(e) Records of a branch of the United States Armed Forces which indicate the applicant performed a function which primarily involved electrical work. Experience gained while in the military shall be deemed to have been earned in Kentucky.

Section 5. Appeal Procedure. Applicants denied a license may appeal the decision of the Office of Housing, Buildings and Construction to the Electrical Advisory Board. The applicant shall submit written notice of the appeal to the Office of Housing, Buildings and Construction within ten (10) days of receiving notice that the license application has been denied. The appeal shall be conducted pursuant to KRS Chapter 13B by a hearing officer appointed by the Electrical Advisory Board. The hearing officer shall submit findings of fact, conclusions of law and a recommended order to the Electrical Advisory Board, which may adopt it, amend it or substitute its own decision based upon the evidence.

Section 6. Proof of Insurance. Applicants for an electrical contractor's license shall provide proof of compliance with liability insurance requirements by providing an insurance certificate showing general liability insurance coverage of at least $500,000 issued by an authorized Kentucky insurer or other insurer certified by the Kentucky Department of Insurance. The applicant shall provide proof of worker's compensation insurance by providing an insurance certificate from an authorized Kentucky insurer or other workers compensation coverage provider or by providing a letter certifying that the applicant is not required to obtain worker's compensation coverage. Electrical contractors shall require their liability and worker's compensation insurers to provide notice to the Office of Housing, Buildings and Construction in the event their policies are cancelled, terminated, nonrenewed or the policy limits are lowered. Electrical contractors shall have a duty to advise the Office of Housing, Buildings and Construction of any change in their insurance coverage, including cancellation or termination of any policy or any change in the insurer providing the coverage. A licensee's failure to notify the Office of Housing, Buildings and Construction of a change in liability or worker's compensation coverage shall be grounds for license revocation, suspension or other disciplinary action.

Section 7. Renewal Requirements. Licenses shall be valid for one (1) year and shall be renewed on or before the last day of the licensee's birth month. For electrical contractor licenses issued to corporations, partnerships or business entities without a birth month, the Office of Housing, Buildings and Construction shall issue a renewal month on a rotating basis. The Office of Housing, Buildings and Construction may issue an initial license to an applicant for a period of up to twenty-three (23) months and may charge a pro rata license renewal fee to reflect the added term of the initial license. The pro rata license renewal fee may be refundable. No initial license shall be for a term of longer than one (1) year plus sufficient months to reach the applicant's next birth month or re-

newal month.

Section 8. Pending License. Upon receipt of an application from an applicant, or portion of an application from an applicant or a local government acting on behalf of an applicant, the Office of Housing, Buildings and Construction may issue the applicant a pending license. This pending license shall be deemed to be the license required by HB 115, Section 3. Issuance of a pending license shall not create a presumption that the applicant will receive, is entitled to, or has a right to a permanent license. Issuance of a pending license does not waive or diminish the Office of Housing, Buildings and Construction's authority to deny or refuse to issue a permanent license to any applicant. All pending licenses shall expire upon issuance of a permanent license, the Office of Housing, Buildings and Construction's decision to deny a permanent license or July 15, 2004, whichever is earliest.

Section 9. Inactive License Status. An applicant may request a license be placed in inactive status. A licensee shall not perform any electrical work requiring a license while their license is inactive. An electrical contractor licensee in inactive status shall not be required to maintain liability insurance or provide proof to the Office of Housing, Buildings and Construction of compliance with worker's compensation laws. Certified electrical inspectors may be licensed as an electrical contractor, master electrician or electrician, but shall maintain any license as inactive while their Electrical Inspector certification is active. Performing electrical work which requires a license while holding an inactive license shall be grounds for revocation or suspension of all electrical licenses and certifications held by the licensee.

Section 10. Material Incorporated by Reference. (1) The following material is incorporated by reference: Form SFM-EC-1, "Electrical Contractor's License (June, 2003 Edition)", Office of Housing, Buildings and Construction.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, Electrical Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, between 8 a.m. and 4:30 p.m., Monday through Friday.

DENNIS J. LANGFORD, Executive Director
LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY:
FILED WITH LRC: February 4, 2004 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2004, at 10 a.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 15, 2004 (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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Frank L. Dempsey, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Frank L. Dempsey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for the licensing of electrical contractors, electricians and master electricians under the grandfathering provisions of 2003 Ky. Acts ch. 119, Section 8.

(b) The necessity of this administrative regulation: This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, electricians and master electricians for the issuance of licenses as established in 2003 Ky. Acts ch. 119.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It sets the standards and procedures that to be followed in implementing HB 115 for the licensing of electrical contractors, electricians and master electricians.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth the standards and procedures authorized by the statute in implementation of the requirements for licensing of electrical contractors, electricians and master electricians.

(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: Not applicable. This is a new regulation.

(b) The necessity of the amendment to this regulation:

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

(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: Every business or individual currently acting as an electrician or electrical contractor will be affected by this administrative regulation. While the Office of Housing, Buildings and Construction does not have an exact number of current electricians or electrical contractors, it is estimated that approximately 30,000 licenses will be issued. This administrative regulation will also affect city and county governments which issue electrical licenses or electrical permits. Currently 11 cities or counties have licensing programs for electricians or electrical contractors. A similar number of cities or counties issue electrical permits.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative, if new, or by the change if it is an amendment: Businesses and individuals working in the electrical industry will be required to be licensed as electrical contractors, master electricians and/or electricians. They will be required to provide proof that they meet the statutory qualifications each of the license categories. Cities and counties which currently licenses electricians or electrical contractors will be asked to provide information regarding their licensees to aid in the process of converting local licenses to state licenses. Local jurisdictions which issue electrical permits will be required to check the permit purchasers either hold the required license or are exempt from licensure.

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

(a) Initially: Cost to implement the electrical licensure grandfathering program is currently estimated at $700,000.

(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: Initial funding will be borrowed from funds held by other divisions of the Office of Housing, Buildings and Construction. These funds will be repaid over 2 years. Permanent funding will be from license fees.

(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: Since this is a new statutory initiative, this administrative regulation sets the license application and renewal fees required in the statute.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes electrical contractor, master electrician, and electrician license application fees and license renewal fees.

(9) TIERING: Is tiering applied? Tiering is not applied.

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 regulation will affect local governments that issue electrical permits and local governments that license electricians.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation relates to the statewide licensure of electricians, master electrician and electrical contractors. Local governments will only be allowed to issue electrical permits to licensed electrical contractors.

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 (+/-):

Expenditures (+/-):

Other Explanation: Exact revenue effects cannot be determined at this time. The additional cost involved in confirming that an electrical permit applicant is a licensed electrical contractor is expected to be minimal. Local governments will quickly learn which local contractors are licensed, thus minimizing the burden. The Office of Housing, Buildings and Construction will have an online database available to local governments to quickly and inexpensively check on contractor license status.

# ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
## Minutes of February 10, 2004

The February meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, February 10, 2004, at 9:30 a.m. in Room 125 of the Capitol Annex. Representative Tanya Pullin, Co-Chair, called the meeting to order, and the roll call was taken. The minutes of the January 13, 2004 meeting were approved with the correction of a misspelled name.

Present were:

Members: Representative Tanya Pullin, Co-Chair; Senator Damon Thayer, Co-Chair; Senators Joey Pendleton, Richard Roeding, and Gary Tapp; Representatives James Bruce, Jimmie Lee, and Jon David Reinhardt.

LRC Staff: Dave Nicholas, Donna Little, Donna Kemper, Sarah Amburgey, Karen Howard, Laura Milam, Ellen Steinberg, Emily Caudill, and Jenifer Harrison.

Guests: Diana Barber, Michael Morgan, Kentucky Higher Education Assistance Authority; Kevin C. Brown, Belinda Casey Daniel Logsdon, Brenda Sweatt, Department of Treasury; Trey Greyson, Ryan Halloran, Sarah B. Johnson, State Board of Elections; Bill Leach, Teacher's Retirement System; Ron Gruzesky, Bob Logan, Larry Taylor, Department for Environmental Protection; Keith Horn, Department of Juvenile Justice; Tim Adams, Mack Bushart, Steve Coffey, Dana Fugazzi, Lt. Glynn C. Powers, Ricky Taylor, Transportation Cabinet; Rick Bender, Public Protection and Regulation Cabinet; David Coyle, Sally Mooney, Department of Financial Institutions; Roseanne Barkley, Sheila Davis, Shirley Eldridge, Russ Fendley, Lynne Flynn, David Hanna, Debbie Salleng, Ben Sweger, Cabinet for Health and Family Services; Rusty Cress, AIK; William G. Barr III, John P. Gabbard, Kentucky Oil and Gas Association.

**The Administrative Regulation Review Subcommittee met on Tuesday, February 10, 2004, and submits this report:**

**Administrative regulations reviewed by the Subcommittee:**

**Kentucky Higher Education Assistance Authority: KHEAA Grant Programs**

**11 KAR 5:034.** CAP grant student eligibility. Diana Barber, Assistant General Counsel, and Michael Morgan, Student Branch Manager, represented the Authority.

**11 KAR 5:130.** Student application.

**Teacher Scholarship Loan Program**

**11 KAR 8:030.** Teacher scholarships.

**Early Childhood Development Scholarship Program**

**11 KAR 16:010.** Early Childhood Development Scholarship Program applicant selection process. A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Robert C. Byrd Honors Scholarship Program**

**11 KAR 18:010.** Robert C. Byrd Honors Scholarship Program. In response to questions by Senator Roeding, Mr. Morgan stated that the Authority began advertising the Robert C. Byrd Honors Scholarship Program in November after administrative responsibility for the program was transferred to them from the Kentucky Department of Education. The Authority had mailed out scholarship applications to students and had mailed out scholarship requirements and applications to all certified high school counselors, including those in private schools. They also had updated their web site and publications with information about the program. The number of scholarship recipients was limited by the amount of federal appropriations for the program.

In response to questions by Representative Reinhardt, Mr. Morgan stated that the Authority's official administration of the program did not begin until the upcoming fiscal year. Additionally, he was aware of only one other scholarship currently being administered by the Kentucky Department of Education, the Minority Education and Recruitment Retention Scholarship. The Authority would begin to administer that scholarship in 2006.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 5, 7, 8, and 9 to comply with the format and drafting requirements of KRS Chapter 13A; and (3) to amend Section 9 to incorporate by reference the separate application form for GED recipients. Without objection, and with agreement of the agency, the amendments were approved.

**Department of Treasury; State Treasury**

**20 KAR 1:040.** Unclaimed properties; claims. Daniel Logsdon, Assistant State Treasurer, Brenda Sweatt, Director of Unclaimed Property, and Kevin Brown, Assistant Attorney General, represented the Department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; and (3) to amend Sections 2, 3, and 5 to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**20 KAR 1:080.** Reports to be filed by holders of unclaimed property. A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; and (3) to amend Sections 1, 2, and 3 to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**20 KAR 1:090.** Accounts for unclaimed property that was held in an interest-bearing demand, savings or time deposit. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; and (2) to amend Sections 1, 2, and 3 to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**20 KAR 1:100.** Multiple claims on the Unclaimed Property Fund. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; (3) to amend Sections 1, 2, and 3 to comply with the format and drafting requirements of KRS Chapter 13A; and (4) to create a new Section 4 to incorporate by reference required material. Without objection, and with agreement of the agency, the amendments were approved.

**State Board of Elections; Help America Vote Act 2002**

**31 KAR 6:020 & E.** Provisional voting. Trey Greyson, Secretary of State and Board Chair, Sarah Johnson, Executive Director, and Ryan Halloran, Assistant Attorney General, represented the Board.

In response to questions by Co-Chair Thayer, Secretary Greyson stated that the Help America Vote Act 2002 required states to provide a voter an opportunity to cast a vote in federal elections even if there were questions about that voter's eligibility status. This administrative regulation established a provisional ballot to provide that opportunity. A voter would fill out a paper ballot which would be sealed and separated from all other ballots. After the polls closed and before 9 a.m. the next morning, the clerks would begin to determine whether that particular vote should

be counted. For example, if it was determined that a poll worker had made a mistake about a voter's registration, that provisional ballot would be counted. The voter was entitled to know whether the vote in fact was counted.

In response to a question by Representative Bruce, Ms. Johnson stated that complying with the Act's requirements, including the opportunity to vote, enabled Kentucky to qualify for about forty (40) million dollars in federal funds.

In response to questions by Senator Roeding, Ms. Johnson stated that allowing provisional ballots would slow down the official election counts. The clerks had to begin reviewing the ballots by 9 a.m. the next morning, but could begin reviewing them earlier. Secretary Greyson added that in practice, the slower official count would not burden a candidate. By comparing the vote margin with the number of provisional ballots, a candidate could determine whether the ballots made a difference in an election's outcome.

In response to a question by Senator Roeding, Secretary Greyson stated that provisional ballots would be used for the first time in the upcoming special election in the sixth congressional district. The Board had provided training to the affected county clerks about the ballots and the clerks had incorporated that information in their precinct officer training.

In response to a question by Representative Reinhardt, Ms. Johnson stated that some other states like Colorado and California previously had implemented versions of provisional balloting. However, no other states had implemented the exact requirements of the Act.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to insert authorizing language, specify citations, and clearly state the function of the administrative regulation; (2) to amend Section 1 to place the definitions in the first section and in alphabetical order, pursuant to KRS 13A.222(4)(e); (3) to amend Section 4 to add "identification type" and "precinct officer initials" to the items required on the Provisional Ballot Precinct Signature Roster; (4) to amend Section 4 to delete indefinite words or phrases as prohibited by KRS 13A.222(4)(a); and (5) to amend various sections to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Teacher's Retirement System; General Rules**

**102 KAR 1:035.** Employment by retired members. Bill Leach represented the System.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**102 KAR 1:150.** Optional benefits. A motion was made and seconded to approve the following amendments: to amend various sections to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Environmental and Public Protection Cabinet; Department for Environmental Protection; Solid Waste Facilities**

**401 KAR 47:030.** Environmental performance standards. Larry Taylor, Commissioner's Office, Bob Logan, Commissioner's Office, and Ron Gruzesky, Division of Solid Waste, represented the Department.

In response to a question by Co-Chair Thayer, Mr. Gruzesky stated that the Department had amended the administrative regulation in response to industry concerns.

In response to a question by Co-Chair Thayer, Mr. Logan stated that this administrative regulation updated ten (10) parameters in the drinking water program with the current federal requirements, with six (6) becoming less conservative and four (4) becoming more conservative.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to insert authorizing language; (2) to amend Sections 3 and 4 to specify citations; (3) to amend Section 11 to specify techniques for avoiding fire hazards; and (4) to amend various sections to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Environmental Protection**

**401 KAR 100:030.** Remediation requirements. Rusty Cress, Associated Industries of Kentucky, appeared in favor of this administrative regulation.

Mr. Cress stated that it had been a long process to develop remediation standards. This administrative regulation met the goals and purposes of Senate Bill 2 as it was passed by the General Assembly in 2001. The Associated Industries of Kentucky supported this administrative regulation because it promoted voluntary cleanup of brownfields throughout the state by establishing strict but very flexible remediation requirements. He commended the Cabinet for their effective, negotiated rulemaking process in developing the standards.

Senator Pendleton stated that he appreciated all of the interested groups coming together to develop these standards. However, it should not have taken three (3) years to do so. In the future, the General Assembly should provide agencies with a deadline to promulgate administrative regulations so that it would be done in a more timely manner.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to specify citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to insert authorizing language; and (3) to amend various sections to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Justice Cabinet, Department of Juvenile Justice, Child Welfare**

**505 KAR 1:110.** Department of Juvenile Justice Policies and Procedures Manual: program services. Keith Horn, Assistant General Counsel, represented the Department.

In response to questions by Senator Roeding, Subcommittee staff stated that that if these administrative regulations contained state agency references that needed to be updated due to EO 2003-064, the Regulations Compiler could do so as a clerical matter pursuant to KRS Chapter 13A.

**505 KAR 1:130.** Department of Juvenile Justice Policies and Procedures Manual: juvenile services in community. A motion was made and seconded to approve the following amendments: to amend material incorporated by reference to specify statutory references and to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**505 KAR 1:140.** Department of Juvenile Justice Policies and Procedures Manual: detention services. A motion was made and seconded to approve the following amendments: to amend material incorporated by reference to specify statutory and internal references and to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Transportation Cabinet: Department of Vehicle Regulation; Division of Motor Carriers**

**601 KAR 1:005.** Safety administrative regulation. Lt. Glynn Powers, Kentucky Vehicle Enforcement, Dana Fugazzi, Staff Attorney, Steve Coffey, Assistant Director, Rick Taylor, Assistant Director, and Tim Adams, Branch Manager, represented the Department.

A motion was made and seconded to approve the following amendments: to amend Sections 1 to 3 and 6 to 11 to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Motor Vehicle Tax**

**601 KAR 9:135.** Apportioned registration. In response to a question by Representative Bruce, Mr. Taylor stated that the General Assembly established the twenty (20) dollar registration fee in 2003 to offset their repeal of the six (6) percent usage tax on vehicles registered over 44,000 pounds.

In response to a question by Senator Roeding, Mr. Taylor

stated that the registration fees were paid to the county clerks in place of the usage tax.

In response to a question by Representative Reinhardt, Mr. Taylor stated that this administrative regulation would decrease costs for commercial motor vehicles.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 6, 7, 8, 10, 11, 14, 15, and 16 to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Commercial Driver's License**

**601 KAR 11:040.** Medical waivers for intrastate operations of commercial motor vehicles. In response to questions by Senator Roeding, Mr. Coffey stated that because this administrative regulation was amended to correct a mistake, it would not affect any current commercial drivers. The Department had realized that the word "not" was no longer in the provision regarding whether they could grant waivers for the hearing requirement. The amendments re-included it so that the Department could not grant the waivers. A person who was deaf would not be able to obtain a commercial driver's license.

In response to questions by Representative Reinhardt, Mr. Coffey stated that other than correcting the mistake, all of the other regulatory requirements remained the same. A person who had correctable hearing loss would not be affected by the amendment.

In response to questions by Co-Chair Pullin, Mr. Coffey stated that because the Department had not been aware of the mistake, they had operated as if the word "not" had remained in the provision at issue. However, the Department had never granted a hearing waiver.

**601 KAR 11:061.** Repeal of 601 KAR 11:060.

**Driver's License**

**601 KAR 12:031.** Repeal of 601 KAR 12:030.

**Environmental and Public Protection Cabinet; Department of Mines and Minerals**

**805 KAR 1:190.** Gathering lines. Rick Bender, Director, represented the Department. William Barr, Legislative Chairman, Kentucky Oil and Gas Association, appeared in favor of this administrative regulation.

Mr. Barr stated that the Kentucky Oil and Gas Association commended the Division of Oil and Gas for working with all interested parties in promulgating this administrative regulation. The Association agreed to the permitting fees established by this administrative regulation because they hoped it would facilitate the permitting process. They hoped that even with the hiring freeze in state government employment, the fees would provide for sufficient staff so that permits could be issued more quickly.

A motion was made and seconded to approve the following amendments: to amend various sections to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Department of Financial Institutions; Mortgage Loan Companies and Mortgage Loan Brokers**

**808 KAR 12:002.** Definitions for 808 KAR Chapter 12. David Coyle, Director, and Sally Mooney, Counsel, represented the Department.

**808 KAR 12:075.** Requirements of mortgage broker residence office. In response to a question by Representative Bruce, Mr. Coyle stated that legislation from the 2003 General Session required out-of-state brokers to have a physical location in Kentucky.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**808 KAR 12:085.** Registration of mortgage loan officer/broker. A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph to correct statutory citations. Without objection, and with agreement of the agency, the amendments were approved.

**808 KAR 12:095.** Continuing education requirements.

**Cabinet for Health and Family Services; Department for Medicaid Services; Medicaid Services**

**907 KAR 1:035.** Payments for early and periodic screening, diagnosis, and treatment services and early periodic screening, diagnosis, and treatment special services. Russ Fendley, Commissioner, David Hanna, Director, Ben Sweger, Director, and Lynne Flynn, Director, represented the Department.

In response to questions by Senator Roeding, Ms. Flynn stated that this administrative regulation was amended to base the payments on provider program payments rather than on local codes which were not allowed under the Health Insurance Portability and Accountability Act (HIPAA). The amendments were not for cost containment.

In response to questions by Representative Reinhardt, Ms. Flynn stated that the amendments to this administrative regulation would not generate additional costs.

In response to a question by Representative Bruce, Mr. Fendley stated that the Department would be bringing forward in the coming weeks their legislative and regulatory plans to modernize Medicaid and establish additional controls in the system.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 5 to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**907 KAR 1:065 & E.** Payments for price-based nursing facility services. In response to a question by Senator Roeding, Mr. Sweger stated that this administrative regulation was amended to replace cost-based reimbursement for nursing facility services with price-based reimbursement.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, 6, 11, 12, and 13 to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Payments and Services**

**907 KAR 3:090 & E.** Acquired brain injury services. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (2) to amend Section 6 to delete reporting requirements for Class II incidents that were not consistent with reporting requirements for Class III incidents; and (3) to amend Sections 1 to 7 and 9 to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**907 KAR 3:170 & E.** Telehealth services and reimbursement. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (3) to amend Sections 1 to 5 and 8 to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Department for Community Based Services; Family Support; K-Tap, Kentucky Works, Welfare to Work, State Supplementation**

**921 KAR 2:015 & E.** Supplemental programs for persons who are aged, blind, or have a disability. Shirley Eldridge and Roseanne Barkley, Branch Manager, represented the Department.

In response to a question by Co-Chair Thayer, Ms. Eldridge stated that this administrative regulation was amended to pass along the increase in Supplemental Security Income and to update the standard for personal care homes, family care homes, and caretaker services.

In response to a question by Senator Roeding, Ms. Barkley stated that this administrative regulation had been amended to reflect the Cabinet for Health and Family Services, established by EO 2003-064.

A motion was made and seconded to approve the following

amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to reference EO 2003-064 which established the Cabinet for Health and Family Services; (2) to amend Section 1 to delete outdated definitions; (3) to amend Section 4(3) to require notification of a local county department office within five (5) working days of the death of a state supplementation recipient; and (4) to amend Sections 1, 2, 4, 12, 13, and 14 to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**The Subcommittee and the promulgating administrative agencies agreed to defer consideration of the following administrative regulations to the next meeting of the Subcommittee:**

**State Board of Elections; Help America Vote Act 2002**

**31 KAR 6:010 & E.** State-based administrative complaint procedure.

**Environmental and Public Protection Cabinet; Department for Environmental Protection; Water Quality**

**401 KAR 5:002.** Definitions for 401 KAR Chapter 5.

**401 KAR 5:005.** Permits to construct, modify, or operate a facility.

**401 KAR 5:026.** Designation of uses of surface waters.

**401 KAR 5:029.** General provisions.

**401 KAR 5:030.** Antidegradation policy implementation method-ology.

**401 KAR 5:031.** Surface water standards.

**Department for Surface Mining Reclamation and Enforcement; General Provisions**

**405 KAR 7:001.** Definitions for 405 KAR Chapter 7.

**Permits**

**405 KAR 8:001.** Definitions for 405 KAR Chapter 8.

**Bond and Insurance Requirements**

**405 KAR 10:001.** Definitions for 405 KAR Chapter 10.

**Inspection and Enforcement**

**405 KAR 12:001.** Definitions for 405 KAR Chapter 12.

**Performance Standards for Surface Mining Activities**

**405 KAR 16:001.** Definitions for 405 KAR Chapter 16.

**Performance Standards for Underground Mining Activities**

**405 KAR 18:001.** Definitions for 405 KAR Chapter 18.

**Special Performance Standards**

**405 KAR 20:001.** Definitions for 405 KAR Chapter 20.

**Areas Unsuitable for Mining**

**405 KAR 24:001.** Definitions for 405 KAR Chapter 24.

**Transportation Cabinet; Department of Vehicle Regulation; Division of Motor Carriers**

**601 KAR 1:018.** Special overweight or overdimensional permits.

**Motor Vehicle Tax**

**601 KAR 9:085.** Procedures for becoming a certified motor vehicle inspector.

**Department of Highways; Traffic**

**603 KAR 5:066.** Weight (mass) limits for trucks.

**603 KAR 5:070.** Motor vehicle dimension limits.

**Motor Vehicle Commission; Commission**

**605 KAR 1:040.** Temporary off-site sale or display event.

**Environmental and Public Protection Cabinet; Department of Financial Institutions; Mortgage Loan Companies and Mortgage Loan Brokers**

**808 KAR 12:065.** Disclosure for lender/broker making less than five (5) loans per year. David Coyle, Director, and Sally Mooney, Counsel, represented the Department.

In response to questions by Senator Roeding, Mr. Coyle stated that by statute, disclosure was required for any business or individual making less than five (5) mortgage loans per year. This administrative regulation established the form to be used when making the required disclosure. Typically, the disclosure requirements applied to individuals making mortgages out of their own money and out-of-state mortgage companies that made only one or two loans a year in Kentucky. The disclosure requirements did not apply to parents loaning their children money for a down payment on a house. However, they would apply to parents providing a mortgage to their children. The Department used the disclosures in monitoring consumer complaints.

In response to a question by Senator Tapp, Ms. Mooney stated that if a parent provided a mortgage to a child and failed to make the required disclosure, the Executive Director had discretion in assessing or waiving a fine as a penalty.

Senator Tapp stated that he had concerns about how the disclosure requirements affected parents.

Co-Chair Thayer stated the Subcommittee needed to consider this issue further. There should not be any laws which penalized a family member making a loan to another family member.

Mr. Coyle stated that the disclosure at issue had been required by statute for several years. The statutes were amended by the 2003 General Assembly to require that the disclosure be made on a form developed by the Department. This administrative regulation established that form.

Representative Bruce made a motion, seconded by Senator Roeding, to find 808 KAR 12:065 deficient. Representative Bruce withdrew that motion and made a motion, seconded by Senator Tapp, to defer consideration of this administrative regulation instead. Co-Chair Pullin stated that deferral would enable the Subcommittee to more closely examine this administrative regulation. Without objection, and with agreement of the agency, this administrative regulation was deferred.

**Department of Charitable Gaming; Charitable Gaming**

**820 KAR 1:001.** Definitions for 820 KAR Chapter 1.

**820 KAR 1:040.** Bingo standards.

**Cabinet for Health and Family Services; Department for Community Based Services; Protection and Permanency; Child Welfare**

**922 KAR 1:320.** Services appeals.

**922 KAR 1:330.** Child protective services.

**922 KAR 1:480.** Appeal of child abuse and neglect investigative findings.

**The Subcommittee adjourned at 10:35 a.m. until March 2004.**

**There were no other committe reports.**

# CUMULATIVE SUPPLEMENT

**Locator Index - Effective Dates** ..... I - 2

The Locator Index lists all administrative regulations published in VOLUME 30 of the Administrative Register from July, 2003 through June, 2004. 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 29 are those administrative regulations that were originally published in VOLUME 29 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2003 bound Volumes were published.

**KRS Index** ..... I - 14

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 30 of the Administrative Register.

**Subject Index** ..... I - 24

The Subject Index is a general index of administrative regulations published in VOLUME 30 of the Administrative Register, and is mainly broken down by agency.

| Regulation Number | 29 Ky.R. Page No. | Effective Date |
|---|---|---|

## VOLUME 29

The administrative regulations listed under VOLUME 29 are those administrative regulations that were originally published in Volume 29 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2003 bound Volumes were published.

**EMERGENCY ADMINISTRATIVE REGULATIONS:**
(Note: Emergency regulations expire 170 days from publication; or 170 days from publication plus number of days of requested extension; or upon replacement or repeal, whichever occurs first)

| | | |
|---|---|---|
| 16 KAR 1:040E | 2413 | 1-21-03 |
| Expired | | 8-18-03 |
| 32 KAR 2:220E | 2605 | 4-4-03 |
| Replaced | 2930 | 8-13-03 |
| 105 KAR 1:150E | 1967 | 1-2-03 |
| Replaced | | 7-17-03 |
| 105 KAR 1:370E | 1744 | 11-27-02 |
| Replaced | 2865 | 6-16-03 |
| 201 KAR 40:040E | 1970 | 12-17-02 |
| Expired | | 7-21-03 |
| 201 KAR 40:050E | 1971 | 12-17-02 |
| Expired | | 7-21-03 |
| 201 KAR 40:060E | 1972 | 12-17-02 |
| Expired | | 7-21-03 |
| 201 KAR 40:070E | 1973 | 12-17-02 |
| Expired | | 7-21-03 |
| 201 KAR 40:080E | 1975 | 12-17-02 |
| Expired | | 7-21-03 |
| 201 KAR 40:090E | 1977 | 12-17-02 |
| Expired | | 7-21-03 |
| 201 KAR 40:100E | 2848 | 5-12-03 |
| Replaced | 585 | 9-8-03 |
| 301 KAR 2:083E | 2849 | 5-13-03 |
| Replaced | | (See 30 Ky.R.) |
| 301 KAR 2:095E | 2441 | 2-20-03 |
| 302 KAR 39:010E | 2606 | 4-3-03 |
| Replaced | 586 | 9-8-03 |
| 405 KAR 5:001E | 1979 | 12-13-02 |
| Expired | | 7-21-03 |
| 405 KAR 5:030E | 1982 | 12-13-02 |
| Expired | | 7-21-03 |
| 405 KAR 5:035E | 1989 | 12-13-02 |
| Expired | | 7-21-03 |
| 405 KAR 5:038E | 1991 | 12-13-02 |
| Expired | | 7-21-03 |
| 405 KAR 5:045E | 1994 | 12-13-02 |
| Expired | | 7-21-03 |
| 405 KAR 5:053E | 1996 | 12-13-02 |
| Expired | | 7-21-03 |
| 405 KAR 5:060E | 1998 | 12-13-02 |
| Expired | | 7-21-03 |
| 405 KAR 5:075E | 2003 | 12-13-02 |
| Expired | | 7-21-03 |
| 405 KAR 5:080E | 2005 | 12-13-02 |
| Expired | | 7-21-03 |
| 503 KAR 1:110E | 1744 | 12-9-02 |
| Replaced | 2883 | 6-16-03 |
| 803 KAR 25:010E | 2607 | 4-14-03 |
| Expired | | 10-18-03 |
| 803 KAR 25:125E | 2852 | 5-13-03 |
| Replaced | | 10-31-03 |
| 810 KAR 1:027E | 2442 | 2-24-03 |
| Expired | | 9-18-03 |
| 900 KAR 6:050E | 2012 | 1-8-03 |
| Replaced | | 7-16-03 |
| 902 KAR 17:041E | 1513 | 11-12-02 |
| Replaced | 2377 | 6-16-03 |
| 902 KAR 20:014E | 2241 | 2-13-03 |
| Expired | | 8-18-03 |
| 902 KAR 45:065E | 2616 | 4-14-03 |
| Withdrawn | | 10-17-03 |
| 907 KAR 1:006E | 2622 | 3-24-03 |
| Expired | | 10-18-03 |
| 907 KAR 1:011E | 2624 | 3-24-03 |
| Replaced | 613 | 8-20-03 |
| 907 KAR 1:013E | 2629 | 4-1-03 |
| Expired | | 10-18-03 |
| 907 KAR 1:015E | 2245 | 2-11-03 |
| Withdrawn | | 8-4-03 |
| 907 KAR 1:018E | 2641 | 4-1-03 |
| Replaced | 617 | 8-20-03 |
| 907 KAR 1:022E | 2644 | 4-4-03 |
| Expired | | 10-18-03 |
| 907 KAR 1:065E | 2022 | 12-30-02 |
| Replaced | 2892 | 6-16-03 |
| 907 KAR 1:145E | 1748 | 11-25-02 |
| Withdrawn | | 7-22-03 |
| 907 KAR 1:155E | 2247 | 1-17-03 |
| Withdrawn | | 7-1-03 |
| 907 KAR 1:160E | 2853 | 5-1-03 |
| Replaced | | 10-31-03 |
| 907 KAR 1:170E | 2857 | 5-1-03 |
| Withdrawn | | 7-1-03 |
| 907 KAR 1:479E | 2029 | 1-8-03 |
| Replaced | | 7-16-03 |
| 907 KAR 1:520E | 2034 | 12-30-02 |
| Expired | | 7-21-03 |
| 907 KAR 1:530E | 2035 | 12-30-02 |
| Expired | | 7-21-03 |
| 907 KAR 1:604E | 2860 | 4-24-03 |
| Withdrawn | | 10-31-03 |
| 907 KAR 1:650E | 2650 | 3-24-03 |
| Withdrawn | | 8-29-03 |
| 907 KAR 1:805E | 2653 | 3-19-03 |
| Replaced | 181 | 8-20-03 |
| 907 KAR 3:030E | 2036 | 12-17-02 |
| Withdrawn | | 7-1-03 |
| 907 KAR 3:090E | 2045 | 12-17-02 |
| Expired | | 7-21-03 |
| 907 KAR 3:110E | 2250 | 2-11-03 |
| Withdrawn | | 7-1-03 |
| 911 KAR 2:120E | 2052 | 1-3-03 |
| Expired | | 7-21-03 |
| 911 KAR 2:130E | 2058 | 12-30-02 |
| Expired | | 7-21-03 |
| 911 KAR 2:200E | 2062 | 1-10-03 |
| Expired | | 7-21-03 |
| 921 KAR 2:015E | 2069 | 12-27-02 |
| Replaced | 2804 | 7-16-03 |

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| 13 KAR 2:090 Amended | 2717 | (See Volume 30) |
| 16 KAR 2:020 Amended | 2913 | (See Volume 30) |
| 16 KAR 2:190 | 2996 | 8-13-03 |
| 16 KAR 5:010 Amended | 2916 | (See Volume 30) |
| 16 KAR 6:020 Amended | 2924 | (See Volume 30) |
| 16 KAR 8:040 Amended | 2927 | (See Volume 30) |
| 30 KAR 3:010 Amended | 2720 | (See Volume 30) |
| 32 KAR 1:020 Amended | 2929 | (See Volume 30) |
| 32 KAR 2:220 Amended | 2930 | 8-13-03 |
| 102 KAR 1:030 Amended | 2931 | (See Volume 30) |
| 102 KAR 1:036 Amended | 2932 | (See Volume 30) |
| 102 KAR 1:038 Amended | 2934 | (See Volume 30) |
| 102 KAR 1:057 Amended | 2935 | (See Volume 30) |
| 102 KAR 1:070 Amended | 2936 | (See Volume 30) |
| 102 KAR 1:100 Amended | 2937 | (See Volume 30) |
| 102 KAR 1:110 Amended | 2938 | (See Volume 30) |
| 102 KAR 1:121 | 2997 | 8-13-03 |
| 102 KAR 1:122 Repealed | 2997 | 8-13-03 |
| 102 KAR 1:150 Amended | 2939 | (See Volume 30) |
| 102 KAR 1:165 Amended | 2940 | (See Volume 30) |
| 102 KAR 1:185 Amended | 2941 | (See Volume 30) |
| 102 KAR 1:290 | 2998 | 8-13-03 |
| 105 KAR 1:150 Amended | 2724 | (See Volume 30) |
| 200 KAR 14:011 Amended | 2727 | (See Volume 30) |
| 201 KAR 18:101 | 2999 | 8-13-03 |
| 201 KAR 18:102 Repealed | 2999 | 8-13-03 |
| 201 KAR 18:104 | 2999 | (See Volume 30) |
| 201 KAR 20:057 Amended | 2943 | 8-13-03 |
| 201 KAR 20:220 Amended | 2945 | 8-13-03 |
| 201 KAR 20:400 Amended | 2947 | 8-13-03 |
| 201 KAR 20:411 Amended | 2948 | 8-13-03 |
| 201 KAR 20:450 Amended | 2950 | 8-13-03 |
| 201 KAR 20:470 Amended | 2952 | 8-13-03 |
| 301 KAR 2:049 Amended | 2956 | 8-13-03 |
| 301 KAR 2:075 Amended | 2958 | (See Volume 30) |
| 301 KAR 2:095 | 3001 | 8-13-03 |
| 301 KAR 2:111 Amended | 2960 | 8-13-03 |
| 301 KAR 2:179 Amended | 2961 | 8-13-03 |
| 301 KAR 2:240 Amended | 2963 | 8-13-03 |
| 301 KAR 2:251 Amended | 2964 | 8-13-03 |
| 301 KAR 3:022 Amended Withdrawn | 2966 | 7-24-03 |
| 307 KAR 2:010 Amended | 2968 | (See Volume 30) |
| 307 KAR 6:010 Amended | 2730 | (See Volume 30) |
| 401 KAR 52:080 Amended | 2970 | (See Volume 30) |
| 401 KAR 57:002 Amended | 2973 | (See Volume 30) |
| 401 KAR 60:005 Amended | 2975 | (See Volume 30) |
| 401 KAR 63:002 Amended | 2979 | (See Volume 30) |
| 401 KAR 63:105 Amended | 1091 | (See Volume 30) |
| 405 KAR 5:001 Amended | 2731 | (See Volume 30) |
| 405 KAR 5:030 Amended | 2735 | (See Volume 30) |
| 405 KAR 5:035 Amended | 2742 | (See Volume 30) |
| 405 KAR 5:038 Amended | 2743 | (See Volume 30) |
| 405 KAR 5:045 Amended | 2745 | (See Volume 30) |
| 405 KAR 5:053 | 2721 | (See Volume 30) |
| 405 KAR 5:060 Amended | 2748 | (See Volume 30) |
| 405 KAR 5:075 Amended | 2752 | (See Volume 30) |
| 405 KAR 5:080 Amended | 2754 | (See Volume 30) |
| 501 KAR 3:020 Amended | 2756 | (See Volume 30) |
| 501 KAR 3:090 Amended | 2758 | (See Volume 30) |
| 501 KAR 3:100 Amended | 2759 | (See Volume 30) |
| 501 KAR 3:130 Amended | 2760 | (See Volume 30) |
| 501 KAR 3:140 Amended | 2762 | (See Volume 30) |
| 501 KAR 6:020 Amended | 2763 | (See Volume 30) |
| 501 KAR 6:040 Amended | 2983 | (See Volume 30) |
| 501 KAR 6:050 Amended | 2765 | (See Volume 30) |
| 501 KAR 6:060 Amended | 2768 | (See Volume 30) |
| 501 KAR 6:070 Amended | 2526 | (See Volume 30) |

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| 501 KAR 6:999 | | |
| Amended | 2984 | 8-13-03 |
| 501 KAR 13:010 | | |
| Amended | 2770 | (See Volume 30) |
| 808 KAR 12:050 | 2401 | |
| Amended | 2901 | (See Volume 30) |
| 815 KAR 7:120 | | |
| Amended | 2986 | (See Volume 30) |
| 815 KAR 20:011 | 3002 | 8-13-03 |
| 815 KAR 20:020 | | |
| Amended | 2988 | 8-13-03 |
| 815 KAR 20:030 | | |
| Amended | 2992 | |
| Withdrawn | | 7-8-03 |
| 815 KAR 20:075 | | |
| Repealed | 3002 | 8-13-03 |
| 815 KAR 20:076 | 3002 | 8-13-03 |
| 900 KAR 6:050 | | |
| Amended | 2530 | |
| Amended | 2902 | (See Volume 30) |
| 902 KAR 10:060 | | |
| Amended | 1895 | |
| Withdrawn | | 8-4-03 |
| 902 KAR 50:050 | | |
| Amended | 2771 | (See Volume 30) |
| 902 KAR 50:110 | | |
| Amended | 2773 | (See Volume 30) |
| 906 KAR 1:140 | 3002 | (See Volume 30) |
| 907 KAR 1:015 | | |
| Amended | 2774 | (See Volume 30) |
| 907 KAR 1:145 | | |
| Amended | 2547 | (See Volume 30) |
| 907 KAR 1:479 | | |
| Amended | 2558 | (See Volume 30) |
| 907 KAR 1:680 | | |
| Amended | 2776 | 7-16-03 |
| 908 KAR 3:050 | | |
| Amended | 2777 | (See Volume 30) |
| 908 KAR 4:030 | | |
| Amended | 2779 | (See Volume 30) |
| 908 KAR 5:010 | 3004 | (See Volume 30) |
| 911 KAR 2:120 | | |
| Amended | 2783 | (See Volume 30) |
| 911 KAR 2:130 | | |
| Amended | 2790 | (See Volume 30) |
| 911 KAR 2:200 | | |
| Amended | 2795 | (See Volume 30) |
| 921 KAR 1:400 | | |
| Amended | 2801 | 7-16-03 |
| 921 KAR 2:015 | | |
| Amended | 2804 | 7-16-03 |
| 922 KAR 1:130 | | |
| Amended | 2187 | |
| Amended | 2711 | (See Volume 30) |
| 922 KAR 2:160 | | |
| Amended | 2810 | (See Volume 30) |
| 922 KAR 3:020 | | |
| Amended | 2994 | |
| Withdrawn | | 7-24-03 |
| 922 KAR 3:030 | | |
| Repealed | 2822 | 7-16-03 |
| 922 KAR 3:031 | 2822 | 7-16-03 |
| 922 KAR 6:010 | | |
| Amended | 2817 | 7-16-03 |
| 922 KAR 6:060 | | |
| Repealed | 2823 | 7-16-03 |
| 922 KAR 6:061 | 2823 | 7-16-03 |
| 922 KAR 6:070 | | |
| Repealed | 2823 | 7-16-03 |

## VOLUME 30

**EMERGENCY ADMINISTRATIVE REGULATIONS:**
(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)

| | | |
|---|---|---|
| 31 KAR 6:010E | 1735 | 12-5-03 |
| 31 KAR 6:020E | 1736 | 11-26-03 |
| 40 KAR 3:011E | 195 | 7-1-03 |
| Expired | | 1-16-04 |
| 105 KAR 1:380E | 5 | 5-21-03 |
| Expired | | 12-18-03 |
| 107 KAR 2:010E | 196 | 7-1-03 |
| Replaced | 844 | 10-31-03 |
| 201 KAR 20:070E | 1403 | 11-13-03 |
| 201 KAR 41:025E | 789 | 8-27-03 |
| Withdrawn | | 12-5-03 |
| 301 KAR 2:081E | 197 | 6-30-03 |
| Withdrawn | | 7-24-03 |
| Resubmitted | 554 | 7-24-03 |
| Replaced | 1505 | 1-5-04 |
| 301 KAR 2:082E | 201 | 6-30-03 |
| Replaced | 404 | 10-31-03 |
| 301 KAR 2:083E | | 5-13-2003 |
| Replaced | 1505 | 1-5-04 |
| 301 KAR 2:221E | 790 | 9-15-03 |
| Replaced | 989 | 1-5-04 |
| 301 KAR 2:222E | 792 | 9-15-03 |
| Replaced | 991 | 1-5-04 |
| 301 KAR 2:225E | 796 | 8-28-03 |
| Replaced | 995 | 1-5-04 |
| 503 KAR 1:160E | 7 | 6-9-03 |
| Expired | | 12-18-03 |
| 503 KAR 3:050E | 204 | 6-27-03 |
| Replaced | 862 | 10-31-03 |
| 503 KAR 3:070E | 206 | 6-27-03 |
| Replaced | 863 | 10-31-03 |
| 803 KAR 2:180E | 798 | 9-10-03 |
| Replaced | 1508 | 1-5-04 |
| 806 KAR 17:180E | 208 | 7-15-03 |
| Replaced | 1518 | 1-5-04 |
| 815 KAR 35:040E | 211 | 6-24-03 |
| Withdrawn | | 2-4-04 |
| 815 KAR 35:050E | 2002 | 2-4-04 |
| 902 KAR 45:065E | | 10-17-03 |
| Withdrawn | | 10-17-03 |
| Resubmitted | 1404 | 10-17-03 |
| 902 KAR 45:090E | 213 | 7-1-03 |
| Replaced | 1259 | 11-19-03 |
| 907 KAR 1:006E | 1410 | 11-3-03 |
| 907 KAR 1:011E | 800 | 8-29-03 |
| Replaced | 1521 | 11-25-03 |

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| 907 KAR 1:013E | 1412 | 11-3-03 |
| Withdrawn | | 12-2-03 |
| Resubmitted | 1738 | 12-2-03 |
| 907 KAR 1:015E | 558 | 8-4-03 |
| Replaced | 1525 | 11-25-03 |
| 907 KAR 1:022E | 2004 | 1-30-04 |
| 907 KAR 1:023E | 1422 | 10-27-03 |
| 907 KAR 1:026E | 1425 | 10-16-03 |
| 907 KAR 1:031E | 560 | 8-4-03 |
| Replaced | 1527 | 11-25-03 |
| 907 KAR 1:045E | 219 | 6-27-03 |
| Withdrawn | | 10-1-03 |
| Resubmitted | 1176 | 10-1-03 |
| 907 KAR 1:060E | 221 | 6-25-03 |
| Replaced | 878 | 10-31-03 |
| 907 KAR 1:065E | 1430 | 11-31-03 |
| 907 KAR 1:145E | 565 | 7-22-03 |
| Replaced | | 1-13-04 |
| 907 KAR 1:155E | 224 | 7-1-03 |
| Replaced | 1264 | 12-5-03 |
| 907 KAR 1:170E | 228 | 7-1-03 |
| Replaced | 883 | 10-31-03 |
| 907 KAR 1:360E | 231 | 6-27-03 |
| Replaced | 887 | 10-31-03 |
| 907 KAR 1:585E | 804 | 8-29-03 |
| Replaced | 1531 | 11-25-03 |
| 907 KAR 1:604E | 1437 | 10-31-03 |
| 907 KAR 1:626E | 1440 | 10-16-03 |
| 907 KAR 1:640E | 807 | 8-29-03 |
| Replaced | 1533 | 11-25-03 |
| 907 KAR 1:645E | 810 | 8-29-03 |
| Replaced | 1536 | 11-25-03 |
| 907 KAR 1:650E | 813 | 8-29-03 |
| Replaced | 1537 | 11-25-03 |
| 907 KAR 1:655E | 9 | 5-23-03 |
| Replaced | 1270 | 12-5-03 |
| 907 KAR 1:665E | 816 | 8-29-03 |
| Replaced | 1540 | 11-25-03 |
| 907 KAR 3:030E | 234 | 7-1-03 |
| Replaced | 1547 | 11-25-03 |
| 907 KAR 3:090E | 1179 | 10-1-03 |
| 907 KAR 3:110E | 242 | 7-1-03 |
| Replaced | 1273 | 11-19-03 |
| 907 KAR 3:170E | 1749 | 12-1-03 |
| 908 KAR 1:340E | 1443 | 10-21-03 |
| 921 KAR 2:015E | 1751 | 12-8-03 |
| 922 KAR 1:500E | 818 | 8-29-03 |
| Replaced | 1561 | 1-5-04 |

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| | | |
|---|---|---|
| 9 KAR 1:040 | | |
| Amended | 661 | |
| As Amended | 1193 | 12-5-03 |
| 11 KAR 3:100 | | |
| Amended | 338 | |
| As Amended | 821 | 10-31-03 |
| 11 KAR 4:040 | | |
| Amended | 662 | |
| As Amended | 1454 | 1-5-04 |
| 11 KAR 5:001 | | |
| Amended | 351 | |
| As Amended | 832 | 10-31-03 |
| 11 KAR 5:034 | | |
| Amended | 1573 | |
| 11 KAR 5:130 | | |
| Amended | 1574 | |
| 11 KAR 5:140 | | |
| Amended | 354 | 10-31-03 |
| 11 KAR 5:145 | | |
| Amended | 355 | |
| As Amended | 834 | 10-31-03 |
| 11 KAR 5:160 | | |
| Amended | 357 | |
| As Amended | 834 | 10-31-03 |
| 11 KAR 6:010 | | |
| Amended | 358 | |
| As Amended | 835 | 10-31-03 |
| 11 KAR 8:030 | | |
| Amended | 361 | |
| As Amended | 837 | 10-31-03 |
| Amended | 1575 | |
| 11 KAR 12:060 | | |
| Amended | 364 | 10-31-03 |
| 11 KAR 14:060 | | |
| Amended | 365 | |
| As Amended | 839 | 10-31-03 |
| 11 KAR 15:010 | | |
| Amended | 366 | |
| As Amended | 840 | 10-31-03 |
| 11 KAR 16:010 | | |
| Amended | 1578 | |
| As Amended | 2010 | |
| 11 KAR 17:010 | 757 | |
| As Amended | 1193 | 12-1-03 |
| 11 KAR 17:040 | 758 | |
| As Amended | 1194 | |
| 11 KAR 17:050 | 759 | |
| As Amended | 1194 | 12-1-03 |
| 11 KAR 17:060 | 760 | |
| As Amended | 1195 | 12-1-03 |
| 11 KAR 17:070 | 761 | |
| As Amended | 1196 | 12-1-03 |
| 11 KAR 17:080 | 763 | |
| As Amended | 1196 | 12-1-03 |
| 11 KAR 17:090 | 764 | |
| As Amended | 1196 | 12-1-03 |
| 11 KAR 17:100 | 765 | |
| As Amended | 1197 | 12-1-03 |
| 11 KAR 17:110 | 766 | |
| As Amended | 1198 | 12-1-03 |
| 11 KAR 18:010 | 1698 | |
| As Amended | 2011 | |
| 13 KAR 2:090 | | |
| As Amended | 14 | 7-17-03 |
| 15 KAR 1:040 | | |
| Amended | 368 | |
| As Amended | 841 | 10-31-03 |
| 16 KAR 1:040 | | |
| Amended | 370 | |
| As Amended | 842 | 10-31-03 |
| 16 KAR 2:020 | | |
| As Amended | 258 | 8-13-03 |
| 16 KAR 3:010 | | |
| Amended | 1321 | |
| As Amended | 1757 | 1-23-04 |
| 16 KAR 3:020 | | |
| Amended | 1322 | |
| As Amended | 1757 | 1-23-04 |
| 16 KAR 3:030 | | |
| Amended | 1323 | |

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| As Amended | 1758 | 1-23-04 |
| 16 KAR 3:040 | | |
| Amended | 1325 | |
| As Amended | 1759 | 1-23-04 |
| 16 KAR 3:050 | | |
| Amended | 1327 | |
| As Amended | 1760 | 1-23-04 |
| 16 KAR 3:051 | | |
| Repealed | | 1-23-04 |
| 16 KAR 3:052 | | |
| Repealed | | 1-23-04 |
| 16 KAR 3:053 | | |
| Repealed | | 1-23-04 |
| 16 KAR 3:054 | 1381 | 1-23-04 |
| 16 KAR 3:061 | | |
| Repealed | | 1-23-04 |
| 16 KAR 5:009 | 1381 | 1-23-04 |
| 16 KAR 5:010 | | |
| As Amended | 260 | 8-13-03 |
| 16 KAR 5:011 | | |
| Repealed | | 1-23-04 |
| 16 KAR 5:012 | | |
| Repealed | | 1-23-04 |
| 16 KAR 5:013 | | |
| Repealed | | 1-23-04 |
| 16 KAR 5:014 | | |
| Repealed | | 1-23-04 |
| 16 KAR 6:020 | | |
| As Amended | 267 | 8-13-03 |
| 16 KAR 6:030 | | |
| Amended | 1329 | |
| As Amended | 1762 | 1-23-04 |
| 16 KAR 7:010 | | |
| Amended | 372 | |
| Amended | 902 | |
| As Amended | 1198 | 12-1-03 |
| 16 KAR 8:040 | | |
| As Amended | 270 | 8-13-03 |
| 20 KAR 1:040 | | |
| Withdrawn | | 10-22-03 |
| Amended | 1580 | |
| As Amended | 2012 | |
| 20 KAR 1:080 | | |
| Withdrawn | | 10-22-03 |
| Amended | 1582 | |
| As Amended | 2014 | |
| 20 KAR 1:090 | | |
| Withdrawn | | 10-22-03 |
| Amended | 1583 | |
| As Amended | 2015 | |
| 20 KAR 1:100 | | |
| Withdrawn | | 10-22-03 |
| Resubmitted | 1701 | |
| As Amended | 2015 | |
| 20 KAR 2:010 | | |
| Repealed | 767 | 12-1-03 |
| 20 KAR 2:011 | 767 | 12-1-03 |
| 20 KAR 2:040 | | |
| Repealed | 767 | 12-1-03 |
| 20 KAR 2:050 | | |
| Repealed | 767 | 12-1-03 |
| 20 KAR 2:060 | | |
| Repealed | 767 | 12-1-03 |
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| Repealed | 767 | 12-1-03 |
| 20 KAR 2:080 | | |
| Repealed | 767 | 12-1-03 |
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| Repealed | 767 | 12-1-03 |
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| Repealed | 767 | 12-1-03 |
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| Repealed | 767 | 12-1-03 |
| 30 KAR 3:010 | | |
| As Amended | 17 | 7-17-03 |
| 31 KAR 6:010 | 1881 | |
| 30 KAR 6:020 | 1882 | |
| As Amended | 2016 | |
| 32 KAR 1:020 | | |
| As Amended | 271 | 8-13-03 |
| 40 KAR 2:160 | | |
| Repealed | 504 | 12-5-03 |
| 40 KAR 2:161 | 504 | 12-5-03 |
| 40 KAR 2:170 | | |
| Repealed | 504 | 12-5-03 |
| 40 KAR 2:180 | | |
| Repealed | 504 | 12-5-03 |
| 40 KAR 2:190 | | |
| Repealed | 504 | 12-5-03 |
| 40 KAR 2:260 | | |
| Repealed | 504 | 12-5-03 |
| 40 KAR 2:340 | 504 | |
| As Amended | 1203 | 12-5-03 |
| 40 KAR 3:010 | | |
| Repealed | 195 | 7-1-03 |
| 102 KAR 1:030 | | |
| As Amended | 271 | 8-13-03 |
| 102 KAR 1:035 | | |
| Amended | 1824 | |
| As Amended | 2017 | |
| 102 KAR 1:036 | | |
| As Amended | 272 | 8-13-03 |
| 102 KAR 1:038 | | |
| As Amended | 272 | 8-13-03 |
| 102 KAR 1:057 | | |
| As Amended | 273 | 8-13-03 |
| 102 KAR 1:070 | | |
| As Amended | 273 | 8-13-03 |
| 102 KAR 1:100 | | |
| As Amended | 274 | 8-13-03 |
| 102 KAR 1:110 | | |
| As Amended | 274 | 8-13-03 |
| 102 KAR 1:150 | | |
| As Amended | 274 | 8-13-03 |
| Amended | 1825 | |
| As Amended | 2018 | |
| 102 KAR 1:165 | | |
| As Amended | 275 | 8-13-03 |
| 102 KAR 1:185 | | |
| As Amended | 176 | 8-13-03 |
| 102 KAR 1:220 | | |
| Amended | 1331 | 1-23-04 |
| 103 KAR 18:050 | | |
| Amended | 664 | |
| As Amended | 1455 | 11-25-03 |
| 103 KAR 18:070 | | |
| Amended | 952 | |
| As Amended | 1456 | 11-25-03 |
| 103 KAR 26:110 | 1382 | |
| As Amended | 1763 | 1-13-04 |

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| 103 KAR 26:120 | 1702 | |
| As Amended | 1904 | 2-16-04 |
| 105 KAR 1:150 | | |
| As Amended | 17 | 7-17-03 |
| 105 KAR 1:380 | 1137 | |
| As Amended | 1457 | 1-5-04 |
| 107 KAR 2:010 | 506 | |
| As Amended | 844 | 10-31-03 |
| 200 KAR 5:015 | | |
| Amended | 666 | |
| Withdrawn | | 11-12-03 |
| 200 KAR 5:021 | | |
| Amended | 667 | |
| As Amended | 1459 | 1-5-04 |
| 200 KAR 5:025 | | |
| Repealed | 1459 | 1-5-04 |
| 200 KAR 5:050 | | |
| Repealed | 1459 | 1-5-04 |
| 200 KAR 5:051 | 768 | |
| As Amended | 1459 | 1-5-04 |
| 200 KAR 5:076 | | |
| Amended | 667 | |
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