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MEETING NOTICE
The Administrative Regulation Review Subcommittee is tenta-

tively scheduled to meet on Tuesday, November 9, 2004 at
10:30 a.m. in Room 149 of the Capitol Annex. See tentative
agenda on pages 903-905 of this Administrative Register.
VOLUME 31, NUMBER 5 – NOVEMBER 1, 2004

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - NOVEMBER 9, 2004, at 10:30 a.m., Room 149 Annex

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Authority
11 KAR 5:001. Definitions pertaining to 11 KAR Chapter 5. (Amended After Comments)

KENTUCKY AFFORDABLE PREPAID TUITION

Plan
11 KAR 17:040. Applying for a prepaid tuition contract.

OFFICE OF THE ATTORNEY GENERAL
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Tobacco Product Manufacturers
40 KAR 8:010. Nonparticipating manufacturer quarterly escrow deposit and certification.

CABINET FOR GENERAL GOVERNMENT
Auditor of Public Accounts

Audits
45 KAR 1:030. Audits of sheriff's tax settlements.
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FINANCE AND ADMINISTRATION CABINET
Office of the Secretary

Purchasing
200 KAR 5:375. Multi-step competitive sealed bidding. (Not Amended After Comments) (Deferred from October)

Private Activity Board Allocation Committee
200 KAR 15:010 & E. Formula for allocations of private activity bonds. (E expires 2/18/05) (Amended After Comments)

GENERAL GOVERNMENT CABINET
Board and Commissions

Board of Dentistry
201 KAR 8:420. The prevention of transmission of human immunodeficiency virus and hepatitis B virus to patients by dental health care workers.

Board of Nursing
201 KAR 20:070. Licensure by examination
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201 KAR 20:225. Reinstatement of license.
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Board of Physical Therapy
201 KAR 22:001. Definitions
201 KAR 22:035. A credential holder's change of name, employment or address.
201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or a physical therapist assistant.
201 KAR 22:045. Continued competency requirements and procedures.
201 KAR 22:052. Compliant procedure and disciplinary action of a credential holder or applicant.
201 KAR 22:070. Requirements for foreign-educated physical therapists.
201 KAR 22:130. Per diem of board members
201 KAR 22:140. Funding of impaired physical therapy practitioners committee.
201 KAR 22:150. Impaired Practitioner Alternative Program.

COMMERCE CABINET
Department of Fish and Wildlife Resources

Fish
301 KAR 1:060. Sport and rough fish.

Game
301 KAR 2:041. Shooting preserves and foxhound training enclosures.
301 KAR 2:049. Small game and furbearer hunting on public areas.
301 KAR 2:081. Transportation and holding of native wildlife.
301 KAR 2:111. Deer and turkey hunting on federal areas.
301 KAR 2:132 & E. Elk depredation permits and quota hunts.
301 KAR 2:178. Deer hunting on wildlife management areas.
301 KAR 2:225 & E. Dove, wood duck, teal, and other migratory game bird hunting.
Public Water Supply
401 KAR 8:010. Definitions for 401 KAR Chapter 8. (Amended After Comments) (Deferred from October)
401 KAR 8:020. Public and semipublic water supplies - general provisions. (Amended After Comments) (Deferred from October)
401 KAR 8:070. Public notification. (Amended After Comments) (Deferred from October)
401 KAR 8:075. Consumer confidence reports. (Amended After Comments) (Deferred from October)
401 KAR 8:150. Disinfection, filtration, and recycling. (Amended After Comments) (Deferred from October)
401 KAR 8:300. Lead and copper. (Not Amended After Comments) (Deferred from October)
401 KAR 8:441. Repeal of 401 KAR 8:440. (Not Amended After Comments) (Deferred from October)
401 KAR 8:700. Bottled water. (Amended After Comments) (Deferred from October)

Division of Waste Management
Solid Waste Planning
401 KAR 48:011. General provisions relating to area solid waste management plans. (Amended After Comments) (Deferred from August)
401 KAR 49:080. Solid waste grant funds and solid waste collector and recycler registration. (Amended After Comments) (Deferred from August)

Hazardous Pollutants
401 KAR 57:002. National emission standards for hazardous air pollutants. (Not Amended After Comments)
401 KAR 58:025. National emission standard for asbestos. (Not Amended After Comments)

New Source Standards
401 KAR 58:185. New solvent metal cleaning equipment. (Not Amended After Comments)

New Source Performance Standards
401 KAR 60:005. Standards of performance for new stationary sources. (Not Amended After Comments)
401 KAR 60:670. Standards of performance for nonmetallic mineral processing plants. (Not Amended After Comments)

General Standards of Performance
401 KAR 63:002. National emission standards for hazardous air pollutants. (Not Amended After Comments)
401 KAR 63:106. Repeal of 401 KAR 63:105. (Not Amended After Comments)

Department for Natural Resources
General Provisions
405 KAR 7:001. Definitions for 405 KAR Chapter 7. (Not Amended After Comments) (Deferred from December 2003)

Permits
405 KAR 8:001. Definitions for 405 KAR Chapter 8. (Not Amended After Comments) (Deferred from December 2003)

Bond and Insurance Requirements
405 KAR 10:001. Definitions for 405 KAR Chapter 10. (Not Amended After Comments) (Deferred from December 2003)

Inspection and Enforcement
405 KAR 12:001. Definitions for 405 KAR Chapter 12. (Not Amended After Comments) (Deferred from December 2003)

Performance Standards for Surface Mining Activities
405 KAR 16:001. Definitions for 405 KAR Chapter 16. (Not Amended After Comments) (Deferred from December 2003)

Performance Standards for Underground Mining Activities
405 KAR 18:001. Definitions for 405 KAR Chapter 18. (Not Amended After Comments) (Deferred from December 2003)

Special Performance Standards
405 KAR 20:001. Definitions for 405 KAR Chapter 20. (Not Amended After Comments) (Deferred from December 2003)

Areas Unsuitable for Mining
405 KAR 24:001. Definitions for 405 KAR Chapter 24. (Not Amended After Comments) (Deferred from December 2003)

Division of Waste Management
Petroleum Storage Tank Environmental Assurance Fund
415 KAR 1:006c. Financial responsibility account. (E expires 1/18/05) (Not Amended After Comments)

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Office of the Secretary
501 KAR 8:020. Corrections policies and procedures.

COUNCIL ON POSTSECONDARY EDUCATION
Adult Education and Literacy
785 KAR 1:130. GED Eligibility requirements. (Amended After Comments)

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Department of Labor
Labor Standards; Wages and Hours
803 KAR 1:070. Executive, administrative, supervisory or professional employees; salesmen. (Not Amended After Comments)
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Office of Insurance

Assets and Liabilities
806 KAR 6:010. Valuation standards; audits.
806 KAR 6:060. Reserve liabilities, cash surrender values, and nonforfeiture benefits for plans of life insurance with separate rates for smokers and nonsmokers.
806 KAR 6:070. Valuation of life insurance and annuity reserves.
806 KAR 6:075. Valuation of life insurance policies.

Utilities
807 KAR 5:120 & E. Applicants for certificate of public convenience and necessity for certain electric transmission lines. (E* expires 2/17/05) (Amended After Comments)
Office of Housing, Buildings and Construction

Electrical Inspectors
815 KAR 35:070 & E. Low-voltage installer certification. (E* expires 1/18/05)(Deferred from September)

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Certificate of Need

Certificate of Need
Department for Public Health

Communicable Diseases
902 KAR 2:020. Disease surveillance.

Food and Cosmetics
902 KAR 45:070 & E. Body piercing and ear piercing. (E* expires 2/17/05) (Not Amended After Comments)

Radiology
902 KAR 100:071. Repeal of 902 KAR 100:073. (Deferred from October)
902 KAR 100:072. Use of radionuclides in the health arts. (Deferred from October)
Department for Medicaid Services

Medicaid Services
907 KAR 1:022 & E. Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental dis-ability services. (E* expires 2/18/05) (Amended After Comments)
907 KAR 1:055 & E. Payments for price-based nursing facility services. (E* expires 2/17/05) (Not Amended After Comments)
907 KAR 1:147 & E. Durable medical equipment covered benefits and reimbursement. (E* expires 2/18/05) (Hearing/Written Comments)

Payment and Services
907 KAR 3:010 & E. Reimbursement for physicians' services. (E* expires 2/18/05) (Deferred from October)
Department for Public Health

Institutional Care

Kentucky Early Intervention System
911 KAR 2:110 & E. Kentucky Early Prevention Program point of entry. (E* expires 2/17/05) (Amended After Comments)
911 KAR 2:120 & E. Kentucky Early Intervention Program evaluation and eligibility. (E* expires 2/17/05) (Amended After Comments)
911 KAR 2:130 & E. Kentucky Early Intervention Program assessment and service planning. (E* expires 2/17/05) (Amended After Comments)
911 KAR 2:140 & E. Kentucky Early Intervention Program primary service coordination and assistive technology. (E* expires 2/17/05) (Amended After Comments)

Energy Assistance Program, Weatherization
921 KAR 4:118. Weatherization assistance for low income persons.

Child Welfare
922 KAR 1:360 & E. Private child care placement, levels, of care, and payment.
Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing information, notice of hearing 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.
806 KAR 6:070. Valuation of life insurance and annuity reserves.

RELATES TO: KRS 304.2-290, 304.6-130-304.6-180, 304.15-410
STATUTORY AUTHORITY: [KRS Chapter 134A] 304.2-110, KRS 304.6-140

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-731, signed 7 July 2004, created the Office of Insurance. KRS 304.2-110 authorizes [provides that the executive director to [Commissioner of Insurance may] adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.6-130 requires the executive director [commissioner] to annually value the reserve liabilities for all outstanding life insurance policies and annuity and personal accident contracts, as shown in the annual report by the National Association of Insurance Commissioners (NAIC) Life and Accident and Health Annual Statement Form whether or not itemized in Exhibit 5 [8] of that statement. KRS 304.6-140 authorizes the executive director to approve by regulation any mortality table "adopted by the National Association of Insurance Commissioners after 1980" for use in determining the minimum standard for valuation of policies. This administrative regulation provides the framework for valuation standards acceptable to the office [department], and sets out the conditions under which the actuary designated by the office [department] will verify the valuation of a company's reserves without cost to the insurer. Furthermore, this amendment to the administrative regulation will allow insurers to use updated mortality tables provided by the NAIC.

Section 1. Definitions. As used in this administrative regulation:

(1) "1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December, 1983 by the NAIC.

(2) "1983 Table 'a'" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June, 1982 by the NAIC. ["Actuary" means a person whose qualifications as to education and experience correspond to those of a "qualified actuary" as defined by the American Academy of Actuaries and published in the Yearbook of that organization. A person who is not a member of that organization who wishes to demonstrate his or her actuarial competence to the commissioner should use that description as a guide.]

(3) "Actuarial guidelines" mean a series of interpretive guidelines approved by the NAIC for inclusion in its Handbook for Financial Examiners.

(4) "Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research. The Annuity 2000 Mortality Table is included in the report on pages 211-249 of Volume XLVII of the Transactions of the Society of Actuaries (1995).

(5) "Office actuary" means the actuary of the office or an actuary employed by the office for the purpose of making or verifying a valuation.

(6) "Executive Director" means the agency head of the Office of Insurance.

(7) "Guaranteed interest contract" means a contract or contract provision in which the insurer accepts one (1) or more deposits, and on which it agrees to pay interest at one (1) or more specified rates for one (1) or more specified periods of time, but which does not involve the contingencies of mortality or morbidity.

(8) (3) "Life insurance policies, annuities, and pure endowment contracts" includes all [such] contracts, together with all riders or endorsements and all additional benefits related thereto, whether these [such] additional benefits are provided by policy provision or supplementary contract. A provision whereby the insurer accepts deposits to provide future insurance, annuity, or pure endowment benefits ("funding agreement") is [such an] additional benefit.

(9) "NAIC" is defined in KRS 304.7-012(59).

(10) "Office" means the Office of Insurance.

(11) "Qualified Actuary" means member in good standing of the American Academy of Actuaries who meets the requirements of Section 7 of this administrative regulation.

(12) "Reserve comparison form" means a form setting out three (3) year tabulations of extracts from a company's valuation. It is to be completed by plan, with subtotals by mortality table, interest assumption, and valuation method which will correspond to the line entries in Exhibit 5 of the current annual statement.

(4) "Guaranteed interest contract" means a contract or contract provision in which the insurer accepts one (1) or more deposits, and on which it agrees to pay interest at one (1) or more specified rates for one (1) or more specified periods of time, but which does not involve the contingencies of mortality or morbidity.

(5) "Special policy" means a "coupon" and "charter" policies and any other policy form for which reserve factors are not readily available from published sources.

(6) "Department" means the department of or an actuary employed by the department for the purpose of making or verifying a valuation.

(7) "Reserve comparison form" means a form setting out three (3) year tabulations of extracts from a company's valuation. It is to be completed by plan, with subtotals by mortality table, interest assumption, and valuation method which will correspond to the line entries in Exhibit 8 of the current annual statement.

(8) "Commissioner" means the Commissioner of the Kentucky Department of Insurance.

(9) "Department" means the Kentucky Department of Insurance.

Section 2. Filing Requirements for Domestic Insurers. (1) To facilitate the executive director's [commissioner's] evaluation of the valuation of reserves for life insurance policies, annuities, and pure endowment contracts made by a domestic insurer's actuary or consulting actuary, each [such] insurer shall furnish the office [department] actuary an affidavit, signed by the qualified actuary responsible for the valuation and setting out insurance amounts and reserves on all [such] contracts by basis of valuation and a reserve comparison form.

(2) Each domestic insurer shall maintain in correspondence order, with the necessary documentation, lists, tabulations, and working papers for policy contract obligations to be valued which shall be in readily accessible and auditable form at its home office.

(3) Each domestic insurer which has any special policies to be valued shall maintain in its home office a file for each such policy form in force which will include a specimen policy, formula used to arrive at the reserve, and a factor table of the various factors by age at issue distributed for the in-force durations considered. Companies subject to this requirement which file such policies for approval on or after the effective date of this administrative regulation shall include such formulas in the filing, together with sufficient detail to establish that the reserves established make a good and sufficient provision for unmatured obligations of the company guaranteed under such policies.

Section 3. Valuation Principles. (1) Extraterritorial. The executive director may [KRS 304.6-130(1)] provides that the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the standards set out therein. While it is not anticipated that it will be a frequent occurrence, the commis-
sioner reserves the right-to question or reject any [such] valuation made by the insurance supervisory official of another state which does not appear to comply with the minimum [these] standards as provided in KRS Chapter 304.6.

(2) Nature of liabilities. Most of the liabilities covered by reserves for life insurance policies, annuities, and pure endowment contracts are generated by recognition of obligations to provide future sums of money, which are guaranteed in these [such] contracts, and the standards of valuation set out in KRS 304.6-140 through 304.6-180, are set out in [such] "prospective" terms. If these [KRS 304.6-140 points out that such] methods are not [always] possible to apply directly [in such instances], "retrospective" methods, using accumulations at appropriate rates of interest are acceptable; however, a company using these [such] methods should be prepared to demonstrate that these [such] methods actually result in sufficient amounts to fund any obligations set out in its contracts as guarantees of future performance. Obligations which arise from known past events are [of course] valued retrospectively.

Section 4. Specific Requirements. (1) Interest assumptions. KRS 304.6-145(4) refers to two (2) specific bond yield averages, which underlie the referenced [interest] rates specified in KRS 304.6-145. The Moody's Corporate Bond Yield Averages referenced are those for the period ending July 1 for each calendar year shown. These were:

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Average over period ending July 1 of a:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1979</td>
<td>9.40% (12-month period) 8.82% (36-month period)</td>
</tr>
<tr>
<td>1980</td>
<td>11.57</td>
</tr>
<tr>
<td>1981</td>
<td>11.57</td>
</tr>
<tr>
<td>1982</td>
<td>13.70</td>
</tr>
<tr>
<td>1983</td>
<td>14.26</td>
</tr>
</tbody>
</table>

A table of current statutory calendar year interest rates is required each year and is herein filed by reference. Copies of the most recent [such] table may be obtained from the office [department].

(2) [Actuarial Guidelines.] The actuarial guidelines will be used as published unless specifically prohibited by statute.

(3) Mortality tables.
(a) Except as provided in paragraphs (b) and (c) of this subsection, the 1983 Table "a" is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1976.
(b) Except as provided in paragraph (c) of this subsection, either the 1983 Table "a" or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1985.
(c) Except as provided in paragraph (d) of this subsection, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2005.
(d) The 1983 Table "a" without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after January 1, 2005, solely when the contract is based on life contingencies and is issued to fund retirement benefits arising from:
1. Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;
2. Settlements involving similar actions such as worker's compensation claims; or
3. Settlements of long-term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.
(e) Except as provided in paragraph (f) of this subsection, the 1983 GAM Table and the 1983 Table "a" are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for any annuity or pure endowment purchased on or after July 1, 1976, under a group annuity or pure endowment contract.
(f) The 1983 GAM Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 1985, under a group annuity or pure endowment contract. The executive director will give consideration to the approval of other tables of mortality which produce lower reserves in any special case, when the request for approval is accompanied by an actuarial report, signed by the qualified actuary, subscribing to the reasons for the request. Where possible, the report should include an estimate of the degree of protection against insolvency provided as margin in the proposed table. [1983 Table "a" means that mortality table developed by the Society of Actuaries Committee on Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality-table for annuities in June, 1982 by the NAIC.]
(g) The 1983 GAM Table means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality-table for annuities in December, 1983 by the NAIC.

(a) The 1983 Table "a" is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1985.

(b) The 1983 Table "a" is to be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1985.

(c) The 1983 GAM Table and the 1983 Table "a" are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, either table may be used for purposes of valuation for any annuity or pure endowment purchased on or after July 1, 1976, under a group annuity or pure endowment contract.

(f) The 1983 GAM Table is to be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 1985, under a group annuity or pure endowment contract. The executive director will give consideration to the approval of other tables of mortality which produce lower reserves in any special case, when the request for approval is accompanied by an actuarial report, signed by the responsible actuary, of the reasons for such request. Where possible, such report should include an estimate of the degree of protection against insolvency provided as margin in the proposed table.]

(4) Changes of method (domestic insurers). The effects of changes in the methods of valuing life contracts must be reported in "Exhibit [5][8]A" of the annual statement in the year in which the change first takes place. "Exhibit [5][8]A" should show the old and the new method of valuation, and the increase or decrease in the actuarial reserve due to the change. When adopting a method that produces an increase in the reserve, the company should notify the office [department]. However, when a change will provide a reserve that will be less than the amount under the old method, the company must have the prior approval of the executive director [commissioner].

Section 5. Cost of [Penalty for] Noncompliance. (1) When the [new] material is not available as outlined above, the additional burden of cost for additional time required by the staff of the Office [Department] of Insurance, or its actuary, will be borne by the life insurance company as provided for in KRS 304.2-290. A special examination may be ordered by the executive director [commissioner], providing for a written report to him together with a time and expense billing to the company so examined.

(2) Whenever a detail audit of reserves reveals that an error was made in the filed annual statement and in the certificate issued by the office [department], the executive director [commissioner] may, in his discretion, order the withdrawal of certification and reissuance of certificates and copies, and require a refiled NAIC annual statement on a significant error, or prescribe corrective internal procedures in the company prior to the next filed NAIC statement form when the resultant error is not significant.

Section 6. Severability. If any provision of this administrative regulation or the application of any provision [thereof to any person or circumstance] is [for any reason] held to be invalid, the remain-
under which the actuary designated by the Office of Insurance will verify the valuation of a company's reserves without cost to the insurer. Furthermore, this amendment to the administrative regulation will allow insurers to use updated mortality tables provided by the NAIC in the valuation of individual annuities.

(b) The necessity of this administrative regulation: This administrative regulation incorporates a new mortality table for the valuation of individual annuities.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.6-130 requires the executive director to annually value the reserve liabilities for all outstanding life insurance policies and annuity and pure endowment contracts, as shown in the National Association of Insurance Commissioners (NAIC) Life and Accident and Health Annual Statement Form whether or not itemized in Exhibit 5 of that statement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide mortality tables and instructions for insurers to comply with Subtitle 6 of the Kentucky Insurance Code.

(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 makes technical changes required by KRS Chapter 13A and approves the use of a new mortality table for the valuation of individual annuities.

(b) The necessity of the amendment to this administrative regulation: KRS 304.6-140 states that the executive director must approve executive director's approval of a new mortality table.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.6-140 states that the executive director must approve mortality tables by administrative regulation. This amendment reflects the approval of a new mortality table.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by providing an additional table for valuation in accordance with KRS 304.6.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation should benefit approximately 250 life insurers by allowing them to use a new mortality table for valuation standards for individual annuities.

(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: All life insurers may use the new mortality table for new policies.

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

(a) Initially: No cost.

(b) On a continuing basis. There should be no cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Kentucky Office of Insurance.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.

(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.

(9) TIERING: Is tiering applied? No, tiering does not apply since this administrative regulation provides a benefit to all life insurers.

**STATEMENT OF EMERGENCY**

922 KAR 1:360E

This emergency administrative regulation is necessary to increase Level V residential rates paid to private child-caring facilities. There have been no increases in these rates since the year...
2000. With the impact of inflation on these rates over the last four
(4) years, child-care facilities are increasingly unable to serve the cabinet's most difficult to manage children (Level V residential), as they cannot cover their costs with the current Level V rate. Increasingly, the cabinet is using more expensive levels of care, such as psychiatric hospitals and out-of-state residential providers who honor Kentucky Medicaid payments to serve these children. The proposed changes in this emergency amendment are to provide incentives for Kentucky's private child care providers to serve those more difficult to manage children. The modest increase should be more than offset by the savings from decreasing the number of children going into higher levels of care. This emergency amendment is needed to immediately implement financial incentives for private child care providers to serve the more challenging and hard to place children in custody of the cabinet, and to get the desired impact on placement of children who are currently in need of high level care. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of clients whose receipt of appropriate services may be jeopardized. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

ERNIE FLETCHER, Governor
JAMES W. HOLINGER Jr., M.D., Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
(Emergency Amendment)

922 KAR 1:360E. Private child care placement, levels of care, and payment.

STATUTORY AUTHORITY: KRS 194B.050(1), 199.641(4), 605.090(1)(d), 605.150(1), EO 2004-726
EFFECTIVE: September 15, 2004
NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Community Based Services under the Cabinet for Health and Family Services. KRS 199.641(4) requires the cabinet to establish the rate setting methodology and the rate of payment for nonprofit child-care facilities, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to place a child committed to the Department of Juvenile Justice, or the cabinet, in a child-caring facility operated by a local governmental unit or private organization willing to receive the child, upon such conditions as the cabinet may prescribe. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) five (5) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care; and (f) procedures for determination of components of the model program cost analysis.

Section 1. Definitions. (1) "Cabinet" is defined at KRS 199.011.
(2) "Child-caring facility" or "facility" is defined at KRS 199.641(1)(b).
(3) "Department" means the Department for Community Based Services or the department's agent.
(4) "District placement coordinator" means an individual whose responsibilities are described in KRS 199.801.
(5) "Emergency shelter" is defined at KRS 600.020(23).
(6) "Gatekeeper" means the department or agent responsible for:
(a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and
(b) Other administrative duties in the areas of:
1. Assessment;
2. Placement;
3. Performance measurement; and
4. Consultation regarding children and their needs.
(7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.
(8) "Initial level of care" means a level of care:
(a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and
(b) That is time-limited and effective for the first six (6) months of a child's placement.
(9) "Level of care" means one (1) of five (5) standards representing the treatment and service needs of a child placed by the cabinet in out-of-home care.
(10) "Level of care packet" means a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care and includes the:
(a) DPP-886, Private Child Care Client Interagency Referral Form;
(b) DPP-886A, Application for Referral and Needs Assessment;
(c) If a child has an IQ of seventy (70) or above:
   1. Until October, 2003, Child Behavior Checklist for Ages 4-18
      (Achenbach);
   2. After October, 2003:
      a. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach); or
      b. Child Behavior Checklist For Ages 6-18; or
   (d) If a child has an IQ below seventy (70):
      1. Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology); and
   (11) "Model program cost analysis" is defined at KRS 199.641(1)(d).
   (12) "Reassigned level of care" means a level of care that is:
      (a) Determined by the gatekeeper after a child's level of care expires; and
      (b) Authorized for a specific period of time.
   (13) "Time study" is defined at KRS 199.641(1)(e).
   (14) "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placement agency, of the child's case record and existing documentation for the purpose of:
      (a) Identifying the child's current level of functioning; and
      (b) Assigning the appropriate level of care.

Section 2. Referral Process for Level of Care System Placement. (1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age at the time that:
(a) The child enters the level of care system;
(b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age; or
(c) A child's level of care expires and assignment of a new level is necessary.

(2) Upon assignment of an initial level of care by the gatekeeper, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the district placement coordinator who shall forward the level of care packet to potential child-caring facilities or child-placing agencies.
(3) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement, a cabinet staff person shall:
(a) Complete the DPP-114, Level of Care Schedule, on or before the date of placement; and
(b) Transport the child to the placement on a date prearranged by the cabinet and provider.

Section 3. Gatekeeper Responsibilities. The gatekeeper shall:
(1) Evaluate a child forty-eight (48) months of age or older:
   (a) Who is referred by the department or currently placed in a child-caring facility or child-placing agency;
   (b) For an initial or reassigned level of care; and
   (2) Within three (3) working days of receipt of the level of care packet:
      (a) Determine the appropriate level of care according to a
needs assessment consistent with one (1) of the five (5) levels of care; and
(b) Return the completed DPP-886, Private Child Care Client Interagency Referral Form, to the department;
(3) Reassess a child through a utilization review:
(a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and
(b) Every three (3) months thereafter if the child is in a private child care residential placement; or
(c) Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;
(d) Reassign a child’s level of care after the level has expired;
(5) Monitor each child-caring facility and child-placing agency, at the request of the cabinet, through a program review that includes:
(a) Reviewing the extent to which services provided are in compliance with the child’s individual treatment plan;
(b) Determining if a change in the child’s needs are reflected in the child’s individual treatment plan;
(c) Reviewing records on site;
(d) Interviewing residents and staff;
(e) Conducting satisfaction surveys of each:
1. Cabinet staff person making a referral for out-of-home care;
2. Child placed by the cabinet in a child-caring facility; and
3. Child’s parent or custodian;
(f) Submitting written reports to the:
1. Child-caring facility or child-placing agency; and
2. Cabinet;
(g) Maintaining a confidential information system for each child served that shall include:
(a) Placement history;
(b) Level of care assignments;
(c) Length of treatment; and
(d) Discharge outcomes.

Section 4. Levels of Care. (1) A Level I child requires a routine home environment that:
(a) Provides maintenance;
(b) Provides guidance;
(c) Provides supervision to meet the needs of the child; and
(d) Ensures the emotional and physical well-being of the child.
(2) A Level II child:
(a) May engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships; and
(b) Requires supervision in a structured supportive setting with:
1. Counseling available from professional or paraprofessional staff;
2. Educational support; and
3. Services designed to improve development of normalized social skills.
(3) A Level III child:
(a) May engage in an occasional violent act;
(b) May have superficial or fragile interpersonal relationships;
(c) Requires supervision in a structured, supportive environment where the level of supervision and support may vary from low to moderate, proportional to the child’s ability to handle reduced structure;
(d) May occasionally require intense levels of intervention to maintain the least restrictive environment; and
(e) Requires a program flexible enough to allow:
1. Extended trials of independence when the child is capable;
2. A period of corrective and protective structure during re-lapse; and
3. Counseling available from professional or paraprofessional staff.
(4) A Level IV child:
(a) Has behavioral and physical, mental or social needs that may present a moderate risk of causing harm to himself or others;
(b) Requires a structured supportive setting with:
1. Therapeutic counseling available by professional staff; and
2. A physical, environmental, and treatment program designed to improve social, emotional, and educational adaptive behavior.
(5) A Level V child:
(a) Has a severe impairment, disability, or need;
(b) Is consistently unable or unwilling to cooperate in his own care; or
(c) Presents a severe risk of causing harm to himself or others; and
(d) Requires Level IV services and a:
1. Highly structured program with twenty-four (24) hour supervision;
2. Specialized setting that provides safe and effective care for a severe, chronic medical condition complicated by a behavioral disorder or emotional disturbance.

Section 5. Payment Methodology and Rates. (1) Payment Methodology. The cabinet shall establish a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, based upon the model program cost analysis defined at KRS 199.641(9). Each private, nonprofit child caring facility shall report to the cabinet annually, on Form DPP-888, cost report and time study data.
(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined. The factor shall be determined as follows:
(a) Based on the amount of treatment provided at each level of care;
(b) By determining the median of:
1. Number of daily treatment hours, derived from time study data, provided to children served by private, nonprofit child-care facilities; and
2. Level of care of children served by private, nonprofit child-care facilities that contract with the cabinet;
(c) The median number of daily treatment hours for children whose rate is:
1. Determined, the median level of care shall be represented by an index factor of one (1); or
2. Not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to a child in the median level.
(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treatment and seventy-five (75) percent for a group home.
(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.
(5) Median cost shall be calculated:
(a) Using a utilization factor of eighty (80) percent:
1. For an emergency shelter with a treatment license:
   a. Board;
   b. Care; and
   c. Treatment components; or
2. For an emergency shelter without a treatment license:
   a. Board; and
   b. Care components; and
(b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.
(6)(a) To the extent funds are available, an incentive payment for a private, nonprofit child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(3)(a). Measurable performance outcomes include:
1. Child safety while in the care of a private child-caring facility or child-placing agency;
2. Child safety after reunification with the child’s family;
3. Adequate educational support;
4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;
5. Increased placement stability during the service period;
6. Increased achievement of permanency goals; and
7. Increased stability in permanency placement following planned discharge.
(b) The cabinet's contract with a private, nonprofit child-caring facility shall specify the:
   1. Indicators used to measure the performance outcomes described in subsection (6)(a) of this section; and
   2. Target percentages used as performance goals.

(c) Each child in the custody of the cabinet who is placed in a private, nonprofit child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.

(d) At the time the contract period expires, each private, nonprofit child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private, nonprofit child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private, nonprofit child-caring facilities to provide alternative services to children and their families. To the extent funds are available, the alternative services:
   (a) Shall be geared toward improved outcomes;
   (b) Shall be tailored to fit the specific needs identified for the service region served by the child-care agency;
   (c) Shall be available within the geographic area encompassed by the service region; and
   (d) May include case management responsibilities shared between the cabinet and the child-caring agency.

(8) Payment to child-caring facilities that provide alternative services according to subsection (7) of this section shall be based upon:
   (a) The model program cost analysis; and
   (b) Expectations agreed upon between the cabinet and the child-caring facility, such as:
      1. Reduced length of stay in out-of-home placement;
      2. Increased safety from child abuse or neglect;
      3. Increased number of children moving into and remaining in permanent placement;
      4. Increased number of children and their families cared for in close proximity to their home communities;
      5. Increased number of children reunified with their families;
      6. Increased accountability for success in after care; and
      7. Decreased reentry into state custody.

Section 6. Residential Care. (1) A child-caring facility [or child-placing agency] in the level of care reimbursement plan shall be licensed under 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300 [or child-placing agency].

(2) The provider shall comply with 922 KAR 1:390, Section 4, Residential Treatment Program, if providing treatment oriented services.

(3) The daily rate for residential care to a child-caring facility shall be:
   (a) Level I - forty-eight (48) dollars and nineteen (19) cents;
   (b) Level II - fifty-eight (58) dollars and fifty-two (52) cents;
   (c) Level III - $106.71;
   (d) Level IV - $130.80; and
   (e) Level V - $186.54, effective October 1, 2004 ($182.43).

Section 7. Emergency Shelter Care. (1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:
   (a) Ninety-nine (99) dollars and eighty-seven (87) cents per day for a child-caring facility with a treatment license; and
   (b) Eighty-seven (87) dollars and eighty-three (83) cents per day for a child-caring facility without a treatment license.

(2) If a child's treatment placement is disrupted and the child enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall:
   (a) Receive a rate consistent with the child's assigned level of care for residential care during the previous placement, pending results of the next-scheduled utilization review; or
   (b) If the child is Level II or lower, receive a rate not less than ninety-nine (99) dollars and eighty-seven (87) cents per day; and
   (c) Adhere to the child's individual treatment plan.

(3)(a) If the department determines that a child without an assigned level of care shall remain in an emergency shelter child-caring facility longer than thirty (30) days, the department shall make a referral to the gatekeeper, by the 20th day of placement, for assignment to an appropriate level of care.

(b) If a child remains in an emergency shelter longer than thirty (30) days, the emergency shelter child-caring facility with a treatment license shall:
   1. Receive the residential rate consistent with the assigned level of care for each day the child is in the facility beyond the 30th day;
   2. If the child is Level II or lower, receive a rate not less than ninety-nine (99) dollars and eighty-seven (87) cents per day; and
   3. Adhere to the child's individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency. (1) Basic daily rate for foster care shall be forty (40) dollars.

(2) Daily rates for therapeutic foster care shall be as follows:
   (a) Levels I and II, if the child is stepped down from Level III or higher - seventy (70) dollars.
   (b) Level III - seventy-six (76) dollars and seventy-eight (78) cents.
   (c) Level IV - ninety-four (94) dollars and eleven (11) cents.

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:
   (1) A rate consistent with the assigned level of care for the adolescent parent; and
   (2) Romanica for child care cost, forty (40) dollars per day for the committed child of an adolescent parent who is committed to the cabinet.

Section 10. Provider Requirements. A child-caring facility or child-placing agency shall:
   (1) Inform the department of the levels of care the facility or agency has the ability to serve;
   (2) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:
      (a) Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;
      (b) Clinical services including:
         1. The evaluation and treatment of an emotional disorder, mental illness, or substance abuse problem; and
         2. Identification and alleviation of related disability or distress, experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and
      (c) Support services that:
         1. Identify necessary resources and coordinate services provided by a range of agencies or professionals;
         2. A child to cope with the disability or distress;
         3. Provide access to improving the educational or vocational status of the child; and
      4. Provide essential elements of daily living;
   (3) Submit the following reports to the gatekeeper in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:
      (a) A behavior inventory appropriate to the child's developmental level consisting of completed forms:
         1. Child Behavior Checklist: For Ages Four (4) to Eighteen (18) (Achenbach), every six (5) months; or
         2. Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology) and Scales of Independent Behavior-Revised (SIB-R), every twelve (12) months.
      (b) And to the department, a copy of the following completed forms:
         1. On a quarterly basis, for a private child care residential placement, "CRP-001, Children's Review Program Residential
3. CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment form for a utilization review; and
   (c) The "request for redetermination" section of the CRP-002 for the level resulting from a utilization review.
   (2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review or admission, and if a higher level is assigned by the gatekeeper, the increased payment shall be retroactive:
      (a) To the date of the most recent utilization review due date; or
      (b) The date of admission. (3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review or admission, and if a:
         (a) Higher level is assigned by the gatekeeper, the increased payment shall be effective the day after the request is received by the gatekeeper; or
         (b) Lower level is assigned by the gatekeeper, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.
   (4) If the child-caring facility or child-placing agency does not agree with the redetermination, an appeal may be requested in accordance with Section 15 of this administrative regulation.

Section 13. Reassignment. (1) If the level of care expires and the child is moved to a different placement, a reassigned level of care shall be obtained by the department by completing a level of care packet for a level assignment. The reassigned level of care shall be effective on the date of assignment to the new placement.
   (2) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as specified in Section 12 of this administrative regulation.

Section 14. Informal Dispute Resolution. (1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.
   (2) Upon receipt of a request for informal resolution, the cabinet shall:
      (a) Review the request; and
      (b) Render a written decision on the issue raised.
   (3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section 15 of this administrative regulation.

Section 15. Administrative Hearing Process. ([6]) A child-caring facility or child-placing agency may request an administrative hearing regarding an adverse action that results in:
   (a) A decrease in payment; or
   (b) Denial of payment.
   (2) If an administrative hearing is requested within thirty (30) calendar days of the action by the gatekeeper, payments shall continue at the disputed level until a hearing decision is rendered.
   (3) If the hearing decision is rendered in favor of the child-caring facility or child-placing agency, the department shall reimburse the child-caring facility or child-placing agency the difference between the ordered level of payment and the disputed payment.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "DPP-114, Level of Care Schedule, edition 10/04 [March 2002];
   (b) "DPP-885, Private Child Care Client Inter-agency Referral Form, edition 10/04 [July 2002];
   (c) "DPP-886A, Application for Referral and Needs Assessment, edition 10/04 [July 2002];
   (d) "Child Behavior Checklist For Ages Four (4) to Eighteen (18) (Achenbach), edition June 1999, until 10/03;
   (e) "Child Behavior Checklist for Ages 1 1/2 - 5 (Achenbach), edition 7/00", after 10/03;
(f) "Child Behavior Checklist for Ages 6-18 (Achenbach), edition 6/01," after 10/03;
(g) "Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology), edition 1999;"
(h) "Scales of Independent Behavior-Revised (SIB-R), edition 1996;"
(j) "CRP-001, Children's Review Program Residential Private Child Care Quarterly Report, edition March 2002;"
(k) "CRP-002, Children's Review Program Private Child Care (PCC) Notice of Level Assignment, edition March 2002;"
(l) "CRP-003, Children's Review Program Foster Care Six (6) Month Progress Report, edition March 2002;"
(m) "CRP-004, Children's Review Program Notice of Redetermination, edition March 2002;" and
(n) "CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment, edition March 2002;"

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MIKE ROBINSON, Commissioner
DIJANE L. KILTY, JR., Ph.D., Undersecretary
JAMES W. HOLLSINGER, JR., M.D., Secretary
APPROVED BY AGENCY: September 9, 2004
FILED WITH LRC: September 15, 2004 at noon
CONTACT: Jill Brown, Cabinet for Health and Family Services, Office of Legal Services, 275 East Main Street, 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

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, to the extent funds are available, the level of care rates for private child-caring facilities, based on a time study and cost report, as provided by KRS 199.641.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and implement the rate setting methodology and rate of payment consistent with the level and quality of services provided by child-caring facilities, in accordance with KRS 199.641(4).
(c) How this administrative regulation conforms to the content of the authorizing statutes: To the extent funds are available, a model program cost analysis is used as a basis for cost estimates for development of the department's biennial budget request, as specified in KRS 199.641(3).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of statutes by establishing, to the extent funds are available, the level of care rates, using the model program cost analysis as a basis for the cost estimates.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this administrative regulation:
(i) The amendment to the regulation will modify the level of care rates for Level V residential care provided by private child-caring facilities.
(b) The necessity of the amendment to this administrative regulation: With the impact of inflation of residential rates over the last 4 years, child-caring facilities are increasingly unable to serve the most challenged and hardest to place children in custody of the cabinet.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment to the regulation will establish, to the extent funds are available, the level of care rates for private child-caring facilities, based on a time study and cost report, as provided by KRS 199.641.
(d) How the amendment will assist in the effective administration of the statutes: In accordance with KRS 199.641, the amendment to the regulation will modify the level of care rates for Level V residential care provided by private child-caring facilities, to the extent funds are available.
(e) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: There are currently 55 child-caring facilities within the state.
(f) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The modified rates for Level V residential care will provide incentives to child-caring facilities to serve the most challenged and hardest to place children that are in custody of the cabinet.

(2) Provide an estimate of how much it will cost to implement this administrative regulation:
(b) On a continuing basis: SFY 2005 costs $367,934.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds, Title IV-E Federal funds, and agency funds.
(d) 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: In SFY 2004, $700,000 general fund dollars were expended to support Medicaid-decertified Level 5 child in psychiatric hospitals. An anticipated 50% reduction would provide $350,000 in general funds that the cabinet could leverage to draw additional federal dollars. In addition, the cabinet will focus on reducing the number of children in psychiatric hospitals covered under general fund dollars. These efforts should support current costs and any increase in costs that arise from the natural growth of ratio increases.

(3) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees established in this administrative regulation.

(4) TIERING: Is tiering applied? The department will implement the policy statewide to child-caring facilities that are contracted for payment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 672 and OMB Circular A-122
2. State compliance standards. KRS 199.641
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 672 and OMB Circular A-122
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
STATEMENT OF EMERGENCY
31 KAR 4:140E

Nature of the emergency: The Uniformed and Overseas Citizens Absentee Voting Act, Pub.L. 99-410, 42 U.S.C. 1973 ff-1, allows states to implement the Department of Defense Interim Voting Assistance System (IVAS) to expedite the absentee voting process using existing e-mail technology. Implementation for IVAS on the federal level has been delegated by the Secretary of Defense to the Director of the Federal Voting Assistance Program. By letter dated August 13, 2004, from the Director of the Federal Voters Assistance Program directed to the Executive Director of the State Board of Elections, Kentucky was requested to implement IVAS. This emergency regulation implements IVAS in Kentucky. The reason an ordinary regulation is not sufficient: An ordinary regulation will not be effective by October 26, 2004, the deadline for requesting absentee ballots. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on September 23, 2004.

ERNIE FLETCHER, Governor
TREY GRAYSON, Chairman

(New Emergency Administrative Regulation)

31 KAR 4:140E. Submitting absentee ballot applications to the Department of Defense Interim Voting Assistance System (IVAS) by electronic mail.

RELATES TO: KRS 117.079, 117.085, and 42 U.S.C. 1973 ff-1
STATUTORY AUTHORITY: KRS 117.015, 117.079, 117.085, 359.107(1)

EFFECTIVE: September 23, 2004
NECESSITY, FUNCTION, AND CONFORMITY: The Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. 99-410, authorizes the Department of Defense to implement an interim voting assistance system for the purposes of expediting the absentee voting process for deployed members of the Armed Forces of the United States using existing e-mail technology. This administrative regulation implements IVAS in Kentucky.

Section 1. Definitions. (1) "Absentee ballot application" means the Federal Postcard Absentee Ballot Application electronically mailed to the county clerk from IVAS.
(2) "Instructions to voter sheet" means the form containing instructions for voting.
(3) "IVAS" means the Department of Defense Interim Voting Assistance System.
(4) "Registered voter" means a resident of Kentucky who is eligible to vote and is a deployed member of the Armed Forces of the United States.
(5) "Voter verification sheet" means the form the registered voter signs and the voter assistance oath.

Section 2. Processing a Completed Application by Electronic Mail. (1) If the application is received by electronic mail from IVAS less than seven (7) days before the applicable election, the county clerk shall not process the application.
(2) If the completed application is received by electronic mail from IVAS not less than seven (7) days before the election, then the county clerk shall affix his seal to the application.
(3) The county clerk shall then verify the voter eligibility. If the voter is eligible to vote in the current election, then the county clerk shall prepare an electronic copy in Portable Document Format (PDF) of the original absentee ballot. The original absentee ballot is then marked "electronically mailed to IVAS" and retained.
(4) The original absentee ballot shall not be reused. The electronic copy of the original absentee ballot shall be sent via electronic mail to IVAS, along with the instructions to voter sheet and the voter verification sheet.

Section 3. Voter's Instructions on Completing an Electronic Absentee Ballot Received From IVAS. (1) When a voter receives an absentee ballot via electronic mail, the voter shall print the absentee ballot, mark the absentee ballot and seal it in an inner envelope.
(2) The voter shall then complete and sign the Voter Verification Sheet. If the voter required assistance, the person rendering assistance shall complete the voter assistance section on the voter verification sheet.
(3) The voter shall print his or her name, voting address and precinct number on the back of the outer envelope as found on the voter verification sheet. The voter shall then seal the voter verification sheet and the inner envelope containing the absentee ballot in an outer envelope. The voter shall then sign across the back flap of the outer envelope. The voter shall print "Absentee Ballot" on the front of the outer envelope, but shall not obstruct the address area.
(4) The voter shall mail the envelope to the appropriate county clerk. The absentee ballot must be received, by 6 p.m. local time on election day, to the county clerk through the mail in order to be counted.

Section 4. Incorporation by Reference. (1) "Federal Post Card Application Standard Form 76A (1-2000);" (2) "Instructions to Voter Sheet. SBE 46A (9/04);" and (3) "Voter Verification Sheet. SBE 46B (9/04)."
(6) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Offices of the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4 p.m.

TREY GRAYSON, Chair
GREGORY D. STUMBO, Attorney General
APPROVED BY AGENCY: September 21, 2004
FILED WITH LRC: September 23, 2004 at 2 p.m.
CONTACT PERSON: Sarah Ball Johnson, Executive Director, Kentucky Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4359.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sarah Ball Johnson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation implements the Department of Defense Interim Voting Assistance System to expedite the absentee voting process for deployed members of the Armed Services of the United States, using existing e-mail technology. This is a federal initiative under the Uniformed and Overseas Citizens Absentee Voting Act, Public Law 99-410, 42 U.S.C.A., 1973 ff-1.
(b) The necessity of this administrative regulation: This regulation is necessary to further the aims of the Uniformed and Overseas Citizens Absentee Voting Act, KRS 117.079 and 117.085 to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1) and 117.079 authorize the board to promulgate administrative regulations governing the absentee voting process for Kentucky residents who are military personnel serving on active duty outside the United States.
(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation provides another option for and expedites the absentee voting process for military personnel who are deployed overseas, many times on
short notice, causing delays in regular mail service and access to facsimile machines in some cases is impractical.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary:
   (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 a new administrative regulation.
   (d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eligible voters who are members of the Armed Forces and deployed overseas and all county clerks in counties who have electronic mail capabilities to enter the Department of Defense Interim Voting Assistance System. There are 68 counties who have the capability of entering the system.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: The county clerks will have to establish a link to the Interim Voting Assistance System website, a userid and password to participate in the program.

(5) Estimate how much it will cost to implement this administrative regulation:
   (a) Initially: The costs for the program are minimal.
   (b) On a continuing basis: The costs associated with participating in the program are minimal.
   (c) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing this regulation will be funded by state and local funds appropriated to the State Board of Elections and the county court clerks.
   (d) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No fees are involved. Additional funding shall not 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 does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, this administrative regulation applies to all eligible voters who are deployed members of the Armed Forces of the United States.

STATEMENT OF EMERGENCY
200 KAR 24:010E

Pursuant to KRS 13A 190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to repeal an outdated administrative regulation so that a new administrative regulation pursuant to HB 157, which was enacted by the General Assembly during the 2004 General Session, may be promulgated. It is necessary to promulgate this administrative regulation on an emergency basis to repeal an administrative regulation that has not been amended to conform to HB 157 and is in the incorrect chapter following the reorganization of the Finance and Administration Cabinet. The normal process will take several months, which will hamper the Finance and Administration Cabinet in the efficient distribution to executive branch agencies of forty-six (46) percent of the $325 service fee paid by persons convicted of driving while under the influence. This emergency administrative regulation shall not be replaced by an ordinary administrative regulation.

ERNIE FLETCHER, Governor
ROBERT B. RUDOLPH, JR., Secretary

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Emergency Repealer)


RELATES TO: KRS 13A.050
STATUTORY AUTHORITY: KRS 42.0201
EFFECTIVE: September 30, 2004
NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.0201 authorizes the State Controller to maintain responsibility for the state government's duties and functions relating to the county fee system for local entities. Following the reorganization of the Finance and Administration Cabinet, the provisions of 200 KAR 24:020 shall be promulgated in a new chapter of Title 200 for the Office of the Controller and shall be amended to conform to HB 157.

Section 1. 200 KAR 24:020, Allocation of driving under the influence service fees, is hereby repealed.

R.B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: September 27, 2004
FILED WITH LRC: September 30, 2004 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ed Ross
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation repeals 200 KAR 24:020.
   (b) The necessity of this administrative regulation: This administrative regulation repeals an administrative regulation that is not the responsibility of the Division of Statewide Accounting Services.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 42.0201 authorizes the state controller to maintain responsibility for the state government's duties and functions relating to the county fee system for local entities.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment repeals administrative regulation that is in the incorrect chapter following reorganization of the Finance and Administration Cabinet.

(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: N/A
   (b) The necessity of the amendment to this administrative regulation: N/A
   (c) How the amendment conforms to the content of the authorizing statutes: N/A
   (d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to the Judicial Branch, Finance and Administration Cabinet, Transportation Cabinet, Cabinet for Health and Family Services, and the Justice and Public Protection Cabinet. These cabinets will not be impacted because a new regulation will be promulgated under a new chapter.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The repealer will have little or no impact on the current practices of state agencies.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: $0
   (b) On a continuing basis: $0
   (c) The source of funding for the implementation and enforcement of this administrative regulation: No funding necessary.

(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? No, this regulation applies equally to all regulated entities.

STATEMENT OF EMERGENCY
200 KAR 38:02OE

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to meet a deadline to promulgate an administrative regulation pursuant to HB 157, which was enacted by the General Assembly during the 2004 General Session. It is necessary to promulgate this administrative regulation on an emergency basis because the normal process will take several months, which will hamper the Finance and Administration Cabinet in proper distribution of forty-six (46) percent of the ($325) service fee paid by persons convicted of driving while under the influence. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on September 30, 2004.

ERNIE FLETCHER, Governor
ROBERT B. RUDOLPH, Jr., Secretary

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
Office of the Controller
(New Emergency Administrative Regulation)

200 KAR 38:02OE. Allocation of driving under the influence service fees.

RELATES TO: KRS 189A.050
STATUTORY AUTHORITY: KRS 42.0201(3), (5)(a)
EFFECTIVE: September 30, 2004
NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.050 imposes a $325 service fee upon persons convicted of driving under the influence of alcohol or other substance impairing one's driving ability and allocates the fee among designated agencies. This administrative regulation provides for the allocation of forty-six (46) percent of the service fee, as stated in KRS 189A.050(3)(f), for the purposes specified in the statute.

Section 1. Circuit clerks shall report to the Finance and Administration Cabinet and pay into the state treasury the fee imposed by KRS 189A.050 upon persons convicted of driving under the influence of alcohol or other substance impairing driving ability at the time other fees, fines, and forfeitures adjudged in the courts of their counties, are reported and paid into the treasury, as provided in KRS 30A.190.

Section 2. Pursuant to KRS 189A.050(3)(f), forty-six (46) percent of the $325 service fee collected shall be allocated quarterly by the Finance and Administration Cabinet, on a percentage basis, to the agencies, and for the purposes, indicated below:

1. Transportation Cabinet - five (5) percent for furnishing copies of driver history records to courts for use in driving under the influence cases.
2. Health and Family Services Cabinet - fifty-one and one-half (51.5) percent for costs of treatment programs for indigent offenders.
3. Finance and Administration Cabinet - twenty-nine and one-half (29.5) percent for distribution to counties in which drunk driving convictions are adjudged to assist in expense of maintaining jails, and which shall be in addition to other jail costs allowed by the state.
4. Justice and Public Safety Cabinet - fourteen (14) percent for enforcement of activities under the provisions of KRS 189A.010.

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: September 27, 2004
FILED WITH LRC: September 30, 2004 at 10 a.m.
CONTACT PERSON: Ed Ross, Controller, Finance and Administration Cabinet, Room 393 Capitol Annex; Frankfort, Kentucky 40601, phone (502) 564-2210, fax (502) 564-6597.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ed Ross
(1) Provide a brief summary of:
(a) What this administrative regulation does: Provides for the allocation to the executive branch of 46% of the $325 service fee paid by persons convicted of driving under the influence.
(b) The necessity of this administrative regulation: KRS 42.0201 authorizes the State Controller to promulgate administrative regulations relating to accounting policies and procedures, and to provide record keeping. KRS 189A.050 states that 46% of a $325 fee collected be transferred to be used for the purposes specified in the administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifies to whom the Finance and Administration will disburse 46% of the service fee collected pursuant to KRS 189A.050(3)(f).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the distribution of 46% of the $325 fee to the Transportation Cabinet, Health and Family Services Cabinet, Finance and Administration Cabinet, and Justice and Public Safety Cabinet.
(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: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Except as otherwise provided by law, this administrative regulation will apply to the Judicial Branch, Finance and Administration Cabinet, Transportation Cabinet, Cabinet for Health and Family Services, and the Justice and Public Protection Cabinet.
(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: There should be no impact on the Judicial Branch. The cabinets specified in the administrative regulation will receive a small increase in the amount received from each service fee paid above that authorized in 200 KAR 24:020. The following table provides the dollar amounts.

<table>
<thead>
<tr>
<th>Cabinet</th>
<th>Percent of 46% of Fee</th>
<th>Current $250 Fee</th>
<th>Proposed $325 Fee</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transportation</td>
<td>05.0%</td>
<td>7.38</td>
<td>7.48</td>
<td>+0.10</td>
</tr>
<tr>
<td>Health and Family Services</td>
<td>51.5%</td>
<td>75.96</td>
<td>76.99</td>
<td>+1.03</td>
</tr>
<tr>
<td>Finance and Administration</td>
<td>29.5%</td>
<td>43.51</td>
<td>44.10</td>
<td>+0.59</td>
</tr>
<tr>
<td>Justice and Public Protection</td>
<td>14.0%</td>
<td>20.65</td>
<td>20.93</td>
<td>+0.28</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>147.50</td>
<td>149.50</td>
<td>$2.00</td>
</tr>
</tbody>
</table>
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Administrative costs should be minimal.
(b) On a continuing basis: Administrative costs should be minimal.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fee collected pursuant to KRS 193A.050.
(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.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.
(9) TIERING: Is tiering applied? No, this regulation applies equally to all regulated entities.

STATEMENT OF EMERGENCY
200 KAR 38:030E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to meet a deadline to promulgate an administrative regulation pursuant to HB 157 and HB 413, which were enacted by the General Assembly during the 2004 General Session. It is necessary to promulgate this administrative regulation on an emergency basis because the normal process will take several months, which will hamper the Finance and Administration Cabinet in the proper distribution of court costs paid by defendants convicted of criminal offenses. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on September 30, 2004.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
Office of the Controller
(New Emergency Administrative Regulation)
200 KAR 38:030E. Allocation and distribution of criminal court fees.

RELATES TO: KRS 23A.205, 23A.206, 23A.2065, 24A.175, 24A.176, and 24A.1765
STATUTORY AUTHORITY: KRS 42.0201(3), (5)(a)
EFFECTIVE: SEPTEMBER 30, 2004
NECESSITY, FUNCTION, AND CONFORMITY: KRS 23A.205 imposes a $100 court cost on a defendant convicted of a criminal offense in circuit court. KRS 23A.206 imposes a twenty (20) dollar fee and KRS 23A.2065 imposes a five (5) dollar fee on a defendant convicted of a criminal offense in circuit court. KRS 24A.175 imposes a $100 court cost on a defendant convicted of a criminal offense in district court. KRS 24A.176 imposes a twenty (20) dollar fee and KRS 24A.1765 imposes a five (5) dollar fee upon a defendant convicted of a criminal offense in district court. This administrative regulation provides for the distribution of the court costs and fees by the Finance and Administration Cabinet for the purposes specified in the statutes.

Section 1. Circuit Court Criminal Convictions Fees. (1) In accordance with KRS 23A.215(5), circuit clerks shall report to the Finance and Administration Cabinet and pay to the state treasury the $100 fee imposed by KRS 23A.175 upon a defendant convicted in a criminal case in circuit court.
(2) Pursuant to KRS 42.320, the total amount of the $100 fee collected shall be allocated monthly by the Finance and Administration Cabinet, on a percentage basis, to the agencies and for the purposes indicated in the statute.
(3) In accordance with KRS 23A.215(5), circuit clerks shall report to the Finance and Administration Cabinet and pay to the state treasury the twenty (20) dollar fee imposed by KRS 24A.175 upon a defendant convicted in a criminal case in circuit court.
(4) Pursuant to KRS 23A.206(5), the total amount of the twenty (20) dollar fee collected shall be allocated quarterly by the Finance and Administration Cabinet, on a percentage basis, to the agencies, and for the purposes indicated in the statute.

Section 2. District Court Criminal Convictions Fees. (1) In accordance with KRS 23A.215(5), circuit clerks shall report to the Finance and Administration Cabinet and pay to the state treasury the $100 fee imposed by KRS 24A.175 upon a defendant convicted in a criminal case in district court.
(2) Pursuant to KRS 42.320, the total amount of the $100 fee collected shall be allocated monthly by the Finance and Administration Cabinet, on a percentage basis, to the agencies and for the purposes indicated in the statute.
(3) In accordance with KRS 23A.215(5), circuit clerks shall report to the Finance and Administration Cabinet and pay to the state treasury the twenty (20) dollar fee imposed by KRS 24A.175 upon a defendant convicted in a criminal case in district court.
(4) Pursuant to KRS 24A.176(5), the total amount of the twenty (20) dollar fee collected shall be allocated quarterly by the Finance and Administration Cabinet, on a percentage basis, to the agencies, and for the purposes, indicated in the statute.
(a) Thirty (30) percent of the total shall be distributed equally to the cities, counties, urban-counties, charter counties or consolidated local governments with a police department or that contract for police services.
(b) Fifty (50) percent of the total shall be divided by the number of certified police officers, pursuant to KRS 15.380 to 15.404, and distributed to the cities, counties, urban-counties, charter counties or consolidated local governments with a police department or that contract for police services based on the number of certified police officers in the police department.
1. Annually, the number of certified police officers shall be based on a report prepared on or before August 1 by the Justice and Public Safety Cabinet specifying the number of certified police officers employed by a local government as of July 1.
2. For the purpose of this subsection, the number of contracted officers shall be calculated as follows:
(a) If the expenditure is $59,999 or less per fiscal year, the number of contracted officers calculated shall be zero.
(b) If the expenditure is $60,000 to $119,999 per fiscal year, the number of contracted officers calculated shall be one (1).
(c) An additional contract officer shall be calculated for each $60,000 annually expended above $120,000 per fiscal year.
(d) Twenty (20) percent of the total shall be distributed equally to the fiscal court in counties with fiscal responsibility for jails or transporting prisoners.
(e) In accordance with KRS 23A.215(5), circuit clerks shall report to the Finance and Administration Cabinet and pay to the state treasury the five (5) dollar fee imposed by KRS 23A.2065 upon a defendant convicted in criminal case in circuit court.
(f) Pursuant to KRS 23A.2065, the total amount of the five (5) dollar fee collected shall be distributed quarterly by the Finance and Administration Cabinet to the Health and Family Services Cabinet for the purpose specified in the statute.

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c. An additional contracted officer shall be calculated for each $60,000 annually expended above $120,000 per fiscal year.

(c) Twenty (20) percent of the total shall be distributed equally to the fiscal court in counties with fiscal responsibility for jails or transporting prisoners.

(5) In accordance with KRS 23A.215(5), circuit clerks shall report to the Finance and Administration Cabinet and pay to the state treasury the five (5) dollar fee imposed by KRS 24A.1765 upon a defendant convicted in a criminal case in district court.

(6) Pursuant to KRS 24A.1765, the total amount of the five (5) dollar fee collected shall be distributed quarterly by the Finance and Administration Cabinet to the Health and Family Services Cabinet for the purpose specified in the statute.

Section 3. Distribution of Court Costs for Criminal Cases. (1) The Finance and Administration Cabinet shall distribute the collected court costs and fees from criminal cases in the circuit and district courts from the court cost distribution fund established pursuant to KRS 42.320 as a percentage of the total amount deposited in the fund.

(2) The Finance and Administration Cabinet shall allocate the total court costs and fees collected in three (3) pools.

(a) Eighty (80) percent of the fund shall be distributed monthly in accordance with Sections 1(2) and 2(2).

(b) Sixteen (16) percent of the fund shall be distributed quarterly in accordance with Sections 1(4) and 2(4).

(c) Four (4) percent of the fund shall be distributed quarterly in accordance with Sections 1(6) and 2(6).

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: September 27, 2004
FILED WITH LRC: September 30, 2004 at 10 a.m.
CONTACT PERSON: Ed Ross, Controller, Finance and Administration Cabinet, Room 393 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-2210, fax (502) 564-6597.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ed Ross

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides for the allocation of court costs paid by persons convicted of criminal offenses in circuit and district courts.

(b) The necessity for this administrative regulation: KRS 42.0201 authorizes the State Controller to promulgate administrative regulations relating to accounting policies and procedures, and to provide record keeping. The Finance and Administration Cabinet is responsible for the distribution of court costs collected pursuant to KRS 42.320.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifies to whom and the amount of court costs from criminal cases that the Finance and Administration Cabinet will disburse.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the distribution of the $126 court costs for criminal cases.

(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: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Except as otherwise provided by law, this administrative regulation will apply to the judicial branch, the executive branch, and counties.

(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: There should be minimal impact on the Judicial Branch. The Health and Family Services Cabinet will receive funds for the telephonic behavioral health jail triage system. Funds will be distributed to local governments to pay the expenses for operating police departments. Funds will be distributed to counties that operate jails or transport prisoners. The Finance and Administration Cabinet will allocate the court costs as a percentage of the entire amount collected to make the distribution process more efficient, rather than maintaining 3 separate funds to implement HB 157 and HB 413.

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

(a) Initially: Administrative costs should be minimal.

(b) On a continuing basis: Administrative costs should be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fee collected pursuant to 23A.205, 23A.206, 23A.2065, 24A.175, 24A.176, and 24A.1765.

(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.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, this administrative regulation establishes the $5 court cost imposed by HB 157 and the $20 court cost imposed by HB 413.

(9) TIERING: Is tiering applied? No, this regulation applies equally to all regulated entities.

STATEMENT OF EMERGENCY

200 KAR 38:040E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to meet a deadline to promulgate an administrative regulation pursuant to HB 71, which was enacted by the General Assembly during the 2004 General Session. It is necessary to promulgate this administrative regulation on an emergency basis because the normal process will take several months, which will hamper the Finance and Administration Cabinet in the proper distribution of fines paid by defendants for violations of the handicapped parking statutes. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on September 30, 2004.

ERNEST RUDOLPH, Governor

ROBERT B. RUDOLPH, JR., Secretary

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
Office of the Controller
(Effective August 1, 2004)

200 KAR 38:040E. Allocation of fines for disabled permit parking violations.

RELATES TO: KRS 24A.180, 189.456, 189.459, 189.990, 205.900 - 205.920

EFFECTIVE: September 30, 2004

STATUTORY AUTHORITY: KRS 42.0201(3), (5)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.990 imposes a $250 fine on a person for violating disabled parking provisions set out in KRS 189.459(2) and (3). This administrative regulation provides for the allocation of those fines for the purposes specified in KRS 189.990.

Section 1. Monthly, district court clerks shall deposit the general fund of the state treasury and report to the Finance and Administration Cabinet the $250 fines collected pursuant to KRS 189.990 for violation of the disabled parking provisions.
Section 2. The fines and costs collected shall be allocated as follows:

(1) Ninety (90) percent of the amount remitted to the state treasury shall be distributed monthly by the Finance and Administration Cabinet to the Health and Family Services Cabinet to be used for the Personal Care Assistance Program pursuant to KRS 209.990 to 209.990.

(2) Ten (10) percent of the amount remitted to the State Treasury shall be distributed annually by the Finance and Administration Cabinet to the fiscal court in the county where the violation occurred, and then distributed equally by the fiscal court to all law enforcement agencies within the county.

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: September 27, 2004
FILED WITH LRC: September 30, 2004 at 10 a.m.
CONTACT PERSON: Ed Ross, Controller, Finance and Administration Cabinet, Room 393 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-2210, fax (502) 564-6597.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ed Ross

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides for the allocation of a $250 fine for violations of subsection (2) or (3) of KRS 189.459 relating to disabled parking placards or license plates.

(b) The necessity of this administrative regulation: KRS 42.0201 authorizes the State Controller to promulgate administrative regulations relating to accounting policies and procedures, and to provide record keeping. KRS 189A.459 states that 90% of the $250 fine collected be used for the personal care assistance program and 10% of the fine collected be returned to the county where the offense occurred and distributed equally to law enforcement agencies within the county.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifies how the Finance and Administration Cabinet will disburse the fines collected pursuant to subsection (2) or (3) of KRS 189A.459.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies that 90% of the fines collected will be collected monthly from the district court clerks and distributed monthly to the Health and Family Services Cabinet to be used for the personal care assistance program. The administrative regulation also specifies that 10% of the fines will be collected monthly from the district court clerks and distributed monthly to the fiscal court clerks in the counties where the violations occurred for distribution to law enforcement agencies.

(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: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Except as otherwise provided by law, this administrative regulation will apply to the Judicial Branch, Finance and Administration Cabinet, and the Health and Family Services Cabinet.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. The district court clerks will be responsible for collecting fines for violations of the disability parking provisions as specified in KRS 189.990 and remitting those fines collected to the general fund for disbursement by the Finance and Administration Cabinet to the agencies specified in the statute. The Health and Family Services Cabinet will receive additional funds for use in the personal care assistance program. The fiscal courts will receive additional funds for distribution to local law enforcement agencies.

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

(a) Initially: Administrative costs should be minimal.

(b) On a continuing basis: Administrative costs should be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding will be required to implement and enforce the collection of fines pursuant to KRS 189.990(28).

(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.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, as specified in KRS 189.990(28) pursuant to HB 71, a $250 fine will be charged to violators.

(9) TIERING: Is tiering applied? No, this regulation applies equally to all regulated entities.
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, October 12, 2004)

11 KAR 4:040. Educational institution participation requirements.

RELATES TO: KRS 164.740, 164.748(6), (13), 20 U.S.C. 1076, 1078-8, 1085, 34 C.F.R. Part 668 subparts A, B, D, E, F
STATUTORY AUTHORITY: KRS 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Higher Education Assistance Authority ["Authority"] administers programs of student financial assistance. KRS 164.748(6) and (13) requires the authority to enter into contracts with eligible educational institutions to provide for the administration of student financial assistance programs, and approve, disapprove, limit, suspend, or terminate the participation of the institutions. This administrative regulation establishes the conditions under which the authority shall execute a contract with an [educational] institution for participation in the authority's programs.

Section 1. Definitions. (1) "Applicable federal loans" means loans that:
(a) are either:
1. Federal Stafford loans or federal SLS loans, which are loans reinsured by the secretary pursuant to 20 U.S.C. 1078 or 1078-8; or
2. The portion of a loan made under the Federal Consolidation Loan Program that is used to repay a federal Stafford loan or federal SLS loan; and
(b) are received for attendance at an institution.
(2) "Authority" is defined by KRS 164.740(1).
(3) "Eligible [educational] institution" is defined in KRS 164.740(3).
(4) "[Business] school" is defined by KRS 164.740(4).
(5) "Eligible program of study" is defined by:
(a) KRS 164.769(2)(b) for purposes of Section 8 of this administrative regulation; and
(b) 11 KAR 5:001, Section 1 (10) [(14)], for purposes of Sections 6 and 9 of this administrative regulation.
(5) [(6)] "Federal act" is defined by KRS 164.740(2) [(9)].
(6) [(7)] "Fiscal year" means the period from and including October 1 of the calendar year through and including September 30 of the following calendar year.
(7) [(8)] "Fiscal year default rate" means:
(a) For a fiscal year in which thirty (30) or more current and former students at the institution entered repayment on applicable federal loans, the percentage of those current and former students who entered repayment on the loans received for attendance at that institution in that fiscal year who default before the end of the following fiscal year as determined by the secretary pursuant to 20 U.S.C. 1085; or
(b) For a fiscal year in which less than thirty (30) of the institution's current and former students entered repayment on applicable federal loans, the percentage of those current and former students who entered repayment on applicable federal loans in any of the three (3) most recent fiscal years, who default before the end of the fiscal year immediately following the year in which they entered repayment.
(9) [(9)] "Insured student loan" is defined by KRS 164.740(10) [(12)].
(10) [(11)] "School of nursing" is defined by KRS 164.740(24).
(11) [(12)] "Secretary" is defined by KRS 164.740(19) [(22)].
(12) [(13)] "Vocational school" is defined KRS 164.740(25).

Section 2. General Rule. (1) The authority shall execute an administrative agreement with any educational institution which:
(a) Meets the applicable eligibility criteria established by KRS 164.740 through 164.7891 [164.789 and 164.780 through 164.786] and the federal act, if applicable; and
(b) is approved for participation by the authority and, if applicable, the secretary.
(2) The authority shall approve for participation in any authority program an eligible [educational] institution which:
(a) is certified by the secretary to participate in programs of student financial assistance authorized by the federal act, and has in force, if required by the secretary, a participation agreement with the secretary to participate in any of those programs;
(b) is not presently suspended or terminated from participation in student financial assistance programs by either the authority, an organization authorized to insure loans under the federal act, or the secretary;
(c) Meets the criteria set forth in Sections 4 through 10 of this administrative regulation, as applicable to the particular authority program in which the educational institution seeks participation; and
(d) Has been in continuous operation for at least two (2) years, unless otherwise required by the federal act.

Section 3. Maintenance of Participation. (1) Except as provided in 11 KAR 4:020, an administrative agreement shall remain in effect:
(a) In accordance with subsection (2) of this section and the terms of the agreement; and
(b) As long as the educational institution conforms to the criteria established in Section 2 of this administrative regulation.
(2) If participation by an institution is suspended or terminated from student financial assistance programs pursuant to 11 KAR 4:020, the authority may determine that the administrative agreement shall remain in force for one (1) or more specified programs if the authority determines there is good cause for the exception.
(3) The authority may periodically reevaluate the status of the institution with respect to the criteria established in this administrative regulation.

Section 4. Documentation of Federal Eligibility. (1) The institution shall demonstrate to the authority that it is approved by the authority to participate, and holds all necessary licenses to offer academic programs by submitting to the authority a true and complete copy of the most recent federal application for institutional eligibility, eligibility letter, and program participation agreement executed by the secretary.
(2) The authority may disapprove, limit, suspend, or terminate the participation of an institution upon failure to submit the required documentation within forty-five (45) days following request by the authority.

Section 5. Insured Student Loan Program Participation. In order to participate in the authority's insured student loan program, the educational institution shall:
(1) Be certified by the secretary to participate and have in force, if required by the secretary, a participation agreement with the secretary; and
(2) Execute an administrative agreement with the authority.
The authority may permit an educational institution, otherwise approved, to participate without an agreement if:
(a) The institution's fiscal year default rate is twenty (20) percent or less; or
(b) The volume of loans insured by the authority for students attending that institution in any fiscal year does not exceed $50,000.

Section 6. Kentucky Tuition Grant Program Participation. In order to participate in the authority's KTG program, an educational...
institution shall:
(1) Qualify as a private, independent college or university, which is accredited by a regional accrediting association recognized by the U.S. Department of Education;
(2) Be located within the Commonwealth of Kentucky;
(3) Offer an eligible program of study, which is not comprised solely of sectarian instruction; and
(4) Execute an administrative agreement with the authority.

Section 7. KHEAA Work Study Program Participation. In order to participate in the authority's KHEAA work study program, an educational institution shall:
(1) Qualify as an eligible institution [a "business-school," "college," "school of nursing," or "vocational school"];
(2) Be located within the Commonwealth of Kentucky;
(3) Offer a program of study not comprised solely of sectarian instruction; and
(4) Execute an administrative agreement with the authority.

Section 8. Teacher Scholarship Participation. In order to participate in the authority's teacher scholarship program, an educational institution shall:
(1) Qualify as an eligible institution [a "business-school," "college," "school of nursing," or "vocational school"];
(2) Be located within the Commonwealth of Kentucky;
(3) Offer an eligible program of study; and
(4) Execute an administrative agreement with the authority.

Section 9. College Access Program Participation. In order to participate in the authority's college access program, an educational institution shall:
(1) Qualify as an eligible institution [a "business-school," "college," "school of nursing," or "vocational school"];
(2) Be located within the Commonwealth of Kentucky;
(3) Offer an eligible program of study; and
(4) Execute an administrative agreement with the authority.

Section 10. The authority may execute an administrative agreement with an educational institution which may include non-maintained campuses of the institution that are not separately incorporated.

JOHN PRATHER, Chair
APPROVED BY AGENCY: August 5, 2004
FILED WITH LRC: August 12, 2004 at 10 a.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 HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARR, October 12, 2004)

11 KAR 5:145. CAP grant award determination procedure.
RELATES TO: KRS 164.748(2), 164.753(4), 164.7535, 164.7889(3)
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4), 164.7889(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891 [164.786]. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7889(3) requires the authority to promulgate an administrative regulation that increases both the maximum amount available under the grant programs, and increases the average income level for qualification for the grant programs if sufficient funds are available. This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

Section 1. Each application submitted pursuant to 11 KAR 5:130 shall be reviewed for determination that all eligibility requirements established in 11 KAR 5:034 are met. To qualify for a CAP award based on financial need, the applicant's expected family contribution shall be $3,850 or less.

Section 2. CAP Grant Award. (1) Except as provided in subsection (2) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment on a full-time basis as determined by the educational institution in an eligible program [at a college, business-school, school of nursing, or vocational school] shall be the lesser of:
(a) $700; or
(b) The amount of eligibility the student has remaining within the aggregate KHEAA grant limit.
(2) The maximum CAP grant in any semester for an applicant accepted for enrollment on less than a full-time basis as determined by the educational institution in an eligible program [at a college, business-school, school of nursing, or vocational school] shall be:
(a) The amount specified in subsection (1)(a) of this section;
(b) Divided by twelve (12); and
(c) Multiplied by the number of credit hours in which the applicant is accepted for enrollment; and
(b) Not in excess of the maximum specified in subsection (1)(b) of this section.
(3) For any academic year, a student shall not receive more than $1,400 for an aggregate CAP grant award.

Section 3. (1) A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books.
(2) A KHEAA grant award shall not be made for a summer academic term.

Section 4. (1) A KHEAA grant award shall not exceed the applicant's cost of education less expected family contribution and other anticipated student financial assistance.
(2) The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the determination of financial need for that student.
(3) The KHEAA Grant Program Officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.
(4) If the applicant's expected family contribution, disbursed KHEAA grant amount, plus other student financial assistance exceeds his cost of education by more than $300, any amount over $300 shall be considered to be an overpayment. If an overpayment occurs, this amount shall be returned to the authority immediately.

Section 5. (1) If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked.
(2) If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant.

Section 6. If the educational institution receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant, and
(1) The grant has not yet been disbursed for the fall academic term, the reduction shall be made to both the fall and spring disbursements, and the educational institution shall notify the student of the reduction;
(2) If the grant for the fall academic term has already been disbursed and the student enrolls for the spring academic term, the reduction shall be made to the spring disbursement, and the educational institution shall notify the student of the reduction;
(3) If the grant for the fall academic term has already been disbursed and the student does not enroll for the spring academic term.
term, the educational institution shall notify the student of the fall overaward and the student shall repay the overaward to the
authority; or
(4) If both the fall and spring disbursements have been made,
the educational institution shall notify the student of the overaward
and the student shall repay the overaward to the authority.

Section 7. (1) Students requested by the institution to provide
verification of data for any financial assistance program shall pro-
vide the verification before receiving disbursement of a KHEA
grant.
(2) Any student who is awarded a KHEA grant who fails to
provide verification requested by the participating institution shall
be deemed ineligible, and the grant shall be revoked.

JOHN PRATHER, Chair
APPROVED BY AGENCY: August 5, 2004
FILED WITH LRC: August 12, 2004, at 10 a.m.
CONTACT PERSON: Richard F. Casey, General Counsel,
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KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, October 12, 2004)

11 KAR 6:010. KHEA Work-Study Program.

RELATES TO: KRS 164.744(2), 164.748(4), 164.753(6)
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS
164.748(4) requires the authority to promulgate administrative
regulations governing work-study payments. This administrative
regulation establishes the KHEA Work-Study Program.

Section 1. Definitions. (1) "Administrative cost allowance" means
a payment negotiated between the authority and a participat-
ing institution for annual costs directly related to the administra-
tion of the KWSP not to exceed eight (8) percent of the
wages earned, the amount requested by the institution, or $15,000
annually, whichever is least.
(2) "Alternate work plan" means a work-study arrangement in
which a participating student alternates a school term with a work
term in accordance with Section 2 of this administrative regulation.
(3) "Authority" is defined in KRS 164.740(1).
(4) "Business school" is defined in KRS 164.740(3).
(5) "Career-related work experience" means a job which has a
connection with the participating student's career direction deter-
dined by the participating institution and evidenced by the stu-
dent's major course of study.
(6) "College" is defined in KRS 164.740(4).
(7) "Cost of education" means those expenses commonly
related to obtaining an education at the participating institution.
plus those costs directly related to the participating student's
KWSP work experience, including required dues and travel (at the rate
allowed for state employee travel reimbursement) of thirty-two ($32)
cents-per-mile) from the school to the place of employment or,
under an alternate work plan, from the student's residence to the
place of employment.
(8) "Eligible institution" is defined in KRS 164.740(3).
(9) "Financial need" means the total cost of education less
financial assistance received from all sources, other than KWSP
employment, including grants, loans, and scholarships.
(10) "Full-time" means the number of credit hours deter-
dined by the participating institution to constitute full-time enrol-
ment, which:
(a) Is generally twelve (12) semester hours, twenty-four (24)
clock hours, or six (6) summer school hours; and
(b) Shall not include academic credit earned from KWSP
employment.
(11) "KWSP" means the KHEA work-study program.
(12) "Participating institution" is defined in KRS 164.740(13).
(13) "Private employer" means an employer in the private
sector, other than the institution that the participating student is
attending.
(14) "School term" means the equivalent of one (1) semester,
one (1) quarter, or one (1) summer school term.
(15) "Vocational school" is defined in KRS 164.740(23).
(16) "Wage reimbursement" means a payment:
(a) Made to a participating employer by a participating institu-
tion as reimbursement for wages paid to a participating student;
and
(b) Specified in an agreement between the participating em-
ployer and the participating institution.
(17) "Work study" is defined in KRS 164.740(20) (24).

Section 2. Alternate Work Plan. A participating student shall be
considered a participant under an alternate work plan if the stu-
dent:
(1) Attends school full time one (1) school term;
(2) Works full time the next school term, including a summer,
for a participating employer;
(3) Is not enrolled at least half-time during the term of employ-
ment; and
(4) Returns to school full time the following school term.

Section 3. Institutional Eligibility. To participate in the KWSP,
an educational institution shall:
(1) Be an eligible institution [a college, business school, voca-
tional school, or school of nursing], located within Kentucky;
(2) Have in force an administrative agreement with the author-
ity pursuant to 11 KAR 4:040;
(3) Submit a request for funding; and
(4) Execute a supplemental contractual arrangement with the
authority and a participating employer.

Section 4. Funding Allocation Process. (1) Each year, the
authority shall invite an eligible institution to submit a proposal for
funding and shall provide instructions for submitting the proposal.
The authority shall consider a proposal properly submitted by an
eligible institution by the date specified in the invitation to partic-
icipate. The authority shall award an administrative cost allowance,
if any, to an eligible institution for one (1) year. At least seventy-five (75)% of
wage reimbursement dollars shall be utilized with private employers.
(2) The authority shall consider the institution's request for
funding and its past performance in the KWSP in the determination of
approval for funding and the funding level. The authority shall
evaluate the institution's level of participation in and administration of
other programs of student financial assistance funded or admin-
istered by the authority and the institution's ability to:
(a) Comply with this administrative regulation and contractual
obligations under the KWSP;
(b) Administer the program cost-effectively with the greatest
results for students, evidenced by previous years' program records;
(c) Utilize the wage-reimbursement dollars allocated, evi-
denced by previous years' program records;
(d) Avoid using KWSP dollars to supplant existing work-related
programs for students; and
(e) Adequately monitor program activities, including eligibility
determination of students and employers, continued eligibility of
students and employers, and actual job activities as they relate to
students' career-related work experience.
(3) (a) At least ninety (90)% of the available funds that do
not exceed the appropriation for the preceding fiscal year shall be
awarded to eligible institutions that participated and expended all
or the major portion of their wage reimbursement allotment during
the prior year.
(b) If available funds do not exceed the appropriation for the
preceding fiscal year, the authority shall not award more than ten
(10)% of available funds to eligible institutions that did not
participate or had minimal participation in the KWSP during the preceding fiscal year.
(c) Allocation by the authority of available funds that exceed the appropriation for the preceding fiscal year shall not be constrained by the level of participation by an eligible institution during the prior year.
(d) If available funds are not sufficient to award each institution the amount requested, the authority shall allocate funds to some or all of the eligible institutions that submit requests for funding, taking into consideration the institution's past performance and level of funding under the KWSP, and the institution's level of participation and demonstrated capability to administer other programs of student financial assistance funded or administered by the authority.

Section 5. Employer Eligibility. To participate in the KWSP, an employer shall:
(1) Provide a bona fide career related work experience for a participating student as determined by the participating institution in which the student is enrolled and submit a descriptive position analysis to the participating institution;
(2)(a) If the employer is not a participating institution, execute a KWSP employer agreement with each participating institution from which a participating student is hired; or
(b) If the employer is a participating institution, agree with the authority to be bound by the terms of a KWSP employer agreement;
(3) Provide a Kentucky work site for a participating student employed by the employer;
(4) Not be a business entity formed substantially for the purpose or intention of participating in the KWSP; and
(5) Not utilize a participating student in a work environment that is sectarian in nature or that involves political activity.

Section 6. Student Eligibility. To participate in the KWSP, a student shall:
(1) Be a citizen of the United States;
(2) Be a Kentucky resident, as determined by the participating institution in accordance with 13 KAR 2:045;
(3) Be enrolled or accepted for enrollment on at least a half-time basis at a participating institution, unless the student is participating in an alternate work plan;
(4) Demonstrate financial need;
(5) Be in good standing and making satisfactory academic progress toward completion of his educational program, as determined by the participating institution, and have a cumulative grade point average of not less than the equivalent of a "C" (inclusive of all postsecondary courses attempted for a postsecondary student or secondary school grade point average for an entering freshman);
(6) Not be participating in another work program administered by the participating institution;
(7) Submit a completed Work-study Program Student Application to the participating institution, properly completed in accordance with the instructions, and be approved for participation by the participating institution;
(8) Not be in default on a financial obligation to the authority under a program administered by the authority pursuant to KRS 164.740 through 164.7891 [164-786], 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; and
(9) Execute an employment agreement required by the participating institution.

Section 7. Employer Responsibilities. To receive wage reimbursement, a participating employer shall:
(1) Immediately notify the participating institution in writing if a participating student's employment is terminated, stating the reason for and effective date of termination;
(2) Report promptly to the participating institution a significant change of the position analysis or the student's work assignment;
(3) Submit to the participating institution on a regular basis a certified, accurate proof of wages paid to a participating student;
(4) Pay a participating student the prevailing wage rate, which shall not be less than the federal minimum wage;
(5) Comply with all federal and state employment, safety and civil rights laws applicable to the position filled;
(6) Not, without prior consent of the participating institution, permit or require a participating student to work in excess of:
(a) Thirty (30) hours per week for a student currently enrolled less than half time;
(b) Twenty (20) hours per week for a student currently enrolled full time; and
(c) Forty (40) hours per week for a student employed under an alternate work plan;
(7) Permit on-site inspection and review of records by a representative of the participating institution and the authority during normal business hours; and
(8) Ensure that a regular employee is not displaced by a KWSP participating student.

Section 8. Student Responsibilities. A participating student shall:
(1) Participate in all screening or preplacement activities required by the participating institution;
(2) Maintain eligibility pursuant to Section 6 of this administrative regulation, and immediately notify the participating institution in writing of a change that affects the student's continued eligibility;
(3) Be available for a job interview if requested by a participating employer; and
(4) Perform all reasonable employment obligations and comply with all reasonable policies and requirements of the participating employer.

Section 9. (1) An appeal regarding student or employer participation shall be directed to the participating institution and shall be reviewed, settled or determined by an appeal committee consisting of no fewer than three (3) individuals.
(2) An appeal regarding institutional eligibility or participation shall be determined by the authority in accordance with 11 KAR 4:020.

Section 10. Incorporation by Reference. (1) "KHEAA Work-Study Program Student Application" form, July.2001 [November, 4997], is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:
(a) 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.; or
(b) A participating institution during that institution's regular business hours.

JOHN PRATHER, Chair
APPROVED BY AGENCY: August 5, 2004
FILED WITH LRC: August 12 2004, at 10 a.m.
CONTACT PERSON: 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 HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, October 12, 2004)

11 KAR 8:040. Deferment of teacher scholarship repayment.

RELATES TO: KRS 164.744(2), 164.769
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 164.769(6)(f)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.769 authorizes the authority to specifically provide a program of teacher scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740
to 164.7891 [164.786]. KRS 164.769(6)(f) requires the authority to promulgate administrative regulations establishing the terms and conditions for the award, cancellation, and repayment of teacher scholarships including, [but not limited to] deferrals. This administrative regulation establishes conditions for deferment of the repayment obligation.

Section 1. Definitions. [Unless otherwise specified, the words and phrases used in this administrative regulation shall have the same meaning as set forth in 11 KAR 6:030.]

(1) Authority is defined by KRS 164.769(1).

(2) "Deferral" means a temporary waiver of the obligation of a teacher scholarship recipient to make payments to the authority, pursuant to one (1) or more promissory notes executed between the recipient and the authority, which is granted by the authority, for a specified period of time, upon a showing of cause by the recipient.

(3) [2] "Eligible institution" is defined in KRS 164.740(3).


(5) "Qualified teaching service" is defined in KRS 164.740(2)(e).

(6) "Semester" is defined in KRS 164.740(2)(f).

(7) "Teaching" means performing continuous classroom instruction as the teacher of record in a position for which appropriate regular teacher certification is a prerequisite to perform the instruction, and does not mean classroom instruction performed pursuant to an emergency certification or a certificate for substitute teaching.

Section 2. Request for Deferral. (1) The recipient shall request a deferment in writing by submitting complete and accurate information on one (1) of the following forms, as appropriate:

(a) "Teacher Scholarship Program Request For School Enrollment Deferral;"

(b) "Teacher Scholarship Program Request For Unemployment Deferral;"

(c) "Teacher Scholarship Program Request For Disability Deferral;" or

(d) "Teacher Scholarship Program Request For Hardship Deferral;"

(2) The recipient's submission of a request for deferment shall constitute authorization for the authority to request and receive the verification of facts represented by the recipient as may be deemed necessary by the authority.

Section 3. Effect on Repayments. (1) During a deferment, [no principal or interest repayments shall be required. Interest shall:]

(a) [but interest shall] Continue to accrue on the unpaid principal balance owed by the recipient during a period specified in Section 4(1) or [and] (3) of this administrative regulation; and

(b) [interest shall] Not accrue during a period specified in Section 4(2) of this administrative regulation.

(2) The authority shall not be required to grant a deferment if the deferment would legally impair the ultimate recovery of the principal and accrued interest owed by the recipient.

(3) If, during a deferment, the recipient resumes full-time enrollment in a teacher education program at a participating institution or renders qualified teaching service, [then] the deferment shall nullify the prior commencement of repayment, and [such that any] promissory note so deferred may be subsequently cancelled in accordance with 11 KAR 8:030.

Section 4. Types of Deferrals. If the requirements established in this section are met, the authority may grant an enrollment deferment, disability deferment, unemployment deferment, hardship deferment, or qualified teaching service deferment. [The following deferrals may be granted by the authority:]

(1) Enrollment deferment. An enrollment deferment shall be a deferment granted to a recipient who is enrolled on at least a half-time basis at an eligible institution [a business school, college, vocational school, or school of nursing (as these terms are defined in KRS 164.740)] in the United States. Each semester, the recipient shall provide to the authority evidence of the enrollment on the "Teacher Scholarship Program Request for School Enrollment Deferral" form.

(2) The authority may grant deferment of repayment for periods not to exceed an aggregate of thirty-six (36) months for any one (1) or combination of the following circumstances, except as limited in paragraph (b) of this subsection or if [in the case of a documented extenuating circumstance is approved by the executive director of the authority:

(a) Disability deferment. A disability deferment shall be a deferment granted to a recipient who is:

a. Temporarily totally disabled and, therefore, unable to obtain full-time employment or attend school; or

b. Unable to obtain full-time employment or attend school due to the temporary total disability of the recipient's spouse who suffers an injury or illness which necessitates an extended or indefinite period of recovery which may be expected to preclude gainful employment or school attendance.

(3) The recipient shall provide to the authority a statement from a licensed physician certifying that the recipient or spouse is temporarily totally disabled in accordance with subparagraphs 1 and 2 of this paragraph. The recipient shall be solely responsible for securing the physician's certification.

4. The authority may grant a disability deferment subject to an annual review of a physician's certification.

5. After the third year of a disability deferment, the authority may cancel the debt if it appears that the disability is expected to continue for an indefinite time. [A deferment granted to a recipient who is temporarily totally disabled and, therefore, unable to obtain any full-time employment or attend school; or, a deferment granted to a recipient who is unable to obtain any full-time employment or attend school due to the temporary total disability of the recipient's spouse who requires continuous, twenty-four (24) hour nursing or similar care by the recipient; and]

(i) Requires continuous, twenty-four (24) hour nursing or similar care by the recipient and

(ii) Is not confined to a hospital, nursing home, intermediate care facility, or similar institution.

6. For purposes of a disability deferment, a recipient or the spouse of a recipient shall be considered temporarily totally disabled if the person suffers an injury or illness which necessitates an extended or indefinite period of recovery which can be expected to preclude gainful employment or school attendance.

7. The recipient shall provide to the authority a statement from a licensed physician certifying that the recipient or spouse is temporarily totally disabled in accordance with the preceding terms and conditions. The recipient is solely responsible for securing the physician's certifications. This deferment may, at the authority's discretion, be granted subject to annual review of a physician's certification. After the third year of any deferment, pursuant to this subsection, the authority may, in its sole discretion, cancel the debt if it appears that the disability is expected to continue for an indefinite time.

(b) Unemployment deferment. A recipient seeking, but unable to obtain, a qualified teaching service position within six (6) months following completion of a teacher education program at a participating institution may be granted a deferment not to exceed an aggregate of one (1) year. The recipient shall:

1. Be eligible to begin the Kentucky Teacher Internship Program; 2. Have applied for a qualified teaching service position with at least three (3) state-accredited school districts;

3. Not have refused an offer of employment in a qualified teaching service position in the state-accredited school districts or in any other state-accredited school districts to which the recipient may have applied; and

4. Provide the authority with a signed statement which sets
forth:
1. The recipient's current address;
2. The names of state-accredited school districts to which the recipient has applied for qualified teaching service employment; and
3. The recipient’s agreement to notify the authority if the recipient obtains full-time employment in a qualified teaching service position.

(c) Hardship deferral. The authority may determine that a hardship exists and grant a hardship deferral if:
1. If Enrollment in a teacher education program or employment in a qualified teaching service position is temporarily interrupted due to circumstances beyond the recipient's control, including, but not limited to, major illness, accident or death in the family, after which the recipient intends to resume the enrollment or qualified teaching position; or
2. [...]or [...] the recipient is insolvent due to circumstances beyond his control, including natural disaster, involuntary unemployment, or unforeseen medical expenses; then the authority may determine that a hardship exists and may grant a deferral.

(2) Qualification teaching service deferral or:
(a) A deferment (Deferrals) may be granted [...] from time to time] to a recipient who, due to current employment in a qualified teaching service position, may reasonably be expected, solely with the passage of six (6) months or less time, to qualify for cancellation benefits pursuant to 11 KAR 8:030.
(b) The authority may or may not grant a deferral of the obligation to repay the teacher scholarship during the period of time in which the recipient is making payments or performing qualified teaching service for another program if:
1. The recipient received loans or scholarships from more than one (1) program that:
   a. Is administered by the authority; and
   b. Requires a period of qualified teaching service for repayment or cancellation; or
2. The recipient is either:
   a. Obligated to concurrently make cash payments on the teacher scholarship and other program; or
   b. Performing qualified teaching service to fulfill the other program's requirements. The authority may or may not grant a deferral of the obligation to repay the teacher scholarship during the period of time in which the recipient is making payments or performing qualified teaching service for another program if:
   1. The recipient received loans or scholarships from more than one (1) program that:
      a. Is administered by the authority; and
      b. Requires a period of qualified teaching service for repayment or cancellation; or
   2. The recipient is either:
      a. Obligated to concurrently make cash payments on the teacher scholarship and other program; or
      b. Performing qualified teaching service to fulfill the other program’s requirements if a recipient has received loans or scholarships from more than one (1) program administered by the authority, which require a period of qualified teaching service for repayment or cancellation, and the recipient is either:
         1. Obligated to concurrently make cash payments on the teacher scholarship and another such program; or
         2. Performing qualified teaching service to fulfill the requirement of another such program; then a deferral of repayment of the teacher scholarship may be granted during the period in which the recipient is making payments or performing qualified teaching service in accordance with the requirements of the other program.

Section 5. Incorporation by reference. (1) The following material is incorporated by reference:
(a) "Teacher Scholarship Program Request For School Enrollment Deferral", March 2002;
(b) "Teacher Scholarship Program Request For Unemployment Deferral", March 2002;
(c) "Teacher Scholarship Program Request For Disability Deferral", March 2002; and
(d) "Teacher Scholarship Program Request For Hardship Deferral", March 2002.

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JOHN PRATHER, Chair
APPROVED WITH I.AGENCY: August 5, 2004
FILED WITH LRC: August 12, 2004, at 10 a.m.
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KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARR's, October 12, 2004)

11 KAR 16:001. Definitions for 11 KAR Chapter 16.

RELATES TO: KRS 164.58
STATUTORY AUTHORITY: KRS 164.518(3), 164.740(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 definitions applicable to 11 KAR Chapter 16.

Section 1. Definitions. (1) "Academic term" means the fall, spring, or summer semester or its equivalent under a trimester or quarter system at a postsecondary education institution.
(2) "Authority" is defined in KRS 164.740(1).
(3) "Award year" means a period that begins July 1 of one (1) calendar year and ends June 30 of the next succeeding calendar year.
(4) "College" is defined in KRS 164.740(4).
(5) "Early childhood facility" means:
   a. A licensed Type I or a Type II day care facility defined in 922 KAR 2:001 that is located in Kentucky;
   b. A certified or licensed child care home pursuant to KRS 195.8901(4)(e) or 922 KAR 2:100 that is located in Kentucky;
   c. An organization approved by the Office of Inspector General of the Cabinet for Health and Family Services to offer training in early childhood development.
   d. A developmentally or physically appropriate preschool program defined in KRS 157.3175(2).
(6) "ECDÂ" means Early Childhood Development Authority.
(7) "ECDÂ-approved early childhood development credential" means the Child Development Associate's credential or a postsecondary, undergraduate degree, certificate or diploma that is:
   a. An associate degree in early childhood education or baccalaureate degree in interdisciplinary early childhood education, or a related program that is approved by the Early Childhood Development Authority; or
   b. The Kentucky Early Childhood Development Director’s certificate.
(8) "Eligible institution" is defined in KRS 164.740(3).
(9) "Participating early childhood facility" means an early childhood facility that agrees to provide monetary incentives pursuant to 11 KAR 16:000 to early childhood development scholarship recipients employed by the facility.
(10) "Participating educational institution" means an eligible institution [a college or vocational school] located in Kentucky that:
   a. Actively participates in the federal Pell Grant Program;
   b. Offers a scholarship program curriculum;
   c. Has a contract in force with the authority relating to the administration of the Early Childhood Development Scholarship Program and other programs administered by the authority; and
   d. Is publicly operated; or
   2. a. Is licensed by the Commonwealth of Kentucky;
   b. Has operated for at least ten (10) years;
   c. Offers a program of study not comprised solely of sectarian
FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(As Amended at ARRS, October 12, 2004)

200 KAR 2:005. Employees' reimbursement for travel.

RELATES TO: KRS 44.050, 45.101
STATUTORY AUTHORITY: KRS 44.050, 45.101
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45.101
authorizes the Finance and Administration Cabinet to promulgate an administrative regulation that establishes requirements and reimbursement rates for the travel expenses of state employees. This administrative regulation establishes the eligibility requirements relating to rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

Section 1. Definitions. (1) "Agency" means a budget unit.
(2) "Agency head" means the elected or appointed head of a budget unit.
(3) "Approval" means approval granted in either written or electronic format.
(4) "Cabinet" means the Finance and Administration Cabinet.
(5) "Division" means the Division of Statewide Accounting Services, Office of the Controller, Finance and Administration Cabinet.
(6) "High rate area" means a city, state, or metropolitan area in which it has been recognized that higher meal costs and lodging rates have historically prevailed, and that has been designated by the Secretary of the Finance and Administration Cabinet as a high rate area and included in the cabinet's policies and procedures manual incorporated by reference in 200 KAR 5:021.
(7) "Incidental expense" means unexpected minor expenses arising from travel situations, or minor expenses authorized by an agency head to be reimbursed to an employee as a matter of efficiency or convenience.

(1) "Lodging" means any preprinted invoice, from a hotel or motel or type of lodging, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.
(9) "Others in the official service of the commonwealth" means individuals who are not state employees as defined in KRS Chap-
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Section 3. Work Station. (1) The official work station of an employee assigned to an office shall be the street address where the office is located.

(2) The official work station of field employees shall be established by the agency head, based solely on the best interests of the commonwealth.

(3) If an employee is permanently reassigned or is stationed at a new location two (2) months, the new location shall become that employee's official work station.

Section 4. Authorizations. (1) For travel in Kentucky, or outside Kentucky, but within the United States or its possessions, or Canada, the person requesting reimbursement shall obtain authorization from the agency head or a designated representative as authorized by Secretary's Order 597-451.

(2) Travel to a bordering state that does not require airfare or an overnight stay shall be authorized in the same manner as travel in Kentucky.

(3) Travel expenses shall be reimbursed if travel was authorized in advance as provided by subsections (4), (5), and (6) of this section.

(4) [43] If direct billing is to be utilized for state park and motor pool expenses, authorization shall be requested on a Travel Authorization (TE or TEI) document.

(5) [44] For travel outside of Kentucky, authorization shall be requested on Travel Authorization (TEO) document.

(6) [45] For travel outside the United States, its possessions or Canada the person requesting reimbursement shall have obtained authorization from:

(a) The agency head or a designated representative;

(b) The secretary or a designated representative; and

(c) The governor or a designated representative.

(7) [46] A travel request for travel specified in subsections (4) and (5) of this section shall be received by the agency or cabinet at least five (5) working days before the start of travel.

Section 5. Transportation. (1) Economy shall be required.

(a) State officers, agents, employees, and others in the official service of the commonwealth shall use the most economical, standard transportation available and the most direct and usually-traveled routes. Expenses added by use of other transportation or routes shall be assumed by the individual.

(b) Round-trip, excursion or other negotiated reduced-rate rail or plane fares shall be obtained if practical.

2.a. Tickets prepaid by the commonwealth shall be purchased through agency business travel accounts provided by a major charge card company or commercial travel agencies.

b. Tickets purchased through the Internet shall be paid by the traveler and reimbursed on a [his] Travel Payment Voucher (TP or TPI).

3. Exceptions may be made with the approval of the agency head if other arrangements will be in the best interest of the commonwealth.

4. Agencies shall be billed monthly by the charge card company.

5. Related payments shall be processed on Vendor Payment Voucher (P1) document.

(2) State vehicles. State-owned vehicles with their credit cards shall be used for state business travel when available and feasible. Mileage payment shall not be claimed if state-owned vehicles are used.

(3) Privately-owned vehicles. Mileage claims for use of privately-owned vehicles shall be allowed if a state vehicle was not available or feasible.

(4) Buses, subways. For city travel, employees shall be encouraged to use buses and subways. Taxi fare shall be allowed if [when] more economical transportation is not feasible.

(5) Airline travel. Commercial airline travel shall be the lowest negotiated coach or tourist class. Additional expense for first-class travel shall not be reimbursed by the state. Payment shall be made in accordance with subsection (1)(b) of this section.

(6) Special transportation.

(a) The cost of hiring cars or other special conveyances in lieu of ordinary transportation shall be allowed if written justification from the employee is submitted and approved by the agency head or his designated representative.

(b) Privately-owned aircraft may be used if it is determined to be to the advantage of the state, measured both by travel costs and travel time.

(c) An employee may submit a written request for approval from the State Controller for an increased reimbursement rate greater than that calculated in Section 7. If the employee drives a personal vehicle modified to:

1. Facilitate operation by altering controls for the brakes, accelerator, or steering wheel; or

2. Allow a driver to enter the vehicle by installing a wheelchair lift, hoist, or ramp.

Section 6. Accommodations. (1) Lodging shall be the most economical, as determined by considering location of the lodging.

(2) Facilities providing special government rates or commercial rates shall be used if feasible.

(3) State-owned facilities shall be used for meetings and lodging if available, practicable and economical.

(4) Location. Cost for lodging within forty (40) miles of the claimant's official work station or home shall be reimbursed if approved in advance by the agency head, or a designated representative.

(5) Group lodging, by contract.

(a) State agencies and institutions may contract with hotels, motels and other establishments for four (4) or more employees to use a room or rooms on official business. Group rates shall be requested.

(b) The contract may also apply to meals and gratuities. The contract rates and the costs of rooms and meals per person shall not exceed limits set in Section 7 of this administrative regulation.

(c) The traveler shall not claim reimbursement or subsistence for room and meals paid direct to an establishment providing these services.

(d) Payment shall be made on a Vendor Payment Voucher (P1) document and shall not include personal charges of employees or others in the official service of the commonwealth.

(e) Payment shall be made to the hotel, motel, or other establishment.

(f) Contracted group meeting rooms and lodging and meal charges shall be exempt from Kentucky sales tax and the agency sales-use tax number assigned by the Department of Revenue [Cabinet] shall be specified on the payment document.

(g) Tax exempt numbers shall not be used by individual employees to avoid point of sale payment of Kentucky sales tax connected with lodging costs. Sales tax payments shall be reimbursed on Travel Payment Voucher (TP or TPI) document.

(6) State parks. A state agency or institution using state park facilities may pay for rooms and meals by an Internal Travel Voucher (ITV) document to transfer funds, within the limits of this administrative regulation.

Section 7. Reimbursement Rates. (1) The following persons shall be exempted from the provisions of this section:

(a) Governor;

(b) Governor's staff;

(c) Lieutenant governor;

(d) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;

(e) Elected constitutional officers;

(f) Cabinet secretaries;

(g) State officers and employees authorized to travel outside the United States (its possessions or Canada);

(h) Members of statutory boards and commissions; and

(i) Others in the official service of the Commonwealth.

(2) Lodging.

(a) Except as provided in paragraph (b) of this subsection, a state officer or employee shall be reimbursed for the actual cost of lodging if the:

1. Lodging is determined to be the most economical; and

2. State officer or employee has provided the hotel, motel, or other establishment's receipt to be reimbursed for the traveler's costs.
expenses.

(b) Reimbursement for lodging shall not exceed the cost of a single room rate, except that if employees share lodging, each employee shall be reimbursed the lesser of single rate or one-half (1/2) the double rate.

(c) Subsistence and incidental expenses.

(a) Breakfast and lunch. A state officer, employee shall be eligible for reimbursement for subsistence for breakfast and [lunch, or dinner] expenses while traveling in Kentucky, if his authorized work requires an overnight stay and absence during the mealtime hours established by paragraph (d) or (e) of this subsection.

An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.

(b) Dinner expenses. A state officer, employee shall be eligible for reimbursement for dinner expenses while traveling in Kentucky, if his authorized work requires an absence:

1. At a destination more than forty (40) miles from the individual's work station and home; or
2. During the mealtime hours established by paragraph (d) or (e) of this subsection.

(c) A state officer or employee shall be eligible for reimbursement for meals while on authorized travel outside Kentucky, but within the United States, its possessions or Canada, at the reimbursement rates established in paragraphs (d) and (e) of this subsection.

An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.

(d) Reimbursement for non-high rate areas:

1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - [with receipt, not to exceed] seven (7) dollars;

2. Lunch: authorized travel 11 a.m. through 2 p.m. - [with receipt, not to exceed] eight (8) dollars;

3. Dinner: authorized travel 5 p.m. through 9 p.m. - [with receipt, not to exceed] fifteen (15) dollars.

(e) Reimbursement for high rate areas:

1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - [with receipt, not to exceed] eight (8) dollars;

2. Lunch: authorized travel 11 a.m. through 2 p.m. - [with receipt, not to exceed] nine (9) dollars;

3. Dinner: authorized travel 5 p.m. through 9 p.m. - [with receipt, not to exceed] nineteen (19) dollars.

(f) A state officer or employee authorized to travel outside the United States, its possessions, or Canada shall be reimbursed for their actual and necessary expenses for subsistence.

(g) A state officer or employee may be reimbursed with prior approval of the agency head or designee, for reimbursement for the actual cost charged for meals, if the individual [he] is assigned to attend meetings and training sessions.

(h) Gratuity may be reimbursed if:

1. The total payment of the meal and gratuity do not exceed the limits established in paragraphs (d) or (e) of this subsection;

2. The gratuity does not exceed twenty (20) percent of the cost of the meal.

(i) Lodging receipts, or other credible evidence, shall be attached to the Travel Payment Voucher (TP or TPI).

(4) Transportation expenses.

(a) Reimbursement for authorized use of a privately-owned vehicle shall:

1. Be adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline cost reported on June 1, 2004, and adjusted thereafter on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:

a. If the fuel cost is between one dollar fifty cents ($1.50) and one dollar sixty-nine and nine-tenths cents ($1.69), the employee shall be reimbursed thirty-two (32) cents per mile.

b. If the fuel cost is between one dollar seventy cents ($1.70) and one dollar eighty-nine and nine-tenths cents ($1.89), the employee shall be reimbursed thirty-three (33) cents per mile.

c. If the fuel cost is between one dollar seventy cents ($1.70) and one dollar eighty-nine and nine-tenths cents ($1.89), the employee shall be reimbursed thirty-four (34) cents per mile.

d. If the fuel cost is between one dollar ninety cents ($1.90) and two dollars ninety-nine and nine-tenths cents ($2.99), the employee shall be reimbursed thirty-five (35) cents per mile.

e. If the fuel cost is between two dollars ten cents ($2.10) and two dollars twenty-nine and nine-tenths cents ($2.29), the employee shall be reimbursed thirty-six (36) cents per mile.

f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents ($2.29), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cent increase in the rate, made at the rate of thirty-two (32) cents per mile; and

2. Not exceed the cost of commercial coach round-trip airfare.

(f) Mileage for in-state travel shall be based on the "Kentucky Official Highway Map", mileage software or MapQuest website. Out-of-state mileage shall be based on the most recent edition of the "Rand McNally Road Atlas", mileage software or MapQuest website.

(g) Reimbursement for the actual cost of commercial transportation shall be made upon submission of receipts with the Travel Payment Voucher (TP or TPI).

(h) Reimbursement for use of privately-owned aircraft shall be made if, prior to use, written justification was submitted to and approved by the agency head or designee.

(i) A maximum of twenty (20) dollar forty-two (42) dollars per night for parking or parking charges for camping vehicles shall be reimbursed.

(j) Actual parking, bridge and highway toll charges shall be reimbursed.

2.2. A toll receipt for authorized in-state travel by two (2) axle vehicles shall not be required.

(k) Reimbursement shall be made for reasonable incidental expenses [charges] for:

1. Baggage handling;

2. Delivery of baggage to or from a common carrier, lodging or storage;

3. Overweight baggage charges, if the charges relate to official business.

(5) Registration fees required for admittance to meetings shall be reimbursed.

(b) If a registration fee entitles the registrant to meals, claims for those meals shall be reduced accordingly.

(6) Telephone and telegraph costs for necessary official business shall be reimbursed.

(b) Telephone calls to agency central offices shall be made through:

1. Agency 800 and 888 numbers, if available;

2. A state government telephone credit card; or

3. Lowest available service.

(7) Other incidental expenses may be allowed by the agency head or designee if they are determined to be necessary expenses of official travel.

Section 8. Actual and Necessary Expenses. (1) The following persons shall be eligible for actual and necessary expenses:

(a) Governor;

(b) Governor's staff;

(c) Lieutenant governor;

(d) Elected constitutional officers;

(e) Cabinet secretaries;

(f) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;

(g) State officers and employees authorized to travel outside the United States, its possessions or Canada;

(h) Members of statutory boards and commissions; and

(i) Others in the official service of the Commonwealth.

(2)(a) Actual and necessary expenses of official business travel shall be reimbursed only upon submission of receipts for items over ten (10) dollars. The secretary may reduce the amount of any actual expense to be reimbursed if the secretary determines that the expense is unreasonably excessive.
items of expense not documented with a receipt shall not be reim-
bursted [for items over ten (10)-dollars].

(b) Actual and necessary expenses for official business travel
shall include:

1. Lodging;
2. Meals;
3. Commercial transportation;
4. Taxes related to actual and necessary expenses; and
5. Reasonable gratuities.

(c) A credit card receipt shall be accepted for a meal if the
receipt prepared by the establishment clearly shows that it is a
receipt for a meal.

(d) Reimbursement for official use of a privately-owned vehicle
shall:
1. Be adjusted based on the American Automobile Association
(ABA) Daily Fuel Gauge Report for Kentucky for regular grade
gasoline cost reported on June 1, 2004, and adjusted thereafter
on January 1, April 1, July 1, and October 1 each calendar year based
on the average retail price of regular grade gasoline for the week
beginning on the second Sunday of the prior month as follows:

a. If the fuel cost is between one (1) cent and one dollar forty-
in (140) cents, the employee shall be reimbursed thirty-three (33)
cents per mile.

b. If the fuel cost is between one dollar forty-eight (48) cents
and one dollar sixty-nine and nine-tenths (169) cents, the employee
shall be reimbursed thirty-nine (39) cents per mile.

c. If the fuel cost is between one dollar seventy cents (170) and
one dollar eighty-eight and nine-tenths (188) cents, the
employee shall be reimbursed thirty-five (35) cents per mile.

d. If the fuel cost is between one dollar ninety cents (190) and
two dollarsnine and nine-tenths (209) cents, the employee shall be
reimbursed thirty-six (36) cents per mile.

e. If the fuel cost is between two dollars ten (20) and
two dollars twenty-nine and nine-tenths (229) cents, the
employee shall be reimbursed thirty-seven (37) cents per mile.

f. If the fuel cost is greater than two dollars twenty-nine and
nine-tenths (229) cents, the amount the employee is reimbursed
shall increase one (1) cent for every twenty (20) cents increase in
the rate, [(thirty-two (32) cents per mile; and]
2. Not exceed the cost of commercial coach round-trip airfare
[fare].

(e) 1. The governor and cabinet secretaries may be reimbursed
for actual and necessary costs of attending official business
guests, upon certification of these expenses to the secretary or
his designee.

2. The secretary or the secretary's [his] designee may:
a. Question a claim for reimbursement; and
b. Reduce the amount to be reimbursed, if the secretary [he]
determines that it is unreasonably excessive.

(f) An employee of the Economic Development Cabinet or the
Commerce [Tourism] Cabinet shall be reimbursed for actual and
necessary costs of entertaining official business guests of the
Commonwealth if the costs were:

1. Related to the promotion of industry, travel, or economic
development;
2. Substantiated by receipts; and
3. Certifed by the head of the cabinet.

Section 9. Mileage. (1) Mileage commuting between home and
work station shall not be paid.

(2)(a) If an employee's point of origin for travel is the em-
ployee's residence, mileage shall be paid for the shorter of
mileage between:

1. [a] Residence and travel destination; or
2. [b] Work station and travel destination.

(b) If an employee's point of origin for travel is an em-
ployee's workstation, and after proceeding to a travel destina-
tion, an employee's final destination is an employee's resi-
dence, mileage shall be paid for the shorter of mileage be-
tween:

1. Residence and travel destination; or
2. Workstation and travel destination. (3) Vicinity travel, and
authorized travel within a claimant's work station shall be listed
on separate lines on the Travel Payment Voucher (TP or TPI) docu-
ment.

Section 10. Travel Documents. (1) Travel software shall have
three (3) types of authorizations:

(a) TE or TEL for in-state travel;
(b) TEO for out-of-state travel; and
(c) TEO for out-of-country foreign travel.

(2) A traveler shall create a:
(a) Travel authorization (TE or TEL) document if a state park
facility or a motor pool vehicle will be used or if a registration fee is
to be paid in advance.
(b) Travel authorization (TEO) document for an out-of-state
trip.
(c) Travel authorization (TEO) document for an out-of-country
trip.

(3) A contract for group accommodations shall be made on the
standard form used by the establishment providing the services.

(4) Authorization for reimbursement of others in the official
service of the Commonwealth shall be requested on:
(a) A Vendor Payment Voucher (P1) document; or
(b) A Travel Payment Voucher (TP or TPI) document.

(5) A Travel Payment Voucher (TP or TPI) document shall be
used to claim reimbursement for travel expenses.

(6) The Travel Payment Voucher (TP or TPI) document shall
be limited to the expenses made by one (1) person for the:
(a) Traveler [Himself]; and
(b) If applicable, another person:
1. Who is a ward of the commonwealth; or
2. For whom the traveler [he] is officially responsible.

(7) A Travel Payment Voucher (TP or TPI) document for expen-
des made for a person specified in subsection (6)(b) of this
section shall include the person's:
(a) Name; and
(b) Status or official relationship to the claimant's agency.

(8)(a) A Travel Payment Voucher (TP or TPI) document shall be
submitted:
1. For one (1) major trip; or
2. Every two (2) weeks for employees that are in travel status
for an extended period.

(b) A Travel Payment Voucher (TP or TPI) document shall
include:
1. Social Security number of the claimant; and
2. Purpose of each trip.

(c) A Travel Payment Voucher (TP or TPI) document shall be
signed and dated, or entered electronically and approved by the:
1. Claimant; and
2. Agency head or authorized representative.

(d) If monthly expenses total less than ten (10) dollars, a Travel
Payment Voucher (TP or TPI) may include expenses for six (6)
months of a fiscal year.

(e) [9](a) A Travel Payment Voucher (TP or TPI) document
shall be:
1. Legibly printed in ink or typed; or
2. Processed electronically through travel software.

(f) (b) A receipt shall provide the following information for
each expense:
1. Amount;
2. Date;
3. Location; and
4. Type.

(g) [ed] Receipts shall be maintained at the agency if docu-
ments are processed electronically.

(h) [ed] If leave interrupts official travel, the dates of leave shall
be stated on the Travel Payment Voucher (TP or TPI).

(i) Lodging receipts, or other credible evidence, shall be at-
tached to the Travel Payment Voucher (TP or TPI).

Section 11. Incorporation by Reference. (1) The following ma-
terial is incorporated by reference:

(a) Travel Payment Voucher (TP or TPI) document (1999);
(b) Travel Authorization (TE or TEL) document for in-state
travel (1999);
(c) Travel Authorization (TEO) for out-of-state travel (1999);
(d) Travel Authorization (TEO) document for out-of-country
agency, shall determine the appropriate project delivery method prior to the development of preliminary specifications and the issuance of any project solicitations.

(3) A solicitation of proposals for competitive negotiation shall state:

(a) That the purchasing agency proposes to enter into comprehensive negotiation with responsible offerors;
(b) The date, hour, and place that written proposals shall be received;
(c) The type of alternative delivery method involved and the associated requirements;
(d) A description of the services sought and the procurement procedures to be followed;
(e) Specifications, or the location where specifications may be obtained;
(f) The specific qualitative and pricing evaluative factors, with associated scoring values or weights, to be considered in determining the proposal most advantageous to the commonwealth, with qualifications and price to be weighted at not less than twenty-five (25) percent and fifty (50) percent respectively; and
(g) The level or quantity of information required from each offeror to allow for equitable evaluation;

(h) The proposed method of award of contract;
(i) Other information as [in the opinion of the purchasing officer] may be desirable or necessary to reasonably inform potential offerors of technical, performance, and any other data and requirements of the procurement;

(j) The existence of a funding limitation, if determined to be in the best interest of the commonwealth;

(k) The amount of the funding limit, if it is determined by the Director of the Division of Contracting and Administration that disclosure of the amount of the funding limit will promote competition and will be in the best interest of the commonwealth; and

(l) The level or amount of stipends, if any, to be provided and to whom, contingent upon funding limitations. Stipends shall only be provided if adequate funds are available over and above the required project costs.

(4) If a funding limit has been established, proposals that exceed the funding limit may be rejected.

Section 4. (1) Procedures for the manner in which proposals will be evaluated shall be established by the purchasing officer per the requirements of the competitive negotiation for each procurement and shall be set forth in the request for proposals. The purchasing officer may request offerors to submit written clarification or explanation of their proposals, and the proposal of any offeror who fails to respond or to request an extension of time to respond within the time requested may be rejected.

Proposals shall be evaluated based upon factors stated in the request for proposals. Numerical [or other appropriate] rating systems shall [may] be used. All evaluation documentation, scoring, and summary conclusions shall be in writing and made a part of the file records for the procurement.

Section 5. The Director of the Division of Contracting and Administration shall appoint an evaluation committee of scoring and nonscoring (technical) members with membership comprised of [appropriate] personnel from the Finance and Administration Cabinet and the user agency for which the project is being constructed. The Director of the Division of Contracting and Administration shall determine, in writing, the number of committee members based upon the financial scope and technical complexity of the subject project, with no less than four (4), nor more than seven (7) scoring members.

Section 6. Interim preproposal meetings shall be conducted with potential offerors to allow for questions and clarifications regarding project plans and specifications provided as a part of the request for proposals. A written confirmation of all information presented in these meetings shall become an official addendum to the procurement documents and provided to all potential offerors. The number of preproposal meetings shall be determined by the Director of the Division of Contracting and Administration and stated in the request for proposals.
BOARD OF HAIRDRESSERS AND COSMETOLOGISTS
(As Amended at ARRS, October 12, 2004)

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

RELATES TO: KRS 317A.350(8), 317B.030(1), 2004 Ky. Acts ch. 96, sec. 3
NECESSITY, FUNCTION, AND CONFORMANCE: KRS 317A.060 and 317B.020 require the board to promulgate administrative regulations governing licenses in cosmetology, nail technology and esthetics. KRS 317A.050(8) and 317B.030(1) authorize the board to promulgate administrative regulations regarding continuing education. KRS 317A.050(8) requires a cosmetologist, nail technician or esthetician to provide proof of continuing education for renewal of license as determined by the board by promulgation of an administrative regulation. KRS Chapter 317B Section 6(1) requires an esthetician and esthetic instructor to provide proof of continuing education for renewal of license. This administrative regulation establishes the requirements for sponsoring a continuing education program and for providing proof of attendance at a continuing education program.

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

(1) Include the:
(a) Title of the program;
(b) Name, address, and telephone number of the sponsoring organization or individual;
(c) Number of clock hours for which approval is requested;
(d) Cost of the program to the attendee;
(e) The program's date, location, and time;
(f) Objective of the program;
(g) Name of the instructor;
(h) Manner of presentation to indicate whether the program is:

1. Lecture;
2. Demonstration;
3. Panel; or
4. Hands-on participation program; and
(i) Plan for program evaluation;
(2) Be signed by the sponsor to indicate that the sponsor agrees to:
(a) Accurately record attendance at each presentation;
(b) Complete a record of attendance confirming the number of clock hours actually attended for each attendee; and
(c) Submit a list of attendees within thirty (30) days after the program to the board office; and
(3) Be accompanied by a copy of the:
(a) Promotional advertisement for the program;
(b) Instructor's biography and list of credentials;
(c) Course outline; and
(d) Evaluation sheet.

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

Section 3. (1) The program shall consist of an organized program of learning which:
(a) Contributes directly to the competency of the licensee;
(b) Pertains to subjects related to the theory, management and practice of cosmetology, nail technology, or esthetics; and
(c) Pertains to the health, safety, welfare, and protection of the public including:
1. Sanitation;
2. Sterilization;
3. Chemical waste disposal;
4. Safety in the work place;
5. First aid;
6. Bloodborne pathogens;
7. Airborne pathogens; and
8. HIV/AIDS education, [sanitation, sterilization, chemical waste disposal, safety in the work place, first aid, bloodborne pathogens, airborne pathogens, and HIV/AIDS education.]
(2) A program that meets the requirements established in subsection (1) of this section shall be approved by the board if it is provided by:
(a) An American Red Cross Chapter;
(b) The Cabinet for Health Services;
(c) The Kentucky Labor Cabinet, Division of Education and Training; or
(d) The Kentucky State Board of Nursing; or
(e) American Heart Association.
(3) A program shall be limited to a class size appropriate to the classroom or facility.

Section 4. (1) A program shall specify the:
(a) Course objectives;
(b) Content;
(c) Prerequisites;
(d) Requirements; and
(e) Number of continuing education hours to be earned.
(2) A program shall specify the course objectives, content, prerequisites, requirements, and the number of continuing education hours to be earned. The information shall be specified in all promotional materials.

Section 5. A program shall:
(1) Be generic product related; and
(2) Not be used to promote, sell or advertise a product.

Section 6. (1) A sponsor shall be:
(a) A private school of cosmetology or a vocational school that offers a course in cosmetology [a private or vocational technical school of cosmetology];
(b) An association or organization whose membership consists of licensees of the board;
(c) A college, university, or other institution of higher education recognized by the Kentucky Council on Postsecondary Education or the Kentucky Community College, Trade and Technical Schools;
(d) An individual who:
1. Holds an active cosmetologist license, instructor of cosmetology license or nail technicians license; and
2. Has special education, training and experience in cosmetology;
(e) A person who has a license, degree, special education, training or experience relating to the subject matter of the program;
(f) A state agency program; or
(g) A manufacturer or distributor.
(2) A manufacturer or distributor product show shall not be approved as a continuing education program.
(b) A manufacturer or distributor product class shall be approved if the requirements established in this administrative regulation are met.
(e) Alcoholic beverages shall not be served, sold or consumed in the classroom.

Section 6. (7-) Academic Coursework. Successful completion of one (1) three (3) hour semester long course shall satisfy the continuing education requirement established by KRS 317A.050(8) and 317B.030(1) if the:
(1) Course is completed within the license renewal period;
(2) Course is relevant. A course shall be considered relevant if the course:
(a) Is biology, chemistry, psychology, health science, or business;
(b) Relates to the practice of the licensee; and
(3) Licensee submits an original transcript with the seal of the college or university affixed with the application for license renewal.

Section 7. (1) [8.] The board may monitor or review a continuing education program approved by the board.
(2) Upon evidence of significant variation in the program presented from the program approved, the board may withdraw approval of the hours granted to the program.

Section 8. (1) In order to receive credit for attendance at a program, a licensee shall:
(a) Complete a "Record of Attendance for Continuing Education Credit" form at the end of the program;
(b) Submit one (1) copy of the form to the program's registration desk at the end of the program; and
(c) Submit one (1) copy of the form with the licensee's renewal application.
(2) The form shall indicate the:
(a) Program title;
(b) Name of the sponsoring organization or individual;
(c) Date, location, and number of hours of the program; and
(d) Licensee's:
1. Name;
2. Address;
3. Phone number; and
4. a. Social Security number; or
b. Professional license number.

Section 9. (40) (1) A cosmetologist or nail technician not currently working in a salon may choose to let his or her expire and may restore that license within five (5) years by obtaining six (6) hours of continuing education and paying a restoration fee as required by 201 KAR 12:260, Section 5 [of fifty (50) dollars in accordance with KRS 317A.050, Section 4(1)].
(2) A licensed esthetician not currently working in a salon may choose to let his or her license expire and may restore that license within five (5) years by obtaining the required continuing education and paying the restoration fee set in 201 KAR 12:220(4)(1).

Section 10. (74) Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Approval of Continuing Education Program" (September 13, 1996 edition); and
(b) "Record of Attendance for Continuing Education Credit" (September 12, 2003 [13-1996] edition).
(2) This material [These forms] may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, Chairman
APPROVED BY AGENCY: June 22, 2004
FILED WITH LRC: July 15, 2004 at 3 p.m.
CONTACT PERSON: Dena Moore, Executive Secretary, Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

GOVERNOR'S OFFICE OF AGRICULTURAL POLICY
(As Amended at ARRS, October 12, 2004)

202 KAR 9:010 Procedure for selling guaranteed security instruments

RELATES TO: KRS 247.942-247.978
STATUTORY AUTHORITY: KRS 247.946(15)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.946(11) permits the corporation to sell at public or private sale, all or any part of a guarantee made by the U.S. Government as security for a loan made by the corporation. This administrative regulation establishes the procedure for selling these instruments to eligible investors.

Section 1. Definitions. (1) "Corporation" is defined in KRS 247.942.
(2) "Investor" means:
(a) A lending institution as defined in KRS 247.942;
1. Chartered to do business in Kentucky by the Commonwealth of Kentucky, or by an agency of the U.S. government; and
2. Maintaining an office in Kentucky;
(b) A broker-dealer registered or authorized to do business as a brokerage firm that engages in the business of trading and selling securities; or
(c) Any agency created or authorized by the Agricultural Credit Act of 1987 as amended (12 U.S.C. 2279aa et seq.) or any other federally chartered instrumentality of the U.S. created by Congress to establish a secondary market for agricultural and rural development loans.

Section 2. Requirements for an Investor. [4] Any investor wishing to purchase any guaranteed portion of a loan shall submit the following for the corporation's review:

1. A copy of its annual audited financial reports, including accompanying schedules;
2. Year-to-date quarterly financial statements;
3. Documentation authorizing the investor to do business in Kentucky, including licenses and if applicable, certification of good standing from the Secretary of State;
4. Resumes of the principals of the Investor with whom the corporation will be dealing directly and names and addresses of Kentucky institutions or Kentucky agencies with whom an investor has completed similar actions to those they wish to conduct with the corporation;
5. A copy of a standard form or other documents used by the Investor to purchase guarantees made by the U.S. Government; and
6. The most current weekly report of published rates based upon the length of the loan.

Section 3. Approval Procedure of the Corporation. Approval of eligible investors: (1) Upon the receipt of all requested documentation the corporation at its next regularly scheduled board meeting shall render an opinion on approval of the investor which shall remain in effect for one (1) calendar year from the date of the board's decision. The corporation may extend the approval of the Investor for no longer than ninety (90) days prior to the end of the anniversary of approval.

Section 4. Renewal Approvals by the corporation; (1) In order to obtain an extension of the approval of the corporation the Investor shall provide all of the items previously enumerated in Section 2 of this administrative regulation within ninety (90) days from the end of each fiscal year.

Section 5. (1) Upon the corporation's receipt of a conditional commitment from a U.S. governmental agency guaranteeing the corporation's loan to a borrower, the corporation shall send approved Investors notification of the conditional commitment and shall seek from the approved Investor within three (3) business days the following:
(a) A quotation that includes rate and terms for the borrower,
(b) The price to be paid by the Investor to the corporation for the guarantee; and
(c) Pricing associated with servicing of the corporation's loan.
(2) The corporation upon receipt of this information from any approved investor shall make a decision of which approved Investor, if any, to utilize in that specific instance.

KEITH L. ROGERS, Executive Director
APPROVED BY AGENCY: August 11, 2004
FILED WITH LRC: August 13, 2004, at 10 a.m.
CONTACT PERSON: Keith L. Rogers, Executive Director, Governor's Office on Agricultural Policy, 404 Ann Street, Frankfort, Kentucky 40601, phone (502) 564-4627, fax (502) 564-8990.

EDUCATION CABINET
Board of Education
Department of Education
(As Amended at ARRS, October 12, 2004)

704 KAR 7:140. World War II and Korean Veterans Diplomas.

RELATES TO: KRS 158.140(4)
STATUTORY AUTHORITY: KRS 158.140(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.140(4) requires the Kentucky Board of Education to promulgate an administrative regulation establishing the guidelines for use by local boards of education when awarding a high school diploma to an honorably discharged veteran who was enrolled in, but did not complete, high school prior to being inducted into the United States Armed Forces during World War II, as defined in KRS 40.010, or the Korean conflict as defined in KRS 40.010. This administration establishes the requirements for awarding a high school diploma to those World War II and Korean conflict veterans. [This administrative regulation establishes the requirements for awarding a high school diploma to those World War II veterans.]

Section 1. Documentation Needed to Determine Eligibility. An honorably discharged veteran of World War II [WAV-II, or the Korean conflict, or a member of the veteran's family, shall provide a discharge certificate showing the period of service and type of discharge and the name of the school and district of enrollment to the Kentucky Department of Veterans Affairs, 1111 Louisville Road, Frankfort, Kentucky 40601.

Section 2. Guidelines for Local Boards of Education to Award Diplomas. (1) The Kentucky Department of Veterans' Affairs shall forward the verified documentation to the local board of education.
(2) Upon receipt of documentation, a local board of education shall verify the veteran was enrolled in, but did not complete, high school prior to induction and meets the requirements of KRS 158.140. If the high school or district has been consolidated or reconfigured since the veteran's enrollment, the current local board of education with jurisdiction shall provide the verification.

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: August 12, 2004
FILED WITH LRC: August 12, 2004, at 3 p.m.
CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

COUNCIL ON POSTSECONDARY EDUCATION
(As Amended at ARRS, October 12, 2004)

785 KAR 1:010. GED Testing Program.

RELATES TO: KRS 151B.125
STATUTORY AUTHORITY: KRS 151B.023, 151B.410, EO 2004-725

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.410(1) requires the Department for [Kentucky] [the Department for Adult Education and Literacy (and Literacy)] to promulgate necessary administrative regulations and administer a statewide adult education and literacy system throughout the state. KRS 151B.023 requires the Department for [Kentucky] [the Department for Adult Education and Literacy (and Literacy)] to implement the twenty (20) year state strategy to reduce the number of adults at the lowest levels of literacy and most in need of adult education and literacy services. KRS 151B.125 recognizes the General Educational Development or GED test for high school equivalency purposes in Kentucky, EO 2004-725 abolished the Department for Adult Education and Literacy and transferred its duties to
the Council on Postsecondary Education. This administrative regulation establishes the procedure for testing an adult for the GED diploma.

Section 1. Test Purpose [Subjecs]. The GED test shall provide a valid means of measuring the educational achievement of an adult who is a non-high school graduate and of comparing the adult’s competency with that of high school graduates. The test shall be a high school level battery consisting of five (5) comprehensive examinations covering:
(1) Language arts, writing;
(2) Social studies;
(3) Science;
(4) Language arts, reading; and
(5) Mathematics.

Section 2. Test Centers. Official GED testing centers shall be established under contract with the GED Testing Service. Kentucky [The Commissioner of the Department for] Adult Education [and Literacy] shall authorize the location of these centers.

Section 3. Test Scores. (1) Kentucky [The Department for] Adult Education [and Literacy] shall:
(a) Administer the scoring of the tests;
(b) Accept scores as official if reported by:
1. A state, territorial, or provincial department of education;
2. A GED testing center;
3. The GED Testing Service; or
4. DANTES (as the repository of score reports issued by the U.S. Armed Forces Institute).

(2) An applicant shall score the minimum standard score on each subtest and the minimum overall average score on the Official GED Test as set by GED Testing Service. If an applicant passes the five (5) subtests with a minimum standard test score on each subtest, but does not attain an overall average standard score, he shall be eligible to retake any subtest in an attempt to raise the overall standard score.

Section 4. GED Diploma. Kentucky [The Department for] Adult Education [and Literacy] shall provide a high school equivalency diploma to an applicant who meets all the provisions of this administrative regulation and the eligibility requirements established by 785 KAR 1:130.

Section 5. Test Fees. (1) The testing fee shall be:
(a) Forty (40) dollars, if the applicant is taking all five (5) subtests in a test session; or
(b) Ten (10) dollars per subtest. The testing fee shall be a uniform fee of forty (40) [thirty-(30)] dollars per test or ten (10) [six (6)] dollars per subtest.

(2) A request for a transcript or diploma shall be in writing and shall carry the signature, birth date, and Social Security number of the examinee and shall be accompanied by the payment of:
(a) A five (5) dollar processing fee assessed [shall be collected] for the issuance of a duplicate [GED-diploma or] transcript request of $1;
(b) A twenty-five (25) dollar fee assessed for the issuance of a duplicate diploma [request for a score shall be in writing and shall carry the signature, birth date, and Social Security number of the examinee].

THOMAS D. LAYZELL, President
DENNIS TAULBEE, General Counsel
APPROVED BY AGENCY: August 6, 2004
FILED WITH LRC: August 11, 2004, at 2 p.m.
CONTACT PERSON: B. J. Helton, Senior Associate, GED Administrator, Kentucky Adult Education, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 250, Frankfort, Kentucky 40601, phone (502) 573-5114, ext. 102, fax (502) 573-5436, email: bj.helton@ky.gov

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Alcoholic Beverage Control
(As Amended at ARRS, October 12, 2004)

804 KAR 1:100. General advertising practices.

RELATES TO: KRS 244.130, 244.500, 244.590
STATUTORY AUTHORITY: KRS 241.060
NECESSITY, FUNCTION, AND CONFORMITY: KRS 244.130 authorizes the [permits this Office of Alcoholic Beverage Control [department] to regulate the advertising of alcoholic beverages. This administrative regulation establishes standards for [is designed to regulate said] advertising in a manner consistent with modern marketing practices and in conformance with relevant statutory provisions and legislative intent.

Section 1. A [No] licensee shall advertise [or cause to be advertised any alcoholic beverages or his place of business in any manner not] in conformity with the Kentucky Revised Statutes and administrative regulations governing alcoholic beverages.

Section 2. (1) A licensee may use outdoor advertising,
(2) outdoor [—however, no] advertising by a manufacturer, producer, brewer, vintner, distributor or wholesaler pursuant to this section shall not contain the name or business designation (DBA) or any reference whatsoever to any retail licensee.

Section 3. A licensee [Licensee(s)] may advertise in material directed to the home or business of the consumer [if the advertising material is] in conformity with the provisions of KRS 244.130 and this administrative regulation.

Section 4. (1) Except as provided by, subsection (2) of this section, advertising novelties shall be permitted.
(2) A [No] licensee shall not require, directly or indirectly, the purchase or consumption of any alcoholic beverage as a condition for the sale, gift, or reduction in price of any advertising novelty.

Section 4. (3) Except as provided for under KRS 244.590(2)(a), a [244.590(2)(b), no] mail beverage distributor shall not sell, give away or furnish advertising novelties, in any manner, directly or indirectly, to a retail licensee.

Section 5. A [Licensee(s)] may advertise by means of radio and television.

Section 6. (1) A licensee [Licensee(s)] may sponsor or cosponsor athletic leagues, tournaments, contests and charitable events provided that the consumption or purchase of alcoholic beverages shall not be a requirement, directly or indirectly, for participation.
(2) A [No] licensee sponsoring or cosponsoring an event described in subsection (1) of this section upon a retail licensed premises shall not require, directly or indirectly, the retail licensee to purchase, sell, or distribute the products of the sponsoring licensee as a condition for participation or in connection with the event described in this administrative regulation.

Section 7. A [No] licensee shall not in whatever media or by whatever means, use the terms free, complimentary or any other terms, which imply [infer or suggest giveaways in the advertising of alcoholic beverages in any advertisement.

Section 8. A [No] licensee shall not advertise any product, service or activity, which the licensee is prohibited by statute or administrative regulation from selling, providing, or conducting.

This is to certify that the General Counsel of the Office of Alcoholic Beverage Control has reviewed this administrative regulation, prior to its filing by the Office of Alcoholic Beverage Control with the Legislative Research Commission as required by KRS 13A.120(3), 13A.220(6)(a).

LAUJUANA S. WILCHER, Secretary
JAMES L. ADAMS, Commissioner
JOHN CLAY, Executive Director
VOLUME 31, NUMBER 5 – NOVEMBER 1, 2004

APPROVED BY AGENCY: August 12, 2004
FILED WITH LRC: August 13, 2004, at 10 a.m.
CONTACT PERSON: Virginia V. Davis, Resource Management Analyst III, or Pam Helton, Executive Staff Advisor, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Alcoholic Beverage Control
(As Amended at ARRS, October 12, 2004)

804 KAR 4:010. Information required.

RELATES TO: KRS 243.390, 243.530
STATUTORY AUTHORITY: KRS 241.060
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations governing procedures relative to the sale of license. KRS 243.380 establishes the information to be furnished with an application. KRS 243.630 requires that information be furnished to the board when there is a transfer of a license. This administrative regulation establishes the procedures for reporting and approval of a transfer [243.390(2)] requires notification to this board of any change in the facts required in an application to this board for a license. Since a number of licenses issued with this board are in the name of a corporation, it is necessary that stock ownership changes in such corporation be reported to this board. The board can, therefore, investigate the person to whom the stock is transferred in order to ascertain whether that person is precluded by statute from holding an interest in an alcoholic beverage license.

Section 1. (1) If a licensee, licensed pursuant to KRS 243.030 or 243.040, reorganizes but retains the same officers, directors, or shareholders, the licensee shall be exempt from the requirements of KRS 243.630 if:
   (a) All persons included in a supplemental application for change would otherwise qualify for a new license;
   (b) The license fees established in KRS 243.030, 243.040, and 243.090 are paid; and
   (c) All other requirements in this administrative regulation are met.

(2) The licensee shall provide all of the information required by KRS 243.390.

Section 2. (1) If a licensee, licensed pursuant to KRS 243.030 or 243.040, reorganizes and does not retain the same officers, directors, or shareholders, the licensee shall submit the following information to the board for each new officer, director, or shareholder:
   (a) Name and address;
   (b) The new position that he is assuming;
   (c) A statement as to whether not he is a citizen of the United States;
   (d) Date of birth;
   (e) A statement as to whether or not he is a resident of Kentucky and when that residency was established;
   (f) Whether or not he has any financial interest in any other license or corporation holding a license pursuant to KRS 243.030 or 243.040; and
   (g) The extent of stock ownership.

(2) The information required by this section shall be filed with the board as an amendment to the application currently on file with the board. [As used in KRS 243.390, the word "change" is construed to include any change of directors or officers of the corporation, or a change in ownership of stock whereby any person secures ten (10) percent of the outstanding stock. Transfer of more than ten (10) percent of the total stock shall require a new license. (a) A reorganization of the licensees among its existing officers, directors, or shareholders licensed under KRS 243.030 and 243.040 may be exempt from the requirements of subsection (1) of this section if all persons included in a supplemental application for change would otherwise qualify for a new license; all other requirements in this regulation are met; a license fee provided for in KRS 243.030, 243.030 and 243.040 is paid; and approval by the state administrator(s) is granted. The licensee shall provide the information outlined in KRS 243.390 to the board.]

(2) The following information will be required concerning any new director, officer, or person occupying any interest in an alcoholic beverage license:
   (a) Name and address;
   (b) Nature of interest;
   (c) Whether or not a citizen of the United States;
   (d) Date of birth;
   (e) Date residence was established in Kentucky, if a resident of Kentucky;
   (f) Whether or not he has any interest in any other license or corporation holding a license under this act;
   (g) Extent of stock ownership.

(3) This information shall be filed with the Office [Department] of Alcoholic Beverage Control as an amendment to the application pursuant to which the license was granted.

This is to certify that the General Counsel of the Office of Alcoholic Beverage Control has reviewed this administrative regulation, prior to its filing by the Office of Alcoholic Beverage Control with the Legislative Research Commission as required by KRS 13A.120(3), 13A.220(6)(a).

LAJJUANA S. WILCHER, Secretary
JAMES L. ADAMS, Commissioner
JOHN CLAY, Executive Director
APPROVED BY AGENCY: August 12, 2004
FILED WITH LRC: August 13, 2004, at 10 a.m.
CONTACT PERSON: Virginia V. Davis, Resource Management Analyst III, or Pam Helton, Executive Staff Advisor, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Alcoholic Beverage Control
(As Amended at ARRS, October 12, 2004)

804 KAR 4:100. Records to be retained.

STATUTORY AUTHORITY: KRS 241.060, 244.150
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations governing procedures relative to the sale, manufacture, and trafficking of alcoholic beverages. KRS 244.150 requires licensees under KRS 243.020 to 243.670 to keep and maintain adequate records of all transactions and requires the agency to prescribe the type and retention schedule for those records by administrative regulation. KRS 242.123 and 242.286 authorize licensees that also require the monitoring of records. This administrative regulation establishes the requirements for records (it is necessary that, upon request from a representative [an agent] of the Office of Alcoholic Beverage Control [Department], a licensee be able to produce invoices of purchases, and records of sales. It is also necessary that the licensees be required to keep these records on the premises or accessible since part of those records consist of reports, not only to this office [department], but to the federal government and various tax agencies of the state. It should be noted that this administrative regulation does not require any additional forms or records be completed by the licensees, but only that they have retained [the retain] on the premises these records dealing with alcoholic beverages and food which have [the has] already reported to the various state and federal agencies. These records become extremely important when this office [department] conducts an investigation into sales to bootleggers, the relisting of bottles of distilled spirits, qualifying for certain license types, and purchases that may have been made from persons not licensed by
Section 1. (1) Pursuant to KRS 244.150(1), a [Every] licensee is required to keep on file on the [his] licensed premises, or pursuant to KRS 244.150(1) for a period of two (2) years true and correct copies of:
(a) All reports relating to trafficking in alcoholic beverages required by the federal government, the Kentucky Department of Revenue or the Kentucky Office [Department] of Alcoholic Beverage Control.
(b) Invoices, receipts and other pertinent information relating to the licensee's traffic [his trafficking] in alcoholic beverages.
(c) Invoices, receipts and other pertinent information relating to the licensee's purchases and sales of food, if the licensee holds a license type which requires maintenance of [his or her to maintain a] minimum percent of gross receipts from the sales in food.
(2) All [Said] reports, invoices and other information shall be available at all reasonable times for inspection by authorized representatives of the Department of Revenue or the Kentucky Office [Department] of Alcoholic Beverage Control, and failure to make those [such] available shall be deemed cause for revocation of the license.

Section 2. Every invoice for the sale of malt beverages from a malt beverage distributor to a retail beer licensee shall be signed by the retail beer licensee or its agent.

Section 3. A licensee functioning under the provisions of KRS 249.123 or 242.185 shall keep and maintain records in accordance with the provisions of this administrative regulation.

This is to certify that the General Counsel of the Office of Alcoholic Beverage Control has reviewed this administrative regulation, prior to its filing by the Office of Alcoholic Beverage Control with the Legislative Research Commission as required by KRS 13A.120(3), 13A.220(6)(a).

LAJUANA S. WILCHER, Secretary
JAMES L. ADAMS, Commissioner
JOHN CLAY, Executive Director
APPROVED BY AGENCY: August 12, 2004
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CONTACT PERSON: Virginia V. Davis, Resource Management Analyst III, or Pam Helton, Executive Staff Advisor, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Alcoholic Beverage Control
(As Amended at ARRS, October 12, 2004)


RELATES TO: KRS 243.030(21), 243.200
STATUTORY AUTHORITY: KRS 241.060
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations governing procedures relative to the transportation of alcoholic beverages. KRS 243.200 restricts the transportation of alcoholic beverages to those persons holding appropriate license. This administrative regulation establishes the requirements for through transportation (243.200), transporter license for distilled spirits and wine, limits such license to a common carrier or railway express company. This administrative regulation expands persons eligible for such a license to include any person wishing to transport distilled spirits and wine through the State of Kentucky and over Kentucky highways. This allows company-owned trucks of wineries or distillers to transport distilled spirits and wine through the State of Kentucky. The fee for the herein license appears in KRS 243.030(21)(b).

Section 1. (1) A person wishing to transport distilled spirits and wine through the Commonwealth of Kentucky over the public highways shall apply for and receive a "through transporter's license" from the Office of Alcoholic Beverage Control. This license shall entitle the holder to transport distilled spirits and wine during the period of the license. The transportation of distilled spirits and wine without benefit of a through transporter's license shall subject the offending party to the penalties established in KRS 243.990 [Persons wishing to transport distilled spirits and wine through the State of Kentucky over the highways must apply for and receive from the Office [Department] of Alcoholic Beverage Control a "through transporter's license" which license will allow the holder, for the period of said license, to so transport. Failure to hold such a license will subject transporter to the penalties prescribed in KRS Chapters 243 and 244].

(2) Application for a "through transporter's license" shall be made to the Office [Department] of Alcoholic Beverage Control, under oath, on a form furnished by that office [department], and shall set forth in detail the same kind of information required of applicants for a transporter's license, and any additional information required by KRS 243.200 or this administrative regulation.
An application [such additional information as the department may require in order to render effective the requirements of this administrative regulation. Application for a "through transporter's license" shall] must be accompanied by:
(a) A statement of the route by which transporter wishes to be licensed to use,
(b) Photostatic copies of the applicant's state and federal permits (or evidence that the applicant is a common carrier under regulations prescribed by the Interstate Commerce Commission), and:

(3) A statement that the applicant, if [grant the license], will allow any authorized representative of the Office [Department] of Alcoholic Beverage Control, the Department of Revenue, or Kentucky State Police, to stop and examine the cargo of any truck or vehicle in which distilled spirits or wine is being transported within the boundaries of the Commonwealth of Kentucky.

(3) Immediately on approval, the license herein prescribed may be issued.

Section 2. (1) The driver of a vehicle so transporting shall [must be] in the possession of:
(a) Bills of lading, consignment, or other evidence of ownership of the cargo which tarry with the cargo; and:
(b) A copy of the license.

(2) Failure of the driver to be in possession of these documents [facsimile evidence of illegal trafficking].

Section 3. Incorporation by Reference. (1) "Schedule 'T' Transporters Licenses," 07/16/04, is incorporated by reference.

(2) This material may be inspected, copied, or obtained subject to applicable copyright laws, at the Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the General Counsel of the Office of Alcoholic Beverage Control has reviewed this administrative regulation, prior to its filing by the Office of Alcoholic Beverage Control with the Legislative Research Commission as required by KRS 13A.120(3), 13A.220(6)(a).

LAJUANA S. WILCHER, Secretary
JAMES L. ADAMS, Commissioner
JOHN CLAY, Executive Director
APPROVED BY AGENCY: August 12, 2004
FILED WITH LRC: August 13, 2004, at 10 a.m.
CONTACT PERSON: Virginia V. Davis, Resource Management Analyst III, or Pam Helton, Executive Staff Advisor, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.
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ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Alcoholic Beverage Control
(As Amended at ARRS, October 12, 2004)

804 KAR 4:380. License renewals.

RELATED TO: KRS 243.090(1)
STATUTORY AUTHORITY: KRS 241.060
NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.090(1) requires the Office of Alcoholic Beverage Control to establish a year-round system for renewal of licenses. This administrative regulation establishes the system for license renewal [was amended in 1988 and required the Office of Alcoholic Beverage Control to promulgate an administrative regulation establishing a year-round system for renewal of licenses. This system shall be designed to distribute the workload as uniformly as possible within the offices of the local administrators and the state office).

Section 1. (1) The board shall establish the date each license expires, and the month the license shall be annually renewed, and a table referencing these dates. Every year each licensee shall renew its license on or before the expiration date of the license.

(2) The required renewal dates are included in the "ABC Table of License Expiration Dates by Zip Code" which is incorporated by reference.

Section 2. (2)[3] Incorporation by Reference. (1) (a) ABC Table, License Expiration Dates by Zip Code (07/15/04 Edition), Office of Alcoholic Beverage Control, is incorporated by reference.

(2) (b) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

Section 3. (2) (1) Transports, out-of-state license types, solicitors storage warehouse, and other smaller license type groups, designated by the state office, shall have licenses, which expire in the month of December.

(2) All other licenses shall expire during the months of January through November of each year, except for the months of July and August.

(3) The board may allow a licensee who owns multiple premises sites to renew its license(s) at the same time. Licensees’ names that begin with any numeral or the letters A-L shall have licenses expiring in July. Licensees’ names that begin with the letters M-Z shall have licenses expiring in August.

Section 4. (3) Licensees that qualify under Section 3(3) [2(3)] shall have the option to renew their licenses separately. The licensee shall notify the board, in writing, of its intent to renew each premises separately. The board shall then select the license expiration date for each premises site according to the provisions in Section 1 of this regulation.

Section 5. (4) The board may revise the dates licenses expire if it is in the best interest of the local administrators or the state office.

This is to certify that the General Counsel of the Office of Alcoholic Beverage Control has reviewed this administrative regulation, prior to its filing by the Office of Alcoholic Beverage Control with the Legislative Research Commission as required by KRS 13A.120(3), 13A.220(6)(a).

LAUJANA W. WILCHER, Secretary
JAMES L. ADAMS, Commissioner
JOHN CLAY, Executive Director
APPROVED BY AGENCY: August 12, 2004
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CONTACT PERSON: Virginia V. Davis, Resource Management Analyst III, or Pam Helton, Executive Staff Advisor, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Alcoholic Beverage Control
(As Amended at ARRS, October 12, 2004)

804 KAR 5:070. Minors.

RELATED TO: KRS 241.090(37), 244.080, 244.085, 244.087, 244.090
STATUTORY AUTHORITY: KRS 241.060(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations governing procedures relative to the supervision and control of the use and sale of alcoholic beverages. This administrative regulation establishes the necessity for the administrative regulation of minors on licensed premises. [The function of this administrative regulation is to establish detailed prohibitions applicable to minors entering or remaining on licensed premises.]

Section 1. [Definition. "Restaurant" means a business which receives at least thirty-five (35) percent of its gross food and alcoholic beverage sales receipts from the sale of food.] Premises that qualify for the restaurant exemption pursuant to KRS 244.085(6), shall only be exempted during those times of the day that meals are served to customers.

Section 2. [Except as provided in KRS 244.087 and 244.090, a licensee, his agents, servants, or employees shall not permit any person under twenty-one (21) years of age to enter or remain on any premises on which alcoholic beverages are sold by the drink or consumed on the premises, unless the usual and customary business of the establishment is as a restaurant, grocery store, drug store, hotel, motel, private club, park, fair, church, school, athletic complex, or public exhibition at which live sports, athletic events, bona fide plays, or contests are scheduled.

Section 3. Unless an establishment is exempted under KRS 244.085(6) [the provisions of Section 1 of this administrative regulation], every retail licensee that sells alcoholic beverages by the drink for consumption on the premises shall display at all times, in a prominent place, a printed card at least 8 in. x 11 in. in size which shall read, in thirty (30) point or larger type, substantially as follows:

PERSONS UNDER 21 MAY NOT ENTER OR REMAIN ON THIS PREMISES.

This is to certify that the General Counsel of the Office of Alcoholic Beverage Control has reviewed this administrative regulation, prior to its filing by the Office of Alcoholic Beverage Control with the Legislative Research Commission as required by KRS 13A.120(3), 13A.220(6)(a).

LAUJANA S. WILCHER, Secretary
JAMES L. ADAMS, Commissioner
JOHN CLAY, Executive Director
APPROVED BY AGENCY: August 12, 2004
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CONTACT PERSON: Virginia V. Davis, Resource Management Analyst III, or Pam Helton, Executive Staff Advisor, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Alcoholic Beverage Control
(As Amended at ARRS, October 12, 2004)

804 KAR 7:010. Location in cities of first class.

RELATED TO: KRS 241.090(37), 244.065, 241.075
STATUTORY AUTHORITY: KRS 241.060(1), (2), 241.075(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS
241.060(1) authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations governing procedures relative to the applications for and revocations of licenses, and the supervision and control of the use and sale of alcoholic beverages. KRS 241.075(1), requires the ABC Board to divide cities of the first class into "downtown business areas" and "combination business and residential areas." This administrative regulation establishes the boundaries for these [of such] districts in the City of Louisville, the only city of the first class in Kentucky, and establishes requirements for establishments selling alcoholic beverages within these districts.

Section 1. (1) For the purpose of regulating the distance between locations of retail package and retail drink liquor licenses, the "downtown business areas" and "combination business and residential areas are [area] [be-and-they-are-hereby] established as follows.

(2) The City of Louisville shall be divided into two (2) sections.

(a) "Downtown business area" shall consist of that portion of the city which is bounded as follows: Beginning at the north east corner of Eighth Street and the Ohio River; then [hence] southwardly along the east side of Eighth Street to the south west corner of Broadway; then [hence] westwardly along the south side of Broadway to Preston Street and to include only those premises on the north west side of Ninth Street having a Broadway Street address; then [hence] north on the west side of Preston Street to the Ohio River; thence westwardly along the southern boundary of the Ohio River to the northeast corner of Eighth Street, the point of beginning.

(b) "Combination business and residential areas" shall consist of all the area of the City of Louisville not [situated-and] described above in the "downtown business area."

Section 2. Requirements for Nonquota Licenses Issued in "Combination Business and Residential Areas." (1) The board may issue nonquota licenses to sell distilled spirits and wine by the drink in the areas included in Section 1(2)(b) of this administrative regulation within 700 feet of the location of an earlier establishment in any combination business and residential area, if the requirements of subsections (2) or (3) of this section are met.

(2) For an outlet in a hotel, inn, or motel having accommodations for the traveling public, designed primarily to serve transient patrons, an applicant for a license shall submit to the board satisfactory proof that the facilities shall:

(a) Accommodate sufficient patrons to sustain the operation of a retail drink outlet;
(b) Contain at least fifty (50) sleeping units;
(c) Contain dining facilities for at least 100 persons;
(d) Have at least 25,000 square feet of parking space; and
(e) Receive at least fifty (50) percent of its gross receipts from its dining facilities from the sale of food.

(3) For a restaurant, as defined in KRS 241.010(37), the restaurant shall maintain a minimum seating capacity of at least 100 persons at tables.

(4) Provided, however, that at its discretion, the Alcoholic Beverage Control Board may issue retail licenses to sell distilled spirits and wine by the drink in those areas included in paragraph (b) of this subsection to any licensee who proposes to sell distilled spirits and wine by the drink at a location within 700 feet of the location of an earlier establishment in any combination business and residential area, provided, that the license is for an outlet in a hotel, inn, or motel having accommodations for the traveling public, designed primarily to serve transient patrons, and any applicant for such license shall submit to the board satisfactory proof that such facilities for a hotel, inn, or motel will accommodate sufficient patrons to sustain the operation of a retail drink outlet, and said hotel, inn, or motel shall contain not less than fifty (50) sleeping units, dining facilities for not less than 100 (150) persons, and not less than 25,000 square feet of parking space and which receive at least fifty (50) percent or more of its gross receipts from its dining facilities from the sale of food or for a restaurant having a seating capacity of at least 100 people at tables and which receive at least fifty (50) percent or more of its gross receipts [annual income] from its dining facilities from the sale of food. The premises on which said hotel, inn, or motel or qualifying restaurant is located shall be considered "a downtown business area" for the purpose of regulating the distance between it and other licenses for the retail sale of distilled spirits and wine by the drink in conformity with the provisions of KRS 241.075.

This is to certify that the General Counsel of the Office of Alcoholic Beverage Control has reviewed this administrative regulation, prior to its filing by the Office of Alcoholic Beverage Control with the Legislative Review Commission as required by KRS 13A.120(3), 13A.220(5)(a).

LAUJANA S. WILCHER, Secretary
JAMES L. ADAMS, Commissioner
JOHN CLAY, Executive Director
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CONTACT PERSON: Virginia V. Davis, Resource Management Analyst III, or Pam Helton, Executive Staff Advisor, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Alcoholic Beverage Control
(As Amended at ADRS, October 12, 2004)

804 KAR 9:010. Retail liquor license limit.

RELATES TO: KRS 241.010(37), 241.060, 241.065, 241.075, 243.030
STATUTORY AUTHORITY: KRS 241.060(1), (2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations relative to the applications for and revocations of licenses. KRS 241.060(2) authorizes the board [ABC-Board] to limit the number of licenses to be issued in any county of the Commonwealth. This administrative regulation establishes the basis of this limitation and establishes the manner in which the population of a county is to be ascertained for purposes of the number of licenses in a county.

Section 1. The number of retail package liquor licenses issued by the Alcoholic Beverage Control Board in any county of the Commonwealth shall not exceed a number equal to one (1) for every 2,500 persons resident. A county containing cities of the first class shall be subject to the limitations in KRS 241.065.

Section 2. (1) The number of retail drink liquor licenses issued by the Alcoholic Beverage Control Board in any county of the Commonwealth shall not exceed a number equal to one (1) for every 2,500 persons resident, subject to the exceptions in subsections (2), (3), and (4) of this section. A county containing cities of the first class shall be subject to the limitations in KRS 241.065.

(2) The Alcoholic Beverage Control Board may issue retail drink licenses in excess of the number provided in subsection (1) of this section if the license is:

(a) For an outlet in a hotel, inn or motel for accommodation of the traveling public; [and]
(b) Designed primarily to serve transient patrons; and;
(c) An applicant shall submit to the Board satisfactory proof that the facility shall accommodate sufficient patrons to sustain the operation of a retail drink outlet. The facility shall [contain]:

1. Contain at least [Not less than] fifty (50) sleeping units;
2. Contain dining facilities for at least [Dining-facilities-for] not less than 100 (150) persons; and
3. Receive [Receive] at least [not less than] fifty (50) percent of its gross [annual-alcoholic-beverage-and-food] receipts from the sale of food [and];

4. Have not less than 25,000 square feet of parking space;

(3) The Alcoholic Beverage Control Board may issue retail drink licenses in excess of the number provided in subsection (1)
of this section if the license is for an outlet in an airport terminal where commercial flights are made in or near cities of the first, second or third class in wet counties.

(4) The Alcoholic Beverage Control Board may issue retail drink licenses in excess of the number provided in subsection (1) of this section if the license is:

(a) For a restaurant, as defined by KRS 241.010(37); [for a restaurant:
(b) Which receives at least fifty (50) percent or more of its gross receipts [annual alcoholic beverage and food income] from the sale of food; and
(c) Has a minimum seating capacity of 100 people at tables;[1]
(c) An applicant shall submit to the Board:
1. Satisfactory proof that the facility meets the [above] criteria in paragraphs (a) and (b) of this subsection; and
2. A certification of seating capacity by the applicable fire marshal's office or its equivalent; and

(d) Upon application for renewal, the licensee shall submit an annual report to the Board indicating annual gross receipts from the sale of food and the sale of alcoholic beverages.

(5) Licenses issued under the [these] exceptions in subsections (2), (3) and (4) of this section, shall not be transferred to other premises.

Section 3. (1) The estimates of population for Kentucky counties prepared by the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, shall be used in every year except a census year to determine the number of licenses prescribed by this administrative regulation. The United States Government census figures of population shall be used in a census year.

(2) On or before January 1 of each year, the Alcoholic Beverage Control Board shall request from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, population estimates as of that date for those counties in which license quotas may need to be reviewed by the Board. Upon receipt of these estimates from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, the Alcoholic Beverage Control Board, shall within thirty (30) days, send a specific notice to the newspaper with the largest circulation in each county where the estimate justifies a change in that county's quota, and issue a release of this information to the general press. The Office [Department] of Alcoholic Beverage Control shall accept applications for new quota licenses for a period of thirty (30) days following the date of publication in the newspaper of each county affected.

Section 4. This administrative regulation shall not prohibit renewal of licenses. The present quota shall be reduced, in conformance with this administrative regulation, as licenses are revoked or surrendered.

This is to certify that the General Counsel of the Office of Alcoholic Beverage Control has reviewed this administrative regulation, prior to its filing by the Office of Alcoholic Beverage Control with the Legislative Research Commission as required by KRS 13A.120(3), 13A.220(6)(a).

LAUJANA S. WILCHER, Secretary
JAMES L. ADAMS, Commissioner

JOHN CLAY, Executive Director
APPROVED BY AGENCY: August 12, 2004
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CONTACT PERSON: Virginia V. Davis, Resource Management Analyst III, or Pam Helton, Executive Staff Advisor, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

ENvironmental and Public Protection Cabinet
Office of Alcoholic beverage Control
(As Amended at ARRS, October 12, 2004)

804 KAR 11:010. Equipment and supplies.

RELATES TO: KRS 244.500, 244.590
STATUTORY AUTHORITY: KRS 241.060(1), 244.590(1)(c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations governing procedures relative to the supervision and control of the use, manufacture, sale, advertising, and trafficking of alcoholic beverages. KRS 244.590(1)(c) authorizes the administrator of the malt beverage unit to prescribe by administrative regulation the types of equipment or other things of value a brewer or distributor may furnish to a malt beverage retailer. This administrative regulation establishes the items that a brewer or distributor may furnish to a retail licensee and other licensees, KRS 244.600 and 244.690 expressly prohibits any premiums, gifts or prizes for any purpose in connection with the sale of malt beverages. Under the authority of that general statute, this administrative regulation contains specific items, which can be furnished to a retailer by a brewer or distributor, and designates those items, which cannot be furnished to a retailer.

Section 1. (1) A brewer or distributor may furnish the following equipment to retail licensees that sell draft malt beverages:

(a) Tapping accessories;
(b) Rods;
(c) Vents;
(d) Taps;
(e) Hoses;
(f) Washers;
(g) Couplings;
(h) Vent tongues;
(i) Check valves; and
(j) Tap knobs.

(2) If [tapping accessories, rods, vents, taps, hoses, washers, couplings, vent tongues, check valves, and tap knobs. When] tap knobs, or similar devices, bearing brand names are furnished they shall not be used to dispense malt beverages of a different brand from that designated on the knob. [No] Other equipment shall not [may] be furnished to retail malt beverage licensees.

Section 2. A brewer or distributor may furnish vats, tubs, tanks, or portable dispensing units to special temporary licensees, picnics, bazaars and carnivals. The equipment may bear a trade name, trademark, trade slogan or a facsimile of a product, container or display, associated with a particular brand that is visible to the consumer.

[Section 3. A brewer or distributor is prohibited from supplying coil cleaning service to a retailer either directly or indirectly.]

This is to certify that the General Counsel of the Office of Alcoholic Beverage Control has reviewed this administrative regulation, prior to its filing by the Office of Alcoholic Beverage Control with the Legislative Research Commission as required by KRS 13A.120(3), 13A.220(6)(a).

LAUJANA S. WILCHER, Secretary
JAMES L. ADAMS, Commissioner

JOHN CLAY, Executive Director
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CONTACT PERSON: Virginia V. Davis, Resource Management Analyst III, or Pam Helton, Executive Staff Advisor, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.
Section 1. Definitions. (1) "Adverse determination" means selection of an independent review entity by an insurer, and acceptance of a request to conduct an external review by an independent review entity.

(2) "Assign" or "assignment" means selection of an independent review entity by an insurer, and acceptance of a request to conduct an external review by an independent review entity.

(3) "Coverage denial" means selection of an independent review entity by an insurer, and acceptance of a request to conduct an external review by an independent review entity.

(4) "Covered person" means selection of an independent review entity by an insurer, and acceptance of a request to conduct an external review by an independent review entity.

(5) "Department" means the Department of Insurance.

(6) "Electronic" or "electronically" means selection of an independent review entity by an insurer, and acceptance of a request to conduct an external review by an independent review entity.

(7) "External review" means selection of an independent review entity by an insurer, and acceptance of a request to conduct an external review by an independent review entity.

(8) "Independent review entity" means selection of an independent review entity by an insurer, and acceptance of a request to conduct an external review by an independent review entity.

(9) "Insurer" means selection of an independent review entity by an insurer, and acceptance of a request to conduct an external review by an independent review entity.

(10) "Reviewee" means an individual selected by the independent review entity to conduct an external review and make a recommended decision to the independent review entity.

Section 2. Requirements of an Insurer. (1) An insurer shall:

(a) Disclose to a covered person in a consumer friendly written formal the following information concerning an external review:

1. At the time of enrollment, the right to an external review in accordance with KRS 304.17A-605(1)(g); and

2. The availability of an external review, including expedited external review, in the insurer's notice of an adverse determination [e.g., notice of coverage denial] in accordance with KRS 304.17A-623(1); and

3. Instructions for initiating an external review in the internal appeal decision letter upholding an adverse determination, including:

a. Whether the appeal must be in writing;

b. How to complete any forms, including a medical record release form or a written authorization of representation;

c. Applicable time frames;

d. The position and phone number of a contact person who can provide additional information about an external review; and

e. Any other required documentation;

f. The right of a covered person to request an external review within sixty (60) days of receiving notice from an insurer that, pursuant to KRS 304.17A-617(3), has elected not to provide coverage and to afford an opportunity for external review;

(g) Allow a covered person, authorized person, or provider acting on behalf of and with the consent of a covered person, to submit an oral request, followed up by an abbreviated written request, for an expedited external review;

(h) Provide the following information relating to an external review in the policy or certificate of coverage issued to a covered person and upon request:

1. The circumstances whereby the following types of external review shall be provided:

   a. Nonexpedited external review in accordance with KRS 304.17A-623(3), (4) and (6); and

   b. Expedited external review in accordance with KRS 304.17A-623(10), (11) and (12);

2. The filing fee for requesting an external review in accordance with KRS 304.17A-623(5);

3. That the cost for an external review by an independent review entity shall be paid by the insurer in accordance with KRS 304.17A-625(6);

4. The procedure for submitting:

a. An oral request followed up by an abbreviated written request, or a written request for an expedited external review;

b. A written request for a nonexpedited external review;

c. The completion of any specific forms, including a medical records release consent form;

5. The time frame for:

a. Submitting a request for external review in accordance with KRS 304.17A-623(4);

b. Rendering a decision by an independent review entity in accordance with KRS 304.17A-623(12) and (13); and

c. Compliance of an insurer with a decision of the independent review entity in accordance with KRS 304.17A-625(11) through (13);

6. The telephone number and position of a contact person of the insurer who may provide information relating to an external review;

7. A statement relating to the confidential treatment of medical records and information relating to the external review; and

8. A statement of the availability and a description of a complaint process through the department relating to:

a. A covered person's right to an external review in accordance with KRS 304.17A-623(8); and

b. The action of an independent review entity in accordance with KRS 304.17A-625(16); and

d. If an external review is requested by an authorized person or provider acting on behalf of a covered person, obtain the:

   1. Written authorization of representation; and

   2. Consent to release medical records to the independent review entity;

(e) Make a determination whether an external review is warranted in accordance with KRS 304.17A-623(3) and (10), and notify the requester of that determination within the following time periods:

1. For expedited reviews, within sufficient time to comply with KRS 304.17A-623(11); or

2. For nonexpedited reviews, within five (5) business days of receipt of the request;

(f) Upon a determination that an expedited external review is warranted, promptly:

1. Request assignment of the external review to an independent review entity selected on a consecutive rotation basis from a list of certified independent review entities provided by the department; and

2. Notify the independent review entity by telephone that the insurer shall forward the following documents to the independent review entities within twenty-four (24) hours of receipt of the request in accordance with KRS 304.17A-623(11):

a. Consent of the covered person authorizing release of all necessary medical records as required by KRS 304.17A-623(4); and

b. Information to be taken into account as required by KRS 304.17A-625(1)(a); and

c. A completed External Review Information Form, HIPMC-IRE-6 (07/04/02);

(g) Upon a determination that a nonexpedited external review is warranted:

1. Request assignment of the external review by telephone to an independent review entity selected on a consecutive rotation basis from a list of certified independent review entities provided by the department; and

2. Within three (3) business days of assignment deliver to the independent review entity:

   a. Consent of the covered person authorizing release of all necessary medical records as required by KRS 304.17A-623(4); and

b. Information to be taken into account as required by KRS 304.17A-625(1)(a); and

c. A completed External Review Information Form, HIPMC-IRE-6 (07/04/02);
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304.17A-625(1)(a); and

c. A completed External Review Information Form, HIPMC-IRE-6 (07/04 (02));

(h) Upon assignment of an independent review entity, complete and send to the department an Assignment of Independent Review Entity Form, HIPMC-IRE-2 (07/04 (02));

1. Within one (1) business day for an expedited external review;
or;

2. Within three (3) business days for a nonexpedited external review;

(i) Upon receipt of new clinical information submitted pursuant to KRS 304.17A-623(6)(b):

1. Immediately send a copy of the new clinical information to the:

a. Covered person or authorized person;

b. Provider; and

c. Independent review entity;

2. Consider reversal of the internal appeal decision based upon the new clinical information; and

3. If the internal appeal decision is reversed:

a. Provide written notice of the reversal to the:

(i) Covered person or authorized person;

(ii) Provider; and

(iii) Independent review entity; and

(iv) Department; and

b. Pay the fee in accordance with Section 3(18)(b) of this administrative regulation;

(j) Upon receipt of a decision relating to external review from an independent review entity, implement the decision in accordance with KRS 304.17A-625(11) through (13);

(k) Upon receipt of an itemized statement of services rendered and costs, pay the independent review entity within thirty (30) days;

(l) Maintain a written record of each external review; and

(m) Provide a copy of the covered person’s health insurance policy to the independent review entity.

(2) If a request for external review is denied by an insurer:

(a) Written notice shall be provided by the insurer to the person requesting the external review and shall include:

1. The date the request for external review was received by the insurer;

2. A statement relating to the nature of the request;

3. The rationale of the insurer denying the request;

4. A statement relating to the availability of review by the department if a dispute arises regarding the right to external review;

5. The toll-free telephone number of the department; and

6. The name and telephone number of a contact person who shall provide information relating to the denial of the request.

(b) Upon request by the department, the insurer shall provide:

1. A copy of the written notification described in paragraph (a) of this subsection; and

2. Additional information deemed necessary by the department.

Section 3. Requirements of an Independent Review Entity. An independent review entity shall:

1. Accept a request for assignment unless:

a. A conflict of interest exists;

b. Confidentiality issues exist; or

c. Due to circumstances beyond the control of the independent review entity, an appropriate reviewer becomes unavailable.

2. Upon receipt of a request for assignment from an insurer:

a. Determine whether a conflict of interest exists, confidentiality requirements of an insurer can be met and an appropriate reviewer is available; and

1. Immediately provide verbal notification, followed by written notification to an insurer and the department of the rejection of an assignment if:

a. A conflict of interest exists;

b. Confidentiality requirements of an insurer cannot be met; or

c. Due to circumstances beyond the control of the independent review entity, an appropriate reviewer becomes unavailable.

2. Within twenty-four (24) hours of receipt of the request for assignment, provide written notification to an insurer of the acceptance of an assignment if:

a. No conflict of interest exists;

b. Confidentiality requirements of an insurer can be met; and

c. An appropriate reviewer is available; and

(b) Maintain a written record of:

1. Whether the external review relates to an adverse determination or a coverage denial, which requires resolution of a medical issue;

2. The specific question or issue to be resolved by the external review; and

3. Whether the external review is expedited or nonexpedited;

(3) For each external review, obtain and maintain on file a signed statement of a reviewer that he has no conflict of interest;

(4) Upon the receipt of new clinical information from a covered person, authorized person, or provider acting on behalf of and with the consent of a covered person, immediately send a copy of the new clinical information to the following, as applicable:

a. Covered person or authorized person;

b. Provider; and

c. Insurer;

(5) Have a reviewer with expertise in:

a. Health insurance benefits and contracts and who shall serve as a reviewer, in addition to a health care professional reviewer, in an external review of a coverage denial which requires the resolution of a medical issue in accordance with KRS 304.17A-617(3)(d); and

b. Health care and who shall:

1. Conduct an external review of a coverage denial which requires resolution of a medical issue and an adverse determination; and

2. Meet the following requirements:

a. Hold active licensure in a state of the United States;

b. Have recent experience or familiarity with current body of knowledge and applicable specialty practice;

(c) Have at least five (5) years of experience in the specialty of the external review;

(d) Hold current board certification by:

(i) The American Board of Medical Specialties if the reviewer is a medical doctor;

(ii) The American Osteopathic Association if the reviewer is a doctor of osteopathic medicine;

(iii) The American Board of Podiatric Surgery if the reviewer is a doctor of podiatric medicine; or

(iv) Other recognized health professional board in accordance with KRS 304.17A-827(7(7));

(6) Establish criteria in accordance with KRS 304.17A-627(6); and

(7) for:

a. Selection of a qualified reviewer, including the initial verification and revalidation every three (3) two (2) years of credentials of the reviewer;

b. Ensuring that an appropriate reviewer performs the external review;

(c) Ensuring that an appropriate reviewer performs the external review;

(d) Ensuring that at least one (1) reviewer qualified in each medical specialty is available for external review;

(e) Have a medical director or clinical director with professional postresidency experience in direct patient care who shall:

a. Hold a current license to practice medicine in a state of the United States;

b. Provide guidance for the medical aspects of the external review process;

(c) Oversee the medical aspects of the quality management program; and

(d) Oversee the medical aspects of the reviewer credentialing program;

(8) Establish and implement criteria for determination of the need for a time extension of:

(a) Twenty-four (24) hours to render a decision in an expedited external review in accordance with KRS 304.17A-623(12); and

(b) Fourteen (14) calendar days to render a decision in a nonexpedited external review in accordance with KRS 304.17A-623(13);

(9) Provide written notification of a decision as required by KRS 304.17A-625(6), which shall include the:
(a) Title, license number, state of licensure and specialty certifications, if any, of the reviewer;
(b) Date the decision was rendered; and
(c) A statement that the decision is final and binding on the insurer, and that any comments, questions, or complaints shall be submitted in writing to the department;
(10) Provide written notification of the decision to:
(a) The covered person or authorized person, treating provider, and insurer within two (2) business days of making the decision; and
(b) The department by:
1. Copying the department on the written notification to the covered person; and
2. Completing an External Review Decision Notification Form, HIPMC-IRE-3 (07/02) [(14/02)], within two (2) business days of rendering a decision;
(11) Establish written policies and procedures for maintenance and the confidential treatment of external review records in accordance with KRS 304.17A-623(9) and applicable state and federal law;
(12) Maintain a written record of an external review for a minimum of five (5) years in accordance with 806 KAR 2:070 which shall include as applicable:
(a) All documentation relating to the external review pursuant to KRS 304.17A-625(1);
(b) The independent review entity's decision regarding each issue identified in the external review;
(c) The name, credentials, and specialty of the reviewer;
(d) Medical evidence and information considered during the review;
(e) References to any medical literature or research data or national clinical criteria upon which the independent review entity's decision was based;
(f) A copy of relevant policy language of the insurer, including any relevant contractual definition of medical necessity;
(g) A copy of the adverse determination, coverage denial, which requires resolution of a medical issue and the internal appeal decision;
(h) A copy of all correspondence and communication between the independent review entity, the reviewer and any other person regarding the external review, including a copy of the final decision letter;
(13) Provide toll-free telephone access that:
(a) Operates at a minimum from 9 a.m. until 5 p.m. of each business day in each time zone where the services under review are in dispute; and
(b) Allows for:
1. Receiving after-hours requests for external review; and
2. Acting on expedited external review requests in accordance with KRS 304.17A-623(12);
(14) If an external review function, or any portion of this function, is delegated or subcontracted to another person or organization, submit:
(a) Policies and procedures relating to oversight activities to ensure compliance with requirements of an independent review entity as established in KRS 304.17A-623 and 304.17A-625, and this section; and
(b) A copy of the agreement whereby the external review function is delegated or subcontracted;
(15) Establish and maintain a written quality assurance program in accordance KRS 304.17A-627(8)](18) which shall be made available to the public upon request and shall include a written plan which addresses:
(a) Scope and objectives;
(b) Program organization;
(c) Monitoring and oversight mechanisms; and
(d) Evaluation and organizational improvement of external review activities, including:
1. Objectives and approaches used in the monitoring and evaluation of external review activities, including the systematic evaluation of complaints for patterns and trends;
2. The implementation of an action plan to improve or correct an identified problem; and
3. The procedures to communicate the results of an action plan to its employees and reviewers, as applicable;
(16) Submit a copy of any change to information provided on the Application for Certification of an Independent Review Entity, HIPMC-IRE-1 (07/02), in writing to the department for approval. A change shall not become effective until approved by the commissioner;
(17) Submit a new application for certification if requested by the department following notification of a material change in the application information as required by KRS 304.17A-627(2);
(18) Establish a fee structure, to be available upon request, for each type or level of external review, including at a minimum, a fee for:
(a) A completed external review of:
1. A coverage denial, which requires resolution of a medical issue; and
2. An adverse determination; and
(b) An incomplete external review;
(19) Immediately terminate an external review and provide written notification of the termination to the insurer requesting the external review, as appropriate, and the department if:
(a) A conflict of interest or confidentiality issue is discovered at any time during the external review process; or
(b) If a reversal of a coverage denial or adverse determination is received in writing from the insurer;
(20) If more than one (1) reviewer is utilized in making a decision:
(a) Render an overall decision based upon the majority decision of the reviewers; and
(b) If the reviewers are evenly split as to whether the recommended or requested health care service or treatment should be covered, request an additional reviewer to make a binding majority decision;
(21) Implement a written policy and procedure for each aspect of an external review process, including:
(a) Processing of the request for assignment of an external review from an insurer;
(b) Receipt and maintenance of medical records and information from insurer;
(c) Ensuring access to a sufficient number of appropriate qualified reviewers;
(d) Ensuring the credentialing, selection, and notification of a reviewer for an external review;
(e) Rendering a timely decision and issuance of notification of the decision;
(f) Ongoing monitoring and evaluation of the performance of a reviewer;
(g) Monitoring and oversight of a delegated external review function, if any;
(h) Billing for and collection of fees for external review, including filing fee of covered person and cost of external review borne by the insurer;
(i) Collecting and reporting data;
(j) Receipt and consideration of new clinical information;
(k) Termination of external review; and
(l) Response to a request for information relating to a complaint filed with the department or by others; and
(22) Conduct a periodic formal program for training reviewers and provide a written record of the training to the department upon request.

Section 4. Application Process for Certification to Perform External Reviews. (1) To perform an external review, an independent review entity shall be certified in accordance with requirements as established in KRS 304.17A-627 and this section.
(2) To be certified to perform an external review, an independent review entity shall:
(a) Complete and submit to the department the Application for Certification of an Independent Review Entity, HIPMC-IRE-1 (07/02);
(b) Submit a fee with the application for certification as required by Section 5 of this administrative regulation, made payable to the Kentucky State Treasurer; and
(c) Enclose with the application for certification, written documentation which supports compliance with the requirements of an
independent review entity as established in KRS 304.17A-627 and Section 3 of this administrative regulation.

(3) An application for certification shall be submitted to the department at least ninety (90) days prior to expiration of the current certification.

Section 5. Fees. (1) Department fees. (a) An application for certification as an independent review entity shall be accompanied by a fee in the amount of $500.
(b) A submission of changes in information included in the application to the department in accordance with KRS 304.17A-627(2), or any change in application information after certification, shall be accompanied by a fee of fifty ($50) dollars.

(2) Independent review entity fees.
(a) The total fee charged for an external review shall not exceed $800 unless justification for a higher fee is submitted to the department for approval prior to billing the insurer in the case of unusual or complicated circumstances; and
(b) The twenty-five ($25) dollar filing fee to be paid by the covered person shall:
1. Be billed by the independent review entity upon assignment; or
2. Be waived if it creates a financial hardship in accordance with KRS 304.17A-623(5). The independent review entity shall accept the following as evidence of financial hardship:
   a. Gross income of the covered person below 200 percent of the federal poverty level based upon family size as shown by a federal income tax return for the previous year; or
   b. The covered person’s participation in one (1) of the following programs:
      (i) National Prescription Drug Patient Assistance;
      (ii) Kentucky Transitional Assistance;
      (iii) Medicaid; or
      (iv) Unemployment Insurance; or
3. Not be assessed if an external review is conducted following the submission of new information in accordance with KRS 304.17A-625(9)(b).

Section 6. Department Review of Application for Certification or Change to Information Provided on the Application. (1) Upon receipt of an application for certification or a change to information provided on the application, the department shall:
(a) Inform the applicant if supplemental information is or is not needed;
1. Applicant shall submit requested information within thirty (30) days; or
2. If requested information is not provided to the department within thirty (30) days, the department shall:
   a. Deny the application for certification or the change to information provided on the application; and
   b. Refund the applicable fee submitted in accordance with Section 5(1) of this administrative regulation;
(b) Review the application and information required by KRS 304.17A-627 and Sections 2 through 11 of this administrative regulation;
(c) Make a determination whether a conflict of interest or an appearance of impropriety exists; and
(d) Approve or deny certification, or the change to information provided on the application, of an independent review entity within ninety (90) days.
(2) An independent review entity certificate shall expire on the second anniversary of the certification date unless it is renewed by submitting a new application for certification in accordance with Section 4(2) of this administrative regulation.

Section 7. Denial, Decertification, or Suspension Hearing Procedure. Upon the denial of certification, decertification, or suspension of a certification, the department shall give written notice of its action and advise the applicant or certificate holder that a request for a hearing may be filed in accordance with KRS 304.2-310.

Section 8. Independent Review Entity Complaint Process. (1) A copy of the complaint filed pursuant to KRS 304.17A-625(16) and a letter from the department requesting a written response to the complaint shall be sent to the independent review entity.
(2) The independent review entity shall respond to the department within ten (10) business days of receipt of the letter from the department the following:
(a) Any information relating to the complaint;
(b) Corrective actions to resolve the complaint, if any, including time frames for those actions; and
(c) A mechanism to evaluate the corrective action, if any.
(3) Upon receipt of the written response of the independent review entity, the department shall:
(a) Take action in accordance with KRS 304.17A-625(3); and
(b) Notify the complainant of action taken, if any.

Section 9. Department Investigations. The commissioner, upon his own action, may conduct investigations of any independent review entity pursuant to KRS 304.2-100.

Section 10. Reporting Requirements. An independent review entity shall, as a condition of certification, submit to the department by March 31 of each year for the previous calendar year, the following reports:
(1) Data Reporting Requirements for Independent Review Entities, HIPMC-IRE-4 (7/00); and

Section 11. Cessation of Operations to Perform External Review. (1) Upon a decision to cease external review operations in Kentucky, an independent review entity shall:
(a) Immediately notify the department in writing of its decision to cease accepting new assignments; and
(b) Submit the following to the department thirty (30) days prior to ceasing operations:
   1. Written notification of the cessation of operations, including the date of cessation and the number of pending external reviews with corresponding assignment dates; and
   2. A written action plan for ceasing operations, which shall be approved by the department and include:
      a. The projected date for rendering a decision for each external review which has not been acted upon; and
      b. The projected date of submission of the Data Reporting Requirements for Independent Review Entity, HIPMC-IRE-4 (7/00).
(2) Upon receipt of a written notification as required in subsection (1) of this section, the department shall review and act upon the action plan of the independent review entity.
(3) Upon approval of an action plan to cease operations by the department, the independent review entity shall send written notification to insurers of the date of cessation.
(4) Annual reports required pursuant to Section 10(1) of this administrative regulation shall be submitted to the department by an independent review entity within thirty (30) days of [prior to] ceasing operations.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Certification of an Independent Review Entity, HIPMC-IRE-1 (07/02)";
(b) "Assignment of Independent Review Entity Form, HIPMC-IRE-2 (07/04 [02]);"
(c) "External Review Decision Notification Form, HIPMC-IRE-3 (10/02)";
(d) "Data Reporting Requirements for Independent Review Entities, HIPMC-IRE-4 (7/00)"; and
(e) "Annual Independent Review Entity Report Form, HIPMC-IRE-5 (7/00);" and
(f) "External Review Information Face Sheet, HIPMC-IRE-6 (07/04 [02])".
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of [Department] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained by the department’s Internet website at http://doi.prkky.gov/kydiet [www.doi.state.ky.us].
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
(As Amended at ARRS, October 12, 2004)

902 KAR 2:070. Rabies control.

RELATES TO: KRS 258.005-258.085, 258.990(1), (2)
STATUTORY AUTHORITY: KRS [196.040()] 211.090, 258.035,
258.076, EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services, KRS 258.005 to 258.085 and 258.990(1) and (2) authorize the cabinet for [Human Resources] to administer a statewide rabies control program. [The purpose of this administrative regulation establishes a uniform procedure for the diagnosis, prevention, and control of rabies.]

Section 1. Brands and Types of Approved Vaccine. The Cabinet for Health and Family Services [Human Resources] hereby approves all brands and types of antirabies vaccine approved by the United States Department of Agriculture administered in accordance with the manufacturers' instructions; except [provided], however, [that] only vaccine certified to induce at least three (3) year immunity shall be used [exclusively] in mass immunization clinics sponsored by local health departments [or by-the-Cabinet for Health and Family Services] [Human Resources].

Section 2. Vaccination Schedule. The vaccination schedule for all dogs, cats, and ferrets shall be as follows:

1. All dogs, cats, and ferrets four (4) months of age and older shall be vaccinated against rabies.

2. Dogs, cats, and ferrets initially vaccinated prior to one (1) year of age shall be revaccinated one (1) year after the initial vaccination regardless of the type of vaccine used or age of the animal at the time of vaccination.

3. Thereafter the period of time required for revaccination shall be dependent upon the type of vaccine administered. The date of expiration shall be indicated on the vaccination certificate. The current revaccination recommendations of the National Association of State Public Health Veterinarians, Inc. may be utilized in determining expiration dates of vaccines.

Section 3. Vaccination Certificates. Vaccination certificates shall [will] provide the information found on the National Association of State Public Health Veterinarians NASPHV #1. Certificate information may be handwritten on a reproduction of the NASPHV #1 or it may be computer generated. [Tags: Vaccination tags shall reveal the type of vaccine administered. The word "labeled" shall be used to designate modified live virus vaccines of either chick embryo or of various tissue culture origins.]

Section 4. Dogs, Cats, and Ferrets Brought Into State. All dogs, cats, and ferrets brought into Kentucky, except those brought in for exhibition purposes for a period not to exceed ten (10) days, shall be vaccinated against rabies and have a currently valid rabies vaccination certificate. Reciprocity with other states is granted if the vaccine is U.S. Department of Agriculture approved and administered by a veterinarian licensed in that state.

Section 5. Destroying an Animal Exhibiting Positive Signs of Rabies. If a dog, cat, or ferret is ordered to be destroyed and tested for rabies pursuant to KRS 258.085(1)(b), it shall be killed in [dogs, cats, or ferrets] showing active signs of rabies or suspected of having rabies shall be confined under competent observation for such a time as may be necessary to determine a diagnosis as specified in KRS 258.066. If confinement is impossible or impracticable, such dog, cat, or ferret shall be destroyed. Whenever an animal exhibits positive signs of rabies it shall be killed in such a manner as to preserve the brain intact. The animal shall not be shot or clubbed in the head [nor shall strychnine or other-chemical-poisons be used]. Wild animals suspected of rabies shall be sacrificed and their heads submitted to the laboratory im-
mediately.

Section 6. Sending Heads of Ownerless Animals to the Laboratory. If [in-the-event the ownership of a rabies suspect animal is unknown, the expense of forwarding the head of the animal to the laboratory shall be borne by the local health department. [Animal heads shall be submitted in a manner prescribed by the Cabinet for Human Resources. Whole animals, dead or alive, shall not be accepted.]


(2) Current permit holders may [will be allowed to] renew their permit annually if initially renewed by December 31, 2004.

(3) New permit holders shall [must] pass a written examination that shall [will] be administered immediately following an instructional course on rabies laws and vaccine administration. This course and examination will be provided annually in Frankfort.

(4) The Cabinet for Health and Family Services [Human Resources] shall forthwith revoke any permit issued under this administrative regulation upon finding that the permittee had vaccinated dogs not owned by him.

(5) Permits issued under this administrative regulation shall authorize the use of modified (killed virus) vaccine only.

(6) Permits issued under this administrative regulation may be renewed each year unless suspended, revoked or cancelled. Failure to renew between January 1 and February 28 of each year shall [will] result in cancellation.

(7) No permit issued under this section shall create a permanent or vested property interest in the permittee; and same may be cancelled whenever the Cabinet for Health and Family Services [Human Resources] determines that a need no longer exists.

Section 8. Incorporation by Reference. (1) "National Association of State Public Health Veterinarians NASPHV #51 (2004)" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m. [Rabies Vaccination Permits for Other Qualified Persons.] In the event the rabies control program in a particular county is not being conducted to the satisfaction of the Cabinet for Health and Family Services [Human Resources], and the services of graduate licensed veterinarians are not available, unlicensed persons with veterinary medical experience may be selected and trained by the Cabinet for Health and Family Services [Human Resources] and issued temporary permits to vaccinate dogs, cats, and ferrets against rabies.

(2) No permit issued under this section shall create a permanent or vested property interest in the permittee and same may be cancelled whenever the Cabinet for Health and Family Services [Human Resources] determines that a need no longer exists.

JAMES W. HOLISINGER, Jr. Secretary
DR. DUANE KILTY, Undersecretary for Administration and Fiscal Affairs
RICE C. LEACH, M.D., Commissioner
NICHOLAS Z. KAFOGlis, M.D., Chairman
APPROVED BY AGENCY: July 19, 2004
FILED WITH LRC: July 20, 2004 at noon
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Office of Legal Services, Cabinet for Health and Family Services, 275 East Main Street 5-W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division Of Public Health Protection and Safety
(As Amended at ARRS, October 12, 2004)

902 KAR 50:110. Grade A milk and milk products standards.

RELATES TO: KRS 217C.010-217C.990
STATUTORY AUTHORITY: KRS 194A.050, 211.090, 217C.040, 217C.040, EO 2004-728
NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services. KRS 217C.040 requires the cabinet to promulgate administrative regulations concerning [The cabinet for Health Services] is directed by KRS 217C.040 to regulate] the production, transportation, processing, handling, sampling, examination, grading, sale and such other matters relating to Grade A milk and milk products as may be necessary to protect the public health. This administrative regulation establishes uniform permit requirements and sanitary standards for Grade A milk producers, processors, handlers and distributors, Grade A dry and condensed milk, Grade A dry and condensed whey and the fabrication of single-service containers and closures for milk and milk products.

Section 1. Grade A Milk and Milk Products. The permit requirements, sanitary and quality requirements for the production, processing, handling and distribution of Grade A milk and milk products shall be the same as the requirements established [as set-forth] in the publication entitled, "Grade A Pasteurized Milk Ordinance," 2003 [1999] recommendations of the United States Public Health Service/Food and Drug Administration [as incorporated by reference].

Section 2. Incorporation by Reference. [Grade A Condensed, Dry Milk Products—Condensed and Dry Whey. The permit requirements, sanitary and quality requirements for the production, processing, handling, and distribution of Grade A condensed dry milk products, condensed and dry whey as set forth in the publication entitled, "Grade A Condensed and Dry Milk Products—Condensed and Dry Whey," 1978 recommendations of the United States Public Health Service/Food and Drug Administration—1985 Edition is incorporated by reference.]


Section 4.] (1) "Grade A Pasteurized Milk Ordinance," 2003 edition is incorporated by reference. [The following material is incorporated by reference:]


(b) "Grade A Condensed and Dry Milk Products—Condensed and Dry Whey," 1985 edition.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.


JAMES W. HOLISINGER, Jr. Secretary
RICE C. LEACH, M.D., Commissioner
NICHOLAS Z. KAFOGlis, M.D., Chairman
CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, October 12, 2004)

902 KAR 100:012. Fee schedule.

RELATES TO: KRS 211.840-211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194A.050(1), 211.844, EO
2004-728
NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-728, effective July 9, 2004. Reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services. KRS 211.848(1) requires the cabinet for health and family services to establish a reasonable schedule of fees and charges by administrative regulation. This administrative regulation establishes a schedule of fees and charges for radiological material licenses and radiation producing machine registrants, and counties or organizations responsible for the shipment of radioactive material, spent nuclear fuel, transuranic waste, radioactive waste, or other radioactive material requiring escort through Kentucky.

Section 1. Radiation Producing Machine Schedule of Annual Fees and Charges. The following schedule of annual fees shall apply to radiation producing machine registrants. An application for registration or annual renewal shall be accompanied by the appropriate fee established below:

(1) A diagnostic x-ray machine; therapeutic x-ray machine capable of operating up to 150 kVp; or industrial x-ray machine - fifty ($50) dollars.
(2) A therapeutic x-ray machine capable of operating at 150 kVp or above including particle accelerators - fifty ($50) dollars.
(3) Other x-ray machines not specified above - fifty ($50) dollars.
(4) Shielding evaluation - $200.
(5) Linear accelerator - $1,000.

Section 2. Radioactive Material License Schedule of Annual Fees and Charges. The following schedule shall apply to radioactive material licenses. An initial and renewal application shall be accompanied by the fee established in this section:

(1) A specific radioactive material license initial and annual fee.
(a) Human use.
1. Nuclear medicine - $790.
2. Teletherapy - $790.
4. Other - $375.
5. (b) Industrial radiography - $790.
6. (c) Wireline service - $790.
7. (d) Broad scope - $1,050.
8. (e) Nuclear laundry - $1,580.
9. (f) Irradiator.
10. (f) Self-contained - $390.
11. (g) Unshielded during irradiation - $1,580.
12. (h) Manufacturing/processing/distribution.
13. (i) Industrial gauging devices - $1,310.
15. Radiopharmaceuticals - $1,580.
17. (h) Industrial gauging devices - $390.
18. (i) In vitro and clinical laboratory - $225.
19. (j) Veterinary - $375.
20. (k) Services, such as leak testing - $260.
21. (l) An application for review of a:
22. (m) New sealed source or device; or
23. Custom device - $1,050 plus the applicable fee in para-

Section 3. Shipments of Radioactive Material and Waste. (41)(1) The shipper or carrier shall provide full cost reimbursement for escort prior to the shipment of radioactive material, spent nuclear fuel, transuranic waste, radioactive waste, or other radioactive material or waste through Kentucky.

Section 4. General Requirements. (1) A general radioactive material license shall expire on July 31 following the date of issuance.
(2) A radiation producing machine registration certificate shall expire on the last day of the month, one (1) year after the date of issuance.
(3) A general radioactive material license fee shall be paid on or before July 31.
(4) A specific radioactive material license shall be renewed annually based on the expiration date stated in the license.
(5) A radiation producing machine registration certificate shall be paid within forty-five (45) days of the bill date. A payment postmarked more than forty-five (45) days of the bill date shall be subject to $100 late payment penalty in addition to the registration fee.
(6) Payment of a fee or other charge shall be submitted to the Radiation Health and Toxic Agents Branch, Cabinet for Health and Family Services, 275 East Main Street, Mailstop HS2E-D, Frankfort, Kentucky 40621-0001, in the form of a check or money order payable to the Kentucky State Treasurer.
(7) If a check issued for payment of the fee established in this administrative regulation is returned to the state treasurer due to insufficient funds, the payor shall resubmit payment by money order or cashier's check.
(8) A registration and licensing application fee shall be nonrefundable.
(9) Failure to submit an applicable fee established in this administrative regulation shall be deemed a violation and subject to the provisions of 902 KAR 100:170.

JAMES W. HOLINSOER, Jr. Secretary
RICE C. LEACH, M.D., Commissioner
NICHOLAS Z. KAFOGIS, M.D., Chairman
APPROVED BY AGENCY: July 19, 2004
FILED WITH LRC: July 20, 2004 at noon
CONTACT PERSON: Jill Brown, Office of the General Counsel, Cabinet for Health and Family Services, 275 East Main Street, 5-W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amended After Comments)

11 KAR 5:001. Definitions pertaining to 11 KAR Chapter 5.

RELATES TO: KRS 164.740-164.785
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785.
KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation defines terms used in 11 KAR Chapter 5 pertaining to the Kentucky Tuition Grant Program and the College Access Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution and prior to 2004 summer sessions, shall not include summer sessions, except a summer quarter at an educational institution that uses a quarter system.
(2) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full-time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty-four (24) semester hours, or thirty-six (36) quarter hours of instruction.
(3) "Authority" is defined by KRS 164.740(1).
(4) "Business school" is defined by KRS 164.740(3).
(5) "College" is defined by KRS 164.740(4).
(6) "College Access Program" or "CAP" means the program of student financial assistance grants authorized under KRS 164.7535 to assist financially needy part-time and full-time undergraduate students attending an educational institution.
(7) (FP) "Correspondence course" means a home study course that:
(a) is provided by an educational institution under which the institution provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the institution;
(b) Meets the following requirements:
1. When the student completes a portion of the instructional materials, the student takes the examinations that relate to that portion of the materials, and returns the examinations to the institution for grading;
2. The institution provides instruction through the use of video cassettes or video discs in an academic year, unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at an institution during the same academic year; and
3. If a course is part correspondence and part residential training, the course shall be considered to be a correspondence course; and
(c) Does not include courses from the Kentucky Commonwealth Virtual University (KCVU).
(8) ABS "Educational expenses" means tuition and fees, books and supplies, room and board or reasonable living expenses, reasonable miscellaneous personal expenses, and reasonable transportation costs for the academic period of the grant application.
(9) (9) "Educational institution" means a participating institution located in Kentucky which:
(a) Offers an eligible program of study;
(b) As a condition of enrollment as a regular student, requires that the person:
1. Have a certificate of graduation from a school providing secondary education, or the equivalent of a certificate; or
2.a. Be beyond the age of compulsory attendance in Kentucky; and
b. Have the ability to benefit from the training offered by the institution; and
(c)1. For purposes of the College Access Program is a public or private participating institution — a business school, college, school of nursing or vocational school, and meets the requirements of 20 U.S.C. 1070 to 1070-4 and 1088 to 1099; or
2. For purposes of the Kentucky Tuition Grant Program, is a private independent college or university, accredited by a regional accrediting association recognized by the United States Department of Education, that is a participating institution whose institutional programs whose institutional programs are not comprised solely of sectarian instruction.
(10) "Eligible institution" is defined by KRS 164.740(3).
(11) "Eligible noncitizen" means an individual who is:
(a) Either:
1. A U.S. national;
2. A U.S. permanent resident with an Alien Registration Receipt Card (1-151 or 1-551); or
3. A person with a Departure Record (I-94) from the U.S. Immigration and Naturalization Service showing any one (1) of the following designations:
a. "Refugee";
b. "Asylum granted";
c. "Indefinite parole" or "humanitarian parole"; or
d. "Cuban-Haitian entrant"; and
(b) Not in the United States on a:
1. F1 or F2 student visa;
2. J1 or J2 exchange visa; or
3. G series visa.
(12) "Eligible program of study" means an undergraduate program of at least two (2) academic years duration, offered by an educational institution which:
(a) For purposes of the KTG or CAP Grant Programs, leads to a degree; or [is of at least two (2) academic years duration; and]
(b) For purposes of only the CAP Grant Program;
1. leads to a certificate or diploma while attending a publicly operated vocational-technical institution; or
2. [is designated as an equivalent undergraduate program of study by the Council on Postsecondary Education.
(13) ["Expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's educator determined by applying the federal methodology established in 20 U.S.C. 1087kk through 1087v to the information that the student and his family provided on the application.
(14) "Federal act" is defined by KRS 164.740(9) and means 20 U.S.C. through 1148a.
(15) "Full-time student" means an enrolled student who is carrying a full-time academic workload;
(a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student, except that correspondence courses shall not be counted in determining the student's full-time status; and
(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution’s minimum standard shall equal or exceed one (1) of the following minimum requirements:
1. Twelve (12) semester hours or twelve (12) quarter hours per academic term in an educational program using a semester, trimester, or quarter system;
2. Twenty-four (24) semester hours or thirty-six (36) quarter hours per academic year for an educational program using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one (1) academic year;
3. Twenty-four (24) clock hours per week for an educational program using clock hours;
4. In an educational program using both credit and clock hours, any combination of credit and clock hours if the sum of the follow-
ing fractions is equal to or greater than one (1):

a. For a program using a semester, trimester, or quarter system, the number of credit hours per term divided by twelve (12) and the number of clock hours per week divided by twenty-four (24); or

b. For a program not using a semester, trimester, or quarter system, the number of semester or trimester hours per academic year divided by twenty-four (24) and the number of quarter hours per academic year divided by thirty-six (36) and the number of clock hours per week divided by twenty-four (24);

5. A series of courses or seminars that equals twelve (12) semester hours or twenty-four (24) quarter hours in a maximum of eighteen (18) weeks; or

6. The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

(12) [148] "Grant" is defined by KRS 164.740(10).

(15) [149] "Kentucky Tuition Grant" or "KTG" means the program of student financial assistance grants authorized by KRS 164.785 for residents of Kentucky who bear the major costs of attending an educational institution and who demonstrate financial need.

(16) [147] "KHEAA grant" means an award of a student financial assistance grant under the College Access Program or the Kentucky Tuition Grant Program or a combination of the two.

(17) [146] "KHEAA grant limit" means an aggregate limitation on KHEAA grants awarded to an individual for all academic years of the eligible program of study in which the student receives a KHEAA grant (including any KHEAA grant limit previously used in a different eligible program of study or at a different educational institution). The KHEAA grant limit shall be [which is]:

(a) Measured in terms of the applicable percentage [number] of the maximum [semesters during which a KHEAA grant that would have been [is] disbursed for the academic year to a full-time student and not fully refunded; and

(b) Depleted each academic term by subtracting, from the applicable percentage, the percentage used for the academic term, derived by dividing [one (1)-semester];

1. The net amount of KHEAA grant disbursed for the academic term; by for a KHEAA grant disbursed to a full-time student in a semester; or

2. The maximum KHEAA grant award for the academic year that would have been disbursed to a full-time student, using the then current maximum KHEAA grant (By a CAP grant recipient enrolled less than full-time, who receives the cumulative equivalent amount of CAP grant that would have been received by a full-time CAP grant recipient using the then-current maximum CAP grant).

For purposes of determining the KHEAA grant limit, the applicable percentage representing the aggregate limitation of KHEAA grant awards shall be:

1. 250 percent for a student enrolled in a two (2) year eligible program of study; or

2. 450 percent for a student enrolled in a four (4) year eligible program of study.

(18) [149] "KHEAA grant program officer" or "KGPO" means the official designated on the administrative agreement, pursuant to KRS 164.748(5), to serve as the educational institution's on-campus agent to certify all institutional transactions and activities with respect to the authorizing and grants programs.

(19) [150] "Overaward" means receipt of financial assistance from all sources in excess of a student's need, determined in accordance with the KAR 5:130 through 5:145.

(20) "Participating institution" is defined in KRS 164.740(13).

(21) "Part-time student" means an enrolled student who is carrying an academic workload:

(a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as at least a half-time student, except that correspondence courses shall not be counted in determining the student's part-time status; and

(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:

1. At least six (6) semester hours per semester;
2. Six (6) quarter hours per quarter; or
3. Half of the academic workload of a full-time student as determined by the educational institution.

(22) "Pell Grant" means an award under the federal Pell Grant Program operated by the secretary under the provisions of 20 U.S.C. 1070a.

(23) "Resident of Kentucky" or "resident" means a person who is classified as an in-state student in accordance with the criteria established in 13 KAR 2.045.

(24) "Total cost of education" means an amount determined for an academic year for each applicant by the following formula: normal tuition and fees charged by the institution chosen by the applicant, plus maximum board contract amount, plus minimum room contract amount.

RICHARD F. CASEY, General Counsel
APPROVED BY AGENCY: October 14, 2004
FILED WITH LRC: October 15, 2004 at 10 a.m.
CONTACT PERSON: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 758, Frankfort, Kentucky 40620-0758, phone (502) 696-7250, fax (502) 696-7253.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Rick Casey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in 11 KAR Chapter 5 pertaining to the Kentucky Tuition Grant Program and the College Access Program.

(b) The necessity of this administrative regulation: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740-164.785. KRS 164.733(4) requires the authority to promulgate administrative regulations pertaining to grants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the statute of the authorizing statutes by promulgating administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740-164.785. KRS 164.733(4) requires the authority to promulgate administrative regulations pertaining to grants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation merely defines terms used in 11 KAR Chapter 5 pertaining to the Kentucky Tuition Grant Program and the College Access Program.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by deleting the definitions of "business school," "college," "school of nursing," and "vocational school" in this administrative regulation consistent with KRS 164.740. In addition, references to the terms "eligible institution" and "participating institutions" as defined in KRS 164.740 are added to the regulation to replace the deleted definitions. Additionally, the clarification of the definition of "eligible program of study" is made to conform to statutory changes in KRS 164.7435, pertaining to CAP grants, but this change does not substantively change current policy or practice with regard to "eligible program of study." Finally, this amendment will change the definition of "KHEAA Grant Limit" by providing that the grant limit be measured by the percentage of award received, rather than by semesters of eligibility. This change will simplify the determination of the maximum amount of money each student can receive both on an annual basis and in the aggregate.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment is necessary in order to
conform with the changes to KRS 164.740 and 164.7435.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment conforms the regulation to the changes to KRS 164.740 and 164.7435.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment will assist in the effective administration of the relevant statues by deleting and clarifying definitions consistent with statutory changes to KRS 164.740 and 164.7435.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all institutions eligible to participate in KTG and CAP programs by virtue of conforming to the statutory change eliminating certain definitions pertaining to institutions. The amendment to the definition of "KHEAA grant limit" in response to written comments, would potentially limit all students that receive KTG and CAP grants, since all grant recipients are subject to a cumulative grant limit over the duration of their program of study.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, or by the change if it is an amendment: The proposed amendment pertaining to definitions of institutional types will not directly impact any of the participating institutions, because the amendment to the regulation merely conforms to a change in the enabling statute, and because no additional institutions will become eligible by virtue of the definition change, nor will any existing institutions be denied participation by reason of the definition change. The amendment pertaining to the definition of "KHEAA grant limit" in response to written comments would have only a negligible impact on students that receive KTG and CAP grants, because it is essentially just a different way of measuring the grant limit (by percentage of usage rather than by counting semesters), but is not anticipated to enable students to receive grants for a longer period of time nor restrict students to a shorter period of receiving grants.

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

(a) Initially: None

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Grants for students under the College Access Program and the Kentucky Tuition Grant Program are funded from net lottery revenues transferred to the Authority for grant and scholarship programs and administrative costs are borne by the authority through receipts of the Authority.

(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 administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

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

(9) TIERING: Is tiering applied? No, tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. 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. The regulation provides equal treatment and opportunity for all applicants and recipients.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amended After Comments)

200 KAR 15:010. Formula for allocation of private activity bonds.

RELATES TO: KRS 103.200(1)(k), (l), (m), (n), (2), 103.2101, 103.2186
STATUTORY AUTHORITY: KRS 103.286(3), 26 U.S.C. sec. 146
NECESSITY, FUNCTION, AND CONFORMITY: KRS 103.286(3) provides that the Secretary of the Finance and Administration Cabinet shall promulgate administrative regulations to provide for the allocation of the state ceiling for the issuance of private activity bonds. This administrative regulation establishes the formula for that allocation.

Section 1. Definitions. For the purposes of this administrative regulation:

(1) "Affected bonds" means "private activity bonds" as defined by 26 U.S.C. sec. 146, excluding any obligations not subject to the state ceiling under the Code;

(2) "Allocation" means the amount of volume cap that was approved by the Kentucky Private Activity Bond Allocation Committee for a local issuer or state issuer;

(3) "Available volume cap" means the amount of volume cap remaining from the local issuer pool on June 30;

(4) "Bonds", see KRS 103.2000(2);

(5) "Borrower" means a company that is utilizing a local issuer or local issuing authority to issue bonds;

(6) [3] "Committee" means the Kentucky Private Activity Bond Allocation Committee;

(7) [2(1)] "Eligible available volume cap applicants" means state issuers and local project applicants who file a notice of intent to issue and are approved to receive an available volume cap. [Applicable volume cap of five (5) million dollars or more in the local issuer pool shall be allocated as follows:

(a) First, a lottery to determine the order of disbursement to state issuers and local projects which did not receive an allocation from the local issuer pool;

(b) Second, to the extent there is remaining available volume cap, a lottery to determine the order of disbursement to local projects which:

1. Received an allocation from the local issuer pool, but did not use the allocation;

2. Received an allocation from the local issuer pool and issued the allocation, but did not receive the twenty-five (25) percent borrower limit.

(7) [6] "Issued" means delivered and paid for;

(8) [9(1)] [44] "Issuer" or "issuing authority" means the public or authorized governmental body which issues the bonds;

(9) [140] "Local issuer" or "local issuing authority" means a public or authorized governmental body which issues bonds on behalf of a local project;

(10) [643] [66] "Local issuer pool" means the portion of the state ceiling from which allocations for local projects are made to issuers of affected bonds issued on behalf of or for the benefit of an entity which is not a state agency;

(11) [529] [72] "Local project" makes a project for which bonds are issued on behalf of or for the benefit of an entity which is not a state agency;

(12) [434] "Lottery" means any process of random selection utilized to allocate [by which the order of available volume cap applicants will be determined]. The method of selection shall be in the sole discretion of the committee. The lottery shall be conducted by staff at a public meeting of [immediately to be determined by the committee and conducted by the manner provided in Section 5 of this administrative regulation];

(13) [443] [69] "Staff" means the Office of Financial Management [and Economic Analysis] of the Finance and Administration
Cabinet;
(14) [1453] [1453] "State ceiling" means the cap imposed by 26
U.S.C. sec. 146 on private activity bonds issued within the Com-
monwealth of Kentucky;
(15) [1456] [1457] "State issuer pool" means the portion of the state
ceiling from which allocations for state projects are made to
issuers of affected bonds issued on behalf or for the benefit of a
state agency;
(16) [1473] [1473] "State project" means a project for which
bonds are issued on behalf or for the benefit of a state agency;
and
(17) [1480] [1483] "Year" shall mean calendar year.

Section 2. Allocation of State Ceiling for Affected [Private
Activity Bonds. On the first business day of January [1st] of
each year, the state ceiling for affected [private activity] bonds
shall be divided into two (2) separate pools:

(1) Sixty (60) percent of the state ceiling shall be allocated at
the discretion of the committee be reserved in a state issuer
pool until July 1st. On July 1st, the remainder of any unallocated
portion of the state ceiling shall become available volume-cap
[revert to the single issuer pool].

(2) Forty (40) percent of the state ceiling shall be reserved for
a local issuer pool until July 1st. On July 1st, the remainder of any
unallocated portion of the state ceiling shall become available volume-
cap. [No borrower shall be allocated more than twenty-five (25)
percent of the total local issuer pool in a given calendar year.]
(revert to the single issuer pool)

Section 3. Allocations For Local Projects. Allocations for lo-
cal projects are subject to the following limitations:

(1) A local project may not receive an allocation of state
ceiling in an amount greater than ten (10) percent of local is-
suer pool for the year; and

(2) Local projects that are related to other local projects by
virtue of the common or complimentary utilization of state
celling may not receive an aggregate allocation of state ceiling
in an amount greater than twenty-five (25) percent of the local
issuer pool for the year [Prior to July 1 the committee shall not
allocate a portion of the state ceiling for any project in an aggre-
gate principal amount greater than ten (10) percent of the amount
of the local issuer pool].

Section 4. Evaluation of Local Projects. Local projects seeking
allocation from the state ceiling shall be based on evaluation of the factors listed, and allocated according to the rankings:

(1) Creation of new jobs, as well as preservation of existing
jobs, by the project;

(2) Average hourly wage and benefits of new employees [salary-per-employee] proposed for the project;

(3) Capital investment in Kentucky being made as a result of
the project;

(4) Unemployment rate in the county of the project;

(5) State economic development incentives awarded to the
company, if any;

(6) Previous state ceiling [private activity bond cap] allocated to the company.

Section 5. Allocation of Available Volume Cap [Single-Issuer Pool]. Allocations from the available volume cap [single issuer pool] shall be made to eligible volume-cap applicants, as follows:

(1) First, a lottery to determine the order of disbursement
local projects which did not receive an allocation from the
local issuer pool [if available volume-cap is less than five (5) mil-
lion dollars, the committee at their discretion shall allocate the vol-
ume-cap to one (1) or more state issuers].

(2) Second, to the extent there is remaining available vol-
ume cap, a lottery to determine the order of disbursement to
local projects which received an allocation from the local is-
suer pool, but did not use the allocation and local projects
which received an allocation from the local issuer pool and
issued the allocation, but did not receive the twenty-five (25)
percent local project limit. If the available volume-cap amount
remaining is greater than five (5) million dollars, the remaining
balance shall be allocated to available volume-cap applicants in the
order established by lottery, which shall be conducted as provided
in Section 5(3).

(3) Available volume cap shall be allocated as follows:

(a) First, a lottery to determine the order of disbursement to
state issuers and local projects which did not receive an allocation
from the local issuer pool;

(b) Second, to the extent there is remaining available volume
cap, a lottery to determine the order of disbursement to local pro-
jects which;

3. Received an allocation from the local issuer pool, but did not
use the allocation;

2. Received an allocation from the local issuer pool and issued
the allocation, but did not receive the twenty-five (25) percent bor-
cover limit.

(3) Finally, any remaining balances shall be allocated by
the committee to one (1) or more state issuers for use during the
year or as carry forward, [local projects which have filed a notice of
intent to issue, but which did not receive an allocation from the local
issuer pool, or did not receive the total allocation requested from
the local issuer pool, in the order in which they were placed pursuant
to Section 4 of this administrative regulation. No local project shall
be allocated a total amount which is greater than ten (10)
percent of the local issuer pool. Any funds remaining after alloca-
tion to local projects as stated in this administrative regulation,
shall be allocated by the committee on a first-come first-serve ba-
sis.

Section 6. Committee Meetings. The committee shall meet as
necessary to allocate the state ceiling. Special meetings may be
held on the call of the committee chairman.

Section 7. An issuer shall obtain a confirmation authorizing the
issuance of affected bonds by filing with the committee a written
notice of intention to issue bond ("notice of intent form). The com-
mittee shall issue a confirmation ("Confirmation of Allocation of
State Ceiling" form) allocating to the issuer a portion of the state
ceiling. Affected bonds shall not be issued by any issuer prior to
receiving confirmation by the committee of an allocation under the
state ceiling. Confirmations shall be dated and numbered in the
order issued.

Section 8. Notice of Issuance. Local Projects. Confirmation
Effective for Ninety (90) Days. A confirmation shall expire ninety
(90) calendar days from the date of issuance by the committee, or
December 15, whichever is earlier. The issuer shall deliver to the
committee a notice that the affected bonds have been issued ("No-
tice of Issuance" form). The notice of issuance may be sent by any
means but the committee shall receive it by the close of business
on the 90th day after the confirmation. If the period ends on a Sat-
urday, Sunday, or other day upon which state offices are closed for
business, the notice period shall be extended to the next business
day.

effective until December 15 for 180 days. A confirmation shall expire 180 calendar days from the date of issuance by the com-
mittee, or December 15, whichever is earlier. The issuer shall
deliver to the committee a notice of issuance [that the affected
bonds have been issued ("Notice of Issuance" form). The notice of
issuance may be sent by any means but the committee shall re-
ceive it by the close of business on or before December 15 [the
180th day after the confirmation]. If the period ends on a Saturday,
Sunday, or other day upon which state offices are closed for busi-
ness, the notice period shall be extended to the next business day.

Section 10. Issuance of Bonds in Lesser Amounts than Con-
firmation. Eighty-five (85) Percent Requirement. A confirmation of
affected bonds shall be effective if issued in amounts less than the
confirmed amount; if the face amount of the issued bonds is not
less than eighty-five (85) percent of the original confirmed amount.
The issuer shall notify the committee if the bonds issued are within
the eighty-five (85) percent limit and the unused part of the alloca-
tion shall revert to the issuer pool from which the allocation was
made, or if such reversion occurs [to an available volume cap] [a single-issuer pool] after July 1 of any year, such amount shall become available volume cap.

Section 11. Carry Forward Allocations. (1) In any year, the committee shall allocate any remaining state ceiling as carry forward allocations if the aggregate amount of affected [private activity] bonds issued during the year is less than the state ceiling on December 15th. An issuer shall [may], in order to receive a carry forward allocation, file with the committee by December 15th:
(a) A [*Notice of Intent*] ["Notice of Intent"] form; and
(b) A [*Carry forward election of unused private activity bond volume cap"] U.S. Treasury Department Form 8328.

(2) The carry forward of any unallocated portion of the state ceiling may be for any purpose authorized by 26 U.S.C. sec. 146(f).

(3) The committee shall issue a confirmation of the notice and election to carry forward ["Confirmation of Carry Forward Allocation of State Ceiling"] form.

(4) The committee may consider, but shall not be required to, grant a carry forward notice or election filed after December 15th.

Section 12. The committee shall not confirm a notice of intent [to issue bonds] after the aggregate amount of bond confirmations, including carry forwards, have reached the state ceiling for that year.

Section 13. Form and Manner. (1) The notice and confirmation forms required to be filed with and issued by the committee is incorporated by reference in Section 15 of this administrative regulation.

(2) An issuer of a local project shall not:
(a) File a notice of intent [to issue bonds] unless the issuance will be made within the ninety (90) day confirmation period established in Section 8 of this administrative regulation;
(b) Seek an allocation of the state ceiling in excess of the amount necessary to finance all costs of a project.

(3) An issuer of a state project shall not:
(a) File a notice of intent [to issue bonds] unless the issuance will be made by December 15 [within the 180-day confirmation period];
(b) Seek allocation of the state ceiling in excess of the amount necessary to finance all costs of a program.

Section 14. Delegation of Functions. The committee shall review and allocate all requests for state ceiling. The committee shall not delegate authority to make allocations of the state ceiling to staff except in cases of surplus or carry forward allocations. Any delegation of authority and the limit of that authority shall be recorded verbatim in the minutes of the committee meeting at which the delegation is made.

Section 15. Incorporation by Reference. (1) The following forms are incorporated by reference:
(a) "Notice of Intent" application (March 1998);
(b) "Confirmation of Allocation of State Ceiling" (March 1998);
(c) "Confirmation of Carry-forward Allocation of State Ceiling" (March 1998);
(d) "Notice of Issuance" (March 1998); and
(e) "U.S. Treasury Department Form 8328".

(2) Copies of the forms may be inspected, copied or obtained at the Office of Financial Management [and Economic Analysis], 261 Capitol Annex, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

R. B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: October 13, 2004
FILED WITH LRC: October 13, 2004 at 4 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jason Hamilton

(1) Provide a brief summary of:
(a) What this administrative regulation does: Ensures compliance with federal regulations relative to debt ceiling on "private activity" bonds and the allocation of the state ceiling for the issuance of private activity bonds. This administrative regulation establishes the formula for that allocation.
(b) The necessity of this administrative regulation: KRS 103.286(3) requires the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations to provide for the allocation of the state ceiling for the issuance of private activity bonds. This administrative regulation establishes the formula for that allocation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: Describes criteria for efficient allocation of the resource within the parameter established by federal tax law and the authorizing statute.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Eliminates the need for prospective applicants to "cash out" in order to receive consideration for Additional Volume Cap.
(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 will change the process from a first-come, first-served allocation to a more efficient lottery style drawing for available Volume Cap after June 30.
(b) The necessity of the amendment to this administrative regulation: The proposed lottery drawing will give local applicants an equal chance of obtaining Available Volume Cap. In the past, the first-come, first-served allocation has proven to be inefficient and elicited numerous negative comments from applicants.
(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: State issuers and local projects (city/county) i.e. manufacturing, solid waste, disposal facilities, housing and other businesses who may benefit under the private activity concept in federal tax law that wish to be considered to receive an allocation of state ceiling for the issuance of private activity bonds.
(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 issuers will have an equal chance of obtaining available Volume Cap.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.
(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.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
(9) TIERING: Is tiering applied? Tiering was applied to give preference to local projects that did not receive private activity bond cap from the local issuer pool and to discourage applicants from obtaining cap from projects that are not ready to proceed, putting viable projects at a disadvantage.
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COUNCIL ON POSTSECONDARY EDUCATION
(Amended After Comments)

785 KAR 1:130. GED eligibility requirements.

RELATES TO: KRS 151B.023, 151B.125

STATUTORY AUTHORITY: KRS 151B.023, 151B.410, EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: KRS
151B.410(1) requires the Department for [Kentucky] [the Department for Adult Education and Literacy] [Kentucky Department for Adult Education and Literacy] to promulgate necessary administrative regulations and administer a statewide adult education and literacy system through the state. KRS 151B.023 designates the Department for [Kentucky] [the Department for Adult Education and Literacy] to carry out the statewide mission on adult education. The Department for Adult Education and Literacy [The Department] has the responsibility for all administrative functions of the state in relation to the management, control, and operations of programs and services in adult education and literacy. KRS 151B.125 recognizes the general educational development (GED) test for high school equivalency purposes in Kentucky. EO 2004-726 abolished the Department for Adult Education and Literacy and transferred its duties to the Council on Postsecondary Education. This administrative regulation establishes the eligibility requirements for taking the GED test.

Section 1. Eligibility Requirements. Except as provided in Section [Sections] 2 and [3] of this administrative regulation, the GED test shall be administered to an applicant with a Kentucky address who:

1. Has reached his 18th birthday; or
2. Has reached his 19th birthday; or
3. Is at least sixteen (16) [seventeen (17)] years of age.

[a] The applicant has officially withdrawn from public or private school as certified by the local school district[.][ and (b) The applicant's last enrolled class has graduated; or (c) The applicant has been out of formal instruction for a period of one (1) year.

Section 2. [Exigent Circumstance. An applicant at least sixteen (16) years of age who believes exigent circumstances exist and who does not meet the conditions of Section 1 of this administrative regulation may request an exemption from the local school superintendent or designee in the district where the applicant resides. An exemption granted on the basis of exigent circumstances or a denial shall be in writing. A copy of all exigent circumstance decisions shall be mailed or faxed within five (5) working days of the decision to the state GED administrator. An applicant may appeal a denial by the local school superintendent to the Commissioner of the Department for Adult Education and Literacy.

Section 3. Exemptions. An applicant at least sixteen (16) years of age with a Kentucky address shall also be eligible to take the GED test if the applicant:

1. Is committed or placed in a state correctional facility;
2. Enrolled in the Jobs Corps Program of Instruction;
3. Is considered a state agency child, as defined by KRS 158.135(1)(a) and receives approval for the GED test from his interdisciplinary team; or
4. Detained in a juvenile detention center or juvenile holding facility, and the applicant:
   a. Has at least one (1) year behind academically in his graduating class;
   b. Has a minimum stay in detention of thirty (30) days; and
   c. Is approved for the GED test by the local school superintendent.

Section 4. Test Readiness. An applicant shall be certified as test-ready by an entity designated by Kentucky [a Department for Adult Education and Literacy-designated entity] before taking the official GED test. An applicant shall:

1. Successfully complete the Official GED Practice Test with the same passing scores required for the GED test or present a Kentucky Educational Television GED Connection Voucher.
2. Complete the GED Testing Application Form. This form shall be available from the local adult education provider, local school superintendent, or Kentucky [the Department for] Adult Education [and Literacy].
3. The military personnel shall:
   a. Not be required to complete the GED Testing Application Form prior to taking the test; and
   b. Complete the Military GED Application (Form 300-M) before a high school equivalency diploma shall be issued.

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

a. Kentucky Adult Education GED Test Application [GED Testing Application (DAE-6)], revised 10/42/01 edition, Cabinet for Workforce Development, Department for Adult Education and Literacy; and

2. This material may be inspected, copied, or obtained, subject to applicable copyright law, at 1024 Capital Center Drive, Suite 250, [the Department for Adult Education and Literacy, Capital Plaza Tower, Third Floor, 500 Aero Street, Frankfort, Kentucky 40601, phone (502) 573-5114, ext. 102, fax (502) 573-5436, email: bj helton@ky.gov]

THOMAS D. LAYZELL, President
APPROVED BY AGENCY: October 15, 2004
FILED WITH LRC: October 15, 2005 at 10 a.m.
CONTACT PERSON: B.J. Helton, Senior Associate, GED Administrator, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 250, Frankfort, Kentucky 40601, phone (502) 573-5114, ext. 102, fax (502) 573-5436, email: bj helton@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. J. Helton, Senior Associate, GED Administrator (1) Provide a brief summary of:

a. What this administrative regulation does: HB 178, of the 2004 Session of the General Assembly would not count students as dropouts if they obtain a GED by the next October 1. The current administrative regulation does not permit dropouts to take the GED until they have been withdrawn from school for 1 year or the last enrolled class has graduated. There is a conflict between HB 178 and the current administrative regulation. This amendment eliminates the conflict.

b. The necessity of this administrative regulation: This regulation is mandated by KRS 151B.023 and 151B.410.

c. How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms explicitly to the authorizing statutes.

d. How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation complies with the change of status of dropout students.

(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 eliminates the time requirement before a dropout student may take the GED.

b. The necessity of the amendment to this administrative regulation: Under the current administrative regulation, a student may not take the GED within a year of dropping out or until the last enrolled class has graduated.

c. How the amendment conforms to the content of the authorizing statutes: This amendment conforms explicitly to the requirements of HB 178, of the 2004 Session of the General Assembly. How the amendment will assist in the effective administration of the statutes: This amendment conforms the GED eligibility requirements to legislative changes made in the status of high school dropouts.

(3) List the type and number of individuals, businesses, organi-
sations, or state and local governments affected by this administr-
tative regulation: Local providers of adult education in each county
will be affected as well as adult education students.

(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: Students
who dropout will be eligible to take the GED at an earlier date; this
may increase the number of high school dropouts who get their
GED by removing an artificial time barrier that restricted access to
the GED for 1 year.

(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(9) What is the source of the funding to be used for the imple-
mentation 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 regula-
tion, if new, or by the change if it is an amendment: No increase in
fees or funding will be necessary with the implementation of this
new administrative regulation.

(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: Test
fees are assessed but these are covered in another administrative
regulation. No fees or fee increases are involved in the adminis-
tration of this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not appropriate un-
der these circumstances.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Kentucky Public Service Commission
(Amended After Comments)

807 KAR 5:120. Applications for certificate of public con-
venience and necessity for certain electric transmission lines.

RELATES TO: KRS 278.020(2), (8)
STATUTORY AUTHORITY: KRS 278.040(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS
278.040(3) authorizes the commission to promulgate reasonable
administrative regulations to implement the provisions of KRS
Chapter 278. KRS 278.020(2) provides that [interested parties shall
be notified and that] a certificate of public convenience and
necessity must be obtained prior to construction of an electric
transmission line of 138 kilovolts or more and of more than 5,280
feet in length. KRS 278.020(6) includes "a person over whose
property the proposed transmission line will cross" among
those persons who are "interested party who may move to
intervene in the proceeding." This administrative regulation est-
ablishes procedures and minimum filing requirements for an appli-
cation to construct an electric transmission line of 138 kilovolts or
more and of more than 5,280 feet in length.

Section 1. Notice of Intent to file Application. (1) At least thirty
(30) days but no more than six (6) months prior to filing an appli-
cation to construct an electric transmission line of 138 kilovolts or
more and of more than 5,280 feet in length, an applicant shall file
with the commission a notice of intent to file application. If an ap-

 applicant fails to file an application within six (6) months of the
filing of such a notice, the notice shall automatically expire
without further notice to the applicant.

(2) A notice of intent to file application shall include:
(a) The name, address and telephone number of the utility
that [person who] intends to file the application;
(b) A [brief] description of the proposed construction that will
be the subject of the application [along with a map of suitable scale
to show the route proposed and any alternative route that was
considered];
and
(c) The name of the county or counties in which the construc-
tion will be proposed.

Section 2. Application. To apply for a certificate of public con-
venience and necessity to construct an electric transmission line
of 138 kilovolts or more and more than 5,280 feet [or more], a utility
shall file with the commission the following:

(1) All documents and information required by:
(a) 807 KAR 5:001, Section 8, except that the applicant shall
file the original and six (6) copies of the application; and
(b) 807 KAR 5:001, Sections 9(2)(a) through (c) and (e) through
(g).
(2) A three (3) maps with suitable scale, but no less than one
(1) inch equals 1,000 feet for the project proposed. The map
detail shall include the affected property boundaries as indicated
on the property valuation administrator's maps, modified as required,
and the location of all proposed structures, facilities, rights of way
and easements. Sketches of proposed typical transmission line support structures shall also be pro-
vided. A separate map of the same scale shall show any alter-
tnative routes that were considered.

(b) A verified statement that, according to county property
valuation administrator records, each property owner over whose
property the transmission line is proposed to cross and each property owner whose property abuts those prop-
erties has been sent by first-class mail, addressed to the
property owner at the owner's address as indicated by the
county property valuation administrator records, or hand de-
livered:
1. Notice of the proposed construction;
2. The commission docket number under which the appli-
cation will be processed and a map showing the proposed
route of the line;
3. The address and telephone number of the executive
director of the commission;
4. A description of his or her rights to request a local pub-
lic hearing and to request to intervene in the case; and
5. A description of the project, [no less than one (1) inch
equals 400 feet scale] for the project proposed. The map detail
shall include the affected property boundaries as indicated
on the property valuation administrator's maps, modified as required,
and the location of all proposed structures, facilities, proposed rights of
way and proposed easements.

(3) A verified statement that each property owner over whose
property the transmission line is proposed to cross has been:
(a) Notified of the proposed construction by certified mail, re-
turn receipt requested;
(b) Given the commission docket number under which the
application will be processed and a map showing the proposed
location;
(c) Given the address and telephone number of the executive
director of the commission;
(d) Informed of his or her rights to request a local public hearing
and to move to intervene in the case;
(e) Given a description, including the proposed scope, of the
project;
(c) A sample copy of each notice provided to a property
owner, pursuant to the preceding paragraph, and a list of the
names and addresses of the property owners to whom the
notice has been sent. [A copy of each notice provided to a prop-
erty owner, pursuant to the preceding paragraph]
(d) A statement that a notice of the intent to construct a
proposed transmission line has been published in a newspaper
of general circulation in the county or counties in which the construc-
tion is proposed, which notice included:
1. A map showing the proposed route;
2. A statement of the right to request a local public hearing;
and
3. A statement that interested persons have the right to
request to intervene [A statement of the right to move to inter-
vene].
(e) A copy of the newspaper notice described in the preceding
paragraph;
(f) A statement describing or summarizing discussions oc-
curring during any public meeting with persons who own property over
which the line is proposed to be constructed;
(g) A copy of each written assessment of the environmental,
historical, and archeological impact of the proposed construction; if
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any, required by a governmental-administrative agency with jurisdiction.

(a) A statement as to whether the project involves sufficient capital outlay to materially affect the existing financial condition of the utility involved.

Section 3. Local Public Hearing. (1) Any interested person under KRS 278.020(8) (a resident of a county in which a transmission line of 138 kilovolts or more and of more than 6,280 feet in length is proposed to be built) may request that a local public hearing be held by sending a written request complying with subsections (2) and (3) of this section to the Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 818, Frankfort, Kentucky 40602. This hearing shall be requested no later than thirty (30) days after filing of an application for a certificate of public convenience and necessity.

(2) A request for a local public hearing shall contain:
(a) The docket number of the case to which the request refers;
(b) The name, address, and telephone number of the person requesting the hearing [sending the request]; and
(c) A statement as to whether the person requesting the hearing [making the request] wishes to participate in an evidentiary hearing or to make an unsuborn public comment.

(3) If a person requesting a local public hearing wishes to participate in an evidentiary hearing as well, that person must also apply to intervene in the commission proceeding on the application pursuant to 807 KAR 5:001, Section 3(8) to intervene in the commission proceedings on the application.

Section 4. Deviation from Rules. The provisions of 807 KAR 5:001, Section 14 apply to applications filed under this administrative regulation.

MARK DAVID GOSS, Chairman
JAMES L. ADAMS, Commissioner
LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: October 14, 2004
FILED WITH LRC: October 15, 2004 at 8 a.m.
CONTACT PERSON: A.W. Turner, Jr., phone (502) 564-3940, fax (502) 564-7729.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: A.W. Turner, Jr.

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes a procedure for applications for a certificate of convenience and necessity for construction of a transmission line under KRS 278.020. It also provides for public notice of such an application and for a procedure for members of the affected public to participate in the certificate proceedings.
(b) The necessity of this administrative regulation: This proposed regulation will assist the Public Service Commission in enforcing the statutes, and is necessary to the Public Service Commission’s authority to regulate utilities and enforce KRS Chapter 278.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.020 authorizes the commission to grant certificates of convenience and necessity for construction of certain utility plants. The amendments of Chapter 75 (SB 248) of the latest legislative session extend this authority to certain significant transmission lines. This regulation establishes procedures for utilities to apply for such a certificate and provides for public participation in that process.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the procedure for a public electric utility to apply for a certificate of convenience and necessity to construct a transmission line that, under the amendments to KRS 278.020, requires such a certificate. In addition, the regulation explains how the affected public may participate in the certificate case. Adoption of the regulation will therefore assist the commission in administering this new set of certificate cases.

(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: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 21 rural electric utilities serving their customers. 5 investor-owned electric utilities serving their customers, and any persons owning property over which a utility proposes to locate such a transmission line.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The impact of implementing this administrative regulation is not extensive. It will establish necessary procedures for processing applications for transmission line certificates.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initial: Implementation of the proposed amendment will not involve additional costs.
(b) On a continuing basis: No additional costs are expected.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.

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

(9) TIERING: Is tiering applied? Yes, tiering is used in this proposed regulation. The regulation only applies for those facilities that are larger and have higher transmission capacities. Larger facilities create a greater potential for disrupting the environment and the use and enjoyment of property upon near where the lines are proposed to be placed. In addition, larger facilities tend to generate more public involvement in the process.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives
(Amended After Comments)

907 KAR 1:022. Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services [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(2) [(3)], 194A.050(1), 205.520(2), 205.505, EO 2004-726.

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family 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 provision of medical assistance to Kentucky's indigent citizen. This administrative regulation establishes the provisions relating to nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services [the mentally-retarded and developmentally disabled level of care criteria].
Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "High-intensity nursing care services" means care provided to a Medicaid eligible individual who meets high-intensity nursing care patient status criteria in accordance with Section 4 of this administrative regulation and by a nursing facility or a nursing facility with waiver participating in the Medicaid Program with care provided in beds also participating in the Medicare Program.

(3) "High-intensity rehabilitative services" means 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.

(4) "Intermediate care facility for individuals with mental retardation or a developmental disability [the mentally retarded and developmentally disabled]" or "ICF-MR-DD" means a licensed intermediate care facility for individuals 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 individuals with mental retardation or a developmental disability [facilities for the mentally retarded and developmentally disabled] services.

(5) (3) "Intermediate care facility for individuals with mental retardation or a developmental disability [the mentally retarded and developmentally disabled] services" means care provided to a Medicaid-eligible individual who meets ICF-MR-DD patient status criteria in accordance with Section 4 of this administrative regulation and by an ICF-MR-DD participating in the Medicaid Program.

(6) "Intermittent high-intensity nursing care [skilled] services" means services for an individual who requires high-intensity nursing care [skilled] 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.

(7) "Low-intensity nursing care services" means care provided to a Medicaid-eligible individual who meets low-intensity nursing care patient status criteria in accordance with Section 4 of this administrative regulation and by a nursing facility or a nursing facility with waiver participating in the Medicaid program.

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

(9) "Nursing care services" means care provided that is consistent with a combination of the services listed in Section 5 of this administrative regulation.

(10) (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;

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395t and 1306i, 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. 1395(r), (c), (d), 42 C.F.R. 447.280 and 482.66.

(11) "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.]

(12) "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.

(13) "Patient status" means that an individual possesses care needs in accordance with Section 4 of this administrative regulation for treatment in an institutional setting.

(14) "Personal care" means services to help an individual achieve and maintain good personal hygiene including but not limited to assistance with bathing, shaving, cleaning and trimming of fingers and toenails, cleaning of the mouth and teeth and washing, grooming and cutting of hair. (140) "Skilled nursing care services" means care that is consistent with a combination of the services listed in Section 4(2) of the 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.

(14) "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.

(15) (42) "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 507 KAR 1:671 and 507 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 nursing 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. The addition of one (1) new certified Medicaid bed shall increase the required minimum number of certified Medicaid beds to 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.

(3) 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.

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

(5) In order to provide specialized rehabilitation services to an individual with a brain injury in accordance with Section 9 [7] of this administrative regulation, a facility shall be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF).

(6) 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 per-
son with a brain injury; or
(b) Care for a person who is ventilator dependent.

Section 3. Payment Provisions. (1) Payment for high-intensity nursing care, low-intensity nursing care, or [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 high-intensity nursing care services provided to a Medicaid-eligible individual meeting high-intensity nursing care patient status [nursing-facility level-of-care] criteria if the services are provided in a Medicaid-certified and also participating in the Medicare Program.

(3) An NF or NF-W shall receive payment for low-intensity nursing care services provided to a Medicaid-eligible individual meeting low-intensity nursing care patient status criteria if the services are provided in a Medicaid participating bed.

(4) [33] An ICF-MR-DD shall receive payments for ICF-MR-DD services only.

Section 4. Determining Patient Status, [Nursing-Facility Level-of-Care]. The department shall review and evaluate the health status and care needs of an individual in need of in-patient care giving consideration to the A patient status decision shall be based on 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 non-institutional services.

(1) For an admission and continued stay an individual shall qualify An individual shall not qualify for Medicaid nursing facility level of care unless the individual qualifies for admission, and continued stay as appropriate, under the preadmission screening and resident review criteria specified in 42 U.S.C. 1396r and 907 KAY 1.735.

(2) An Individual shall qualify for high-intensity nursing care [skilled nursing-care services-if]
(a) On a daily basis:
1. The individual's needs mandate:
   a. High-intensity [Skilled] nursing care services; or
   b. High-intensity rehabilitation [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 at least two (2) or more of 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. Indwelling 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 high-intensity [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;
   13. Receiving services which would qualify as high-intensity rehabilitation services if provided by or under the supervision of a qualified therapist, for example;
   a. Ongoing assessment of rehabilitation needs and potential;
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(4) An individual with a mental illness or mental retardation or a developmental disability meeting the health status and care needs specified in subsections (2) and (3) of this section shall:
(a) Be considered to meet patient status; 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; or
2. 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.

(5) An individual shall meet ICF-MR-DD patient status if the individual requires physical or environmental management or re habilitation for moderate to severe retardation and meets the following criteria:
(a) The individual has significant developmental disabilities and significantly subaverage individual functioning and requires a planned program of active treatment to attain or maintain the individual’s optimal level of functioning; but does not necessarily require care in a nursing facility or nursing facility with waiver services.
(b) The individual requires a protected environment while overcoming the effects of developmental disabilities and subaverage intellectual functioning while:
1. Learning fundamental living skills;
2. Learning to live happily and safely within his own limitations;
3. Obtaining educational experiences that will be useful in self-supporting activities; or
4. Increasing his awareness of his environment; or
(c) The individual has a psychiatric primary diagnosis or needs if:
1. The individual also has care needs as shown in paragraph (a) or (b) of this subsection;
2. The mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility for individuals with mental retardation or a developmental disability); and
3. The individual does not require psychiatric inpatient treatment;
(d) An individual who does not require a planned program of active treatment to attain or maintain the individual’s optimal level of functioning shall meet ICF-MR-DD patient status.
(e) An individual shall not be denied for ICF-MR-DD services solely due to advanced age, or length of stay in an institution, or history of previous institutionalization, if the individual qualifies for ICF-MR-DD services on the basis of all other factors.
(f) Excluding an individual with mental retardation, for an individual with a developmental disability to qualify for ICF-MR-DD services, the individual shall have manifested itself prior to the individual’s 22nd birthday.

(9) Transfer trauma criteria. A Medicaid recipient in an NF who does not meet the low-intensity or high-intensity nursing care patient status criteria established in 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 patient status criteria; and
(c) The department confirms the recipient’s attending physician’s assessment regarding the trauma caused by possible discharge from the NF.

(10) A Medicaid recipient who meets transfer trauma criteria in accordance with subsection (9) 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.

(11) The recipient transfer trauma criteria established in subsection (9) of this section shall not apply to an individual who resides in a facility which experiences closure or a license or certificate revocation.

(2) An individual with a stable medical condition manifesting a combination of at least three (3) of the following care needs 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: e.g., assistance with wheelchairs, manual wheelchairs to propel 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.
(d) Assistance with going to and from the bathroom and bedpan for elimination.
(e) Administration of stabilized and dosages of medication.
(f) Requires restorative and supportive nursing care to maintain the individual and prevent deterioration of his or her condition.
(g) Administration or preparation of assistance of another person.
(h) Assistance with preparing and taking medications and assistance of another person.
(i) Assistance with dressing, grooming, bathing and sitting in a chair.
(j) Assistance with using a walker, crutch, cane, or wheelchair.
(k) Assistance with getting into and getting out of bed.
(l) Assistance with understanding and following simple instructions.
(m) Assistance with eating, drinking, and swallowing.
(n) Assistance with toileting.
(o) Assistance with personal hygiene.
(p) Assistance with ambulation.
(q) Assistance with standing and walking.
(r) Assistance with transfer, positioning, and turning.
(s) Assistance with mobility.
(t) Assistance with activities of daily living (ADL).
(u) Assistance with medical equipment.
(v) Assistance with adaptive equipment.
(w) Assistance with instrumental activities of daily living (IADL).
(x) Assistance with instrumental activities of daily living (IADL).
(y) Assistance with instrumental activities of daily living (IADL).
(z) Assistance with instrumental activities of daily living (IADL).

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(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;
3. If the individual does not meet the preadmission screening and resident review criteria specified in 42 U.S.C. 1395r and 907 KAR 1:756 for entering or remaining in a facility.

Section 6. 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 and 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. Requirements, Standards and Preauthorization of Specialized Rehabilitation Services for Individuals with Brain Injuries. An individual who has a brain injury [i.e., brain-injured] and meets the high-intensity nursing care patient status criteria established in Section 4 of this administrative regulation [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 sustains 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 frame 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 7. [8.] Requirements, Standards and Preauthorization
of Certified Distinct-part Nursing Facility Ventilator Services. An individual who is ventilator dependent and meets the high-intensity nursing care patient status criteria (which 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 high-intensity [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 high-intensity [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 patient status (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 hyperventilation, 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 8. [9.] Denial of Patient Status (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 9. [46.] Reserved Bed Days. The department shall cover reserved bed days in accordance with the following criteria.

(1) In accordance with subsection (5) 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 10. [41.] 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.


(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.

JAMES W. HOLLSINGER, Jr., M.D., Secretary SHANNON TURNER, Acting Commissioner DR. DUANE KILTY, Undersecretary APPROVED BY AGENCY October 14, 2004
Contact Person: Stuart Owen or Teresa Goodrich (584-5204)

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to nursing facility (NF) and intermediate care facility for individuals with mental retardation or a developmental disability (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 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 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 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 service criteria in effect prior to April 2003 has been reinstated in order to enable the Department for Medicaid Services (DMS) to maximize the number of recipients to be served by the nursing facility and home and community based waiver service programs with the limited resources available to DMS.

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

(c) 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 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 the change if it is an amendment: The amendment to this administrative regulation restores the qualifying requirements that were in effect prior to April 2003; thus, individuals who had qualified prior to April 2003 but were then denied would be expected to qualify again barring a significant improve-

ment in health condition or other unforeseen circumstance. DMS estimates that over 3,500 individuals (including individuals who had previously qualified as well as new applicants) have been denied services as a result of the criteria implemented April 2003. As a result of the amendment to this administrative regulation, any such individual will be evaluated based on the criteria in effect prior to April 2003. Additionally any current recipients will be evaluated based on the prior to April 2003 criteria during their next reevaluation.

(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 $9.91 million annually ($6.92 million federal funds; $2.99 million state funds).

(b) On a continuing basis: DMS estimates that the amendment to this administrative regulation will result in a cost of approximately $9.91 million annually ($6.92 million federal funds; $2.99 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 facility services and intermediate care facility for individuals with mental retardation or a developmental disability (ICF MR DD) services.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation revises the Department for Medicaid Services qualifying requirements regarding nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability (ICF MR DD) services.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives
(Amended After Comments)

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
NECESSITY, FUNCTION, AND CONFORMITY: EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky’s indigent citizen. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for services provided by a price-based nursing facility as well as increases price-based nursing facility service reimbursement in accordance with HB 292 of the 2004 Session of the General Assembly.

Section 1. Definitions. (1) “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) “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) “Appraisal base year” means a year in which the department shall conduct an appraisal of each price-based NF.
(4) “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) “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) “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) “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 pt. (version 5.12B) thirty-four (34) group model resident classification system.
(8) “Department” means the Department for Medicaid Services or its designee.
(9) "DRI" means an indication of changes in health care cost from year to year developed by Data Resources Incorporated.
(10) "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) "Expenditure period" means the period beginning July 1, and ending June 30, 2004.
(12) "Governmental entity" means a unit of government for the purposes of 42 U.S.C. 1396w(6)(A).
(13) "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) "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) "Local unit of government" means a city, county, special purpose district, or other governmental unit in the state.
(16) "Metro Health Area Statistical Area” or “MHA” means the designation of urban population centers based on the national census and updated on a five-year basis, as published by the Federal Office of Management and Budget.
(17) "NF building" means a roofed and walled structure serviced by electricity, heating and cooling which is also an NF.
(18) "NF-MRS" means an NF which in 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.
(19) "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.
(20) "Provider assessment" means an assessment imposed by HB 292 of the 2004 Session of the General Assembly.
(22) "Routine services" means the services covered by the Medicaid Program pursuant to 42 C.F.R. 483.10(c)(8)(l).
(23) "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) "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) "Standard price" means a facility-specific reimbursement that includes a case-mix adjusted component, noncase-mix adjusted component including an allowance to offset a provider assessment, noncapital-facility related component; and capital rate component.
(26) "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 NPs for routine services furnished during the preceding calendar year, excluding any payment made pursuant to Section 14 [14] 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 to determine the facility specific capital component in 2009, [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 alarm, 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 additions 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 five (5) 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, Wonderguards, 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 served);
   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 wainscoting (standard allowance shall be three (3) dollars and fifty (50) cents per linear foot).
   (4) An item listed in subsection (3)(c) 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
   b1. 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(13) [4(4)] 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, 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;
(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 aide; 
   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 to include an allowance to offset a provider assessment;
(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 based on rebased wages at the 2004 level:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban</td>
<td>$78.24</td>
<td>$58.84</td>
<td>$137.08</td>
</tr>
<tr>
<td></td>
<td>($61.83)</td>
<td>$41.92</td>
<td>($103.75)</td>
</tr>
<tr>
<td>Rural</td>
<td>$64.58</td>
<td>$52.24</td>
<td>$116.82</td>
</tr>
<tr>
<td></td>
<td>($61.03)</td>
<td>$36.53</td>
<td>($87.56)</td>
</tr>
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</table>

(8) A price-based NF's standard price shall be adjusted for inflation every July 1 and rebased in 2008:

(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) Effective July 1, 2004, an NF shall not receive a rate less than its standard price [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 which shall include an allowance to offset a provider assessment;
(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) per-
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cent, 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 estab-
lished 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 Pro-
gram pursuant to Section 3(4) of 907 KAR 1:672.
(d) [69] 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 de-
partment shall:
(a) Extract the required MDS data from the NF’s MDS form:
1. Incorporated by reference in 907 KAR 1:765;
2. Transmitted by the NF to the Cabinet for Health and Family
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:

<p>| MDS Data | MDS Data | Rate | Audits | Required | Rate | Sanction |</p>
<table>
<thead>
<tr>
<th>Extraction Date</th>
<th>Revision Cut-Off Date</th>
<th>Effective Date</th>
<th>Initiated</th>
<th>MDS Accuracy</th>
<th>Sanction</th>
<th>Effective Date</th>
</tr>
</thead>
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<tr>
<td>6/30/01</td>
<td>9/30/01</td>
<td>10/1/01</td>
<td>10/2001</td>
<td>40%</td>
<td>$0.10 per patient day (ppd)</td>
<td>1/1/02</td>
</tr>
<tr>
<td>9/30/01</td>
<td>12/31/01</td>
<td>1/1/02</td>
<td>1/2002</td>
<td>40%</td>
<td>$0.10 ppd</td>
<td>4/1/02</td>
</tr>
<tr>
<td>12/31/01</td>
<td>3/31/02</td>
<td>4/1/02</td>
<td>4/2002</td>
<td>50%</td>
<td>$0.15 ppd</td>
<td>7/1/02</td>
</tr>
<tr>
<td>3/31/02</td>
<td>6/30/02</td>
<td>7/1/02</td>
<td>7/2002</td>
<td>50%</td>
<td>$0.15 ppd</td>
<td>10/1/02</td>
</tr>
<tr>
<td>6/30/02</td>
<td>9/30/02</td>
<td>10/1/02</td>
<td>10/2002</td>
<td>65%</td>
<td>$0.20 ppd</td>
<td>1/1/03</td>
</tr>
<tr>
<td>9/30/02</td>
<td>12/31/02</td>
<td>1/1/03</td>
<td>1/2003</td>
<td>65%</td>
<td>$0.20 ppd</td>
<td>4/1/03</td>
</tr>
<tr>
<td>12/31/02 and forward</td>
<td>3/31/02 and forward</td>
<td>4/1/03 and forward</td>
<td>4/2003 and forward</td>
<td>65-79%</td>
<td>$0.50 ppd</td>
<td>7/1/03</td>
</tr>
<tr>
<td>3/31/02 and forward</td>
<td>4/1/03 and forward</td>
<td>4/2003 and forward</td>
<td>4/2003 and forward</td>
<td>40-64%</td>
<td>$0.60 ppd</td>
<td>and</td>
</tr>
</tbody>
</table>

Section 8. Limitation on Charges to Residents. (1) Except for
applicable deductible and coinsurance amounts, an NF that re-
ceives reimbursement for a resident pursuant to Section 6 of this
administrative regulation shall not charge a resident or his repre-
sentative 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)(6)(iii) if:
1. The department shall generate a random sample of twenty-
five (25) percent of the price-based NF’s Medicaid MDS assess-
ments;
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 para-
graph 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 ac-
cordance 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 subsection
(3)(c)2 and 3 of this section, of a price-based NF’s MDS assess-
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-
view within ten (10) business days of being notified of the find-
ings 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 sec-
ond quarter following the MDS extraction date;
(d) That MDS audits shall be initiated in the same month con-
taining 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
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:

(e) 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;
(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 biennial budget less:
(a) Any reduction due to a programmatic change that affects nursing facility reimbursement;
(b) Any reduction in the department's budget that affects nursing facility reimbursement.

Section 11. Cost Report. (1) A Medicare cost report and the Supplemental Medicaid 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) A copy of a price-based NF's Medicare cost report shall be submitted for the most recent fiscal year end.

Section 12. Ancillary Services. [(1)] Effective November 1, 2003;
(1)(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 Fee Schedule established in 907 KAR 3:010, Section 3;
(2)(b) The department shall reimburse for an oxygen therapy utilizing the Medicaid DME Program fee schedule established in 907 KAR 1:479; and
(2)(e) 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)(e) of this section by submitting a Schedule J Request for Reimbursement form to the department by December 1, 2003.

Section 13. Reimbursement for State Fiscal Years (SFY) 2003 and 2004 (July 1, 2002 through June 30, 2004). (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.
(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) 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 non-federal 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 14. [45.] 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 factor 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 15, [16] Incorporation by Reference. (1) The following material is incorporated by reference:
   (b) The "Instructions for Completing the Medicaid Supplemental Schedules, November 2003 Edition;"
   (c) The "Supplemental Medicaid Schedules, November 2003 Edition;" and

(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.

RUSS FENDLEY, Commissioner
DR. DUANE KILTY, Undersecretary
JAMES W. HOLSINGER, JR., MD, Secretary
APPROVED BY AGENCY: October 14, 2004
FILED WITH LRC: October 15, 2004 at 10 a.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health and Family Services, Office of the Counselor, 275 East Main Street - 6W-B, Frankfort, Kentucky 40621, phone (502) 594-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Teresa Goodrich or Stuart Owen

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services (DMS) reimbursement methodology for price based nursing facility services.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS reimbursement methodology for price based nursing facility services.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing DMS reimbursement methodology for price based nursing facility services.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing DMS reimbursement methodology for price based nursing facility services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation increases price-based nursing facility service reimbursement to offset a provider assessment in accordance with HB 292 of the 2004 Session of the General Assembly.
   (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with HB 292 of the 2004 Session of the General Assembly.
   (c) How the amendment conforms to the content of the authorizing statutes: HB 292 of the 2004 Session of the General Assembly authorizes DMS to increase provider reimbursement to offset a provider assessment.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist DMS in the effective administration of the authorizing statutes by increasing price-based nursing facility service reimbursement to offset a provider assessment in accordance with HB 292 of the 2004 Session of the General Assembly.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are approximately 279 price based nursing facilities currently participating in the Medicaid 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: Providers will receive an increase in reimbursement to offset a provider assessment in accordance with HB 292 of the 2004 Session of the General Assembly.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: The amendment to his administrative regulation is estimated to cost approximately $44 million annually ($13.2 million state funds; $30.8 million federal funds) with state funding being provided by the Medical Assistance Revolving Trust (MART) Fund in accordance with HB 292 of the 2004 Session of the General Assembly.
   (b) On a continuing basis: The amendment to this administrative regulation is estimated to cost approximately $44 million annually ($13.2 million state funds; $30.8 million federal funds) with state funding provided by the Medical Assistance Revolving Trust (MART) Fund in accordance with HB 292 of the 2004 Session of the General Assembly.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding to implement the amendment to this administrative regulation will be provided by the MART Fund in accordance with HB 292 of the 2004 Session of the General Assembly.

(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 will be necessary to implement the amendment to this administrative regulation and funding will be provided by the MART Fund in accordance with HB 292 of the 2004 Session of the General Assembly.

(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.

1. Federal mandate 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. The amendment to this administrative regulation increases provider reimbursement in order to offset a provider assessment in accordance with HB 292 of the 2004 Session of the General Assembly.

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative
regulation does not set stricter requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Adult and Child Health Improvements
(Amended After Comments)

911 KAR 2:110. Kentucky Early Intervention Program Point of Entry.

RELATES TO: 20 U.S.C. 1471-1485
STATUTORY AUTHORITY: KRS 194A.050, 200.650-676, EO 2004-726(444)
NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726(444), effective July 9 [May 1], 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services. The cabinet [for Health Services] is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the point of entry provisions pertaining to First Steps, Kentucky's Early Intervention Program.

Section 1. Point of Entry. (1) The point of entry (POE) staff shall coordinate child-find efforts with local education agencies in order to insure compliance with child find mandates with each party.
(2) The POE staff shall coordinate child find efforts with other state and federal programs serving this population, including maternal and child health programs, early and periodic screening, diagnosis, and treatment programs, Head Start, Supplemental Security Income Program, and programs authorized through the developmental disabilities assistance and Bill of Rights Act.
(3) The POE staff shall develop a child-find activity plan to be conducted in each district that includes:
(a) Completing a minimum of two (2) face-to-face contacts per month to potential referral sources in the district to explain First Steps services.
(b) Utilizing the materials developed by the Interagency Coordinating Council Public Awareness Committee by making them available to the community upon request in cooperation with the district technical assistance team and the district early intervention committee (DEIC).
(4) The POE staff shall maintain accessibility and provide public awareness activities in each district by:
(a) Having a district toll free telephone number;
(b) Having a dedicated local telephone number to be answered by person or machine twenty-four (24) hours a day, seven (7) days a week as First Steps;
(c) Utilizing the Image Consistency Kit developed by the Interagency Coordinating Council Public Awareness Committee.
(5) The POE staff shall maintain communication with the DEIC, district technical assistance team and lead agency on matters of child find, service options and other issues relevant to the First Steps Program, by completing the following activities:
(a) Presenting a report at each DEIC meeting that includes the following information:
1. Number of referrals and referral sources since last DEIC meeting;
2. List of current service providers [provider] including deletions and additions from last meeting;
3. Report on identified gaps related to services and location; and
4. A highlight of the month’s activities that include the public awareness activities.
(b) Solicit advice from the DEIC, district technical assistance teams, and lead agency on child find, service options and other issues relevant to the First Steps Program.
(6) The POE staff shall act on all referrals for First Steps services.
(a) Upon receiving a telephone or written referral, POE staff shall:
1. Determine if the family is aware that a referral is being made; and
2. Do an initial screening to determine if the referral is appropriate based on:
   a. Establishing that the child’s age is between birth and three (3) years old;
   b. Ensuring the family’s residence is within the assigned district; and
   c. Confirming that there is a developmental concern or a suspected established risk diagnosis.
   If the initial screening finds the referral to be inappropriate, the POE shall give the referral source the appropriate resource to refer the child and family to the services that meet that child’s needs. These resources include:
1. Public schools;
2. The Department for Community Based Services;
3. Medical services; or
4. Another POE.
(c) If it is determined that the referral is appropriate, POE staff shall contact the family by telephone or letter within five (5) working days for the purpose of:
1. Briefly informing them of First Steps’ services;
2. Advising them that all services are voluntary; and
3. Ascertaining whether the family would like more information and an initial visit scheduled.
4. Administer the Department for Public Health approved screening test.
(d) If a family is interested, the POE staff shall schedule a visit and send the family a letter to confirm the date, time and location of the visit.
(e) If a family is not interested, the family shall be informed by the POE staff that they can contact the POE at any time to reintroduce the referral and the POE staff shall:
1. Document in the child’s record, the refusal of services; and
2. Send a letter to the referral source explaining refusal of services by the family.
(f) If efforts to contact the family by telephone and in writing fail, in order to bring closure to the referral the POE staff shall send a follow-up letter within ten (10) working days of the referral encouraging the family to contact the POE at anytime to:
1. Initiate services; or
2. To ask further questions.
(g) Within fifteen (15) working days the POE staff shall send, in writing, an acknowledgment to the referral source that the referral was received and the status of the processing of the referral, if known at the time.
(7) At the initial visit to the family, the POE staff shall:
(a) Identify the purpose of the visit;
(b) Explain the First Steps services;
(c) Explain the family rights by giving the family the “Family Rights Handbook” and review the statement of assurances;
(d) Obtain signature of parent on statement of assurance;
(e) Obtain release of information for medical or developmental information from parent;
(f) Determine willingness to participate in First Steps services or refusal of services;
(g) Interview family and other individuals identified by the parents who are significant in the child’s life, record on the “Family Input Page” or similar document, to help record the child’s developmental status, social relationships and contexts for learning, including the family’s history, resources, priorities, concerns, patterns, daily routines and activities; [to help them determine priorities, resources and concerns;]
(h) Complete developmental and social history form;]
(i) Determine next action needed with family to determine eligibility of child;
(2) (ii) Discuss evaluation and service options that include:
1. Family convenience and preference [Convenience];
2. Funding sources; and
3. Natural environments [Family preference].
(i) [iii] Establish potential date for developing Individualized
Family Service Plan (IFSP);
(k) [][i] Discuss options for a primary service coordinator; and
(l) [][m] Collect data necessary for billing.

(b) All children referred to First Steps because of suspected
developmental delay or established risk condition shall have the
hearing checklist completed prior to the initial IFSP meeting.

(g) The POE staff shall use the following to assist in the deter-
mination of hearing status:
(a) If the referral is a birth to three (3) year old child who is “at
risk” as indicated on the Kentucky High Risk Hearing Registry and
the “at risk” indicator is the only reason they were referred to First
Steps, and no audiological screen has been done, the child and
family shall be notified to contact their pediatrician or a clinic for an
audiological screen to determine hearing status.

(b) If the referral is from three (3) years old child who is
suspected of having a hearing problem, but not suspected of hav-
ing any developmental problems, the family shall be notified to
contact their pediatrician or a clinic for an audiological screen to
determine hearing status.

(c) If the referral is a birth to three (3) year old child with a di-
age of significant hearing loss, as specified by KRS
200.654(10) [200-645(10)], the child is considered to have an “es-
tablished risk” diagnosis and the child shall be eligible for First
Steps services and the referral process continues.

(d) If a birth to three (3) year old child who is suspected of
having a hearing loss, with no verification of degree of loss or di-
gnosis of suspected delays in developmental areas, POE staff
shall initiate the evaluation for First Steps, which should
include an audiological evaluation.

(e) If a birth to three (3) year old child is referred because of
suspected developmental delay or established risk condition, but
no apparent hearing problems, the POE shall complete the hearing
checklist prior to IFSP meeting.

(ii) POE staff shall coordinate the evaluation process for eligi-
bility determination within the federally mandated time line of forty-
five (45) days from receipt of referral.

(a) The POE staff shall gather existing documentation that
will be used to determine eligibility; and

(b) Shall ensure that all releases are completed and on file.

(11) The POE staff shall make appropriate referrals to secure
needed evaluations of the child’s medical and developmental
status. [Medicaid eligible children shall have the approval of their
Medicaid primary care physician to assure reimbursement of ser-
vices.]

(12) The POE staff shall ensure that referrals for needed as-
sessments are made, the assessments are completed and that
those reports shall be made available prior to the initial IFSP, shall
be completed and that those reports shall be made available for
initial IFSP:

(a) The POE staff shall make the appropriate referrals for
needed assessments prior to initial IFSP.

(b) The POE staff shall request copies of completed assess-
ment reports to be included in the child’s record and used in the
development of initial IFSP.

(c) The POE staff shall send all future assessment reports to
the primary service coordinator.

(13) The POE staff shall coordinate and ensure completion of
the initial individualized family service plan (IFSP) meeting within
federally mandated time line of forty-five (45) calendar days from
receipt of referral.

(a) The POE staff shall assist the family in identifying the IFSP
team members and discuss a potential primary service coordinator.

(b) Once a potential primary service coordinator has been
suggested, the POE staff shall contact that person and confirm his
willingness to function as the primary service coordinator.

(c) After releases of information signed by the parent have
been obtained, the POE staff shall send copies of the following
information to the requested primary service coordinator:
1. Initial referral information;
2. Developmental and social history;
3. Any available evaluation reports; and
4. Any available assessment reports.

(d) The POE staff shall send notices to all identified IFSP team
members of the upcoming IFSP meeting date, time, and location.

(e) If a telephone is available, the POE staff shall call the family
at least three (3) working days prior to the IFSP meeting to:
1. Confirm the time and place of the meeting;
2. Determine whether transportation is needed;
3. To reiterate the purpose of meeting; and
4. To answer questions.

(f) If the developmental and medical evaluators, family, and
POE agree that the child is not eligible prior to the IFSP meeting, a
meeting shall not be held unless any one (1) member disagrees or
still has concerns, a meeting shall be held.

(g) The POE staff shall facilitate the initial IFSP meeting by:
1. Leading introductions;
2. Reviewing the purpose of the meeting;
3. Explaining the family rights and responsibilities for partici-
pation, the array of services currently available, and the service
delivery approaches which include family centeredness, natural
environments and transdisciplinary services; and
4. Discussing and leading the IFSP team to verify eligibility
based on collected documentation.

(a) If the child is not eligible, the POE staff shall discuss other
options and make the family aware they can reconnect the POE
anytime.

(b) If the child is eligible but the family is not interested in serv-
ces, the POE staff shall document the refusal of services and
make the family aware they can reconnect the POE any time for
reconsideration.

(c) If the child is eligible and the family is interested in services
the POE staff shall:
(i) Develop an IFSP ensuring that all IFSP components are
included; and

(ii) Introduce [Determine] the primary service coordinator.

(h) The POE staff shall ensure that the written IFSP is devel-
oped and recorded at the meeting:

(i) The POE staff shall send the completed IFSP to the family
within five (5) working days of the IFSP meeting;

(j) The POE staff shall within five (5) working days of the IFSP
meeting, make available, through appropriate releases, to the
primary service coordinator the following:
1. The completed IFSP.
2. Any evaluation reports not previously sent; and
3. Any assessment reports not previously sent.

(k) The identified primary service coordinator shall send copies
of the IFSP to other IFSP team members and to the parties re-
quested by the family within ten (10) working days of the IFSP
meeting.

(l) The POE staff shall send the necessary documentation of
service decisions to the billing agent within five (5) working days
after the IFSP meeting.

(m) The identified primary service coordinator shall be respon-
sible for referrals to services identified on the IFSP.

(14) The POE staff shall:

(a) Provide consultation and support to the primary service
coordinate as requested;

(b) Keep on file copies of all IFSP and reviews sent from the
primary service coordinator;

(c) Assist primary service coordinators in transition of children
from First Steps services to future services;

(d) Track and notify the primary service coordinator that a tran-
sition conference shall be completed within federal time frame of
no less than ninety (90) days prior to child’s third (3) birthday by:
1. Sending notification, no later than the child’s 30th month of age,
to the primary service coordinator that the transition confer-
ence is due and the date by which it shall be held.

2. Receiving from the primary service coordinator the revised
IFSP which incorporates the transition plan no later than one (1)
week, five (5) working days, after the meeting has been held. This
plan should include at least:
   a. Basic demographic information;
   b. A listing of family priorities;
   c. Family resources and concerns; and
   d. Documentation of the transition meeting and outcomes.

(15) The POE staff shall function as the primary service coor-
dinator to ensure that the transition conference and plans are com-
pleted in the event that the primary service coordinator resigns and
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no other primary service coordinator can be assigned in time, or referral is received within forty-five (45) days of child's third birthday.

(a) The POE staff shall be responsible for knowing the following transition procedure that includes:

1. Ensuring all potential agencies and programs that could provide services to a particular child after the age of three (3), are included.

2. Processing the referrals of all children who are less than the age of two (2) years and one-half (10 1/2) months for evaluation and First Steps services.

(b) For all children who are two (2) years and ten and one-half (10 1/2) months old to age three (3), the POE shall facilitate the transition conference which would include representatives of available next referrals.

(c) The POE staff shall be responsible for conducting the transition conference and development of the plan when assuming the role of primary service coordinator.

(16) In the event the family refuses service coordination, the POE shall coordinate and facilitate all IFSP meetings.

(17) The POE staff shall maintain a complete record on all children referred through the POE by:

(a) Keeping on file all records generated by the POE or sent to the POE from all other service providers;

(b) Ensuring that all POE contacts shall be documented in the child's record;

(c) Notifying the billing agent of all changes in the status of the child and the family within seven (7) working days of notification of changes to the POE or at least every six (6) months in conjunction with IFSP six (6) month reviews;

(d) Providing data to the lead agency as requested.

(18) The POE shall provide a written data report to the DEIC.

The POE shall complete the district data report monthly. The information to be included in the report is:

(a) Number of referrals per quarter;

(b) Sources of referrals;

(c) Number of eligible children;

(d) Eligibility categories and number of children in each category;

(e) Number of children not eligible;

(f) Number of children or families refusing services;

(g) Number of IFSP's completed; and

(h) Number of children who received primary, intensive and tertiary evaluations.

(i) Age of child at time of referral.

(19) The POE shall collect and maintain the District Service Provider Directory.

(a) The POE shall collect data on all available First Steps service providers, maintain that data, and have the current services in a printable form, upon request from the community.

(b) Send a compiled list of changes to their district technical assistance team quarterly.

Section 2. Material Incorporated by Reference. (1) Incorporated by reference Hearing Check List may be reviewed during regular working hours 8 a.m. to 4:30 p.m. in the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621 [Office of the Executive Director, Commission for Children with Special Health Care Needs, 982 Eastern Parkway, Louisville, Kentucky 40217]. Copies may also be obtained from that office.

(2) Incorporated by reference District Early Intervention Committee Report may be reviewed during regular working hours 8 a.m. to 4:30 p.m. in the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621 [Office of the Executive Director, Commission for Children with Special Health Care Needs, 982 Eastern Parkway, Louisville, Kentucky 40217]. Copies may also be obtained from that office.

(3) Incorporated by reference Family Rights Handbook may be reviewed during regular working hours 8 a.m. to 4:30 p.m. in the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621 [Office of the Executive Director, Commission for Children with Special Health Care Needs, 982 Eastern Parkway, Louisville, Kentucky 40217]. Copies may also be obtained from that office.

JAMES W. HOLISINGER, JR., M.D., Secretary
WILLIAM D. HACKER, M.D., Acting Commissioner
DR. DUANE KILTY, Undersecretary, Administration and Fiscal Affairs
NICKOLAS Z. KAFOGILIS, M.D., Chairman
APPROVED BY AGENCY: October 8, 2004
FILED WITH LRC: October 9, 2004 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, Cabinet for Health Services, 275 East Main Street, 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7906, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dr. Steve Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation allows the Cabinet of Health and Family Services, Department of Public Health, Division of Adult and Child Health Improvements to transition the administration of the First Steps Program from the Commission for Children with Special Health Care Needs and to establish and set forth guidelines for the operation of a Point of Entry for the Kentucky Early Intervention Program (First Steps).

(b) The necessity of this administrative regulation: KRS 200.650-676 requires the Cabinet for Health and Family Services to enter into contracts with service providers to establish a Point of Entry for the Kentucky Early Intervention Program. This regulation sets forth requirements for the duties of the Point of Entry staff.

(c) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment provides changes in the regulation to meet state and federal statutes and to comply with recent administrative changes from the Commission for Children with Special Health Care Needs to the Department for Public Health. In addition, this regulation will initiate cost savings and cost containment in the Kentucky Early Intervention Program.

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

(a) How the amendment will change this existing administrative regulation: Sets forth a minimum average of referrals to be processed by Point of Entry staff and streamlines the intake, referral and evaluation processes.

(b) The necessity of the amendment to this administrative regulation: This amendment addresses recent administrative changes and allows for measures needed to address cost containment issues.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment carries out the intent and provisions of the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: Without the amendment, streamlining of service provision and cost containment issues cannot be addressed.

(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 2000 individuals that serves over 10,000 children with established risk diagnoses or developmental delays, and their families; and local communities or agencies that plan for, use, or develop community services for children with disabilities.

(f) 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: Service providers will be required to adhere to the changes in this regulation when participating in the First Steps program; children and their families will not be subjected to unnecessary testing; community agencies will be involved in securing and providing more appropriate services for children and their families.

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

(a) Initially: None, but will initiate a cost savings.

(b) On a continuing basis: None, but will secure cost contain-
ment.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Adult and Child Health Improvements
(Amended After Comments)

911 KAR 2:120. Kentucky Early Intervention Program evaluation and eligibility.


NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726[441] reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services. KRS 200.660 requires the cabinet [for Health Services] to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the evaluation and eligibility requirements for First Steps, Kentucky's Early Intervention Program.

Section 1. Evaluation. (1)(a) A child referred to the First Steps Program shall be initially evaluated to determine eligibility when:
   1. The screen indicates a developmental delay; or
   2. The screen does not indicate a delay, but the family still has concerns; and
   3. The child does not have an established risk condition.

(b) A child with established risk as listed in Section 2(3)(b) of this administrative regulation shall receive a five (5) area assessment done by a primary level evaluator in lieu of a primary level evaluation. If a child is eligible due to an established risk condition of hearing loss, the five (5) area assessment shall be performed by a speech therapist or a teacher of the deaf and hard of hearing who is approved as a primary level evaluator. (Beginning with annual IFSP meetings scheduled on or after January 1, 2004, the child shall be evaluated on an annual basis to determine on-going eligibility and to evaluate progress while in the program, until the child exits the program and in accordance with subsection (8) of this section.)

(2)(a) A determination of initial eligibility pursuant to Section 2 of this administrative regulation, assessments in the identified area of delay, in accordance with 911 KAR 2:130, and the initial IFSP team meeting shall occur within forty-five (45) calendar days after a point of entry receives an initial referral.

(b) If a determination of initial eligibility, assessments and initial IFSP team meeting does not occur within forty-five (45) calendar days due to illness of the child or a request by the parent, the delay circumstances shall be documented.

(c) If a family is referred for a determination of initial eligibility and the family is under court order or a social services directive to enroll their child in First Steps, the court or social service agency shall be informed within three (3) working days by the initial service coordinator, if the family refuses the determination of eligibility.

(3) Child records of evaluations transferred from an in-state or out-of-state developmental evaluator shall be reviewed by the initial service coordinator and shall be utilized for eligibility determination if:

(a) The records meet First Steps evaluation time lines established in subsection (4)(a) of this section; and

(b) The records contain the developmental evaluation information established in subsection (11)(a) and (b) of this section.

(4) The primary level evaluation [shall be the first level in the First Steps evaluation system] shall be utilized to determine eligibility of children without established risk, developmental status and recommendations for further assessment to determine program planning.

(a) If there is a previous primary level evaluation available, it shall be used to determine eligibility if:
   1. a. For children under twelve (12) months of age, the evaluation was performed within three (3) months prior to referral to First Steps; or
   b. For children twelve (12) months to three (3) years of age, the evaluation was performed within six (6) months prior to referral to First Steps; and
   2. There is no additional information or the family has not expressed new concerns that would render the previous evaluation no longer valid.

(b) If there is a previous primary level evaluation available that was performed within the timeframes established in subparagraph 1 of this paragraph but there are new concerns that shall render the evaluation no longer valid, the initial service coordinator shall request a new primary level evaluation.

(c) Primary level evaluation shall provide evaluation in the five (5) developmental areas identified in Section 2(1)(c) through 5 of this administrative regulation using norm-referenced standardized instruments that provide a standard deviation score in the total domain for the five (5) areas.

(d) The primary level evaluation shall be provided by:
   1. A physician or nurse practitioner; and
   2. A primary evaluator approved by the cabinet.

(e) A primary level evaluation shall include:
   1. A medical component completed by a physician or a nurse practitioner that shall include:
      a. Appeared a history and physical examination;
      b. A hearing and vision screening; and
      c. A child's medical evaluation that shall be current in accordance with the EPSDT Periodicity Schedule; and
   2. A developmental component completed by a cabinet-approved primary level evaluator that utilizes norm-referenced standardized instruments, the results of which shall:
      a. Include the recommendation of a determination of eligibility or possible referral for a record review; and
      b. Be interpreted to the family prior to the discussion required by subsection (5) of this section.

(5)(a) Prior to the initial IFSP team meeting, the initial service coordinator shall contact the family and primary level evaluator to discuss the child's eligibility in accordance with subsection (4)(e)(b) of this section. If the child is determined eligible, the service coordinator shall:

1. Make appropriate arrangements to select a primary service coordinator;
2. Arrange assessments in the areas identified in Section 2(1)(c) of this administrative regulation found to be delayed; and
3. Assist the family in selecting service providers in accordance with 911 KAR 2:110. If the child is receiving therapeutic services from a provider outside of the First Steps Program, the service coordinator shall:
   a. Invite the current provider to be a part of the IFSP team;
   b. Request that the provider supply the team with his assessment and progress reports; and
   c. If the current provider does not want to participate, have the First Steps provider consult with the current provider if assessing the area being treated by the current provider.

(b) If the child does not have an established risk condition identified in Section 2(1)(c) of this administrative regulation, and is determined not eligible, the team shall discuss available community resources, such as Medicaid, EPSDT, the Department for Public Health and the Commission for Children with Special Health Care Need's (CCSHCN's) Title V programs, and other third-party payors.
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[2.a.] If the child has an established risk condition, and the developmental evaluation does not indicate a developmental delay in at least one (1) skill area, the family shall receive service coordination services until the earlier of:

(i) An annual developmental evaluation that is performed in accordance with subsection (b) of this section; or
(ii) Notification that the family has a concern or suspects that the child may have a delay present that was not revealed by the testing.

b. If the situation described in clause (ii) of this subparagraph occurs, the procedure established in Section 2(2) of this administrative regulation shall be followed.

(5) At the initial IFSP team meeting, the IFSP team shall:

(a) Include the following members at a minimum:
   1. The parent of the child;
   2. Other family members, as requested by the parent, if feasible to do so;
   3. An advocate or person outside of the family, if the family requests that the person participate;
   4. The initial service coordinator;
   5. The primary service coordinator;
   6. A provider who performed an assessment on the child; and
   7. If appropriate, a First Steps provider who shall provide services to the child or family;
(b) Verify the child's eligibility;
(c) Review the evaluation information identified in subsection (4) of this section;
(d) Review the assessment reports in accordance with 911 KAR 2:130;
(e) Determine the family's outcomes, strategies and activities to meet those outcomes as determined by the family's priorities and concerns; and
(f) Determine the services the child shall receive in order for the family to learn the strategies and activities identified on the IFSP. This shall include identifying:
   1. The discipline;
   2. The professional, para-professional, or both;
   3. The method in which services shall be delivered, such as individual, group, or both; and
   4. The payor source for the service; and
   5. The frequency of the service.

(7)(a) Reevaluations shall be provided if the IFSP team determines a child's eligibility warrants reevaluation and the child does not have an established risk condition.
(b) Primary level reevaluations shall not be used to:
   1. Address concerns that are medical in nature; or
   2. Provide periodic, ongoing follow-up services for post-testing or testing for transition.
(c) Based on the result of the reevaluation or annual evaluation, the IFSP team shall:
   1. Continue with the same level of services;
   2. Continue with modified services; or
   3. Transition the child from First Steps services.
(8) The provisions of this subsection shall apply to annual IFSP meetings scheduled on or after January 1, 2005.

(a) In accordance with KRS 200.004(7), in order to determine continuing program eligibility and the effectiveness of services provided to the child, a delay ranking by developmental domain shall be assigned in the progress review report by each therapeutic interventionist using the delay ranking scale. [The provisions of this subsection shall apply to annual IFSP meetings scheduled on or after January 1, 2004.
(b) In accordance with KRS 200.004(7), in order to determine on-going eligibility:
   1. A developmental evaluation shall be performed on an annual basis no earlier than ninety (90) days nor later than sixty (60) days before the annual IFSP expiration date; and
   2. An updated medical evaluation shall be obtained from the child's physician or nurse-practitioner in accordance with subsection (4)(c) of this section.
(b) The annual developmental evaluation shall be performed by a primary level evaluator who is not currently providing a therapeutic intervention for that child and shall provide an evaluation in the five (5) developmental areas identified in Section 2(1)(c) of this administrative regulation.
(c) If the results of the annual evaluation do not meet the continuing-program-eligibility requirements of Section 2(4) of this administrative regulation, the service coordinator shall:
   1. Within three (3) days of receiving the written evaluation report, notify the service provider of the results of the evaluation and that therapeutic intervention shall cease when the current IFSP expires;
   2. Notify the family of the results of the evaluation and that when the current IFSP expires, the child and family are no longer eligible for First Steps services;
   3. Facilitate a transition conference in accordance with 911 KAR 2:140, Section 1(14); and
   4. Subsequent to the transition conference, discharge the child from the program.
(d) If the procedure established in Section 2(2) of this administrative regulation is administered, the service coordinator shall refer the information required by subsection (9)(b) of this section to the record review team within five (5) workdays of receiving the annual evaluation results.
(e) If the results of the annual developmental evaluation meet the continuing-program-eligibility requirements established in Section 2(4) of this administrative regulation, the IFSP team shall be convened for the annual IFSP meeting in accordance with 911 KAR 2:130, Section 2.
(f) (9) A review of the child's First Steps record shall be the second level in the First Steps evaluation system that shall be utilized to determine eligibility, medical or mental diagnosis, program planning, or plan evaluation.
(a) Upon obtaining a written consent by the parent, a service coordinator shall submit a child's record to the Department for Public Health [CCSCHN] for a record review if:
   1. A primary evaluator identifies a need for further developmental testing necessary to clarify a diagnosis to further define the child's developmental status in terms of a child's strengths and areas of need;
   2. A child does not meet eligibility guidelines at the primary level, but an IFSP team member and the family still have concerns that the child is developing atypically and a determination of eligibility based on professional judgment is needed; or
   3. The IFSP team requests an intensive level evaluation for the purposes of obtaining a medical diagnosis or to make specific program planning and evaluation recommendations for the individual child.
(b) If a service coordinator sends a child's record for a record review, the following shall be submitted to the Record Review Team, Department for Public Health, at the address indicated by the Department for Public Health [Committee, Louisville CCSCHN office at 682 Eastern Parkway, Louisville, Kentucky 40217];
1. A cover letter from the service coordinator or primary evaluator justifying the referral for a record review;
2. Primary level evaluation information specified in subsection (10) of this section;
3. Available assessment reports required in 911 KAR 2:130;
4. Available IFSPs and amendments;
5. Most recent progress reports from the IFSP team members; Reports older than three (3) months shall include an addendum reflecting current progress;
6. Therapeutic staff notes from the previous two (2) months; and
7. If requesting a record review for a child who is receiving speech therapy, a hearing evaluation performed by an audiologist within six (6) months of the request.
2. The service coordinator requesting the record review shall attempt to procure and submit the following information, if available:
   a. Birth records, if neonatal or perinatal complications occurred;
   b. General pediatric records from the primary pediatrician;
   c. Medical records from hospitalizations; and
   d. Records from medical subspecialty consultations, such as neurology, orthopedic, gastroenterology or ophthalmology.
(c) Upon receiving a referral, a Record Review Team [of CCSCHN professional staff] shall conduct a record review.
2. After conducting the record review, Record Review Team [CCSHCN-staff] shall:
   a. Determine whether there are at least sixty (60) calendar days from the date of the review before the child turns three (3) years of age;
   b. Determine that the child meets or does not meet the eligibility criteria established in Section 2(1) of this administrative regulation; and
   c. Provide the IFSP team with recommendations for service planning.
3. If there are at least sixty (60) calendar days from the date of the review before the child turns three (3) years of age, Record Review Team [CCSHCN-staff] shall:
   a. Determine if further developmental testing, diagnostics or additional professional judgment are required in order to adequately ascertain the child's developmental needs; and
   b. Refer:
      (i) The child for an intensive level evaluation, the third level in the First Steps evaluation system; or
      (ii) The family to local community resources.
4. Name and telephone number of the contact person;
5. Identifying information that includes the:
   a. Child's CBIS identification number;
   b. Child's name and address;
   c. Child's chronological age (and gestational age, if prematurely born) at the time of the evaluation; and
   d. Health of the child during the evaluation;
6. Date of birth;
7. Reason for referral or presenting problems;
8. Tests administered or evaluation procedures utilized and the purpose of the instrument. One (1) method of evaluation shall not be used, but a combination of tests and methods shall be used;
9. Test results and interpretation of strengths and needs of the child;
10. Test results reported in standard deviation pursuant to subsection (4)(e)2 of this section, and a rank on the delay ranking scale for each of the five (5) developmental areas identified in Section 2(11)(c)1 through 5 of this administrative regulation;
11. Factors that may have influenced test conclusion;
12. Eligibility;
13. Developmental status or diagnosis;
14. Suggestions regarding how services may be provided in a natural environment that address the child's holistic needs based on the evaluation;
15. Parent's assessment of the child's performance in comparison to abilities demonstrated by the child in more familiar circumstances;
16. A narrative description of the five (5) areas of the child's developmental status;
17. Social history;
18. Progress reports, if any, on the submitted information; and
19. A statement that results of the evaluation were discussed with the child's parent.
20. The report required by paragraph (a) of this subsection shall be written in clear, concise language that is easily understood by the family.
21. The reports and notification of need for further evaluation shall be made available to the current IFSP team and family within fourteen (14) calendar days from the date the evaluator received the complete evaluation referral.
22. In addition to the requirements established in this section, an intensive level evaluation site shall:
   a. Provide to the Record Review Team [Committee] a copy of the evaluation report within fourteen (14) calendar days from the date the evaluator received the evaluation referral; and
   b. If an IFSP is currently in place:
      (i) Focus recommendations on areas that are specified on the IFSP as being of concern to the family;
      (ii) Identify strategies and activities that would help achieve the outcomes identified on the IFSP; and
      (iii) Provide suggestions for the discipline most appropriate to transfer the therapeutic skills to the parents.
23. If it is not possible to provide the report and notification required in this paragraph by the established time frame due to illness of the child or a request by the parent, the delay circumstances shall be documented and the report shall be provided within five (5) calendar days of completing the evaluation.

Section 2. Eligibility. (1) Except as provided in subsection (2) or (3) of this section, a child shall be eligible for First Steps services if he is:
(a) Aged birth through two (2) years;
(b) A resident of Kentucky at the time of referral and while receiving a service;
(c) Through the evaluation process determined to have fallen significantly behind developmental norms in the following skill areas:
   1. Total cognitive development;
   2. Total communication area through speech and language development, which shall include expressive and receptive;
   3. Total physical development including growth, vision and hearing;
   4. Total social and emotional development; or
   5. Total adaptive skills development; and
(d) Significantly behind in developmental norms as evidenced by the child's score being:
1. Two (2) standard deviations below the mean in one (1) skill area; or
2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas.

(2)(a) If a norm-referenced testing reveals a delay in one (1) of the five (5) skill areas but does not meet the eligibility criteria required by subsection (1)(d) of this section, a more in-depth standardized test in that area of development may be administered if the following is evident:
1. The primary level evaluator, service coordinator or the family has a concern or suspects that the child’s delay may be greater than the testing revealed;
2. A more sensitive norm-referenced test tool may reveal a standardized score which would meet eligibility criteria; and
3. There is one (1) area of development that is of concern.

(b) Upon completion of the testing required by paragraph (a) of this subsection, the results and information required by Section 1(9)(b) of this administrative regulation shall be submitted by the service coordinator to the record review team for a determination of eligibility.

(3) A child shall be eligible for First Steps services if:
(a) The child is being cared for by a neonatal follow-up program and its staff determine that the child meets the eligibility requirements established in subsection (1) or (4) of this section; or
(b) Meets the criteria established in KRS 200.654(10)(b) who has one (1) of the following conditions diagnosed by a physician or advanced registered nurse practitioner (ARNP):

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<td>Campomelic Dysplasia</td>
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<td>Canavan Disease</td>
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<td>Carbohydrate Deficient Glycoprotein syndrome</td>
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<td>Cardio-Facio-Cutaneous syndrome</td>
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<td>Carpenter syndrome</td>
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<td>Cataracts - Congenital</td>
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<td>Caudal Dysplasia</td>
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<td>Cerebro-Costo-Mandibular syndrome</td>
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<td>Cerebellar Aplasia/Hypoplasia/Degeneration</td>
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<td>Cerebrals Atrophy</td>
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<td>Cerebral Palsy</td>
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<td>Cerebro-culo-facial-skeletal syndrome</td>
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<td>CHARGE Association</td>
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<td>Chediak Higashi syndrome</td>
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<td>Chondrodysplasia Punctata</td>
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<td>Chromosome Abnormality</td>
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<td>a. unbalanced numerical (autosomal)</td>
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<td>b. numerical trisomy (chromosomes 1-22)</td>
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<td>c. sex chromosomes XXX; XXXX; XXXXX; XXXY</td>
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<td>CNS Aneurysm with Neuro-Developmental Delay</td>
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<td>CNS Tumor with Neuro Developmental Delay</td>
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<td>Cockayne syndrome</td>
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<td>EEC (Ectodactyly-ectodermal dysplasia-clefting) syndrome</td>
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<td>Facio-Cardio-Renal (Eastman-Blixter) syndrome</td>
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<td>Hays-Well syndrome</td>
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<td>Head Trauma with Neurological Sequelae/Developmental Delay</td>
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<td>Hearing Loss (30dB or greater in better ear as determined by ABR audiometry or audiotric behavioral measurements) (Bilateral permanent hearing loss with pure-tone average of &gt;30dB or greater)</td>
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<td>Hemimegalencephaly</td>
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<p>| Hypoxic Ischemic encephalopathy |
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<td>Muscular Dystrophy</td>
<td>Schinzel-Giedion syndrome</td>
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<tr>
<td>Myasthenia Graves - Congenital</td>
<td>Schimmelpenning syndrome (Epidermal Nevus syndrome)</td>
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<tr>
<td>Myelocystocele</td>
<td>Schizencephaly</td>
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<tr>
<td>Myopathy - Congenital</td>
<td>Schwartz-Jampel syndrome</td>
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<tr>
<td>Myotonic Dystrophy</td>
<td>Seckel syndrome</td>
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<tr>
<td>Nager (Acrofacial Dysostosis) syndrome</td>
<td>Septo-Optic Dysplasia</td>
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<tr>
<td>Nance Horan syndrome</td>
<td>Shaken Baby syndrome</td>
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<tr>
<td>NARP</td>
<td>Short syndrome</td>
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<tr>
<td>Neonatal Meningitis/Encephalitis</td>
<td>Sialidosis</td>
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<tr>
<td>Neuronal Ceroid Lipofuscinoses</td>
<td>Simpson-Golabi-Behmel syndrome</td>
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<tr>
<td>Neuronal Migration Disorder</td>
<td>Sly syndrome (MPS VII)</td>
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<tr>
<td>Nonketotic Hyperglycinemia</td>
<td>Smith-Fineman-Myers syndrome</td>
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<td>Noonan syndrome</td>
<td>Smith-Limitz-Opitz syndrome</td>
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<td>Ocular Albinism</td>
<td>Smith-Magenis syndrome</td>
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<td>Oculocerebrocutaneous syndrome</td>
<td>Sotos syndrome</td>
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<td>Oculo-Cutaneous Albinism</td>
<td>Spina Bifida (Meningomyelocele)</td>
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<td>Optic Atrophy</td>
<td>Spinal Muscular Atrophy</td>
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<td>Optic Nerve Hypoplasia</td>
<td>Spondyloepiphyseal Dysplasia Congenita</td>
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<tr>
<td>Oral-Facial-Digital syndrome Type I-VII</td>
<td>Spondylometaphyseal Dysplasia</td>
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<tr>
<td>Osteogenesis Imperfecta Type III-IV</td>
<td>Stroke</td>
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<tr>
<td>Osteopetrosis (Autosomal Recessive)</td>
<td>TAR (Thrombocytopenia-Absent Radii syndrome)</td>
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<tr>
<td>Oto-Palato-Digital Syndrome Type I-II</td>
<td>Thanatophoric Dysplasia</td>
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<td>Pachygyria</td>
<td>Tibial Aplasia (Hypoplasia)</td>
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<td>Pallister Mosaic syndrome</td>
<td>Toriello-Carey syndrome</td>
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<td>Pallister-Hall syndrome</td>
<td>Townes-Brocks syndrome</td>
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<td>Pelizaeus-Merzbacher Disease</td>
<td>Treacher-Collins syndrome</td>
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<td>Pendred's syndrome</td>
<td>Trisomy 13</td>
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<tr>
<td>Periventricular Leukomalacia</td>
<td>Trisomy 18</td>
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<td>Pervasive Developmental Disorder</td>
<td>Tuberous Sclerosis</td>
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<td>Peters Anomaly</td>
<td>Urea Cycle Defect</td>
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<td>Phacomelia</td>
<td>Velocardiofacial syndrome (22q11.2 deletion)</td>
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<td>Pierre Robin Sequence</td>
<td>Wildervanck syndrome</td>
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<td>Poland Sequence</td>
<td>Walker-Warburg syndrome</td>
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<td>Polymicrogyria</td>
<td>Weaver syndrome</td>
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<td>Popliteal Pterygium syndrome</td>
<td>Wiedemann-Rautenstrauch syndrome</td>
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<td>Porencephaly</td>
<td>Williams syndrome</td>
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<td>Prader-Willi syndrome</td>
<td>Winchester syndrome</td>
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<td>Progeria</td>
<td>Wolf Hirschhorn syndrome</td>
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<td>Proponic Acidemia</td>
<td>Yunis-Varon syndrome</td>
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<td>Proteus syndrome</td>
<td>Zeillweger syndrome</td>
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<tr>
<td>Pyruvate carboxylase Deficiency</td>
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<tr>
<td>Pyruvate Dehydrogenase Deficiency</td>
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<tr>
<td>Radial Aplasia/Hypoplasia</td>
<td>(4) A child shall have continuing program eligibility for First Steps services if the child is under three (3) years old, is a resident of Kentucky, and the results of the semi annual progress review [annual evaluation]:</td>
</tr>
<tr>
<td>Refsum Disease</td>
<td>(a) Meet the initial eligibility requirements of subsections (1) to (3) of this section; or</td>
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<tr>
<td>Retinoblastoma</td>
<td>(b) Indicate a continued delay on the semi annual progress review's delay ranking scale [score-below-one (1) standard deviation below the mean in at least one (1) skill area that showed a previous score of at least one and one-half (1-1/2) standard devia-</td>
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<tr>
<td>Retinoic Acid Embryopathy</td>
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<tr>
<td>Retinopathy of Prematurity Stages III, IV</td>
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<tr>
<td>Rett syndrome</td>
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<tr>
<td>Rickets</td>
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</table>
tions below the mean in that same area).

(5) If a child referred to the First Steps Program was born at less than thirty-seven (37) weeks gestational age, the following shall be considered:

(a) The chronological age of infants and toddlers who are less than twenty-four (24) months old shall be corrected to account for prematurity birth. The evaluator shall ensure that the instrument being used allows for the adjustment for prematurity. If it does not, another instrument shall be used.

(b) Correction for prematurity shall not be appropriate for children born prematurely whose chronological age is twenty-four (24) months or greater.

(c) Documentation of prematurity shall include a physician's or nurse practitioner's written report of gestational age and a brief medical history.

(d) Evaluation reports on premature infants and toddlers shall include test scores calculated with the use of both corrected and chronological ages.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621 [Commission for Children with Special Health Care Needs, 955 Eastern Parkway, Louisville, Kentucky 40217], Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES W. HOLSINGER, Jr., M.D., Secretary
WILLIAM D. HACKER, M.D., Acting Commissioner
DR. DUANE KILTY, Undersecretary
NICHOLAS Z. KAFAGOLIS, M.D., Chairman
APPROVED BY AGENCY: October 8, 2004
FILED WITH LRC: October 8, 2004 at 4 p.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health and Family Services, 275 East Main Street, 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Steve Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation allows the cabinet to administer funds appropriated, to enter into contracts with service providers and amend the evaluation and eligibility requirements for First Steps, Kentucky's Early Intervention Program.

(b) The necessity of this administrative regulation: KRS 200.650 to 200.676 requires the Cabinet for Health and Family Services to administer First Steps, Kentucky’s Early Intervention System.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 200.650 to 200.676 requires the implementation of funds for the provision of contract services, to promulgate regulations and to establish evaluation and eligibility requirements for the Kentucky Early Intervention Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment moves the First Steps program from the Commission for Children With Special Health Care Needs to the Department for Public Health and updates the First Steps Program to maintain and implement a statewide comprehensive system of early intervention services for infants and toddlers with disabilities and their families and to coordinate the payment for such services.

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

(a) How the amendment will change this existing administrative regulation: Section 1(1)(b): The indications for an initial evaluation for a child referred to First Steps are clarified. The requirements for annual evaluations for ongoing eligibility are changed. Section 1(4): The primary level evaluation is no longer required to be the first level in the evaluation system. The primary evaluation is required to determine eligibility of children without established risk.

(b) The necessity of the amendment to this administrative regulation: Without this amendment, the regulation would not be in compliance with the Executive Order moving the First Steps program to the Department for Public Health and the First Steps Partnership Group recommendations would not be in effect.

(3) The type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 600 contracted providers, which includes 2000 individuals that serve over 10,000 children with established risk diagnoses or developmental delays, and their families; and local communities or agencies that plan for, use, or develop community services for children with disabilities.

(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: These groups will be impacted by the changes to primary service coordination.

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

(a) Initially: None

(b) On a continuing basis: None

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering involved? 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 Public Health
Division of Adult and Child Health Improvements

911 KAR 2:130, Kentucky Early Intervention Program assessment and service planning.

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-72[644]1, effective July 9, May-11, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for
Section 1. Assessment. (1) Initial assessment activities for children without established risk conditions shall occur after the establishment of a child's eligibility for First Steps and prior to the initial IFSP in accordance with 911 KAR 2:120, Section 1.

(a) An initial assessment shall occur within the areas of development that were determined to be below the normal range, a score greater than -1.0, as identified in the primary level evaluation.

(b) The following shall complete an assessment:
1. A discipline most appropriate to assess the area of documented delay and of which the family has the greatest concern, and
2. The fewest additional disciplines as needed to assess the other areas identified as delayed.

[(c) If a child is eligible due to an established risk condition of hearing loss, an assessment shall be performed by a speech therapist.]

(2) Assessment shall be the ongoing procedure used by personnel meeting qualifications established in 911 KAR 2:150 throughout the period of a child's eligibility for First Steps. An assessment shall reflect:

(a) The child's unique strengths and needs;
(b) The services appropriate to meet those needs;
(c) The family's resources, priorities and concerns which shall be:
1. Voluntary on the part of the family;
2. Family-directed; and
3. Based on information provided by the family through personal interview; and
(d) The supports and services necessary to enhance the family's capacity to meet the developmental needs of their child.

(3)(a) Assessments shall be ecologically valid and reflect appropriate multisource and multimeasures. One (1) source or one (1) measure shall not be used as the sole criterion for determining an intervention program. Assessment methods shall include direct assessment and at least one (1) of the following:
1. Observations, which shall:
   a. Take place over several days if possible;
   b. Occur in natural settings;
   c. Include play and functional activities of the child's day; and
   d. Be recorded in a factual manner;
2. Interview and parent reports, which shall:
   a. Involve the use of open-ended questioning after the assessor establishes rapport; and
   b. Be provided by parents and other primary caregivers; and
   c. Include the effect and impact of the child's disability on participation in natural environments; and
3. Behavioral checklist and inventories, which shall:
   a. Be completed by caregivers by mail, phone or through face-to-face interview; and
   b. Allow for comparison across settings.

(b) Direct assessment shall include one (1) or more instruments:
1. That are appropriate for an infant or toddler and that allows for adaptations for a disability as needed; and
2. That are criterion-referenced, which compares the child's level of development with skills listed in a chronological sequence of typical development.

[(c) In order for a therapeutic intervention to be provided in the area of delay identified by the developmental evaluation, the assessment instrument shall indicate that the child's development is below the instrument's normal range for a child his age.]

(4) If after the initial assessments are completed, the IFSP team determines that a subsequent assessment is warranted, the following shall be documented on the IFSP:

(a) The parent has a documented concern that would necessitate another assessment;
(b) Why there is not a current provider on the IFSP team that can assess the area of concern; and
(c) What has changed in the child's ability or the family's capacity to address their child's developmental needs to warrant the subsequent assessment.

(5) A service coordinator shall obtain a physician's or ARNP's written consent in order to complete an assessment on a child deemed medically fragile. The consent shall be specific as to the skill areas that may be assessed.

(6) [The written] Assessments shall have a written report that shall include:
(a) A description of the assessment instruments used in accordance with subsection (3)(b) of this section;
(b) A description of the assessment activities and the information obtained, including information gathered from the family;
(c) Identifying information, including:
   1. The central billing and information identification number;
   2. The child's Social Security number, if available;
   3. The name of the child;
   4. The child's age at the date of the assessment;
   5. The name of the service provider and discipline;
   6. The date of the assessment;
   7. The setting of the assessment;
   8. The state of health of the child during the assessment;
   9. The parent's assessment of the child's performance in comparison to abilities demonstrated by the child in more familiar circumstances;
   10. The medical diagnosis if the child has an established risk condition;
   11. The formal and informal instruments and assessment methods and activities used;
   12. Who was present for the assessment; and
   13. The signature of the assessor;
(d) A profile of the child's level of performance, in a narrative form which shall indicate:
   1. Concerns and priorities;
   2. Child's unique strengths, [and] needs, and preferences;
   3. Skills achieved since last report, if applicable;
   4. Current and emerging skills, including skills performed independently and with assistance [Emerging-skills]; and
   5. Recommended direction of future service delivery;
(e) Suggestions for strategies, materials, settings, equipment or adaptations that shall support the child's development in natural environments; and
(f) Information that shall be helpful to the family and other providers in building on the team's focus for the child and family.

(ii) The initial assessment, other formal assessments and their resulting report shall be completed and sent to the service coordinator within ten (10) working days of the provider receiving the complete written assessment referral from the service coordinator. The complete assessment referral request shall include:
1. The point of entry's intake and child history documentation; and
2. [The Point of Entry Update Form; and]
3. A the primary level evaluation report; and
3. The current IFSP; and
4. Authorizing CBIS billing forms.

[iii] Prior to January 1, 2004, if an IFSP is in place, page 1 of the IFSP (Form 10) authorizing the assessment;

(iii) The IFSP Meeting-Summary Sheet-Services Form; and

(iii) The primary level evaluation report; or

(iv) If the January 1, 2004 edition of the IFSP is in place, the "Amendment: Assessment Not Indicated by PLE Score" page of the IFSP;

(v) The "Ongoing Evaluation and Eligibility" page;
(vi) The "Ongoing Evaluation/Assessment/Progress Report Results" page; and
(vii) The "Child Learning Profile" page.

(b) The provider who performed the assessment shall:
1. Verbally share the assessment report with the family and shall document the contact in the assessor's notes;
2. Provide the written report to the family and the service cor-
meeting and the reasons why the meeting cannot be held prior to the expiration of the current IFSP;
3. The scheduled date that the next IFSP meeting shall take place;
4. A copy of the current IFSP that has expired or is expiring, with amendments; and
5. Copies of the current progress reports from the IFSP team.
(d) If a family chooses not to receive a service included on the IFSP, for reasons such as illness or an inability to keep an appointment, the service provider shall document the circumstances in his staff notes.
(e) The following shall be adhered to in the development and implementation of the IFSP. IFSP team members shall:
   (a) Provide a family-centered approach to early intervention;
   (b) Honor the racial, ethnic, cultural, and socioeconomic diversity of families;
   (c) Show respect for and acceptance of the diversity of family-centered early intervention;
   (d) Allow families to choose the level and nature of early intervention's involvement in their lives;
   (e) Facilitate and promote family and professional collaboration and partnerships are the keys to family-centered early intervention and to successful implementation of the IFSP process;
   (f) Plan and implement the IFSP using a team approach;
   (g) Reexamine their traditional roles and practices and develop new practices that promote mutual respect and partnerships which may include a transdisciplinary approach;
   (h) Ensure that First Steps services are flexible, accessible and responsive to family-identified needs; and
   (i) Ensure that families have access and knowledge of to services provided in as normal a fashion and environment as possible and that promote the integration of the child and family within the community which are embedded in the family's normal routines and activities; these services shall be conducted in the family's natural environment wherever possible, and in such a way that services promote integration into a community atmosphere which includes children without disabilities.

(5)(a) For a child who [has] was evaluated for the first time and determined eligible in accordance with 311 KAR 2:120, a meeting to develop the initial IFSP shall be conducted within forty-five (45) days after the point of entry receives the referral.
(b) If the initial IFSP meeting does not occur within forty-five (45) days due to illness of the child or approval to delay by the parent, the delay circumstances shall be documented on the IFSP.
(c) The IFSP shall be reviewed for a child and the child's family by convening a face-to-face meeting at least every six (6) months. An IFSP team meeting shall be convened more frequently if:
   (A) The family or a team member requests a periodic IFSP review meeting [review];
   (B) A therapeutic intervention service is added or increased. [The child's condition changes;]
   (C) For IFSP meetings that occur before January 1, 2004 and
      except for a situation established in subsection (7)(f) or (g) of this section, a service provider identified on the IFSP form changes; or
   (D) Except for a situation established in subsection (7)(c) of this section, a member of the IFSP team determines there is a
      need to increase the intensity, frequency or duration of a service.

(7)(a) The service coordinator shall obtain written approval or verified verbal approval from team members and shall document the means of obtaining that approval on the IFSP, and the team members shall document the contact and approval in their staff notes when: [An IFSP may be amended without a meeting in accordance with the procedures established in paragraphs (b) and (c) of this subsection if]:
   1. A child is discharged from:
      a. A service due to achieving developmental milestones in that area;
      b. The First Steps Program;
   2. A service provider recommends [There is] a decrease in the frequency, intensity or duration of their [a] service;
   3. The frequency of a service increases but not the number of units, such as changing from once a week for one [1] hour to twice a week for thirty (30) minutes;
   4. A member of the IFSP team determines that an additional
assessment is needed;
5. The family requests transportation services;
6. a. A service provider is being replaced [will-be-on-leave];
b. [The current IFSP indicates who the replacement shall be;]
c. The replacement provider does not change the outcomes identified on the current IFSP; and
7. [a] The family agrees;
7. [a] A primary service coordinator change at the request of the previous primary service coordinator or the family;
8. The replacement primary service coordinator does not change the outcomes identified on the IFSP;
9. The family agrees to the primary service coordinator change;
and
10. The primary service coordinator notifies the team members of the change;
8. [9.] A team member changes provider numbers and the family wishes to retain that team member's services; or
8. [9.] An assistive technology device is ordered after an IFSP meeting was held at which the team members agreed that a specific assistive technology device was needed and strategies and activities were identified in the plan to meet the outcomes.
(b) The family shall be given prior written notice of any changes to the IFSP. [If a change identified in paragraph (a) of this subsection occurs on or after January 1, 2004, the service coordinator shall obtain written approval or verified verbal approval from team members and shall document the means of obtaining the approval on the IFSP. Additionally, the team members shall document the contact and approval in their staff notes.
(c) Except for the change identified in paragraph (a) of this subsection, if a change identified in paragraph (a) of this subsection occurs on or after January 1, 2004, the service coordinator shall meet with the parent of the child to obtain written approval prior to effecting the change. Approval from other IFSP team members shall not be required.
2. If the change identified in paragraph (a) of this subsection occurs on or after January 1, 2004, the service coordinator shall obtain written approval or verified verbal approval from team members and shall document the means of obtaining the approval on the IFSP. Additionally, the team members shall document the contact and approval in their staff notes.
(b) With the approval of the family, the primary service coordinator shall arrange an IFSP [a] conference to discuss the transition of the family from the program. The conference shall be conducted at least ninety (90) days and up to six (6) months before the child's third birthday and shall include:
(a) The family;
(b) A representative of the local education agency and representatives of other potential settings;
(c) The primary service coordinator as a representative of the First Steps Program;
(d) Others identified by the family; and
(e) Current service providers.
9. The IFSP shall include:
1. A summary of the family rights handbook;
2. A signed statement of assurances by the family; and
3. A statement signed by the parent that complies with KRS 200.684(6);
(b) Information about the child's present level of developmental functioning. Information shall cover the following domains:
1. Physical development that includes fine and gross motor skills;
2. Cognitive development that include skills related to a child's mental development and includes basic sensorimotor skills, as well as preacademic skills;
3. Communication development that includes skills related to exchanging information or feelings, including receptive and expressive communication and communication with peers and adults;
4. Social and emotional development that includes skills related to the ability of infants and toddlers to successfully and appropriately select and carry out their interpersonal goals. These include:
a. Attachment with caregivers or family members [Parent-and infant-bonding];
b. Interactions with nondisabled peers and adults;
c. Play skills; and
d. Self-concept development, if-and
e. Bonding with family members;
5. Adaptive development that includes self-help skills and the ability of the child's sensory systems to integrate successfully [necessary] for independent functions that include:
a. Self-feeding;
b. Toileting; and
c. Dressing and grooming; and
d. Meaningful interaction with the environment.
6. Physical development that shall be documented annually and that shall include:
a. Vision;
b. Hearing;
c. Health status [status]; and
d. If present, the established risk condition;
(c) Performance levels to determine strengths which can be used when planning instructional strategies to teach skills;
(d) A description of:
1. Underlying factors that may affect the child's development;
and
2. What motivates the child, as determined on the basis of observation in appropriate natural settings, during child interaction and through parent report;
(e) With concurrence of the family, a statement of the family's resources, priorities and concerns related to enhancing the development of the child;
(f) A statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and time lines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary. Outcome and strategy statements shall:
a. Be functionally stated;
b. Be representative of the family's own priorities;
c. Fit naturally into the family's routines or schedules;
d. Reflect the use of the family's own resources and social support network; and
(e) Be flexible to meet the child and family's needs in expanded current and possible future environments; and
2. Strategy and activity statements that shall be practical suggestions that assist the family and other team members in achieving the family's desired outcomes for the child and family.
(a) Typically strategies shall refer to the steps or methods a family and team will use to accomplish the outcomes;
(b) Activities shall refer to [what will be done to embed strategies into] the routines or regular events that occur in the child's natural environment; and
(c) The strategies and activities area shall include how strategies will be embedded into activities, the criteria of how the outcomes shall be measured to determine mastery or progress and shall be developmentally appropriate, functional, valued by others, realistic and achievable and promote generalized use of skill;
(g) The specific First Step services necessary to meet the unique needs of the child and family to achieve the outcomes. Service documentation shall be stated in frequency, intensity, duration, location and method of delivering services, and shall include payment arrangements, if any;
2. A student in a field experience with an approved First Steps provider who provides therapeutic intervention must complete and sign staff notes and the First Steps provider must also complete and sign a staff note for each session in which the student facilitates intervention, including a statement in the note that direct one-on-one supervision was provided during the intervention session.
3. With the exception of group intervention, and unless prior authorization is granted in accordance with KAR 4:2:720, Section 4, based on individual needs of the child, the frequency and intensity for therapeutic intervention for each child shall not exceed one (1) hour per discipline per day [week] for the following disciplines:
a. Audiologist;
b. RN or LPN;
c. Nutritionist or dietician;
(d. Occupational therapist or occupational therapist assistant;
a. Orientation and mobility specialist;
   f. Physician;
   g. Physical therapist or physical therapist assistant;
   h. Psychologist, certified psychologist with autonomous func-
      tioning, psychological associate, family therapist, or licensed social
      worker;
   i. Speech language pathologist or speech language pathologist
      assistant;
   j. Teacher of the visually impaired;
   k. Teacher of the deaf and hard of hearing; or
   l. Developmental interventionist or developmental associate;

4.0.a. A description of the natural environment, which in-
cludes natural settings and service delivery systems, in which the
early intervention services is to be provided;

b. How the skills shall be transferred to a caregiver so that the
caregiver can incorporate the strategies and activities into the
child's natural environment;

c. How the child's services may be integrated into a setting in
which other children without disabilities participate; and

5.0. If the service cannot be provided in a natural envir-

onment, the IFSP shall be documented with the reason;

(b) The projected dates for initiation of the services, and the
   anticipated duration of those services;

(i) Other services that the child needs, such as medical serv-
   ices or housing for the family, that are not early intervention
   services. The funding sources and providers to be used for those
   services or the steps that will be taken to secure those services through
   public or private resources shall be identified;

(j) The name of the primary service coordinator chosen to
   represent the child's or family's needs. The primary service coordina-
   tor shall be responsible for the implementation of the IFSP and
   coordination with other agencies and persons in accordance with
   911 KAR 2:140, Section 1(6);

(k) The steps to be taken to support the transition of the child
to preschool services provided by the public educational agency, to
the extent that those services are considered appropriate, or to
other services that may be available, if appropriate;

1. With approval of the family, an IFSP [a] transition confer-
ence shall occur at least ninety (90) days and up to six (6)
   months prior to the child's third birthday;

2. The IFSP transition conference shall involve:
   a. IFSP team members;
      b. Staff from the local public educational agency; and
      c. Other agencies at the family's request that could be potential
         service agencies after the child turns three (3);

3. The conference shall be held to review program options for
   the child at age three (3) and to write a plan, through the IFSP, for
   transition. The service coordinator shall chair this meeting; and
   (l) Documentation substantiating the following if the child is
      being provided ongoing intervention:

   1. If the child is enrolled in day care or attending a group during
      normal routines, why the therapeutic intervention cannot be pro-
      vided in the child's current group setting; and

   2. Therapeutic intervention during group shall be directly rela-
      ted to the child's individualized strategies and activities as identi-
      fied on the IFSP;

(1) If the IFSP team determines that a therapeutic intervention
   service shall be provided using a transdisciplinary team approach,
   the IFSP, provider notes and progress documentation shall in-
   clude:
   (a) Which disciplines are providing the therapy using this
      approach;
   (b) Evidence of transdisciplinary planning and practice, includ-
      ing documentation of how role-release is occurring;
   (c) How the skills are being transferred so that one (1) provider
      is capable of providing the services previously provided by the
      team;
   (d) That the service is individualized to the particular family and
      child's needs; and

   (e) If more than one (1) provider is present and providing
      therapeutic intervention services at the same time using a cotreat-
      ment approach:

1. Why this approach is being used;

2. The outcomes and activities;

3. Who is performing what activities; and

4. That the service providers involved are providing or learning
   about the therapeutic intervention at the same time.

(11) The family shall be encouraged to discuss their child's
   activities, strengths, likes and dislikes, exhibited at home.

(12) The IFSP shall highlight the child's abilities and strengths,
   rather than focusing just on the child's deficits.

(13) Every attempt shall be made to explain the child assess-
   ment process by using language the family uses and understands.

(14) The families may agree, disagree, or refute the assess-
   ment information.

(15) The family's interpretation and perception of the assess-
   ment results shall be ascertained and the family's wishes and de-
   sires shall be documented as appropriate.

(16) If an agency or professional not participating on the IFSP
   team but active in the child's life makes a recommendation for an
   early intervention service, it shall not be provided as a First Steps
   service unless the IFSP team considers the recommendation, veri-
   fies that it relates to a chosen outcome, and agrees to it.

Section 3. Incorporation by Reference. (1) The following mate-
rial is incorporated by reference:

(a) First Steps Individualized Family Service Plan (IFSP), Oc-
   tober 28, 1998; and

(b) First Steps Individualized Family Service Plan (IFSP),

(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Department for Public
   Health, 275 East Main Street, Frankfort Kentucky 40621. [Com-
mission for Children with Special Health Care Needs; 982 Eastern
   Parkway, Louisville, Kentucky 40217.] Monday through Friday, 8
a.m. to 4:30 p.m.

JAMES W. HOLSSINGER, Jr., M.D., Secretary
WILLIAM D. HACKER, M.D., Acting Commissioner
DR. DUANE KILTY, Undersecretary, Administration and Fiscal
Affairs
NICKOLAS Z. KAFOGLOS, M.D., Chairman
APPROVED BY AGENCY: October 8, 2004
FILED WITH LRC: October 8, 2004 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services,
Cabinet for Health and Family Services, 275 East Main Street 5 W-
B, Frankfort, Kentucky 40621, phone: 502-564-7905, fax: 502-564-
7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Steve Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administra-
   tive regulation establishes the provisions of assessment and the
   Individualized Family Service Plans used in First Steps, Kentucky's
   Early Intervention Program.

(b) The necessity of this administrative regulation: KRS
   200.650 to 676 requires the Cabinet for Health and Family Serv-
   ices to administer funds appropriated to implement the provisions
   of the First Steps program, to enter into contracts with service pro-
   viders, and to promulgate administrative regulations.

(c) How this administrative regulation conforms to the content
   of the authorizing statutes: This amendment carries out the intent
   and provisions of the authorizing statutes.

(d) How this administrative regulation currently assists or will
   assist in the effective administration of the statutes: With the
   amendment the statutes can be enforced, and the newly assigned
   administration will be able to initiate cost savings comply and with
   federal and state mandates.

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

(a) How the amendment will change this existing administrative
   regulation: Program services will be improved, costs will be con-
   tained, and regulations will comply with federal and state man-
   dates.

(b) The necessity of the amendment to this administrative
   regulation: Without this amendment, services will not be improved,
costs will not be contained, and the program will be out of compli-
ance with federal and state mandates.
(c) How the amendment conforms to the content of the au-
thorizing statutes: This amendment carries out the intent and
provisions of the authorizing statutes.
(d) How the amendment will assist in the effective administra-
tion of the statutes: Without the amendment the streamlining of
service provision and cost containment issues will not be ad-
dressed.
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this admin-
istrative regulation: Over 600 contracted providers, which includes
2,000 individuals that serves over 10,000 children with established
risk diagnoses or developmental delays, and their families; and
local communities or agencies that plan for, use or develop com-
mittee services for children with disabilities.
(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: Children
with established risk diagnoses will receive necessary services,
costs will be contained, and the integrity of the program will be
assured.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: There may be an increase in cost to serving all
children with established risk initially. But it is expected that serving
this population at an earlier age will mean less cost to the state in
later years. Clarifying when amendment meetings are required is
expected to result in a cost savings of $800,000 per year.
(b) On a continuing basis: There will be a cost savings to the
state to serve children with established risk early, but this is difficult
to estimate. Clarifying amendment meetings is estimated to save
$800,000 per year.
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: Medi-
caid reimbursement, Title V, and state general funds.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: An increase in
funding may be necessary to provide services to children with an
established risk.
(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: None.
(9) TIERING: Is tiering applied? 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 Public Health
Division of Adult and Child Health Improvements
(Amended After Comments)

911 KAR 2:140. Kentucky Early Intervention Program
primary service coordination and assistive technology.

RELATES TO: 20 U.S.C. 1471-1485
STATUTORY AUTHORITY: KRS 194A.050, 200.650-676, EO
2004-726(444)

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-
726(444), effective July 9 [May 11], 2004, reorganized the Cabinet
for Health and Family Services and placed the Department for
Public Health under the Cabinet for Health and Family Services.
The cabinet [for--Health--Services] is directed by KRS 200.650 to
200.676 to administer all funds appropriated to implement provi-
sions, to enter into contracts with service providers, and to promul-
gate administrative regulations. This administrative regulation sets
forth the provisions of Primary Service coordination as it relates to
First Steps, Kentucky's Early Intervention Program.

Section 1. Primary Service Coordination. (1) The primary
service coordinator shall coordinate and assist in child find efforts
with the local POE through dissemination of materials.
(2) The primary service coordinator shall make referrals to the
POE within forty-eight (48) hours upon identification of a child that
may be eligible for First Steps services. Referral shall be made
after discussing the benefits of early intervention with the family
and acquiring verbal permission to make the referral.
(3) If any materials are developed the primary service coordi-
nator shall utilize the Image Consistency Kit developed by the In-
teragency Coordinating Council Public Awareness Committee for
public awareness activities and materials.
(4) The primary service coordinator shall serve as the single
point of contact in helping families obtain the services and assist-
tance they need.
(5) The primary service coordinator shall have a caseload of:
(a) Up to forty (40); with a maximum of fifty (50) if ten (10) chil-
dren are ninety (90) days away from their third birthday; if he is not
providing any other First Steps services, or is not carrying a
caseload in another program; or
(b) If he is providing a caseload in another program, up to the
prorated equivalency of no more than a combined total of 100 per-
cent of a position's time, with a forty (40) caseload being 100 per-
cent in First Steps services, and the equivalent to forty (40) in an
other program. A caseload of ten (10) in First Steps would repre-
sent twenty-five (25) percent of a position's time, leaving the
 equivalency of seventy-five (75) percent available in another pro-
gram.
(6) The primary service coordinator shall:
(a) Attend the First Steps Primary Service Coordination and
IFSP training prior to facilitating, coordinating, or implementing any
IFSPs, and attend communicating with families training within six
(6) months of completing primary service coordination and IFSP
training.
(b) Attend the initial IFSP meeting, if identified as primary
service coordinator choice or if invited as a potential option for
primary service coordinator, and help the POE facilitate that plan;
(c) Notify parents, per parental prior notice per 34 C.F.R.
Chapter III 303.403 and all the IFSP team members, in writing, of
the upcoming annual IFSP or the six (6) month review or the tran-
sition conference date and on no less than thirty (30) calendar
days prior to IFSP, or review, or transition conference date;
(d) Provide parental prior notice per 34 C.F.R. Chapter III
303.403 and notice to all the IFSP team members of any IFSP
meeting, including the transition conference requested to address
revisions.
(e) In the event of cancellation, notification of the rescheduling
of the IFSP meeting shall be sent to the IFSP members within five
(5) working days of the cancelled meeting;
(f) Facilitate the annual IFSP, six (6) months reviews, and IFSP
meetings requested to address revisions and document. This in-
cludes:
1. Convene or consult team members for involvement in de-
termination of need and rationale
2. Documenting outcomes that have been achieved, as well as,
documenting those that have not been achieved;
3. Assisting families in identifying new outcomes, the service
providers, frequency and location of all services;
4. Assure [Insure] that outcomes are developed to relate to any
changes and that appropriate documentation of the need for the
changes occur.
5. Record rationale for amendment and child and family out-
comes for amendments on the state IFSP form and secure signa-
tures or verified approval from required members in order to verify
authorization of the amendment. Amendments to the IFSP are not
authorized unless the appropriate signatures or verified approval
from the required members are documented on the IFSP form.
6. Resolving any conflicts during the IFSP or review by having
the team come to consensus on any issue where differences oc-
cur.
7. If consensus cannot be reached, the PSC is responsible for
informing the IFSP team of the options and bringing resolution.
8. Submit Summary Sheet to Central Billing and Information
System (CBIS) within five (5) days of the approval of the revision.
9. Refer the family to appropriate agencies for services identi-
fied on the IFSP and coordinating those services;
(h) Send copies of the initial and subsequent IFSP reviews to
the other team members within ten (10) working days of the IFSP
meeting;
(i) Send copies of the IFSP to those persons identified by the family as needing copies;
(ii) Notify the CBIS of any changes in the child's or family status and new IFSP services with a summary sheet and update record in the POE within five (5) working days of changes on the IFSP;
(b) Facilitate the development of a transition plan.
(7) The primary service coordinator shall inform and assist the family of their rights and procedural safeguards by:
(a) Summarizing the family rights handbook at the initial IFSP and the summary of rights at each subsequent (every) IFSP and at any time the family requests;
(b) Familiarizing the family with the procedural safeguards and due process rules and ensuring that the family reviews and signs the statement of assurances found with the Family Rights Handbook at every IFSP review;
(c) Ensuring that all materials are given to the family in a format they can understand in their native language; and
(d) Assisting the family, at their request, with resolving conflicts among service providers.
(8) The primary service coordinator shall assist the family in identifying available service providers by:
(a) Keeping current on all available services in the district, including recent rules regarding funding sources;
(b) Having available to the families a list of all eligible First Steps service providers in each district. The family may choose a service outside the First Steps approved provider list, however, the primary service coordinator's responsibility to the family is to let them know that the provider is not approved through First Steps and may result in a cost to the family;
(c) Making the family aware of community activities that would benefit from their participation such as becoming a member of the District Early Intervention Committee;
(d) Assisting the POE in establishing new service providers by consistently educating the public on the benefits of early identification and intervention.
(9) The primary service coordinator shall ensure that service coordination is available to his families at all times and at the family's request.
(10) The primary service coordinator shall contact the child's family at a minimum of one (1) time per plan (a-month) to discuss service coordination needs, unless otherwise stipulated in the IFSP.
(11) The primary service coordinator shall give the family his address and phone number and any other information that may be helpful, in the event they would need to contact the primary service coordinator.
(12) The primary service coordinator shall identify to the family and the POE a back-up service coordinator for the family to call in the event the primary service coordinator will be gone over ten (10) consecutive working days by:
(a) Choosing the back-up service coordinator from the pool of approved primary service coordinators in the district;
(b) Sending to the family, in writing, within one (1) month of the initial IFSP meeting, the name of the back-up coordinator, their phone number, address and circumstances under which the family should call the back-up coordinator;
(c) Sending a copy of that correspondence to the POE for the records;
(d) Identifying the back-up coordinator in the IFSP;
(e) Calling the family to institute the back-up when the primary service coordinator will be away more than ten (10) consecutive days, and securing their permission to share information;
(f) Notifying the back-up of the scheduled absence;
(g) Sharing only pertinent information for current issues with the back-up; and
(h) Notifying the family, POE, and CBIS, in writing, of any changes in the back-up within five (5) working days of the change.
(13) If the primary service coordinator can no longer serve in the role of primary service coordinator due to a resignation or an unexpected reason the primary service coordinator shall:
(a) If there is at least one (1) week's time notify, in writing, the POE in each district, the family, and service providers and facilitate the identification of a new primary service coordinator; or
(b) If there is less than one (1) week's time, the primary service coordinator shall contact the POE in his district immediately. The POE shall contact the family to assist them in identifying a new primary service coordinator and facilitate the transfer of records. The new primary service coordinator shall notify the other service providers that he is the new primary service coordinator; and
(c) If the family desires a change in their primary service coordinator, they shall contact the POE and the POE shall seek to resolve the situation.
(14) The primary service coordinator shall facilitate the development of a transition plan by:
(a) Knowing the transition procedures as outlined in 911 KAR 2:130, Section 2 (8)(k)(7)(h) and the Kentucky Transition Project publication "Step by Step: A Guide to Transition" and ensuring that all potential agencies and programs that could provide services to a particular child after the age of three (3) are included when introducing the parents to future program possibilities;
(b) Hold a transition conference at least ninety (90) days and up to six (6) months prior to the child's third birthday:
1. Involve the family, IFSP team, the Part B local school district representative; and staff from potential next placement options; and
2. Write a transition plan as a part of the IFSP that includes:
   a. Description of types of information the family might need in relation to future placements;
   b. Strategies and activities to be used to help prepare the child for changes in the service delivery;
   c. Specific steps that will help the child adjust to and function in the new setting;
   d. How and when assistive technology equipment will be returned and how it will be replaced in the next setting if appropriate;
   e. Description of what information will be shared with the new setting, timelines to share the information, and ways to secure the necessary releases to refer and transmit records to the next placement.
(15) The primary service coordinator shall send to the POE all completed IFSPs, changes, and updates, which include the transition plan, no later than five (5) working days after the meeting has been held.
(16) In the event there is no primary service coordinator, or the family refuses service coordination, the POE shall coordinate and facilitate the IFSPs.
(17) The primary service coordinator shall maintain the child's PSC record to ensure that changes are accurately documented. The minimum record to be maintained by the primary service coordinator shall include:
(a) Initial referral information;
(b) Developmental and social history;
(c) All available evaluation reports;
(d) All assessment reports;
(e) All IFSP's;
(f) All primary service coordinator notes;
(g) All correspondence to the family and other service providers;
(h) The transition plan; and
(i) All billing information.
(18) The primary service coordinator shall ensure that all contacts with the family or other service providers are documented in the child's record. This documentation shall include a note which consists of:
(a) Child's name, CBIS ID number, and Social Security number;
(b) The date of contact;
(c) Amount of time spent;
(d) Reason for the contact;
(e) Type of contact whether by telephone or face to face;
(f) Result of contact;
(g) Plan for further action; and
(h) Signature of person making contact.
(19) Primary service coordinator notes shall also include all contacts attempted but not made, and reasons why services were not delivered in a timely manner.
(20) The primary service coordinator shall encourage the family to access all services identified on the individualized family
service plan.

(21) If the family wants to voluntarily terminate a service or all services, the primary service coordinator shall:
(a) Document in the record which services are ending and the date of termination;
(b) Send a follow-up letter to the family which includes when and what services are ending, within seven (7) working days after notice from the family of their choice to end services.
(22) If the family is absent from a service with no prior notice for at least three (3) consecutive visits, the service provider shall notify the primary service coordinator within seven (7) working days after last absence. Then the primary service coordinator shall:
(a) Document the service provider’s contact and try to make contact to discuss the circumstances;
(b) If contact is made send a letter within seven (7) working days to the providers the result of the discussion; or
2. If no contact is made, send the family a letter within seven (7) working days requesting direction as to the choice of the family in continuation of services and stating that the services will be discontinued until a choice is made by the family by contacting the PSC and stating that if no contact is made by the family, services will be terminated fifteen (15) working days from the date of the letter.

(23) The primary service coordinator shall be responsible for securing any release of information necessary to send or secure information from other service providers.
(24) The primary service coordinator shall close the child’s record and send a copy of the primary service coordinator record to the referring POE within:
(a) Three (3) months after the child’s third birthday, unless they state in writing that the record remain with the primary service coordinator due to continued service coordination by the primary service coordinator after the child reaches age three (3).
(b) A copy of the written request from the family shall be sent to the POE;
(b) Notify the service providers whose services are changing, in writing, when services are terminated and the date of termination.
(25) The primary service coordinator shall provide data to the cabinet upon request.
(26) The primary service coordinator shall agree to have any or all records maintained by said primary service coordinator monitored by the cabinet, or their designee.
(27) The primary service coordinator shall attend all required training prior to providing services.
(28) Participate in required quarterly meetings, except when sick or other excused absence as approved by technical assistance team program consultant.
(29) With the exception of a family receiving service coordination as of January 1, 1999, by a discipline who is also providing another service and there is one (1) year or less of eligibility for First Steps services remaining, the primary service coordinator shall limit practice in First Steps to service coordination only.

Section 2. Assistive Technology. (1) Only assistive technology devices on the First Steps administrative-approved technology list shall be reimbursed. The list shall be determined by the Department for Public Health and available at 275 East Main Street, Frankfort, Kentucky 40621.
(2) To be eligible to access assistive technology services and devices the child shall:
(a) Be eligible for First Steps;
(b) Have need for assistive technology devices and services documented by appropriate assessment procedures; and
(c) Have need for and use of assistive technology devices and services documented in the IFSP.
(3) (62) The First Steps assistive technology review process shall be utilized for the following:
(a) All equipment requests which exceed $500; and
(b) All equipment that is questionable by the initial service coordinator, the primary service coordinator, or cannot be determined by the IFSP team as appropriate.
(4) (63) All equipment request requiring review shall:
(a) Be sent to the monitoring coordinator with the following information:
1. A current IFSP;
2. Assessments with recommendations;
3. Justification statement of specific devices based on needs;
4. Information regarding equipment or device request;
(b) Be reviewed by the coordinator for completeness and forwarded to a regional monitoring committee; and
(c) Complete process within ten (10) working days of receiving all information.
(5) (41) The decision of the monitoring committee may be appealed to the state First Steps coordinator who shall:
(a) Consult with the appeal committee;
(b) Issue final decision.
(6) (61) The decision of the First Steps coordinator may be appealed pursuant to 911 KAR 2:170.

JAMES W. HOLLSINGER, JR. M.D., Secretary
DR. DUANE KILTY, Undersecretary
WILLIAM D. HACKER, M.D., Acting Commissioner
NICHOLAS Z. KAFOGLOU, M.D., Chief
APPROVED BY AGENCY: October 8, 2004
FILED WITH LRC: October 8, 2004 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, Cabinet for Health Services, 275 East Main St. 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7906, fax (502) 564-7573.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Dr. Steve Davis
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation allows the Cabinet of Health and Family Services, Department for Public Health, to transition the administration of the First Steps Program from the Commonwealth with Special Health Care Needs and initiates cost savings and containment.
(b) The necessity of this administrative regulation: KRS 200.650-676 requires the Cabinet for Health and Family Services to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of primary service coordination as it relates to First Steps, Kentucky’s Early Intervention Program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 200.650-676 meets the federal requirements.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment keeps Kentucky early intervention primary service coordination consistent with assistive technology current and updated for eligible citizens.
(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: Provides for the current year updating under the direction of the new administration mentioned in the Administrative Order 04-01 dated March 1, 2004, signed by Secretary Hollsinger.
(b) The necessity of the amendment to this administrative regulation: Without this amendment, the plan is out of date, unenforceable, and does not express the new administration’s cost savings and containment efforts.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment carries out the intent and provisions of the authorizing statutes.
(d) How the amendment will assist in the effective administration of the statutes: Without the amendment the statutes cannot be enforced.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 10,000 children who have developmental delays or disabilities and their families (approximately 15,000 family members), 600 enrolled providers encompassing 2,000 individuals serving citizens birth through 2 with developmental delays and/or disabilities and their families, and other community agencies.
who collaborate with First Steps, Kentucky's Early Intervention 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. These groups will be impacted by the changes to primary service coordination.

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

(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Adult and Child Health Improvements
(Amended After Comments)

911 KAR 2:150. Kentucky Early Intervention Program personnel qualifications.

RELATES TO: 20 U.S.C. 1471-1485
STATUTORY AUTHORITY: KRS 194A.050, 200.650-676, EO 2004-726 [444]
NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726 [444], effective July 9 [May 11], 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services. The cabinet (for Health Services) is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of personnel qualifications as they relate to First Steps, Kentucky's Early Intervention Program.

Section 1. Personnel. (1) Minimal qualifications for professionals or disciplines providing services in First Steps shall be:

(a) An audiologist shall have in accordance with KRS 334A.030:
   1. A master's degree; and
   2. A certificate and license from the Kentucky Board of Speech-Language Pathology and Audiometry.
(b) A family therapist shall have in accordance with KRS 335.330:
   1. A master's degree; and
   2. A certificate from the Kentucky Board of Certification of Marriage and Family Therapist.
(c) A developmental interventionist shall have in accordance with KRS 161.028:
   1. A bachelor's degree; and
   2. An interdisciplinary early childhood education certificate (IECE) by Kentucky Education Professional Standards Board, Division of Certification; or
   3. Be working toward the IECE certificate by:
      a. Being enrolled in an approved preparation program in IECE at a university or college; or
      b. Having an individual professional development plan approved by the Department for Public Health (Commission for Children with Special Health Care Needs [CCSHCN]) for developing the skills in the teacher performance standards for IECE as stated in 704 KAR 20:084, Section 9; or
   4. Hold a valid out-of-state certificate for the teacher of children ages' birth to three (3) years [infants] with disabilities.
   (d) A nurse shall have in accordance with KRS 314.041:
      1. An associate degree or diploma from a registered program; and
      2. A license from the Kentucky Board of Nursing.
   (e) A nutritionist shall have in accordance with KRS 310.031:
      1. A master's degree; and
      2. A certificate from the Kentucky Board of Licensure and Certification for Dietitians and Nutritionist.
   (f) A dietitian shall have in accordance with KRS 310.021:
      1. A bachelor's degree; and
      2. A license from the Kentucky Board of Licensure and Certification for Dietitians and Nutritionist.
   (g) An occupational therapist shall have in accordance with KRS 319A.130:
      1. A bachelor's degree; and
   (h) An orientation and mobility (O and M) specialist shall have in accordance KRS 161.020 and with the Division of Exceptional Children Services, Kentucky Department of Education a bachelor's degree in Special Education with emphasis on visual impairment and O and M, KRS 161.020.
      1. A physical therapist shall have in accordance with KRS 311.571:
         1. A doctor of medicine degree or doctor of osteopathy degree; and
         2. A license from the Kentucky Board of Medical Licensure.
   (i) A physical therapist shall have in accordance with KRS 327.020:
      1. Bachelor's degree; and
      2. A license from the Kentucky Board of Physical Therapy.
   (j) A psychologist shall have in accordance with KRS 319.032:
      1. A doctoral degree; and
      2. A license from Kentucky Board of Examiners of Psychology.
   (k) A certified psychologist with autonomous functioning or psychological assistive shall have in accordance with KRS 319.056-064:
      1. A master's degree; and
      2. A certificate from the Kentucky Board of Examiners of Psychology.
   (l) A social worker shall have in accordance with KRS 335.090:
      1. A bachelor's degree; and
      2. A license from the State Board of Examiners of Social Work of Kentucky.
   (m) A speech-language pathologist shall have in accordance with KRS 334A.050:
      1. A master's degree; and
      2. A [certificate- and license] from the Kentucky Board of Speech-Language Pathology and Audiology; or
      3. An interim license from the Kentucky Board of Speech-Language Pathology and Audiology and be under the supervision of a currently enrolled First Steps speech pathology provider.
   (n) A teacher of children who are deaf and hard of hearing shall have in accordance with KRS 161.030:
      1. A bachelor's degree; and
      2. A provisional certificate for teaching the deaf and hard of hearing, K-12 issued by the Kentucky Education Professional Standards Board, Division of Certification.
   (o) A teacher of the visually impaired shall have in accordance with KRS 161.020-030:
      1. A bachelor's degree; and
      2. A certificate for teaching the visually impaired, K-12 issued by the Kentucky Education Professional Standards Board, Division of Certification.

(2) The qualification for paraprofessionals providing early interventions services shall be:

(a) A developmental associate shall have:
   1. An associate degree in the area of early childhood; or
   2. A child development associate certificate for infant and toddlers caregiver or home visitor; or
   3. A postsecondary vocational education diploma in child development or child care; or
   4. Be employed in the developmental associate role in an approved program by October 1, 1997, and have a high school di-
ploma or GED and be working toward one (1) of the qualifications stated in subparagraphs 1, 2, and 3 of this paragraph by:

a. Be enrolled in an approved program granting one (1) of the above stated qualifications; or
b. Have an individual professional development plan approved by the Department for Public Health [CCSHCN] for developing the skills necessary to acquire one (1) of the above stated qualifications; and
5. Be indirectly supervised by a developmental interventionist.

(b) A developmental assistant shall have:
1. A high school diploma; or
2. A GED; and
3. Be directly supervised by a developmental interventionist or developmental associate.

(c) A [certified] occupational therapy assistant shall have in accordance with KRS 319A.110:
1. An OTA degree; and

(d) A physical therapy assistant shall have in accordance with KRS 327.040(12):
1. An associate degree in physical therapy assistance; and
2. A license from the Kentucky Board of Physical Therapy.

(e) [A speech-language pathology assistant shall have in accordance with KRS 334A.030:
1. A bachelor's degree; and
2. A license from the Kentucky Board of Speech-Language Pathology and Audiology.

(f) A licensed practical nurse shall have in accordance with KRS 314.051:
1. A high school diploma or a GED;
2. Have completed a state approved LPN education program; and
3. A license from the Kentucky Board of Nursing.

(3) The qualifications for recognized service positions providing services in First Steps shall be:

(a) An initial service coordinator shall be approved by the cabinet based on the following qualifications:
1. Meeting minimum highest entry-level requirement for one (1) of the professions delineated in this administrative regulation; or
2. Have a bachelor's degree and the equivalency of two (2) years' experience in working with young children ages birth through five (5) years in a position in which the following skills and competencies have been demonstrated:
   a. Communication skills in interviewing, negotiating and mediating, and providing informal support;
   b. Problem-solving by finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;
   c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and
   d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.

(b) A primary service coordinator shall be approved by the cabinet based on the following qualifications:
1. Meeting minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation; or
2. Meeting requirements for one (1) of the paraprofessionals delineated in this administrative regulation; or
3. Have a bachelor's degree and the equivalency of two (2) years' experience in working with young children ages birth through five (5) years in a position in which the following skills and competencies have been demonstrated:
   a. Communication skills in interviewing, negotiating and mediating, and providing informal support;
   b. Problem-solving: finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;
   c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and
   d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.

(c) A developmental evaluator shall be approved by the cabinet by:
1. Meeting minimum highest entry-level requirements for one (1) of the professionals delineated in this administrative regulation; and
2. Having two (2) years experience working directly with young children through birth (0) years of age, including children with disabilities or atypical development; and
3. Having had one (1) year of experience in using standardized instruments and procedures to evaluate infants and toddlers born through two (2) years of age, completed as part of formal training or in supervised practice, or completes a mentorship during the first year of providing services in First Steps as approved by the cabinet.

(d) An assistive technology specialists shall be approved by the cabinet based on the following qualifications:
1. Meeting minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation;
2. Having extensive knowledge, training, and experience in the field of assistive technologies for infants and toddlers with disabilities; or
3. Meeting the qualifications in subparagraph 2 of this paragraph and be employed by an agency that currently provides assistive technology services in First Steps, and be approved by the cabinet.

(e) A respite provider shall:
1. Meet all license, regulations, and other requirements applicable to the setting in which respite is provided;
2. Be approved by the individualized family service planning team.

Section 2. Field Experiences - Intervention Implemented by a Student. Students may provide therapeutic intervention under the direct supervision of personnel as found in 911 KAR 2:150, Section 1.

JAMES W. HOLMSINGER, Jr., Secretary
DR. DUANE KILTY, Undersecretary
WILLIAM D. HACKER M.D., Acting Commissioner
NICKOLAS Z. KAFOGLOIS, M.D., Chairman
APPROVED BY AGENCY: October 8, 2004
FILED WITH LRC: October 8, 2004 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, Cabinet for Health and Family Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Steve Davis, M. D.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation allows the Cabinet of Health and Family Services, Department of Public Health, Division of Adult and Child Health Improvements to transition to the administration of the First Steps program from the Commission for Children of Special Health Care Need to the Department for Public Health by supporting quality personnel standards that will initiate cost savings and containment.

(b) The necessity of this administrative regulation: KRS 200.650-675 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of personnel qualifications as they relate to First Steps, Kentucky’s Early Intervention Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 200.650-675 meets the personnel standards required by the federal guidelines.

(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This amendment
keeps the Kentucky Early Intervention Program personnel
qualifications for contracted service providers current and updated
with higher quality and cost savings and containment.
2. If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: Provides for the current year updating, under the direc-
tion of the new administration mentioned in the administrative or-
der, issued on March 1, 2004, by Secretary Holsinger.
(b) The necessity of the amendment to this administrative regu-
lation: Without this amendment, the plan is out of date and out of
enforcement, and not expressive of the new administration's
requirements.
(c) How the amendment conforms to the content of the
authorizing statutes: This amendment carries out the intent and
provisions of the authorizing statutes.
(d) How the amendment will assist in the effective administra-
tion of the statutes: With the amendment the statute can be en-
forced and the newly assigned administration will be able to initiate
cost savings and containment.
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this adminis-
trative regulation: over 10,000 children who have developmental
delays or disabilities and their families (approximately 15,000 fam-
ily members), 600 enrolled providers, encompassing 2000 indi-
viduals serving citizens birth through 2 with developmental delays
and/or disabilities and their families, and other community agencies
who collaborate with Kentucky's Early Intervention Program (First
Steps).
(4) Provide an assessment of how the above group or groups
will be impacted by either the implementation of this administra-
tive regulation, if new, or by the change if it is an amendment: These
groups will be impacted by the changes in this regulation with posi-
tive clarification of existing regulatory language and strengthening
standards causing an increase in the performance and the quality of
personnel, which will improve the services to the Kentucky chil-
dren with developmental delays and disabilities.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: None, but will initiate a cost savings.
(b) On a continuing basis: None, but will secure cost contain-
ment.
(6) What is the source of the funding to be used for the imple-
mentation 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 regula-
tion, if new, or by the change if it is an amendment: None
(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: None
(9) TIERING: Is tiering applied? 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 Public Health
Division of Adult and Child Health Improvements
(Amended After Comments)

911 KAR 2:200. Coverage and payment for Kentucky Early
Intervention Program Services.

RELATES TO: 34 C.F.R. 303.520, 303.521, 303.527, 303.528,
20 U.S.C. §1371-1485

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050,
1476(a)(12), 1478, EO 2004-726 (444),
effective July 9 May 11, 2004, reorganized the Cabinet for
Health and Family Services and placed the Department for Public
Health under the Cabinet for Health and Family Services, KRS
200.660 requires the cabinet [for Health Services] to administer
funds appropriated to implement the provisions of KRS 200.650 to
200.676, to enter into contracts with service providers, and to
promulgate administrative regulations. This administrative regu-
lation establishes the provisions relating to early intervention serv-
ices for which payment shall be made on behalf of eligible recipi-
ents.

Section 1. Participation Requirements. An early intervention
provider that requests to participate as an approved First Steps
provider shall comply with the following:
(1) Submit to an annual review by the Department for Public
Health [CCS/HCN], for Children with Special Health Care Needs
(CCSC/HCN), or its agent, for compliance with 911 KAR Chapter 2;
(2)(a) Meet the qualifications for a professional or paraprofes-
sional established in 911 KAR 2:150;
or
(b) Employ or contract with a professional or paraprofessional
who meets the qualifications established in 911 KAR 2:150;
(3) Ensure that a professional or paraprofessional employed by
the provider who will provide service in the First Steps Program
shall attend training on First Steps philosophy, practices, and pro-
cedures provided by First Steps representatives prior to providing
First Steps services;
(4) Agree to provide First Steps services according to an indi-
vidualized family service plan as required in 911 KAR 2:150;
(5) Agree to maintain and to submit as requested by the De-
partment for Public Health [CCS/HCN] required information, re-
ports, and reports to ensure compliance with 911 KAR Chapter 2;
(6) Establish a contractual arrangement with the Cabinet for
Health and Family Services for the provision of First Steps serv-
ces; and
(7) Agree to provide upon request information necessary for
reimbursement for services by the Cabinet for Health and Family
Services in accordance with this administrative regulation, which
shall include the tax identification number and usual and customary
charges.

Section 2. Reimbursement The Department for Public Health
[CCS/HCN] shall reimburse a participating First Steps provider the
lower of the actual billed charge for the service or the fixed upper
limit established in this section for the service being provided.
(1) A charge submitted to the Department for Public Health
[CCS/HCN] shall be the provider's usual and customary charge for
the same service.
(2) The fixed upper limit for services shall be as follows:
(a) Primary service coordination. Primary service coordination
shall be provided by face-to-face contact or by telephone on behalf
of a child, with the parent of the child, a professional or other serv-
ices provider, or other significant person in the child's life.
1. In the office, the fee shall be sixty-one (61) dollars per hour of
service.
2. In the home or community site, the fee shall be eighty-three
(83) dollars per hour of service.
(b) Initial service coordination. Initial service coordination shall
be provided by face-to-face contact or by telephone on behalf of a
child, with the parent of the child, a professional or other service
provider, or other significant person.
1. In the office, the fee shall be sixty-eight (68) dollars per hour
of service.
2. In the home or community site, the fee shall be ninety-one
(91) dollars per hour of service.
(c) Primary level evaluation. The developmental component of
the primary level evaluation for nonestablished risk child, shall be
provided by face-to-face contact with the child and parent.
1. In the office or center based site, the fee shall be $225 per
service event.
2. In the home or community site, the fee shall be $225 per
service event.
(d) Five (5) Area Assessment. The developmental compo-
nent of the primary level evaluation for the established risk
child shall be provided by face-to-face contact with the child
and parent.
1. In the office or center-based site, the fee shall be $175
per service event;
2. In the home or community-based site, the fee shall be
$175 per service event.
(e) Record review. A record review shall be provided by a DPH approved team, the fee shall be $300 per service event.

(f) (i) Intensive clinic evaluation. The intensive level evaluation shall be provided by face-to-face contact with the child and parent.

1. In the office or center-based site, which involves a board certified psychologist, the fee shall be $1,100 per service event.

2. In the community site, which involves a board certified physician, the fee shall be $1,100 per service event.

3. In the office or center-based site without a board certified physician, the fee shall be $400 per service event.

4. In the community site without a board certified physician, the fee shall be $400 per service event.

(g) (1) (i) Therapeutic intervention, service assessment or collateral services in accordance with Section 3(3), (4), (6) and (7) of this administrative regulation:

1. For an audiologist:

a. In the office or center based site, the fee for a:
   - (i) service assessment, collateral service or a therapeutic intervention including [other-than] cotreatment shall be sixty-three (63) dollars per hour of service; or
   - (ii) Cotreatment shall be thirty-two (32) – (32) dollars per hour of service.

b. In the home or community site, the fee for a:
   - (i) service assessment, collateral service or a therapeutic intervention including [other-than] cotreatment shall be eighty-nine (89) dollars per hour of service; or
   - (ii) Cotreatment shall be forty-five (45) dollars per hour of service.

2. For a family therapist:

a. In the office or center based site, the fee for a:
   - (i) service assessment, collateral service or a therapeutic intervention including [other-than] cotreatment shall be sixty-three (63) dollars per hour of service; or
   - (ii) Cotreatment shall be thirty-two (32) – (32) dollars per hour of service.

b. In the home or community site, the fee for a:
   - (i) service assessment, collateral service or a therapeutic intervention including [other-than] cotreatment shall be eighty-nine (89) dollars per hour of service; or
   - (ii) Cotreatment shall be forty-five (45) dollars per hour of service.

3. For a licensed psychologist or certified psychologist with autonomous functioning:

a. In the office or center based site, the fee for a:
   - (i) service assessment, collateral service or a therapeutic intervention including [other-than] cotreatment shall be $139 per hour of service; or
   - (iii) Cotreatment shall be seventy (70) dollars per hour of service.

b. In the home or community site, the fee for a:
   - (i) service assessment, collateral service or a therapeutic intervention including [other-than] cotreatment shall be $203 per hour of service; or
   - (ii) Cotreatment shall be $102 per hour of service.

4. For a certified psychological associate:

a. In the office or center based site, the fee for a:
   - (i) collateral service or a therapeutic intervention including [other-than] cotreatment shall be $104 per hour of service; or
   - (ii) Cotreatment shall be fifty-two (52) dollars per hour of service.

b. In the home or community site, the fee for a:
   - (i) collateral service or a therapeutic intervention including [other-than] cotreatment shall be $153 per hour of service; or
   - (ii) Cotreatment shall be seventy-seven (77) dollars per hour of service.

5. For a developmental intervener:

a. In the office or center based site, the fee for a:
   - (i) service assessment, collateral service or a therapeutic intervention including [other-than] cotreatment shall be sixty-one (61) dollars per hour of service; or
   - (iii) Cotreatment shall be thirty-one (31) dollars per hour of service.

b. In the home or community site, the fee for a:
   - (i) service assessment, collateral service or a therapeutic intervention including [other-than] cotreatment shall be sixty-one (61) dollars per hour of service; or
   - (iii) Cotreatment shall be thirty-one (31) dollars per hour of service.

6. For a developmental associate:

a. In the office or center based site, the fee for a:
   - (i) collateral service or a therapeutic intervention including [other-than] cotreatment shall be forty-one (41) dollars per hour of service.

b. In the home or community site, the fee for a:
   - (i) collateral service or a therapeutic intervention including [other-than] cotreatment shall be forty-five (45) dollars per hour of service; or
   - (ii) Cotreatment shall be twenty-three (23) dollars per hour of service.

7. For a registered nurse:

a. In the office or center based site, the fee for a:
   - (i) collateral service or a therapeutic intervention including [other-than] cotreatment shall be sixty (60) dollars per hour of service; or
   - (ii) Cotreatment shall be thirty-two (32) dollars per hour of service.

b. In the home or community site, the fee for a:
   - (i) service assessment, collateral service or a therapeutic intervention including [other-than] cotreatment shall be eighty-nine (89) dollars per hour of service; or
   - (ii) Cotreatment shall be forty-five (45) dollars per hour of service.

8. For a licensed practical nurse:

a. In the office or center based site, the fee for a:
   - (i) collateral service or a therapeutic intervention including [other-than] cotreatment shall be twenty-four (24) dollars per hour of service; or
   - (ii) Cotreatment shall be twelve (12) dollars per hour of service.

b. In the home or community site, the fee for a:
   - (i) collateral service or a therapeutic intervention including [other-than] cotreatment shall be thirty-two (32) dollars per hour of service; or
   - (ii) Cotreatment shall be sixteen (16) dollars per hour of service.

9. For a nutritionist:

a. In the office or center based site, the fee for a:
   - (i) service assessment, collateral service or a therapeutic intervention including [other-than] cotreatment shall be sixty-three (63) dollars per hour of service; or
   - (ii) Cotreatment shall be forty-five (45) dollars per hour of service.

b. In the home or community site, the fee for a:
   - (i) service assessment, collateral service or a therapeutic intervention including [other-than] cotreatment shall be eighty-nine (89) dollars per hour of service; or
   - (ii) Cotreatment shall be forty-five (45) dollars per hour of service.

10. For a dietician:

a. In the office or center based site, the fee for a:
   - (i) service assessment, collateral service or a therapeutic intervention including [other-than] cotreatment shall be sixty-three (63) dollars per hour of service; or
   - (ii) Cotreatment shall be thirty-two (32) dollars per hour of service.

b. In the home or community site, the fee for a:
   - (i) service assessment, collateral service or a therapeutic intervention including [other-than] cotreatment shall be eighty-nine (89) dollars per hour of service; or
   - (ii) Cotreatment shall be forty-five (45) dollars per hour of service.
11. For a speech therapist assistant:
   a. In the office or center based site, the fee for a [i]
      (i) service assessment, collateral service or a therapeutic
      intervention including [other-than] treatment shall be sixty-nine
      ($69) dollars per hour of service; or
      (ii) Treatment shall be forty-five (45) dollars per hour of
      service.
   b. In the home or community site, the fee for a [i]
      (i) service assessment, collateral service or a therapeutic
      intervention including [other-than] treatment shall be forty-six
      ($46) dollars per hour of service; or
      (ii) Treatment shall be twenty-three (23) dollars per hour of
      service.

12. For an occupational therapist assistant:
   a. In the office or center based site, the fee for a [i]
      (i) collateral service or a therapeutic intervention including
      [other-than] treatment shall be seventy ($70) dollars per hour of
      service; or
      (ii) Treatment shall be thirty-five (35) dollars per hour of
      service.
   b. In the home or community site, the fee for a [i]
      (i) collateral service or a therapeutic intervention including
      [other-than] treatment shall be sixty-one ($61) dollars per hour of
      service; or
      (ii) Treatment shall be thirty-one (31) dollars per hour of
      service.

13. For an orientation and mobility specialist:
   a. In the office or center based site, the fee for a [i]
      (i) service assessment, collateral service or a therapeutic
      intervention including [other-than] treatment shall be sixty-three
      ($63) dollars per hour of service; or
      (ii) Treatment shall be thirty-two (32) dollars per hour of
      service.
   b. In the home or community site, the fee for a [i]
      (i) service assessment, collateral service or a therapeutic
      intervention including [other-than] treatment shall be eighty-one
      ($81) dollars per hour of service; or
      (ii) Treatment shall be forty-one (41) dollars per hour of
      service.

14. For a physical therapist:
   a. In the office or center based site, the fee for a [i]
      (i) service assessment, collateral service or a therapeutic
      intervention including [other-than] treatment shall be sixty-three
      ($63) dollars per hour of service; or
      (ii) Treatment shall be thirty-two (32) dollars per hour of
      service.
   b. In the home or community site, the fee for a [i]
      (i) service assessment, collateral service or a therapeutic
      intervention including [other-than] treatment shall be eighty-nine
      ($89) dollars per hour of service; or
      (ii) Treatment shall be forty-five (45) dollars per hour of
      service.

15. For a physical therapist assistant:
   a. In the office or center based site, the fee for a [i]
      (i) collateral service or a therapeutic intervention including
      [other-than] treatment shall be forty-six (46) dollars per hour of
      service; or
      (ii) Treatment shall be twenty-three (23) dollars per hour of
      service.
   b. In the home or community site, the fee for a [i]
      (i) collateral service or a therapeutic intervention including
      [other-than] treatment shall be seventy ($70) dollars per hour of
      service; or
      (ii) Treatment shall be thirty-five (35) dollars per hour of
      service.

16. For a speech therapist:
   a. In the office or center based site, the fee for a [i]
      (i) service assessment, collateral service or a therapeutic
      intervention including [other-than] treatment shall be sixty-three
      ($63) dollars per hour of service; or
      (ii) Treatment shall be thirty-two (32) dollars per hour of
      service.
   b. In the home or community site, the fee for a [i]
      (i) service assessment, collateral service or a therapeutic
      intervention including [other-than] treatment shall be eighty-nine
      ($89) dollars per hour of service; or
      (ii) Treatment shall be forty-five (45) dollars per hour of
      service.

17. For a speech therapist assistant:
   a. In the office or center based site, the fee for a:
      (i) Collateral service or a therapeutic intervention other than
      treatment shall be forty-six (46) dollars per hour of service; or
      (ii) Treatment shall be twenty-three (23) dollars per hour of
      service.
   b. In the home or community site, the fee for a:
      (i) Collateral service or a therapeutic intervention other than
      treatment shall be seventy ($70) dollars per hour of service; or
      (ii) Treatment shall be thirty-five (35) dollars per hour of
      service.

18. For a social worker:
   a. In the office or center based site, the fee for a [i]
      (i) service assessment, collateral service or a therapeutic
      intervention including [other-than] treatment shall be sixty-one
      ($61) dollars per hour of service; or
      (ii) Treatment shall be thirty-one (31) dollars per hour of
      service.
   b. In the home or community site, the fee for a [i]
      (i) service assessment, collateral service or a therapeutic
      intervention including [other-than] treatment shall be eighty-one
      ($81) dollars per hour of service; or
      (ii) Treatment shall be forty-one (41) dollars per hour of
      service.

19. For a teacher of the deaf and hard of hearing:
   a. In the office or center based site, the fee for a [i]
      (i) service assessment, collateral service or a therapeutic
      intervention including [other-than] treatment shall be sixty-one
      ($61) dollars per hour of service; or
      (ii) Treatment shall be thirty-one (31) dollars per hour of
      service.
   b. In the home or community site, the fee for a [i]
      (i) service assessment, collateral service or a therapeutic
      intervention including [other-than] treatment shall be eighty-one
      ($81) dollars per hour of service; or
      (ii) Treatment shall be forty-one (41) dollars per hour of
      service.

20. For a teacher of the visually impaired:
   a. In the office or center based site, the fee for a [i]
      (i) service assessment, collateral service or a therapeutic
      intervention including [other-than] treatment shall be sixty-one
      ($61) dollars per hour of service; or
      (ii) Treatment shall be thirty-one (31) dollars per hour of
      service.
   b. In the home or community site, the fee for a [i]
      (i) Service assessment, collateral service or a therapeutic
      intervention including [other-than] treatment shall be eighty-one
      ($81) dollars per hour of service; or
      (ii) Treatment shall be forty-one (41) dollars per hour of
      service.

21. For a physician providing a collateral service in the
    office or center based site, the fee shall be seventy-six (76)
    dollars per hour of service. A physician shall not receive
    reimbursement for therapeutic intervention.

22. For an assistive technologist specialist:
   a. In the office or center based site, the fee for a [i]
      (i) Service assessment, collateral service or a therapeutic
      intervention including [other-than] treatment shall be sixty-one
      ($61) dollars per hour of service; or
      (ii) Treatment shall be thirty-one (31) dollars per hour of
      service.
   b. In the home or community site, the fee for a [i]
      (i) Service assessment, collateral service or a therapeutic
      intervention including [other-than] treatment shall be eighty-one
      ($81) dollars per hour of service; or
      (ii) Treatment shall be forty-one (41) dollars per hour of
      service.

23. (a) For therapeutic intervention, service assessment or
    collateral services, units shall be determined using the
    beginning and ending time for a service documented in staff notes;
    which shall include the child's name and CBIS number; time in and
    time out; location; method of delivery; a description of what happened during

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the session, the child’s response and future action to be taken: staff title and signature: date [in accordance with 911 KAR 2:130; Section 2(9)(g)]. The units shall be computed as follows:
1. Fifteen (15) to twenty-nine (29) minutes equal one (1) unit;
2. Thirty (30) to forty-four (44) minutes equal two (2) units;
3. Forty-five (45) to fifty-nine (59) minutes equal three (3) units; and
4. Sixty (60) to seventy-four (74) minutes equal four (4) units.

(b) For service coordination services, units shall be determined using the beginning and ending time for a service documented in staff notes in accordance with 911 KAR 2:200, Section 2(3)(a) [2:130, Section 2(9)(g)].

1. That shall be computed as follows:
   a. One (1) to twenty-two (22) minutes equal one (1) unit;
   b. Twenty-three (23) to thirty-seven (37) minutes equal two (2) units;
   c. Thirty-eight (38) to fifty-two (52) minutes equal three (3) units; and
   d. Fifty-three (53) to sixty-seven (67) minutes equal four (4) units.

2. Service coordination minutes spent over the course of a day on a child or family shall be accumulated at the end of the day in order to determine the number of units used.

3. A payment for a primary or intensive evaluation listed in subsection (2) of this section shall be based on a complete evaluation as a single unit of service.

4. Payment for assistive technology devices shall be made in accordance with the First Steps admin-strative approved technology list. [a] Except for an augmentative-hearing device which is anticipated to cost in excess of $500, a payment for an assistive technology device, including ear molds, replacement wiring, or batteries, shall be based on the actual invoiced cost, including the cost of shipping and handling, for the authorized equipment included in the individualized family service plan.

5. A child is determined to need an augmentative-hearing device if an augmentative-hearing device that is anticipated to cost in excess of $500, such as a hearing aid, the family shall be referred to the CCDSCHN office serving the family’s county of residence for action in accordance with 911 KAR 1:070. The First Steps Program shall not provide payment for an FM system.

6. Payment for transportation shall be the lesser of the billed charges or:
   a. A per commercial transportation carrier, an amount derived by multiplying one (1) dollar by the average number of loaded miles using the most direct route;
   b. For a private automobile carrier, an amount equal to twenty-five (25) cents per loaded mile transported; or
   c. For a noncommercial group carrier, an amount equal to fifty (50) cents per mile transported.

7. A payment for a group intervention service shall be thirty (30) dollars per child per hour of direct contact service for each child in the group with a limit of three (3) eligible children per professional or paraprofessional who can practice without direct supervision.

Section 3. Limitations. (1) For primary service coordination, payment shall be limited to no more than ten (10) fifteen (15) hours (or forty (40) sixty (60) units) per child per six (6) month period unless preauthorized by the Department for Public Health [CCDSCHN]. [If submitting a] Prior authorization request to exceed service coordination limits shall be sent to the Department for Public Health. In accordance with 911 KAR 2:130, Section 4 of this administrative regulation [CCDSCHN], the request shall be sent to Payment Authorization Coordinator, as determined by the Department for Public Health [CCDSCHN, 982 Eastern Parkway, Louisville, Kentucky 40217.] [and shall include:
   a. The number of additional fifteen (15) minute units requested;
   b. A copy of the current IFSP;
   c. A detailed description of how and when the additional units are to be used; and
   d. A plan for how primary service coordination will be provided in an effective and efficient manner that will prevent the future need for additional units beyond the limit of sixty (60) units of service per six (6) month period.
   (2) For initial service coordination, payment shall be limited to no more than twenty-five (25) hours (or 100 units) per child per period of eligibility unless preauthorized by the Department for Public Health [CCDSCHN] in accordance with subsection (1) of this section.

3. For service assessment.

(a) Payment shall be limited to no more than two and one-half (2 1/2) hours per child per discipline per assessment unless preauthorized by the Department for Public Health [CCDSCHN] in accordance with Section 4 of this administrative regulation.

(b) Payment shall be limited to three (3) assessments per discipline per child from birth to the age of three (3) unless preauthorized by the Department for Public Health [CCDSCHN] in accordance with Section 4 of this administrative regulation.

(c) A service assessment payment shall not be made for the provision of routine therapeutic intervention services by a discipline in the general practice of that discipline. Payment for a unit of service assessment shall be restricted to the needs for additional testing or other activity by the discipline that go beyond routine practice. Routine activity of assessing outcomes shall be billed as therapeutic intervention.

(d) Payment shall be limited to an assessment provided as a face-to-face contact with the child and parent.

4. For therapeutic intervention, unless prior authorized by the Department for Public Health [CCDSCHN] in accordance with Section 4 of this administrative regulation, limitations for payment of services shall be as follows:

(a) For office home and community sites, and center.
   1. Payment shall be limited to no more than one (1) hour per day [combined hour-of-service per week] per child per discipline by: a. Professional meeting the qualifications established in 911 KAR 2:150; or
   b. Paraprofessional meeting the qualifications established in 911 KAR 2:150.
   2. Payment shall be limited to no more than ninety-six (96) units for a single discipline and 144 units for more than one (1) discipline during the six (6) month period and for group shall be limited to an additional 192 units during the six (6) month period, [one (1) office visit per child, per day, per discipline, except that billing for a collateral service while participating in an IFSP meeting or an ARC meeting in the same day shall be allowed.

(b) For home and community settings:
   1. Payment shall be limited to no more than one (1) combined hour of service per week per child per discipline by: a. Professional meeting the qualifications established in 911 KAR 2:150; or
   b. Paraprofessional meeting the qualifications established in 911 KAR 2:150.
   2. Payment shall be limited to no more than three (3) disciplines per child per day, except that billing for collateral while participating in an IFSP meeting or an ARC meeting in the same day shall be allowed.

(b) [c] For group:
1. Children are not eligible for both group and individual therapy in the same developmental domain concurrently on the plan.
2. Group providers shall be preauthorized by the Department for Public Health [CCDSCHN]. In a group setting, the service time for each professional or discipline and paraprofessional may extend to the time period of the group, net to exceed two and one-half (2 1/2) hours per day, five (5) hours per week.

3. The ratio of staff to children in group therapeutic intervention shall be limited to a maximum of three (3) children per professional and paraprofessional per group.

(c) Payment for siblings seen at the same time shall be calculated by dividing the total time spent by the number of siblings to get the amount of time to bill per child.

(d) Payment for a service shall be limited to a service that is authorized by the entire IFSP team in accordance with 911 KAR 2:130, Section 2(6) or (7).

(e) Payment shall be limited to a service provided as a face-to-face contact with the child and either the child’s parent or caregiver.
(5) For respite, payment shall:
(a) Be limited to no more than eight (8) hours of respite per hour, per eligible child;
(b) Be not allowed to accumulate beyond each month; and
(c) Be limited to families in crisis, or strong potential for crisis without the provision of respite.
(6) For collateral services, payment for:
(a) Length of an IFSP meeting shall be limited to four (4) billable units.
(b) Attendance at one (1) ARC meeting held prior to a child's third birthday shall be limited to the service coordinator and two (2) professionals or paraprofessionals selected by the IFSP team;
(c) (b) Participation at an initial IFSP meeting by a primary level evaluator shall be limited to an evaluator who has provided feedback and interpretation of the evaluation to the family prior to the IFSP meeting in accordance with 911 KAR 2:120, Section 1(4)(e)2b. Payment shall be at the collateral services rate for the discipline that the evaluator represents; and
(d) [(a)] A face-to-face attendance at an IFSP meeting or a face-to-face or telephone consultation by a team member with a child’s physician for developmentally-related needs shall be provided.
(7) For cotreatment, payment shall be limited to three (3) disciplines providing services concurrently.
(8) Unless prior authorized by the Department for Public Health [CCSCHN] due to a shortage of primary level evaluators:
[a] A primary level evaluator shall not be eligible to provide therapeutic intervention to a child whom he evaluated and which resulted in the child becoming eligible; and
[b] A child’s annual evaluation shall be provided by a primary level evaluator who is not currently providing therapeutic intervention to that child.

Section 4. Prior Authorization Process. (1) Requests for payment for therapeutic intervention services beyond the limits established in Section 3 of this administrative regulation shall be submitted to the Payment Authorization Coordinator, as determined by the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, [CCSCHN, 982 Eastern Parkway, Louisville, Kentucky 40217] prior to the service being delivered and shall include the following:
(a) A service exception request [cover-letter] describing:
1. Current IFSP team members;
2. Current services;
3. Description of current development status;
4. Family input;
5. Additional services requested; and
6. Rationale for the additional services;
[1.-Outcomes-related to the request;
2. -Disciplines involved;
3. -Amount of time requested;
4. -A description of how long the additional time is needed in order to meet the outcomes on the IFSP; and
5. -A description of how the additional time will be incorporated into the child's natural environment and how skills shall be transferred to the parents, caregivers, and other members of the IFSP team.]
(b) The medical component of the primary level evaluation in accordance with 911 KAR 2:120, Section 1(4)(e)1, which shall include the following:
1. History;
2. Physical exam;
3. Hearing screening;
4. Vision screening; and
5. Other available reports from medical specialists;
(c) Developmental evaluation reports in accordance with 911 KAR 2:120, Section 1(4)(e)2, which shall include the following:
1. Primary level evaluation report;
2. Intensive level evaluation report, if applicable;
(d) IFSP team member reports completed within the last twelve
[12 months by the disciplines involved, including:
1. Assessments; and
2. Six (6) month progress reports;
(e) IFSP documents from the last twelve (12) months, including amendments;
(f) Payor of Last Resort Form, along with available supporting documentation, including:
1. Requests submitted to other payors; and
2. Responses from payor sources;
3. Transfer of Skills Form; and
4. Service Planning Activity Matrix Form.
(2) Requests for payment for service coordination services beyond the limits established in Section 3 of this administrative regulation shall be submitted to the Payment Authorization Coordinator, as determined by the Department for Public Health, prior to the service being delivered and shall include:
(a) A service exception request as described in Section 4 (1)(a) of this administrative regulation;
(b) A copy of the current IFSP; and
(c) A detailed description of how and when the additional units are to be used.
(3) If the IFSP team is not in agreement with the decision of the record review request for further review shall be submitted to the Part C coordinator.
(4) If the IFSP team is not in agreement with the further review decision; [if the authorization panel is not in agreement regarding payment of service time beyond the one (1) hour-per-week]
(a) The child's IFSP team shall be asked to reconvene for an IFSP meeting with a representative from the record review team and the Part C coordinator or their designee.
(b) A member of the panel shall participate in the meeting to clearly convey the concerns of the panel; and
(c) If the IFSP team concludes at that IFSP meeting that the services are still needed, payment for the service shall be authorized for the duration of the current IFSP.

Section 5. Sliding Fee. (1) Families shall pay for services based on a sliding fee scale, except that a charge shall not be made for the following functions:
(a) Child find;
(b) Evaluation and assessment;
(c) Service coordination; and
(d) Administrative and coordinative activities including development, review, and evaluation of individualized family service plans, and the implementation of procedural safeguards.
(2) Payment of fees shall be for the purpose of:
(a) Maximizing available sources of funding for early intervention services; and
(b) Giving families an opportunity to assist with the cost of services where there is a means to do so, in a family share approach.
(3) The family share payment shall:
(a) Be explained to the family by the service coordinator;
(b) Be an income-based monthly fee, and with the exception established in paragraph (d) of this subsection, shall begin in the month of the IFSP, at the time therapeutic services are authorized, and continuing for the duration of participation in early intervention services, as determined by the:
1. Level of family gross income identified on last Federal Internal Revenue Service statement or check stubs form the four (4) most recent consecutive pay periods, as reported by the family; and
2. Level of income matched with the level of poverty, utilizing the federal poverty measure, poverty guidelines as published annually by the Federal Department of Health and Human Services, based on the following scale:
   a. Below 200 percent of poverty, there shall be no payment;
   b. From 200 percent of poverty to 299 percent, the payment shall be twenty (20) dollars per month of participation;
   c. From 300 percent of poverty to 399 percent, the payment shall be thirty (30) dollars per month of participation;
   d. From 400 percent of poverty to 499 percent, the payment shall be forty (40) dollars per month of participation;
   e. From 500 percent of poverty to 599 percent, the payment shall be fifty (50) dollars per month of participation; or
   f. From 600 percent of poverty and over, the payment shall be $100 per month of participation;
child is potentially eligible for Medicaid, within sixty (60) days of being advised to apply, the family shall provide the service coordinator with notification of the disposition of the inquiry into Medicaid eligibility:

(7) If multiple children in a family receive early intervention services, the family share payment shall be the same as if there were one (1) child receiving services.

(8) If a family has the ability to pay the family share but refuses to do so for three (3) consecutive months, the family shall receive service coordination and assessment services only until discharged from the program or the family share balance is paid in full, whichever occurs first.

(9) A family who chooses to use private insurance for payment of a First Steps service shall not be responsible for payment of insurance deductibles or copayments related to this service. First Steps shall assume payment of First Steps-related coinsurance and deductibles.

(10) With the exception of a discipline identified in 911 KAR 2:130, Section 2(9)(g)2, k, or l, a provider shall bill a third-party insurance, if any, for a therapeutic intervention service prior to billing First Steps. Documentation regarding the billing, the third-party insurance representative's response, and payment, if any, shall be maintained in the child's record and submitted with the First Steps bill.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Payor of Last Resort Form, December 2002;
(b) Transfer of Skills Form, December 2001, and
(c) Service Planning Activity Matrix Form, December 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Commission for Children with Special Health Care Needs, 982 Easter Parkway, Louisville, Kentucky 40217, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES W. HOLISINGER, Jr., M.D., Secretary
DR. DUANE KILTY, Undersecretary
WILLIAM D. HACKER, M.D., Acting Commissioner
NICHOLAS Z. KAFOGILIS, M.D., Chairman
APPROVED BY AGENCY: October 14, 2004
FILED WITH LRC: October 15, 2004 at 11 a.m.

CONTACT PERSOM: Jill Payton, Office of Legal Services, Cabinet for Health and Family Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dr. Steve Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation allows the cabinet to enforce the federal requirements for coverage and payment of early intervention services.

(b) The necessity of this administrative regulation: KRS 200.650-676 requires the Cabinet for Health and Family Services to oversee the coverage and payment of Kentucky's Early Intervention Program (First Steps) services for children birth - 2 years of age with developmental delays and disabilities and their families.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 200.650-676 requires the coverage and payment for early intervention services be in compliance with the federal requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment keeps the coverage and payment of early intervention services in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment will support the administrative changes from the Commission for Children with Special Health Care Needs to the Department of Public Health, in order to initiate cost savings
and cost containment.

(b) The necessity of the amendment to this administrative regulation: This amendment will support the administrative order signed March 1, 2004, by Secretary Holsinger, changing the administration to the Department for Public Health.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment carries out the intent and provisions of the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: Without the amendment, the statutes cannot be enforced.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 600 contracted providers which employees over 2000 individuals that serve over 10,000 children in Kentucky who have developmental delays and disabilities and their (approximately 15000) families and other collaborating agencies.

(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: These groups will be impacted by these changes in coverage and payment for early intervention services. There will be specifications strengthening more appropriate personnel who may perform a service for payment and in some instances there will be less staff performing the same service. Overall, a substantial cost savings within the program.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.
Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or final month, depending upon the length of initial probationary period, except as provided in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

<table>
<thead>
<tr>
<th>TITLE CODE</th>
<th>JOB CLASSIFICATION</th>
<th>LENGTH OF INITIAL PROBATIONARY PERIOD</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>Wildlife and Boating Law Enforcement Officer</td>
<td>12 months</td>
</tr>
<tr>
<td>2201</td>
<td>Correctional Officer</td>
<td>8 months</td>
</tr>
<tr>
<td>2301</td>
<td>Arson Investigator I</td>
<td>12 months</td>
</tr>
<tr>
<td>2302</td>
<td>Arson Investigator II</td>
<td>12 months</td>
</tr>
<tr>
<td>2305</td>
<td>Hazardous Devices Investigator</td>
<td>12 months</td>
</tr>
<tr>
<td>2306</td>
<td>State Park Ranger</td>
<td>12 months</td>
</tr>
<tr>
<td>2308</td>
<td>Facilities Security Sergeant</td>
<td>12 months</td>
</tr>
<tr>
<td>2309</td>
<td>Facilities Security Lieutenant</td>
<td>12 months</td>
</tr>
<tr>
<td>2311</td>
<td>Facilities Security Officer I</td>
<td>12 months</td>
</tr>
<tr>
<td>2312</td>
<td>State Park Ranger Captain</td>
<td>32 months</td>
</tr>
<tr>
<td>2313</td>
<td>State Park Ranger Recruit</td>
<td>12 months</td>
</tr>
<tr>
<td>2322</td>
<td>Facilities Security Officer II</td>
<td>12 months</td>
</tr>
<tr>
<td>2330</td>
<td>MVE Officer I</td>
<td>12 months</td>
</tr>
<tr>
<td>2350</td>
<td>Mounted Patrol Officer Recruit</td>
<td>12 months</td>
</tr>
<tr>
<td>2351</td>
<td>Mounted Patrol Officer I</td>
<td>12 months</td>
</tr>
<tr>
<td>2352</td>
<td>Mounted Patrol Sergeant</td>
<td>12 months</td>
</tr>
<tr>
<td>2353</td>
<td>Mounted Patrol Captain</td>
<td>12 months</td>
</tr>
<tr>
<td>2401</td>
<td>Police Communications Dispatcher I</td>
<td>12 months</td>
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<tr>
<td>2403</td>
<td>Police Communications Dispatcher II</td>
<td>12 months</td>
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<tr>
<td>2404</td>
<td>Police Communications Dispatcher Shift Supervisor</td>
<td>12 months</td>
</tr>
<tr>
<td>2405</td>
<td>Police Communications Dispatcher Supervisor</td>
<td>12 months</td>
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<tr>
<td>2408</td>
<td>Vehicle Enforcement Inspector I</td>
<td>12 months</td>
</tr>
<tr>
<td>2415</td>
<td>Transportation Operations Center Specialist I</td>
<td>12 months</td>
</tr>
<tr>
<td>2433</td>
<td>Polygraph Examiner II</td>
<td>12 months</td>
</tr>
<tr>
<td>2434</td>
<td>Polygraph Examiner I</td>
<td>12 months</td>
</tr>
<tr>
<td>2468</td>
<td>Communications Dispatcher I</td>
<td>12 months</td>
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<tr>
<td>3254</td>
<td>Boiler Inspector I</td>
<td>12 months</td>
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<tr>
<td>3416</td>
<td>Financial Institutions Examiner I</td>
<td>12 months</td>
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<tr>
<td>3550</td>
<td>Insurance Fraud Investigator I</td>
<td>12 months</td>
</tr>
<tr>
<td>3551</td>
<td>Insurance Fraud Investigator II</td>
<td>12 months</td>
</tr>
<tr>
<td>3552</td>
<td>Insurance Fraud Investigator III</td>
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</tr>
<tr>
<td>3553</td>
<td>Insurance Fraud Investigator Supervisor</td>
<td>12 months</td>
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<td>3734</td>
<td>Assessment Conference Officer</td>
<td>12 months</td>
</tr>
<tr>
<td>4056</td>
<td>Firearms and Toolmark Examiner I</td>
<td>12 months</td>
</tr>
<tr>
<td>4061</td>
<td>Forensic Serologist I</td>
<td>12 months</td>
</tr>
</tbody>
</table>

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. When the employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

(4) If an applicant is appointed to a position from a competitive register, the appointment shall be considered an initial appointment.

Section 2. Promotional Probationary Period. (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been
promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. A written notification shall be sent to the employee to advise the employee of the effective date of reversion. When the employee is notified, a copy of the notice of reversion shall be forwarded to the Secretary of Personnel on the same date notice is delivered to the employee.

(3) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the appropriate month following promotion, as required by KRS 18A.005(25), except as provided in KRS 18A.111.

Section 3. Probationary Period Upon Reinstatement. (1) An employee who is reinstated, except an employee ordered reinstated pursuant to KRS 18A.111(3), to a position in the classified service no later than twelve (12) months after the beginning of a break in the classified service shall be reinstated with status.

(2) An employee who is reinstated more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period.

MARK A. SIPEK, Executive Director
APPROVED BY AGENCY: October 11, 2004
FILED WITH LRC: October 11, 2004 at 2 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2004, at 9:00 a.m. at the Kentucky Personnel Board, 28 Fountain Place, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 2004, five working days prior to the hearing, of their intent to attend. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who 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 close of business December 1, 2004. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Mark A. Sipek, Executive Director, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 564-1693.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mark A. Sipek
(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation sets forth the positions for which an initial probationary period in excess of 6 months is required.

(b) The necessity of this administrative regulation: To establish the appropriate probationary periods for classifications throughout state government.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.0751(4)(e) requires the Personnel Board to promulgate an administrative regulation listing the job classifications for which an initial probationary period in excess of 6 months is required.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the positions for which an initial probationary period in excess of 6 months is required.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment provides for a new initial probationary period for the State Park Ranger, State Park Ranger Captain, Vocational Rehabilitation Program Assistant I, Vocational Rehabilitation Specialist I, Vocational Rehabilitation Specialist II, Vocational Rehabilitation Specialist III, Vocational Rehabilitation Specialist IV, Vocational Rehabilitation Specialist V, Vocational Rehabilitation Administrator I, Vocational Rehabilitation Administrator II, and Vocational Rehabilitation Teacher classifications. It also amends the existing regulation to provide the new Title Code for the State Park Ranger Recruit classification, with an initial probationary period of 12 months.

(b) The necessity of the amendment to this administrative regulation: Secretary of the Personnel Cabinet has recommended changes to the list of classifications for which an initial probationary period in excess of 6 months is required.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consists of changes to the list of classifications for which an initial probationary period in excess of 6 months is required.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to meet state agency needs and allow for shorter initial probationary periods for the State Park Ranger, State Park Ranger Captain, Vocational Rehabilitation Program Assistant I, Vocational Rehabilitation Specialist I, Vocational Rehabilitation Specialist II, Vocational Rehabilitation Specialist III, Vocational Rehabilitation Specialist IV, Vocational Rehabilitation Specialist V, Vocational Rehabilitation Administrator I, Vocational Rehabilitation Administrator II, and Vocational Rehabilitation Teacher classifications in order to aid recruitment and retention of these critical professional positions. Also, for the State Park Ranger Recruit, an exclusive job title code for the Department of Parks. This will allow adequate time to evaluate these critical new employees.

(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state employees appointed to the listed classifications.

(f) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The state employees appointed to the State Park Ranger, State Park Ranger Captain, Vocational Rehabilitation Program Assistant I, Vocational Rehabilitation Specialist I, Vocational Rehabilitation Specialist II, Vocational Rehabilitation Specialist III, Vocational Rehabilitation Specialist IV, Vocational Rehabilitation Specialist V, Vocational Rehabilitation Administrator I, Vocational Rehabilitation Administrator II, and Vocational Rehabilitation Teacher classifications will serve shorter probationary periods in order to aid recruitment and not penalize those employees. For the State Park Ranger Recruit, the 12 month probationary period will allow sufficient time to complete all training and for adequate time to evaluate the new employees.

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

(a) Initially: None

(b) On a continuing basis: None

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(3) 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: N/A

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

(4) TIERING: Is tiering applied? This regulation must apply equally to all classified employees in all state agencies with classified employees.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Amendment)

201 KAR 22:020. Eligibility and credentialing procedure [Method of applying for licensure].

RELATES TO: KRS 327.050, 327.060, 327.080
STATUTORY AUTHORITY: KRS 327.040(11), (12), (13), (14)
NECESSITY, FUNCTION, AND CONFORMITY: [KRS 327.060 establishes the licensing provisions for physical therapists. This administrative regulation establishes [describes] the criteria for eligibility, methods, and procedures of qualifying [applying] for a credential [licensed] to practice physical therapy in Kentucky.]

Section 1. Applications shall be accepted for credentialing on successful completion of one (1) of the following processes:

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

Section 2. To be eligible [te-sit] for the [licensure] examination, the applicant shall:

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

(6) Register for the examination.

Section 3. Applicants for credentialing who are registered for the examination in another jurisdiction shall:

(1) Meet the eligibility requirements of Section 2 of this administrative regulation;
(2) Register with the Federation of State Boards of Physical Therapy (FSBPT) Score Transfer Service to have results submitted to Kentucky.

Section 4. [2] To be eligible for credentialing [licensure-application] by endorsement, the applicant shall:

(1) Meet the requirements established in Section 2(1), (3), (4) and (5) [1] of this administrative regulation; and
(2) Have successfully completed the examination and register with the FSBPT to have results submitted to Kentucky.

(a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993 shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation, set equal to a converted score of seventy-five (75);
(b) After July 1, 1993, the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600;
(c) Other examinations as determined by the board can be approved in lieu of, or in addition to the NPTE;
(d) Have an active credential in this profession in another jurisdiction; and
(4) Have verification of credentials showing the credential has never been revoked, suspended, on probation or under disciplinary review in another jurisdiction.

Section 5. To be eligible for reinstatement the applicant shall meet the requirements in 201 KAR 22.040.

Section 6. To be eligible for a temporary permit, the candidate shall:

(1) Meet the qualifications of Section 2 or 3 of this administrative regulation or 201 KAR 22.070; and
(2) Complete the supervisory agreement.

Section 7. Upon issuance of a temporary permit:

(1) The physical therapist applicant shall work only under the supervision of a physical therapist practicing in Kentucky on an unrestricted credential.

(2) The supervising physical therapist for the physical therapist applicant shall:
(a) Be available and accessible by telecommunications at all times during the working hours of the applicant with a temporary permit;
(b) Be responsible for the direction of the actions of the person supervised when services are performed by the person with a temporary permit;
(c) Cosign all evaluations and physical therapy notes within fourteen (14) days; and
(d) Document the date of the record review.

(3) The physical therapist assistant applicant shall work only under the supervision of a physical therapist practicing in Kentucky on an unrestricted credential.

(4) The supervising physical therapist for the physical therapist assistant applicant shall:
(a) Be on-site at all times during the working hours of the applicant with a temporary permit;
(b) Be responsible for the direction of the actions of the applicant supervised when services are performed by the applicant with a temporary permit;
(c) Cosign all physical therapy notes within seven (7) days; and
(d) Document the date of the record review.

The temporary permit shall be revoked if the applicant:
(a) Fails to obtain a passing score on the examination; or
(b) Fails to complete the scheduled examination within the initial 60 day eligibility period.

Section 8. A credential issued by the board shall be in effect until March 31 of the next even-numbered year. [required by 201 KAR 22.031, Section 1(2).

Section 2. To be eligible for licensure-application by endorsement, the applicant shall:

(1) Meet the requirements established in Section 2 of this administrative regulation;
(2) Have successfully completed the examination required by 201 KAR 22.031, Section 3. Candidates shall be accepted for licensure based on successful completion of one (1) of the following processes:

(a) Examination;
(b) Endorsement;
(c) Reinstatement.

Section 9. [4.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Credentialing 9/2004; [Licensure as a Physical Therapist 11/08/01]; and"
(b) "Supervisory Agreement for Physical Therapist Examination Candidate, 9/2004; and [Application for Certification as a Physical Therapist's Assistant 02/04/01]; (c) "Supervisory Agreement for Physical Therapist Assistant Examination Candidate, 9/2004.

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

TERRY RANDALL, PT, Chairman
APPROVED BY AGENCY: September 2, 2004
FILED WITH LRC: September 27, 2004 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2004 at 9 a.m. (EST) at 9110 Leagxale Road, Suite 6, Louisville, Kentucky 40222-5159. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative
and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotion, and motivation. The intent of this administrative regulation is to provide a definition of psychological testing sufficient to allow this board to regulate effectively this aspect of psychological practice. The ability to administer and interpret psychological testing assumes formal academic training at the graduate level in statistics, test construction, sampling theory, tests and measurement, individual differences, and personality theory. In addition, the interpretation of psychological tests for diagnostic purposes assumes formal academic training in the areas of abnormal psychology, psychopathology, psychodiagnosis and, in the case of neuropsychological diagnosis, training in neuropsychology. Competent administration and interpretation of psychological tests also requires formal supervised practice experience.

Section 1. Definitions. (1) "Psychological testing" means the use of (1) or more standardized measurement instruments, devices, or procedures including the use of computerized psychological tests, to observe or record human behavior, and which require the application of appropriate normative data for interpretation, [or] classification or diagnosis. Psychological testing [and] includes the use of standardized instruments for the purpose of the diagnosis and treatment of mental and emotional disorders and disabilities, or for the evaluation or assessment of cognitive and intellectual abilities, personality and emotional states and traits, and neuropsychological functioning.

(a) An individually administered, comprehensive test [Tests] [4] Individual tests] for the evaluation of cognitive and intellectual abilities and the diagnosis and classification of disabilities including: [examples of which are:]
  1. [ea] The Wechsler series;
  2. [eb] The Stanford-Binet; [and]
  3. [ec] The Kaufman Assessment Battery for Children; and [1]
  4. Other individually administered, comprehensive tests of cognitive functioning for the purposes of clinical diagnosis, classification, or treatment:
  (b) An individually administered, comprehensive (c) Individual test designed to measure state and trait aspects [and projective tests] of personality and emotional functioning for the purposes of clinical diagnosis, classification, or treatment, including [states and traits, examples of which are:]
  1. [ea] The Minnesota Multiphasic Personality Inventory; [and]
  2. [eb] The Millon Clinical Multiaxial Inventory;
  3. [ec] The Millon Adolescent Clinical Inventory; [and]
  4. The Personality Assessment Inventory; and [d] Projective techniques including:]
  5. Other individually administered, comprehensive objective tests to assess personality characteristics for the purposes of clinical diagnosis, classification, or treatment;
  (c) An individually administered projective test of personality and emotional states and traits for the purposes of clinical diagnosis, classification, or treatment including:
  1. The Rorschach Ink Blots;
  2. Thematic Apperception Test; [and]
  3. The Holtzman Ink Blots;
  4. Roberts Apperception Test; and
  5. Other individually administered, comprehensive projective tests to assess personality and emotional traits for the purposes of clinical diagnosis, classification, or treatment: [d] Projective techniques including: [3] Individual tests of neuropsychological functioning designed to evaluate brain and behavior relationships for the purposes of clinical diagnosis, classification, or treatment, including: [examples of which are:]
  1. [ea] The Halstead-Reitan Battery;
  2. [eb] The Luria-Nebraska Battery;
  3. [ec] The "Lezak or Kaplan Battery"; [and]
  4. [ed] The NEPSY; and [1]
  5. Other individually administered, comprehensive tests or subtests of neuropsychological functioning for the purposes of clinical diagnosis, classification, or treatment planning.
Section 2. The ability to administer and interpret psychological testing assumes formal academic training at the graduate level in
statistics, test construction, sampling theory, tests and measurement, individual differences, and personality theory. In addition, the
interpretation of psychological tests for diagnostic purposes assumes formal, academic training in the areas of abnormal psychol-
ogy, psychopathology, psychodiagnosis and, in the case of neuro-
psychological diagnosis, training in neuropsychology. Competent
administration and interpretation of psychological tests also re-
quires formal supervised practice experience.

1. [Section 3. Services which are described as] "Psychological
tests [testing]" may only be administered and interpreted by persons
credentialled by this board or who meet the formal academic
training and/or experience qualifications described above and who
are otherwise exempt by statute.

2. [4(1)] Persons credentialled by this board, as well as other
licensed or certified professionals, may also use tests of language,
education and achievement, as well as tests of abilities, interests,
and aptitudes. With the exception of the test categories and psy-
chological tests listed in Section 2 of this administrative regulation,
the use of these other tests is not exclusively within the scope of
this administrative regulation.

3. [23] Members of other professions may not train or super-
vise any person in performing psychological testing.

4. [33] The practice of psychology shall be construed within
the meaning of the definition contained in KRS 319.010(6) without
regard to whether payment is received for services rendered.

5. [4-5] Sealed, which are described as "Psychological tests"
and service (testing and treatment) may be administered to minor children only
upon the notification of and the granting of written permission by
the parent or legal guardian, unless otherwise required by the
courts subject to specific state or federal law.

TRACY DWIGHT EULLS, MBA, Ph.D., Chair
R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: September 15, 2004
FILED WITH LRC: September 16, 2004 at 3 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hear-
ing on this administrative regulation shall be held on November 23,
2004 at 2 p.m. at Division of Occupations and Professions, 911
Leawood Drive, Frankfort, Kentucky. Individuals interested in being
heard at this hearing shall notify this agency in writing five work-
days prior to the hearing, of their intent to attend. If no notification
of intent to attend the hearing is received by that date, the hearing
may be canceled. This hearing is open to the public. Any person
who 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 December
1, 2004. Send written notification of intent to be heard at the public
hearing or written comments on the proposed administrative regu-
lation to the contact person.

CONTACT PERSON: John C. Parrish, Director, Division of
Occupations and Professions, 911 Leawood Drive, Frankfort,
Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John C. Parrish
(1) Provide a brief summary of
(a) What this administrative regulation does: This regulation
provides a definition of psychological testing, and allows the board
to regulate this aspect of psychological practice.
(b) The necessity of this administrative regulation: The neces-
sity of this regulation is to enable the board to regulate psychologi-
cal testing and ensure that it is done in a competent manner.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: It protects the people of this state from
the unlawful, unqualified, and improper use of psychological tests.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This regulation
provides definitions of psychological testing and describes specific
tests that are considered psychological, as well as those that are
not. It outlines who may use psychological tests
(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: The definition of psychological testing is refined; qualifi-
cations for administering and interpreting psychological tests are
clarified.
(b) The necessity of the amendment to this administrative
regulation: To clarify language in the regulation and to clarify
qualifications to administer and interpret psychological tests.
(c) How the amendment: conforms to the content of the
authorizing statutes: The amendment uses language consistent
with KRS Chapter 319.
(d) How the amendment will assist in the effective administra-
tion of the statutes: Improved language, improved effectiveness in
regulating the practice of psychology.

(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this admin-
istrative regulation: Licensed psychologists, licensed psychological
associates, licensed psychological practitioners, certified psy-
chologists, certified psychologists with autonomous functioning,
people who administer tests in a variety of settings.

(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: They
should benefit from improved clarity in defining psychological tests
and who may use them.

(5) Provide an estimate of how much it will cost to implement
this administrative regulation: No costs will be encountered by
the implementation of this regulation.

(a) Initially: No costs will be encountered by the implementation
of this regulation.

(b) On a Continuing basis: No costs will be encountered by
the implementation of this regulation.

(6) What is the source of the funding to be used for the
implementation and enforcement of this administrative regulation:
The board's operation is funded by fees paid by credential holders
and applicants.

(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: No additional
fees will be required.

(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: No di-
rect or indirect costs.

(9) TIERING: Is tiering applied? Tiering was not applied as the
criteria applies to all candidates.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(Amendment)

201 KAR 26:145. Code of conduct.

RELATES TO: KRS 319.032, 319.082
STATUTORY AUTHORITY: KRS 319.032(1)(c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS
319.032(1)(c) requires the board to establish requirements for
disciplining a credential holder of this board, whether a licensed
psychologist, certified psychologist, certified psychologist with
autonomous functioning, licensed psychological practitioner, li-
censed psychological associate, an applicant or a holder of a tem-
porary license. This administrative regulation establishes a code of
conduct for a person practicing psychology.

Section 1. Definitions. (1) "Client" means a person who meets
the requirements established in Section 2 of this administrative
regulation.

(2) "Confidential information" means information revealed by a
client or clients or otherwise obtained by a credential holder in a
professional relationship, if there is reasonable expectation that
because of the relationship between the client and the credential
VOLUME 31, NUMBER 5 – NOVEMBER 1, 2004

(a) The credential holder rendering professional services to an individual client, or services billed to a third-party payor, shall maintain professional records that include:
1. The presenting problem, purpose or diagnosis;
2. The fee arrangement;
3. The date and substance of each professional [billed—or service-count] contact or service;
4. Test results or other evaluative results obtained and the basic test data from which the results were derived;
5. Notation and results of a formal consult with another provider; and
6. A copy of all test or other evaluative reports prepared as part of the professional relationship.

(b) The credential holder shall ensure [secure] that all [data entries in the professional] records are maintained for a period of not less than six (6) [five–(6)] years after the last date that [services were [service was]] rendered.

(c) The credential holder shall store and dispose of written, electronic and other records in a manner which shall ensure [secure] their confidentiality.

(d) For each person supervised pursuant to KRS Chapter 319, the credential holder shall maintain for a period of not less than six (6) [five–(6)] years after the last date of supervision a record of each supervisory session that shall include the type, place, date, and general content of the session.

(2) Continuity of care. The credential holder shall make arrangements for another appropriate professional or professionals to provide [deal with] an emergency need of a client, as appropriate, during a period of his or her foreseeable absence from professional availability.

Section 4. Impaired Objectivity and Dual Relationships. (1) Impaired credential holder.
(a) The credential holder shall not undertake or continue a professional relationship with a client if the objectivity or competency of the credential holder is impaired due to a mental, emotional, physiologic, pharmacologic, or substance [substances] abuse condition.

(b) If an impairment [condition] develops after a professional relationship has been initiated, the credential holder shall:
1. Terminate the relationship in an appropriate manner;
2. Notify the client in writing of the termination; and
3. Assist the client in obtaining services from another professional.

(2) Prohibited dual relationships.
(a) The credential holder shall not undertake or continue a professional relationship with a client if the objectivity or competency of the credential holder is impaired because of the credential holder's present or previous 'amitral, social, sexual, emotional, financial, supervisory, administrative, or legal relationship with the client or a relevant person associated with or related to the client.

(b) The credential holder, in interacting with a client, shall not:
1. Engage in verbal or physical behavior toward the client which is sexually seductive, demeaning, or harassing;
2. Engage in sexual intercourse or other physical intimacy with the client; or
3. Enter into a potentially exploitative relationship with the client.

(c) The prohibitions established in paragraph (b) of this subsection shall extend indefinitely if the client is [proven to be] clearly vulnerable, by reason of emotional or cognitive disorder, to exploitative influence by the credential holder.

Section 5. Client Welfare. (1) Providing explanation of procedures. The credential holder shall give a truthful, understandable, and appropriate account of the client's condition to the client or to those responsible for the care of the client. The credential holder shall keep the client fully informed as to the purpose and nature of an evaluation, treatment, or other procedure, and of the client's right to freedom of choice regarding services provided.

(2) Termination of services.
(a) If professional services are terminated, the credential holder shall offer to assist the client in obtaining services from another professional [help locate alternative sources of professional...]

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services or assistance if indicated). 
(b) The credential holder shall:
1. Terminate a professional relationship if the client is not benefiting from the services [relationship]; and
2. Prepare the client appropriately for the termination.
(3) Stereotyping. The credential holder shall not impose on the client a stereotype of behavior, values, or roles related to age, gender, religion, race, disability, nationality, sexual preference, or diagnosis which would interfere with the objective provision of psychological services to the client. 
(4) Sexual or other dual relationship with a client. The credential holder shall not enter into a sexual or other dual relationship with a client, as specified in Section 4(2) of this administrative regulation.
(5) Solicitation of business by clients. The credential holder providing services to an individual client shall not induce that client to solicit business on behalf of the credential holder.
(6) Referrals on request. The credential holder providing services to a client shall make an appropriate referral of the client to another professional if requested to do so by the client.


(2) Welfare of research subjects. The credential holder shall respect the dignity and protect the welfare of his or her research subjects, and shall comply with all relevant statutes and administrative regulations concerning treatment of research subjects.

Section 7. Protecting the Confidentiality of Clients. (1) General. The credential holder shall safeguard the confidential information obtained in the course of practice, teaching, research, or other professional services. Except as provided in this section, the credential holder shall obtain the informed written consent of the client prior to disclosing confidential information.
(2) Disclosure without written informed consent. The credential holder shall disclose confidential information without the informed consent of the client if the credential holder has a duty to warn an intended victim of the client's threat of violence pursuant to KRS 202A.400 or 645.270.
(3) Disclosure if the client is a corporation or other organization. If the client is a corporation or other organization, the requirements for confidentiality established in this section shall:
(a) Apply to information that pertains to:
1. The corporation or organization; or
2. An individual, including personal information, if the information is obtained in the proper course of the contract; and
(b) Not apply to personal information concerning an individual if the individual had a reasonable expectation that the information was:
1. Obtained in a separate professional relationship between the credential holder and the individual; and
2. Subject to the confidentiality requirements established in this section.
(4) Services involving more than one (1) interested party. If more than one (1) party has an appropriate interest in the professional services rendered by the credential holder to a client or clients, the credential holder shall clarify to all parties prior to rendering the services the dimensions of confidentiality and professional responsibility that shall pertain in the rendering of services.
(5) Multiple clients. If service is rendered to more than one (1) client during a joint session, the credential holder shall at the beginning of the professional relationship clarify to all parties the manner in which confidentiality shall be handled.
(6) Legally dependent clients. At the beginning of a professional relationship the credential holder shall inform a client who is below the age of majority or who has a legal guardian, of the limit the law imposes on the right of confidentiality with respect to his or her communications with the credential holder.
(7) Limited access to client records. The credential holder shall limit access to client records to preserve their confidentiality and shall ensure [assure] that all persons working under the credential holder's authority comply with the requirements for confidentiality of client material.
(8) Release of confidential information. The credential holder shall release confidential information upon court order or to conform with state law, including KRS 422.317, or federal law or regulation.
(9) Reporting of abuse of children and vulnerable adults. The credential holder shall be familiar with the relevant laws concerning the reporting of abuse of children and vulnerable adults, and shall comply with those laws, including KRS 620.030.
(10) Discussion of client information among professionals. If rendering professional services as part of a team or if interacting with other appropriate professionals concerning the welfare of the client, the credential holder may share confidential information about the client if the credential holder takes reasonable steps to protect [assure] that all persons receiving the information are informed about the confidential nature of the information and abide by the rules of confidentiality.
(11) Disguising confidential information. If case reports or other confidential information is used as the basis of teaching, research, or other published reports, the credential holder shall exercise reasonable care to ensure that the reported material is appropriately disguised to prevent client identification.
(12) Observation and electronic recording. The credential holder shall ensure that diagnostic interviews or therapeutic sessions with a client are observed or electronically recorded only with the informed written consent of the client.
(13) Confidentiality after termination of professional relationship. The credential holder shall continue to treat as confidential information regarding the client after the professional relationship between the credential holder and the client has ceased.

Section 8. Representation of Services. (1) Display of credentials. The credential holder shall display his or her current credentials to practice psychology on the premises of his or her professional office.
(2) Misrepresentation of qualifications. The credential holder shall not misrepresent directly or by implication his or her professional qualifications such as education, experience, or areas of competence.
(3) Misrepresentation of affiliations. The credential holder shall not misrepresent directly or by implication his or her affiliations, or the purposes or characteristics of institutions and organizations with which the credential holder is associated.
(4) False or misleading information. The credential holder shall not include false or misleading information in a public statement concerning professional services offered.
(5) Misrepresentation of services or products. The credential holder shall not associate with or permit his or her name to be used in connection with a service or product in a way which misrepresents:
(a) The service or product;
(b) The degree of his or her responsibility for the service or product; or
(c) The nature of his or her association with the service or product.
(6) Correction of misrepresentation by others. The credential holder shall correct others who misrepresent the credential holder's professional qualifications or affiliations.

Section 9. Disclosure of Cost of Services. The credential holder shall not mislead or withhold from a [the] client, [a] prospective client, or third party payor, information about the cost of his or her professional services.

Section 10. Assessment Procedures. (1) Confidential information. The credential holder shall treat as confidential any assessment results [result] or interpretations [interpretation] regarding an individual [as confidential information].
(2) Protection of integrity of assessment procedures. The credential holder shall not disseminate [reproduce or describe in a public presentation] a psychological test [other assessment device] in a way that may [might] invalidate it [them].
(3) Information for professional users. The credential holder offering an assessment procedure or automated interpretation
service to another professional shall accompany this offering by a manual or other printed material which [fully] describes the development of the assessment procedure or service, the rationale, evidence of validity and reliability, and characteristics of the normative population. The credential holder shall [explicitly] state the purpose and application for which the procedure is recommended and identify any special qualifications required to administer and interpret it properly. The credential holder shall ensure that [the] advertisements for the assessment procedure or interpretive service are factual [and descriptive].

Section 11. Aiding Illegal Practice. (1) Delegating professional responsibility. The credential holder shall not delegate professional responsibilities not appropriately qualified or otherwise appropriately qualified to provide psychological services.

(2) Providing supervision. The credential holder shall exercise appropriate supervision over a supervisee, as required by 201 KAR 26:17.

TRACY DWIGHT ELLS, MBA, Ph.D., Chair
R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: September 15, 2004
FILED WITH LRC: September 16, 2004 at 3 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2004 at 2 p.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the Board in writing at least 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 shall 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 December 1, 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: John C. Parrish, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4253, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John C. Parrish

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes a code of conduct for a person practicing psychology.

(b) The necessity of this administrative regulation: The necessity of this regulation is to provide credentials holders with explicit language regarding behavior that may result in disciplinary action, consistent with KRS Chapter 319.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It protects the people of this state by establishing explicit behavioral standards for credentials holders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides explicit behavioral standards for credentials holders, violation of which may result in disciplinary action by this board.

(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 adds simplifying and clarifying language, increases mandatory number of years records must be kept, and clarifies conditions that must be met to release confidential information

(b) The necessity of the amendment to this administrative regulation: To improve understanding of expected professional conduct, to increase conformity with federal law.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment uses language consistent with KRS Chapter 319.

(d) How the amendment will assist in the effective administration of the statutes: Improved language will help administer KRS Chapter 319.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed psychologists, licensed psychological associates, licensed psychological practitioners, certified psychologists, certified psychologists with autonomous functioning.

(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: No changes in current practice will occur as a function of this regulation. Credential holders may benefit from the language clarifications.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional costs will be encountered by the implementation of this regulation.

(a) Initially: No additional costs will be encountered by the implementation of this regulation.

(b) On a Continuing basis: No additional costs will be encountered by the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by 'ees paid by credential holders and applicants.

(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 additional fees will be required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect costs.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria applies to all candidates.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(Amendment)

201 KAR 26:155. Licensed psychologist: application procedures and temporary license.

RELATES TO: KRS 319.050
STATUTORY AUTHORITY: 319.032(1)(a), (c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychologist. This administrative regulation establishes the requirements for applicants for licensure, and the conditions for a temporary license.

Section 1. Application. (1) An application for a credential as a licensed psychologist may be submitted after the requirements established in KRS 319.050(2) are met.

(2) The application required by subsection (1) or (2) of this section shall be made by submitting a completed Form Psy-1 to the board. The application shall:

(a) Include a certification by the applicant that the:
1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and
2. Applicant is aware that the board may take disciplinary actions if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:
1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160;
2. Three (3) letters of reference from persons qualified to evaluate the applicant's professional ability, including two (2) persons who have received a doctorate in psychology (Ph.D. Psy.D., Ed.D.); and
3. An official transcript for all levels of education required for licensure.

Section 2. Temporary Licensure. (1) Pending successful com-
plication of required examinations, an applicant may request permission to practice psychology at the doctoral level on a temporary basis pursuant to KRS 319.050(3). The request for a temporary credential shall be signed by the candidate and the proposed supervisor, who shall be a licensed psychologist approved by the board.

(2) Supervision during the period of temporary licensure shall be a minimum of two (2) hour of individual, face-to-face supervision on a weekly basis.

(3) A report of supervision shall be submitted on a regular basis as required by 201 KAR 28:171, Section 6.

(4) The candidate shall take the Examination for Professional Practice in Psychology (EPPP) within one year of the board’s written approval of temporary licensure (sixty (60) days from the date of the written letter of approval) which comes from the ASPPB examination contractor. Upon receipt of the application for licensure, the candidate shall receive a packet of materials from the board about the EPPP, which instruction to the candidate to contact the ASPPB examination contractor directly for the procedures to follow regarding test application, payment and taking the examination.

(5) The period of temporary licensure shall be terminated upon successful completion of all credentials and examination procedures or upon the earliest (one (1)) of the following:

(a) The candidate’s failure to pass the EPPP within one (1) year of the date of the board’s [authorization-to-test letter] approval for temporary license.

(b) The candidate’s failure to pass the oral examination within one (1) year of the date of the postdoctoral year.

(c) The passage of two (2) years from issuance.

(6) Under exceptional circumstances and upon written request from the board approved supervisor the board may approve an extension of the period of temporary licensure.

Section 3. [Postdoctoral Supervisory Experience]. (1) The one (1) year of postdoctoral experience required by KRS 319.050(2)(c) shall be a training-oriented professional experience.

(2) During the year of postdoctoral experience, the candidate shall:

(a) Obtain and maintain a temporary license as required in Section 2 of this administrative regulation.

(b) Be under supervision as required by 201 KAR 26:471; and

(c) Be employed:

(i) By a:

(a) Regional mental health mental retardation board;

(b) College or university; or

(c) Government agency;

(ii) In the supervisor’s independent practice, if the supervisor is responsible for the direction and control of the practice of the candidate.

(3) In an independent practice that is approved by the board after submission of a special application letter.

(a) A supervisor and a candidate employed in an independent practice shall submit a special application letter to the board if:

(i) The supervisor of record is not the employer; or

(ii) The employer is not an organization listed in subparagraph 1-of this paragraph.

(b) The board shall approve the independent practice before the practice begins.

(c) The special application letter shall identify the temporarily licensed psychologist, supervisor, and employer.

(d) The special application letter shall certify that:

(i) The supervising psychologist is not hired, employed or engaged under contract by the candidate and shall not be terminated by the candidate;

(ii) The candidate is not one (1) of the owners of the independent practice or organization, but rather serves as an employee; and

(iii) The candidate has both administrative and clinical supervision which is provided by the independent practice or organization.

(4) The postdoctoral year shall be served:

(a) In a formalized postdoctoral internship program in a health care facility; or

(b) In an informal arrangement that meets the requirements of subsection (5) of this section.

(4) The supervised professional experience shall include:

(a) Training and supervision in the following areas:

(i) Clinical skill development;

(ii) Legal and regulatory issues;

(iii) Ethical dilemmas and issues; and

(iv) Supervision of skill development.

(b) The candidate and the supervisor of record shall design and describe the proposed experience, including the areas listed in subsection (4) of this section, at the time of application for temporary licensure.

(c) To qualify as postdoctoral supervisory experience, a supervisory experience at a university shall:

(i) Be proffered by a full-time faculty member;

(ii) Include a plan that contains each of the areas established in subsection (4) of this section; and

(iii) Include a minimum of 430 hours of direct and indirect client involvement that:

(1) Is supervised by a licensed psychologist; and

(2) Includes:

(a) Supervising student clinical work;

(b) Diagnosing and interviewing activity that occurs within clinical research projects; or

(c) Clinical work in the context of psychotherapy, interviewing, or psychological testing.

(5) The board shall not request for temporary licensure if the request does not contain an acceptable written plan that the candidate will meet the requirements described by this section.

Section 4. [Grace Period for Submission of Credentials]. In order to allow for processing of the candidate’s materials by the board, there shall be a grace period not to exceed sixty (60) days within which candidates who have completed their degree requirements may begin the postdoctoral year or employment [by an agency] to practice psychology under temporary supervision of a board-approved supervisor, as established in 201 KAR 26:180.

(1) Upon acceptance of employment or the beginning of the postdoctoral year, the candidate and the licensed psychologist who shall serve as his or her supervisor shall immediately submit a letter of notice to the board indicating that he or she has begun to practice in Kentucky and that application materials are forthcoming.

(2) Failure to submit this notice shall be deemed grounds for disciplinary action against the candidate and the supervisor.

(3) Upon acceptance of employment or the beginning of the postdoctoral year, the candidate and the licensed psychologist who shall serve as his or her supervisor shall immediately submit a letter of notice to the board indicating that he or she has begun to practice in Kentucky and that application materials are forthcoming.

Failure to submit this notice shall be deemed grounds for disciplinary action against the candidate and the supervisor.

Section 5. Incorporation by Reference. (1) "Form Psy 1", (January 2002 edition), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TRACY DWIGHT EELLS, MBA, Ph.D., Chair
R.B. RUDOLPH, JR., Chair
APPROVED BY AGENCY: September 15, 2004
FILED WITH LRC: September 16, 2004 at 3 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23,
2004 at 2 p.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing 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, and anyone 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 December 1, 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: John C. Parrish, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John C. Parrish
(1) Provide a brief summary of
(a) What this administrative regulation does: This regulation establishes requirements for applicants for licensure as a psychologist, including provisions for temporary licensure.
(b) The necessity of this administrative regulation: The necessity of this regulation is to provide potential credential holders with procedures and guidelines for applying for license, qualifying for written and oral examinations required by statute, obtaining a temporary license, and fulfilling a post doctoral year of supervised experience.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes explicit guidelines to carry out the mandate of the statute.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes; This regulation establishes explicit guidelines enabling this board to carry out the mandate of the statute.
(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 clarifies timelines and procedures for pursuing licensure and updated contact information for the board. 201 KAR 26:155, Section 3, regarding post doctoral supervisory experience is moved to 201 KAR 26:190.
(b) The necessity of the amendment to this administrative regulation: New wording eliminates the likelihood of misunderstanding the regulation and establishes the possibility of extension for temporary license.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment uses language consistent with KRS Chapter 319.
(d) How the amendment will assist in the effective administration of the statutes: Improved, timelines, provide for more precise interpretation and enforcement of the regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for status as licensed psychologists.
(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: Allows for extension of temporary licensure under exceptional circumstances.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional costs will be encountered by the implementation of this regulation.
(a) Initially: No additional costs will be encountered by the implementation of this regulation.
(b) On a Continuing basis: No additional costs will be encountered by the implementation of this regulation.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by credential holders and applicants.
(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 additional fees will be required.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect costs.
(9) TIERING: Is tiering applied? Tiering was not applied as the criteria applies to all candidates for licensure as psychologists.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(Amendment)

201 KAR 26:165. Inactive status.

RELATES TO: KRS 319.071
STATUTORY AUTHORITY: KRS 319.032
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.071(3) authorizes the board to grant inactive status for a credential holder for a period of up to three (3) consecutive years. This administrative regulation establishes the requirements for inactive status.

Section 1. Inactive status may be granted to a credential holder pursuant to KRS 319.071(3).
(1) The credential holder shall be relieved of their obligation to pay the renewal fee and of maintaining supervision of their practice, but shall continue to meet the requirements for continuing education.
(2) The credential holder may return to active status within the three (3) year period upon:
(a) Notification to the board.
(b) Payment of the current renewal fee;
(c) Resumption of any required supervisory relationship with a supervisor acceptable to the board; and
(d) Demonstration of compliance with all continuing education requirements during the period of inactive status.
(3) The three (3) year period of inactive status shall begin at the date of expiration of the current period of licensure.
(4) If the credential holder does not reactivate his or her [their] credential at the end of [during] the three (3) year period of inactive status, then the credential shall be forfeited and the credential holder shall make a new application to the board and be reexamined by the board before a new credential may be issued. If the credential holder returns to active status within the three (3) year period, his or her new renewal date will be deemed to be the date of return to active status.

TRACY DWIGHT ELLS, MBA, Ph.D., Chair
R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: September 15, 2004
FILED WITH LRC: September 16, 2004 at 3 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2004 at 2 p.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing 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 December 1, 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: John C. Parrish, Director, Division of
VOLUME 31, NUMBER 5 – NOVEMBER 1, 2004

Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John C. Parrish

1. Provide a brief summary of
   (a) What this administrative regulation does: This regulation establishes requirements for applicants for inactive status.
   (b) The necessity of this administrative regulation: The necessity of this regulation is to provide potential credential holders with procedures for applying for inactive status.
   (c) How this administrative regulation conforms to the content of the authorizing statute: The rule establishes explicit guidelines for carrying out the provisions of KRS 319.071.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation establishes explicit guidelines enabling this board to implement KRS 319.071.
   (e) 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 clarifies when the period of inactive status is to begin and, when the credential holder returns to practice, when their licensure renewal date will be.
      (b) The necessity of the amendment to this administrative regulation: To clarify the time period of inactive status and licensure renewal date upon credential holders return to practice.
      (c) How the amendment conforms to the content of the authorizing statute: The amendment uses language consistent with KRS Chapter 319.
      (d) How the amendment will assist in the effective administration of the statute: Clarification will reduce administrative time in communicating with credential holders regarding their status and tracking inactive status credential holders.
      (e) List the types and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All credential holders.
      (f) 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: No changes in current practice will occur as a function of this regulation.
      (g) Provide an estimate of how much it will cost to implement this administrative regulation: No additional costs will be encountered by the implementation of this regulation.
      (h) On a Continuing basis: No additional costs will be encountered by the implementation of this regulation.
      (i) Is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by fees paid by credential holders and applicants.
      (j) 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 additional fees will be required.
      (k) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect costs.
      (l) Tiering: Is tiering applied? Tiering was not applied as the criteria applies to all credential holders.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(Uniformed)

201 KAR 26:171. Requirements for supervision.

RELATES TO: KRS 319.032(1)(l), 319.050(3), (6), 319.056(4), 319.064(3), (4), 319.082(1), 319.092(3)(d), 319.118(1)
STATUTORY AUTHORITY: KRS 319.032(1)(l)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(l) requires the board to promulgate an administrative regulation governing the supervision of a certified psychologist, licensed psychological associate, candidate for licensure, or a credential holder sanctioned by the board. This administrative regulation establishes the requirements for supervision.

Section 1. A supervisory arrangement shall have the prior approval of the board, with both supervisor and supervisee petitioning the board in writing. The supervisor and supervisee shall submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement at least thirty (30) days prior to the effective date of the arrangement or change.

Section 2. (1) All supervision requirements shall:
      (a) Be met with individual, face-to-face, weekly contact between supervisor and supervisee except as provided in subsection (2) of this section and Section 12 of this administrative regulation; and
      (b) Include additional supervision sessions as needed.
      (2) An alternative format of supervision, including two-way interactive video, may be substituted for the supervisory contact, required by subsection (1) of this section, upon specific approval by the board.

Section 3. (1) A certified psychologist or licensed psychological associate may petition the board to be relieved of his or her obligation to maintain supervision during which period he or she shall not practice psychology.
      (2) The certified psychologist or licensed psychological associate shall obtain a supervisor approved by the board before the resumption of practice.
      (3) Upon renewal, the certified psychologist or licensed psychological associate shall document compliance with continuing education requirements and shall report on their professional activities and employment during the period without supervision.

Section 4. (1) A licensed psychologist shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining approval as a supervisor.
      (2) A board approved supervisor shall obtain a minimum of three (3) continuing education hours as required by 201 KAR 26:175, Section 1(5). The board shall suspend its approval of a supervisor if the supervisor does not complete the required continuing education.

Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee’s practice is in compliance with this administrative regulation.
      (2) The supervisor shall report to the board an apparent violation of KRS 319.082(1) on the part of the supervisee.
      (3) The supervisor shall inform the board immediately of a change in the ability to supervise, or in the ability of a supervisee to function in the practice of psychology in a competent manner.
      (4) The supervisor shall control, direct or limit the supervisee’s practice as appropriate to ensure that the supervisee’s practice of psychology is competent.
      (5) The supervisor of record shall be responsible for the practice of psychology by the supervisee. If the board initiates an investigation concerning a supervisee, the investigation shall include the supervisor of record.
      (6) For each person supervised pursuant to KRS 319.050(3), (6), 319.056(3), (4), 319.064(2), (4), or 319.092(3)(d), the supervisor shall maintain a record of each supervisory session that shall include the type, place, and general content of the session. This record shall be maintained for a period of not less than five (5) years after the last date of supervision.

Section 6. (1) In calculating the amount of time spent in full-time practice while under supervision, 2,000 hours of supervised practice shall be equivalent to one (1) year of experience if the practice was obtained postlicensure.
      (2) The supervisor shall provide reports to the board of the supervision of each supervisee according to the following schedule:
### Table: Credential Status and Reporting Requirements

<table>
<thead>
<tr>
<th>Credential Status</th>
<th>Reporting Period</th>
<th>Report Due Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Licensed psychological associate or certified psychologist with four (4) or more [less] years of full-time practice, or its equivalent</td>
<td>Yearly</td>
<td>January 15th</td>
</tr>
<tr>
<td>(b) Licensed psychological associate or certified psychologist [[with four (4) or less [more] years of full-time practice, or its equivalent]]</td>
<td>Every two (2) years (with prior board approval)</td>
<td>January 15th</td>
</tr>
<tr>
<td>(c) Temporarily Licensed Psychologist</td>
<td>Every six (6) Months and one (1) month prior to oral exam</td>
<td>[April and October 15th]</td>
</tr>
<tr>
<td>(d) Temporarily licensed certified psychological associate</td>
<td>Every six (6) Months</td>
<td>[April and October 15th]</td>
</tr>
<tr>
<td>(e) Sanctioned credential holder</td>
<td>Quarterly</td>
<td>January, April, July and October 15th</td>
</tr>
</tbody>
</table>

(3) The report shall include:
- (a) A description of the frequency, format and duration of supervision;
- (b) An assessment of the functioning of the supervisee, including the strengths and weaknesses; and
- (c) Other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. (1) If a supervisee has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with one another at least once every six (6) months, and they shall provide supervisory plans and reports to the board and copies to one another.
(2) A request to have more than two (2) supervisors at one (1) time shall require a special application to the board which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 8. If the supervisee is a licensed psychological associate or a certified psychologist with less than four (4) years of full-time, postlicensure practice, or its equivalent, or a license candidate with temporary permission to practice, the supervisor of record shall:
(1) Read and countersign all psychological assessments;
(2) Review treatment plans, progress notes and correspondence on an as-needed basis to assess the competency of the supervisee to render psychological services;
(3) Jointly establish with the supervisee and submit a supervisory plan to the board at the beginning of the supervisory relationship. The plan shall:
   - (a) Be updated or revised and submitted to the board with the regular report of supervision;
   - (b) Include intended format, and goals to be accomplished through the supervisory process; and
   - (c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process.
(4) Have direct observation of the supervisee’s work at least once every two (2) months. Direct observation can be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or as a cotherapist;
(5) Have direct knowledge of the size and complexity of the supervisee’s caseload;
(6) Limit and control the caseload as appropriate to the supervisee’s level of competence;
(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and
(8) Have knowledge of the supervisee’s physical and emotional well-being when it has a direct bearing on the supervisee’s competence to practice.

Section 9. If the supervisee is a licensed psychological associate or certified psychologist with more than four (4) years of full-time, postlicensure practice, or its equivalent, the supervisor of record shall:
(1) Review and countersign psychological assessments as needed or appropriate;
(2) Review treatment plans, notes, and correspondence as needed or appropriate;
(3) Jointly establish with the supervisee and submit a supervisory plan to the board at the beginning of the supervisory relationship. The plan shall:
   - (a) Be updated or revised and submitted to the board with the regular report of supervision;
   - (b) Include intended format, and goals to be accomplished through the supervisory process; and
   - (c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process.
(4) Have direct observation of the supervisee’s work on an as-needed basis;
(5) Have direct knowledge of the size and complexity of the supervisee’s caseload;
(6) Limit and control the caseload as appropriate to the supervisee’s level of competence;
(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and
(8) Have knowledge of the supervisee’s physical and emotional well-being when it has a direct bearing on the supervisee’s competence to practice.

Section 10. (1) The supervisee shall:
(2) A request to have more than two (2) supervisors at one (1) time shall require a special application to the board which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 11. Identification of Provider. The actual deliverer of a service shall be identified to the client. A billing for a rendered service shall identify which service was performed by the certified psychologist, licensed psychological associate, trainee, or other provider and supervised by the licensed psychologist.

Section 12. Frequency of Supervision. (1) A licensed psychological associate or certified psychologist shall have a minimum of one (1) hour of individual face-to-face supervision on a weekly basis for the first two (2) years of full-time practice or its equivalent following certification.
(2) After two (2) years of full-time, postlicensure practice, or its equivalent, the supervisor and supervisee may petition the board to alter the format, frequency or duration of supervision as long as the proposed change includes a minimum of two (2) one (1) hour individual face-to-face meetings every four (4) weeks, and the total amount of supervision is not less than four (4) hours per four (4) week period. This petition may include a request to change the format from individual to group supervision. Supervision requirements for part-time practice may be modified at the discretion of the board upon submission of an approvable plan.
(3)(a) After four (4) years of full-time, postlicensure practice, or its equivalent, the supervisor and supervisee may petition the board for further modification of the format, frequency, or duration of supervision, with a minimum amount of one (1) hour of face-to-face supervision per month. Board approval of additional modification of the format, frequency or duration of supervision may be
reviewed upon request made to the board.
(b) Upon a change of supervisor, a new plan for supervision shall be submitted by the supervisor and supervisee to the board for approval. This plan may require additional supervision than was previously approved by the board.
(c) Upon termination of the supervisor-supervisee relationship, the final report of supervision shall be submitted to the board.

Section 13. Supervision of a Disciplined Credential Holder. (1) The board shall appoint an approved supervisor to supervise a disciplined credential holder for the period of time defined by the board.
(2) The disciplined psychologist shall be responsible for paying the fee for supervision.
(3) The supervisor shall have completed the board approved training course in supervision.
(4) The supervisor shall:
(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;
(b) Meet with the disciplined psychologist and the board liaison to:
1. Summarize the actions and concerns of the board;
2. Review the goals and expected outcomes of supervision submitted by the board liaison;
3. Develop a specific plan of supervision; and
4. Review the reporting requirements that shall be met during the period of supervision;
(c) Meet with the disciplined psychologist at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;
(d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board-mandated supervision;
(e) Make all reasonable efforts to ensure that the disciplined credential holder's practice is in compliance with KRS Chapter 319 and 201 KAR Chapter 26;
(f) Report to the board an apparent violation of KRS 319.082(1) on the part of the disciplined credential holder;
(g) Immediately report to the board in writing [Report to the board immediately] a change in the ability to supervise, or in the ability of the disciplined credential holder to function in the practice of psychology in a competent manner;
(h) Review and countersign psychological assessments as needed or appropriate;
(i) Review treatment plans, notes, and correspondence as needed or appropriate;
(j) Have direct observation of the disciplined credential holder's work on an as-needed basis;
(k) Have direct knowledge of the size and complexity of the disciplined credential holder's caseload;
(l) Have knowledge of the therapeutic modalities and techniques being used by the disciplined credential holder; and
(m) Have knowledge of the disciplined credential holder's physical and emotional well-being when he has direct bearing on the disciplined credential holder's competence to practice.
(5) The supervisor shall control, direct or limit the disciplined credential holder's practice as appropriate to ensure [ensure] that the disciplined credential holder's practice is competent.
(6) The supervisor shall contact the board liaison with a concern or problem with the disciplined credential holder, his or her practice or the supervision process.
(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined credential holder and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 14. Board Liaison for Disciplined Credential Holder. The board shall appoint a board member to serve as a liaison between the board and the approved supervisor. The board liaison shall:
(1) Recruit the supervising psychologist from a list provided by the board;
(2) Provide the supervising psychologist with the originating complaint, agreed order or findings of the hearing and supply other material relating to the disciplinary action as deemed appropriate by the board;
(3) Ensure [ensure] that the supervising psychologist is provided with the necessary documentation for liability purposes to clarify that he or she is acting as an agent of the board pursuant to KRS 319.118(1) and has immunity commensurate with that of the board;
(4) Provide the supervising psychologist with a written description of the responsibilities of the supervisor and a copy of the responsibilities of the liaison;
(5) Ensure [ensure] that the board has sent a written notification letter to the disciplined credential holder. The notification letter shall:
(a) State the name of the supervising psychologist and the board liaison;
(b) Specify that the disciplined credential holder shall meet with the supervising psychologist and the liaison within thirty (30) days of the date of the notification letter;
(c) Meet with the supervising psychologist and disciplined credential holder within thirty (30) days of the date of the notification letter to summarize the actions of the board, review the applicable statutes and administrative regulations regarding supervision requirements for a disciplined credential holder and assist with the development of a plan of supervision. The plan of supervision shall be written at the first meeting;
(7) Submit the report of supervision to the board for approval. The liaison shall place the report of supervision on the agenda for review and approval at the next regularly scheduled board meeting. In the interim, the supervising psychologist and disciplined credential holder shall continue to meet;
(8) Remain available to the supervising psychologist to provide assistance and information as needed;
(9) Report a problem or concern to the board regarding the supervision and communicate a directive of the board to the supervising psychologist;
(10) Review the quarterly report of supervision and forward to the supervision committee of the board for approval; and
(11) Meet with the supervising psychologist and the disciplined credential holder at the end of the term of supervision to summarize the supervision.

Section 15. Psychology Graduate Students. Graduate-level psychology students who are providing services in psychological health care settings including independent practice settings shall:
(1) Be supervised by a psychologist licensed by the board with health service provider status, who is affiliated with either the university training program or the practice setting;
(2) Be registered for credit in his or her course of study;
(3) Clearly identify their status as psychology trainees and noncredential holders to all clients and payors;
(4) Give to all clients and payors the name of the licensed psychologist responsible for their work;
(5) Not accept employment or placement to perform the same or similar activities following the completion of their university-sanctioned placement, regardless of the job title given, unless the student holds a credential from the board.

TRACY DWIGHT EELLS, MBA, Ph.D., Chair
R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: September 15, 2004
FILED WITH LRC: September 16, 2004 at 3 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2004 at 2 p.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing 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 shall 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 December 1, 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: John C. Parrish, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John C. Parrish

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for supervision.

(b) The necessity of this administrative regulation: The necessity of this regulation is to provide credential holders who must receive supervision and their supervisors with guidelines and procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes explicit guidelines to carry out the provisions of KRS 319.032.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes explicit guidelines enabling this board to implement KRS 319.032.

(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: Eliminate specific dates on which 6 months supervision reports are due for temporarily licensed psychological associates.

(b) The necessity of the amendment to this administrative regulation: As the granting of temporarily licensed psychological associates may occur at different time during the year, specifying specific dates for supervisory reports does not necessarily fall 6 months from granting that status.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment uses language consistent with KRS Chapter 319.

(d) How the amendment will assist in the effective administration of the statutes: Improved language, clarification of current regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All temporarily licensed psychological associates and licensed psychologists who supervise them.

(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: Supervisory reports will be due on a 6 month schedule from when temporary license is issued rather than on a specific schedule.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional costs will be encountered by the implementation of this regulation.

(a) Initially: No additional costs will be encountered by the implementation of this regulation.

(b) On a continuing basis: No additional costs will be encountered by the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by credential holders and applicants.

(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 additional fees will be required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect costs.

(9) TIERING: Is tiering applied? Tiering is not applied as the criteria applies to all temporarily licensed psychological associates.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
( Amendment)

201 KAR 26:175. Continuing education.

RELATES TO: KRS 319.032(1)(f), 319.050, 319.053, 319.064, 319.071

STATUTORY AUTHORITY KRS 319.032(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(f) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license. This administrative regulation establishes the continuing education requirements for renewal of a license.

Section 1. Definitions. (1) "Continuing education" means participation in an approved program beyond the basic educational requirements that meets the requirements established in Section 2(1) of this administrative regulation.

(2) "Continuing education (CE) hour" means a fifty-five (55) minute clock hour of instruction.

Section 2. (1) Each credential holder shall document the completion of at least thirty (30) continuing education hours approved by the board within each three (3) year renewal period. The continuing education shall:

(a) Provide specific content: planned and evaluated to improve the credential holder's professional competence;

(b) Make possible the acquisition of new skills and knowledge required to maintain competence; and:

(c) Strengthen the habits of critical inquiry and balanced judgment; and:

(d) Include a minimum of three (3) hours in either ethical practice or risk management.

(2) Continuing educational hours shall not carry over from one (1) renewal period to the next.

(3)(a) Except as provided in paragraph (b) of this subsection, a licensed psychologist who provides supervision to an applicant for licensure, or a certified psychologist or a licensed psychological associate shall include as part of the thirty (30) hours of continuing education required by subsection (1) of this section a minimum of three (3) continuing education hours in the area of supervision theory or techniques.

(b) The requirement established in paragraph (a) of this subsection shall begin with the renewal period immediately following the period in which the original supervisory training required by 201 KAR 26:171, Section 4(1) and (2), is received.

Section 3. Hours required to satisfy the continuing education requirement shall be completed and reported at the time of credential renewal. The credential holder shall:

(1) Maintain and provide adequate records including certificates [a certificate] of attendance and documentation of completion of the required [an approved program] of continuing education hours per year.

(2) Provide documentation through a board-approved registry which shall certify the name and license number of the credential holder, date and title of each program and the number of hours earned, and confirmation that the programs were given by a board-approved provider.

Section 4. All [A] continuing education activities [activity] approved by the board shall be accepted toward [satisfy] the continuing education requirements for renewal of a credential. A credential holder shall determine prior to attending a specific continuing education program that the program:

(1) Has been approved by the board; or

(2) Is offered or sponsored by an organization approved by the board to sponsor [a continuing education programs [program]]

Section 5. Approved Sponsoring Organizations and Approved Programs. (1) Participation in a continuing education program that is offered or sponsored by an organization listed in this subsection
shall be accepted toward [satisfy] the requirement for continuing education established in Section 2(1) of this administrative regulation:

(a) The American Psychological Association; American Medical Association; American Psychiatric Association; National Association of Social Workers, or an affiliated state chapter;
(b) A recognized state, regional, national, or international psychological association; or
(c) A state or provincial psychology licensure board;

(2) The following programs shall be approved for continuing education:

(a) A course for graduate-level academic credit or a workshop in psychology or psychiatry offered by a national, regional, or state accredited academic institution or an affiliated hospital or medical center;
(b) The Kentucky Mental Health Institute or the Kentucky School of Alcohol and Other Drug Studies sponsored by the Kentucky Department for Mental Health and Mental Retardation Services;
(c) A home study course provided by the American Psychological Association; and
(d) An interactive videoconferencing, internet-based course or a home study course provided by an organization listed in subsection (1) of this section.

(3)(a) The board may [shall] approve an organization that is not listed in Section 5(1) of this administrative regulation as a sponsor of continuing education for a twelve (12) month period if the organization:
1. Files a written request for approval;
2. Pays an initial application fee of $250 (US$60) dollars; and
3. Proposes to sponsor [a] continuing education programs [program] that meets the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) An approved sponsor shall submit an annual report of the continuing education programs offered during that year.

(c) A sponsor that is approved pursuant to paragraph (a) of this subsection may request renewal of its approval for subsequent years by filing a $150 (US$60) dollar renewal fee annually.

(4)(a) The board may [shall] approve a specific continuing education program that is not listed in Section 5(2) of this administrative regulation if the sponsor of the program:
1. Files a written request for approval;
2. Pays an application fee of fifty (50) dollars; and
3. Provides information about a continuing education program that it proposes to sponsor which [Proposes to sponsor a continuing education program that] meets the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) The approval of a program pursuant to paragraph (a) of this subsection shall permit the sponsor to offer the program one (1) time. The sponsor shall submit a request for renewal and a ten (10) dollar renewal fee for each subsequent request to offer the same approved program.

Section 6. A continuing education program which satisfies the requirements for license renewal shall meet the following criteria:

(1) The program shall:
(a) Offered or sponsored by an organization which has been approved by the board; or
(b) A specific program approved by the board;
(2) The program shall:
(a) Have a clearly-stated purpose and defined content area; and
(b) Be consistent with the overall goals of continuing education as defined in Section 1 of this administrative regulation;
(3) A presenter shall be a professional qualified in the defined content area;
(4) The program's time shall be clearly stated. Actual contact time shall be a minimum of one (1) continuing education hour;
(5) Attendance shall be recorded by the program's sponsor;
(6) Documentation of completion shall be provided to the participant;
(7) A participant shall complete an evaluation of the program.

Section 7. Equivalencies. (1) A graduate-level psychology course taken at an accredited academic institution shall earn continuing education hours on the following basis:

(a) Each one (1) hour semester course shall be the equivalent of fifteen (15) continuing education hours for the purposes of meeting the requirements of this administrative regulation; and
(b) Each one (1) hour quarter course shall be the equivalent of nine (9) continuing education hours for the purposes of meeting the requirements of this administrative regulation.

(2) A person who teaches a three (3) hour semester or quarter graduate-level course in psychology at an accredited academic institution shall:

(a) Earn six (6) continuing education hours for teaching the course; and

(b) Not receive:
1. Credit more than once for teaching a particular course during a renewal period; and
2. More than six (6) continuing education hours for these teaching activities.

(3) A person who teaches an approved continuing education workshop or program shall:

(a) Earn continuing education hours on a one (1) to one (1) basis; and

(b) Not receive:
1. Credit more than once for teaching a particular workshop or program during a renewal period; and
2. More than six (6) continuing education hours for these teaching activities.

(4)(a) A person who completes a home study course shall:
1. Earn six (6) continuing education hours; and

2. Not receive:
   a. Credit more than once for completing a particular study course during a renewal period; and
   b. More than six (6) continuing education hours through a home study or internet-based course in a renewal period.

(b) A person who participates in teleconferencing in an interactive setting shall:
1. Earn one (1) continuing education hour for each clock hour of participation; and

2. Not receive more than six (6) continuing education hours through interactive videoconferencing (teleconferencing) participation.

TRACY DWIGHT EELLS, MBA, Ph.D., Chair
R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: September 15, 2004
FILED WITH LRC: September 16, 2004 at 3 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2004 at 2 p.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 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 December 1, 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: John C. Parrish, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John C. Parrish

(1) Provide a brief summary of
(a) What this administrative regulation does: This regulation establishes requirements for continuing education.
(b) The necessity of this administrative regulation: The neces-
sity of this regulation is to provide credential holders with guidance regarding the statutory requirement for continuing education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes explicit guidelines to carry out the provisions of KRS 319.032(1)(f).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes explicit guidelines enabling this board to implement KRS 319.032(1)(f).

(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: Requires a 3-hour continuing education course in ethics or risk management per renewal period. Adds ASPPB as a continuing education provider. Permits limited use of internet-based instruction. Increases continuing education provider fees.

(b) The necessity of the amendment to this administrative regulation: Increases credential holders awareness of ethical practice. Allows automatic acceptance of ASPPB provided continuing education. Better meet costs of managing continuing education programs.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment uses language consistent with KRS Chapter 319.

(d) How the amendment will assist in the effective administration of the statutes: Decreased complaints. Decrease workload on continuing education committee. Increases availability of continuing education opportunities in remote locations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All credential holders.

(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: 1 course made mandatory for each renewal period.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional costs will be encountered by the implementation of this regulation.

(a) Initially: No additional costs will be encountered by the implementation of this regulation.

(b) On a Continuing basis: No additional costs will be encountered by the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by fees paid by credential holders and applicants.

(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 additional fees required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees are established. Fees are increased only for those requesting to provide continuing education.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria applies to all credential holders.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(Amendment)

201 KAR 26:180. Requirements for granting licensure as a psychologist by reciprocity.

RELATES TO: KRS 319.032(1)(i)
STATUTORY AUTHORITY: KRS 319.032(1)(i)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing the granting of a license through reciprocity. This administrative regulation establishes the requirements for licensure as a psychologist by reciprocity.

Section 1. The board shall issue a license to an applicant who qualifies for a license as a psychologist pursuant to an agreement of reciprocity entered into by the board of this jurisdiction with the board or boards of any other jurisdiction or multiple jurisdictions.

Section 2. The applicant for licensure as a psychologist by reciprocity shall:

(1) Hold a current valid license in good standing to practice psychology which has been granted by at least one (1) state or the District of Columbia or a Canadian province which maintains a psychology registration board;

(a) That is a constituent member of the Association of State and Provincial Psychology Boards; and

(b) With whom this board has an agreement of reciprocity;

(2) Have a minimum of five (5) years of full-time practice or its equivalent as determined by the board in other jurisdiction; and

(3) Not have a report of disciplinary action filed with the Association of State and Provincial Psychology Boards.

Section 3. The board shall conduct a face-to-face examination of an applicant for licensure by reciprocity. The applicant shall demonstrate an acceptable level of knowledge of Kentucky mental health law.

Section 4. An applicant for licensure with the health service provider designation shall comply with KRS 319.050(7).

Section 5. If an applicant for licensure does not have a post-doctoral supervised year of experience as required by KRS 319.050(2)(c), the board may determine that the applicant’s practice experience is equivalent to the required year of experience.

Section 6. A person holding the Certificate of Professional Qualification in Psychology (CPQ) issued by the Association of State and Provincial Psychology Boards (ASPPB) or a successor organization, or who is board-certified by the American Board of Professional Psychology (ABPP) or a successor organization shall:

(1) Be deemed to meet the qualifications for licensure by reciprocity as established in this administrative regulation with the exception of the requirements established in Section 3 of this administrative regulation; and

(2) Meet the requirements established in Section 3 of this administrative regulation.

This is to certify that the Chair of the Kentucky Board of Examiners of Psychology has approved this administrative regulation prior to its filing by the Kentucky Board of Examiners of Psychology with the Legislative Research Commission as required by KRS Chapter 13A, to carry out and enforce provisions of KRS 319.005 to 319.990.

TRACY D. EELLS, MBA, Ph.D., Chair
R.B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: September 15, 2005
FILED WITH LRC: September 16, 2004, 3 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2004 at 2 p.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Ky. Individuals interested in being heard at this hearing shall notify this agency in writing 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 December 1, 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: John C. Parrish, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4518.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John C. Parrish, Director

1. Provide a brief summary of
(a) What this administrative regulation does: This regulation establishes requirements for granting reciprocity when an applicant does not hold a Certificate of Professional Qualification (CPQ).
(b) The necessity of this administrative regulation: The necessity of this regulation is to provide applicants licensed in another state with guidance regarding obtaining licensure in Kentucky by reciprocity.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes explicit guidelines to carry out the provisions of KRS 319.032(1)(b).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes explicit guidelines enabling this board to implement KRS 319.032(1)(b).

2. If this is an amendment to an existing administrative regulation, provide a brief summary:
(a) How the amendment will change this existing administrative regulation: It grants reciprocity by reciprocity to psychologists holding the Certification of Professional Qualification to another recognized national credentialing organization, i.e., the American Board of Professional Psychology (ABPP).
(b) The necessity of the amendment to this administrative regulation: Enables qualified psychologists to have easier mobility to relocate and practice with the Commonwealth of Kentucky.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment uses language consistent with KRS Chapter 319.
(d) How the amendment will assist in the effective administration of the statutes: Minimize administrative time in screening appropriate applicants for licensure by reciprocity.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure as a psychologist from another state.

4. Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Psychologist holding the Certificate of Professional Qualification from the American Board of Professional Psychology will have an easier time obtaining licensure by reciprocity.

5. Provide an estimate of how much it will cost to implement this administrative regulation: No additional costs will be encountered by the implementation of this regulation.
(a) Initially: No additional costs will be encountered by the implementation of this regulation.
(b) As a continuing basis: No additional costs will be encountered by the implementation of this regulation.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by credential holders and applicants.

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 additional fees will be required.

8. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect costs.

9. TIERING: Is tiering applied? Tiering was not applied as criteria applies to all licensed psychologists.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology

201 KAR 26:190. Requirements for supervised professional experience.

RELATES TO: KRS 319.050, 319.053, 319.055, 319.064

STATUTORY AUTHORITY: KRS 319.032
NECESSITY, FUNCTION, AND CONFORMITY: Each credential issued by the board requires some type of supervised experience for the applicant. This administrative regulation establishes those requirements.

Section 1. Supervisory Requirements. (1) The predoctoral year, or the first year of a two (2) year postdoctoral supervised professional experience shall be 1,800 hours with at least 100 hours of supervisory sessions distributed over the year.
(2) The postdoctoral year, or the second of a two (2) year postdoctoral supervised professional experience shall be 1,800 hours with at least one (1) hour of individual face-to-face supervision on a weekly basis.
(3) Supervisors shall be licensed psychologists or doctoral-level psychologists approved by the board.

Section 2. For a person applying for licensure as a psychologist with the health service provider designation, the predoctoral internship or first year of a two (2) year postdoctoral program shall meet the following criteria:
(1) The experience shall occur within an organized training program, in contrast to supervised experience or on-the-job training and have a planned, programmed sequence of training experiences;
(2) The training program shall have a clearly designated staff psychologist who shall be:
(a) Responsible for the integrity and quality of the training program;
(b) [4] Actively licensed by the Board of Examiners in Psychology;
(c) [2] Licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists or otherwise meets the standards of applicable state law; and
(d) [4] For school psychology doctoral internships, the responsible psychologist director may be from an affiliate agency or from the university training program.
(3) Internship supervision shall be provided by a staff member of the internship agency or by an affiliate of that agency who has clinical responsibility for the cases being supervised. At least half of the internship supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree;
(4) The internship shall provide training in a range of assessment and treatment activities conducted directly with clients seeking psychological services;
(5) At least twenty-five (25) percent of the trainee's time shall be in direct client contact;
(6) The internship shall include a minimum of two (2) hours per week of regularly scheduled formal, face-to-face individual supervision. There shall also be at least two (2) additional hours per week in learning activities such as case conferences, seminars dealing with clinical issues, group supervision;
(7) Training shall be postgraduate, postgraduate or postgraduate level;
(8) The internship shall have a written statement or brochure which describes the goals and content of the internship, stated clear expectations for quality and quantity of the trainee's work and which is made available to prospective interns;
(9) The internship experience shall be completed within twenty-four (24) months;
(10) The trainee has a title such as "intern", "resident," "fellow," or other designation of trainee status; and
(11) The institution agency, preparing institution, and intern have a written agreement that describes the goals and content of the internship including clearly stated expectations for the nature of experiences offered in the agency and for the quantity and quality of the work.

Section 3. Postdoctoral Supervisory Experience. (1) The one (1) year of postdoctoral experience required by KRS 319.050(2)(c) shall be a training-oriented preessional experience.
(2) The supervised professional experience shall include a planned and organized sequence of activities that includes explicit training and supervision in the following areas:
(a) Clinical skill development;
(b) Legal and regulatory issues;
(c) Ethical dilemmas and issues; and
(d) Supervisory skill development.
(3) During the year of postdoctoral experience, the candidate shall:
(a) Obtain and maintain a temporary license as a psychologist as required in KAR 201 26:155, Section 2;
(b) Be under supervision as required by 201 KAR 28:171; and
(c) Be employed:
1. By a:
   a. Health care facility or agency;
   b. Regional mental health/mental retardation board;
   c. College or university;
   d. Government agency;
   e. Independent practice.
2. The postdoctoral year shall be served:
   a. In a formalized postdoctoral internship program in a health care facility; or
   b. In an informal arrangement that meets the requirements of subsection (2) of this section.
(4) The candidate and the supervisor of record shall design and describe the proposed experience, including the areas listed in subsection (2) of this section, at the time of application for temporary licensure.
(5) If the postdoctoral experience is in an independent practice, a special application letter shall attest to:
   a. The identity of the temporarily-licensed psychologist, supervisor, and employer; and
   b. The supervising psychologist is not hired, employed, or engaged under contract by the candidate and shall not be terminated by the candidate;
2. The candidate is not one of the owners of the independent practice or organization, but rather serves as an employee; and
3. The candidate has both administrative and clinical supervision which are provided by the independent practice or employer.
(6) If the postdoctoral experience is in a university setting, the application shall also:
   a. Be proffered by a full-time faculty member;
   b. Include a plan that contains each of the areas established in subsection (4) of this section; and
   c. Include a minimum of 400 hours of direct and indirect client involvement that:
      1. Is supervised by a licensed psychologist; and
      2. Includes:
         a. Supervising student clinical work;
         b. Diagnostic and interviewing activity that occurs within clinical research projects; or
         c. Clinical work in the context of teaching psychotherapy, interviewing, or psychological testing.
(7) The board shall not grant a request for temporary licensure if the request does not contain an explicit and acceptable plan for the postdoctoral experience as required by this section.

Section 4. An applicant for licensure as a psychological associate shall complete supervised experience consisting of course-related field experience, practica, and formal internships adding up to a minimum of 600 supervised hours which shall meet the following criteria:
(1) The experience shall occur within an organized training program, and consist of a planned, programmed sequence of training experiences;
(2) The training institution's psychology training program shall have a clearly-designated placement director who shall be responsible for the integrity and quality of the experiential component of the training program;
(3) Weekly practicum and internship supervision shall be provided by a staff member of the placement agency, by an affiliate of that agency, or by a university faculty member. At least half of the supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree and license;
(4) Field experiences, practica, and internships shall provide training in a range of assessment and treatment activities conducted directly with clients seeking psychological services;
(5) At least twenty-five (25) percent of the trainee's time shall be in direct client contact;
(6) The preparing institution shall maintain a written statement or brochure describing the goals and content of the required field experiences, practica, and internships.
(7) Students participating in university-sanctioned supervised experience shall be clearly identified to clients and payors as trainees.

Section 5. An applicant for licensure as a psychological practitioner shall complete the equivalent of five (5) full-time years of psychological practice under the direct supervision of a licensed psychologist approved by the board, consistent with the requirements of 201 KAR 28:171.
(1) For purposes of this requirement, a candidate shall complete the equivalent of five (5) full-time years of supervised experience from the date of initial credentialing as a psychological associate, with a full-time year comprising at least 1800 hours of supervised experience.
(2) A school psychologist who is employed in a Kentucky school system, credentialed by the Professional Standards Board, and also credentialed as a psychological associate by this board, may conduct for on-going clinical supervision in the school setting with a board-approved licensed psychologist who is neither an employee nor a contractor of the school system.
(3) The supervised experience shall meet the conditions of this administrative regulation and may be used by the licensed psychological associate employed by the school system to meet the requirements for application to become a licensed psychological practitioner.
(4) To fulfill the requirements of 201 KAR 26:171, there shall be an explicit written plan approved by the board between the school system, the school psychologist, and the board-approved supervisor which delineates roles and responsibilities, not restricting the ability of the school district to direct or control the activities of its employee;
(5) A Person trained in school psychology, if employed by an agency other than a public school or engaged in practice outside of the school setting, shall obtain clinical supervision in the manner specified by 201 KAR 26:171.

TRACY DWIGHT ELLS, MBA, Ph.D., Chair
R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: September 15, 2004
FILED WITH LRC: September 16, 2004 at 3 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2004 at 2 p.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing 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 December 1, 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: John C. Parrish, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John C. Parrish
(1) Provide a brief summary of
(a) What this administrative regulation does: This regulation defines terms used by this board to assess compliance with requirements for supervised experience.
(b) The necessity of this administrative regulation: The neces-
sity of this regulation is to provide applicants for a credential with guidance regarding experience requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes explicit guidelines to carry out the provisions of KRS 319.050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes explicit guidelines enabling this board to implement KRS 319.050.

(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: This change in the administrative regulation is language moved (without change) from 201 KAR 26:155, Section 3.

(b) The necessity of the amendment to this administrative regulation: Better organization of the administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment uses language consistent with KRS Chapter 319.

(d) How the amendment will assist in the effective administration of the statutes: Improved organization of the administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure.

(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: No significant changes in current practice will occur as a function of this regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional costs will be encountered by the implementation of this regulation.

(a) Initially: No additional costs will be encountered by the implementation of this regulation.

(b) On a continuing basis: No additional costs will be encountered by the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by fees paid by credential holders and applicants.

(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 additional fees will be required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect costs.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria applies to all credential holders.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(Amendment)


RELATES TO: KRS 319.032(1)(a), 319.050, 319.053, 319.064
STATUTORY AUTHORITY: KRS 319.032(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) requires the board to promulgate an administrative regulation establishing the examination requirements for an applicant for licensure. KRS 319.050(1) and 319.064(1)(c) require an applicant to successfully complete the required examination prior to licensure. This administrative regulation establishes the examination requirements.

Section 1. Definitions. (1) The written examination shall be the Examination for Professional Practice in Psychology (EPPP) developed by the ASPPB examination contractor and approved by the Association of State and Provincial Psychology Boards. [Prior to April 1, 2002, applicants may choose either the computerized delivery or paper and pencil form. After April 1, 2002] The EPPP shall be taken by computer administration.

(a) For those applicants taking a paper and pencil form of the EPPP in 2001-2002, the board shall publish instructions which include the examination schedule with place, time and final date by which the applicant shall file the required materials.

(b) For those applicants taking the computerized EPPP examination, the board shall submit to the ASPPB examination contractor a list of applicants eligible to sit for the examination.

(2) The board shall submit the ASPPB examination contractor a list of applicants eligible to sit for the examination.

(3)(2) The oral examination shall be structured to cover ethical principles, professional practice and Kentucky mental health law.

Section 2. General Requirements. (1) An applicant for examination shall:

(a) Submit a completed application as required by 201 KAR 26:155, Section 1; and

(b) Pay the applicable fee established in 201 KAR 26:160.

(2) [Once the application has been approved by the board.] The applicant shall sit for the examination within one (1) year of the notice of the application being approved by the board [sixty (60) days of the notice of the examination]. Applicants may sit for the examination at any approved ASPPB examination contractor testing center in the United States, U.S. Territories and Canada, but shall register and pay in only one (1) jurisdiction.

(3) [Failure to take the examination within sixty (60) days of the notice of the examination results in a forfeiture of the testing fee and necessitates a reapplication to the board.] If an applicant loses eligibility to sit for the EPPP because of failure to reschedule, cancel or appear to take the examination as stated in subsection (2) of this section:

(a) The applicant shall forfeit all fees paid; and

(b) Any temporary license issued to the applicant shall be terminated on the scheduled date of the examination.

Section 3. Examination for Licensure as a Licensed Psychologist with the Health Service Provider Designation. (1) The applicant shall pass:

(a) The written examination in accordance with subsection (2) of this section; and

(b) The oral examination in accordance with subsection (6) of this section.

(2) [On-the-EPPP.] The applicant shall obtain a computerized EPPP scaled score of 500 or shall have obtained an EPPP passing score in effect at the time of the examination [an ASPPB recommended passing score of 500 for the EPPP examination]. The applicant shall be notified by the board of the score, as well as all matters concerning the examination.

(3) [Pursuant to KRS 319.053(6), an applicant for licensure as a licensed psychologist who has been approved to sit for the objective examination (EPPP) and whose supervisory arrangement has been approved by the board shall be considered to be functioning under a temporary license until all requirements for licensure have been completed.] If an applicant for licensure as a licensed psychologist fails the EPPP examination, the candidate shall reapply to the board, pay the appropriate fees and be deemed eligible by the board to be permitted to sit again for the examination [another sixty (60)-day eligibility period. Failure to take the EPPP within sixty (60) days of the authorization to test letter will lead to a forfeiture of fee and necessitate a reapplication to the board].

(a) The candidate shall continue to function under the supervision of the board-approved supervisor until:

1. The written and oral examinations are successfully completed; or

2. The temporary license is terminated.

(b) The candidate shall not be scheduled for the oral examination until the objective examination (EPPP) has been successfully passed and the required two (2) years of supervised experience have been approved by the board.

(4) [If the applicant for licensure as a licensed psychologist fails the oral examination, the applicant shall]
(a) File a remediation plan within thirty (30) days of notice of failure; and

(b) Be eligible to sit for the next available oral examination upon approval of the remediation plan by the board [the board shall, upon the development of a remediation plan acceptable to the board, reissue the temporary license-to-function-under-supervision until the results of the next examination are known. A temporary license shall not be renewed by the board more than two (2) times].

(5)(6) An applicant for licensure as a licensed psychologist shall submit to a structured oral examination administered by two (2) licensed psychologists approved by the board.

(a) This examination shall cover ethical principles, professional practice, and Kentucky Mental Health Law. The applicant shall demonstrate an acceptable level of knowledge in each of the three (3) areas in order to pass the examination.

(b) Each examiner shall independently rate the applicant's performance.

(c) An applicant who receives a pass rating from each of the examiners shall have successfully passed the oral examination.

[7][7] If the applicant fails the first oral examination, the applicant may reapply with a remediation plan.

(a) Upon completion of the remediation plan approved by the board, the applicant shall be administered an oral examination by a second team composed in the same manner as the first team.

(b) If the second oral examination is failed, the applicant may reapply with a remediation plan approved by the board.

(5)(7) Upon completion of the approved remediation plan, the applicant shall be administered an examination by a team of the licensed psychologist members of the board and appointed examiners as needed.

(d) A majority of the examination team shall rate the applicant as having passed [in each of the three (3) areas in order to pass] the examination.

(6) (6) If the applicant for licensure as a licensed psychologist fails to pass the examination, and wishes to apply to be credentialed as a licensed psychological associate, a completed application and the appropriate fee, as required by 201 KAR 26:160, shall be submitted with the proposed area of competency and supervision indicated. The board shall accept the applicant's previous examination results to satisfy the requirements as to criteria level and area of competency.

Section 4. Examination for Licensure as a Licensed Psychological Practitioner. (1) The applicant shall pass:

(a) A written examination in accordance with subsection (2) of this section unless the applicant's previous examination results for the EPPP examination satisfied the doctoral licensure requirement as to criterion level and area of competency, and shall have attempted to sit for the examination; and

(b) The applicant shall obtain a computerized EPPP scaled score of 500 or shall have obtained an EPPP score at the doctoral level in effect at the time of test administration. The applicant shall be notified by the board of the score, as well as of passing or failing the examination. [An oral examination, in accordance with subsection (5) of this section.]

(2)(9) Pursuant to KRS 319.050(3), an applicant for licensure as a psychologist who has been approved to sit for the examination under this section, and whose supervisory arrangement has been approved by the board, shall be considered to have passed by temporary license for five (5) years of supervised experience or its equivalent. The candidate shall be considered to have a temporary certificate to function under supervision.

(3)(4) If an applicant for licensure as a licensed psychologist practitioner fails the EPPP examination, the candidate may reapply to the board, pay the appropriate fees and be deemed eligible by the board to be permitted to sit for the examination again, another sixty (60) day eligibility period. Failure to take the EPPP within sixty (60) days of the authorization to test letter will lead to a forfeiture of fees and necessitate a reapplication to the board.

(a) The candidate shall continue to function under the supervision of the board-approved supervisor until the written and oral examinations are successfully completed.

(b) The candidate shall not be scheduled for the oral examination until the objective examination (EPPP) has been successfully passed and the required five (5) years of supervised experience or its equivalent have been approved by the board.

(4)(6) An applicant for licensure as a licensed psychological practitioner shall submit to a structured oral examination administered by an examination team consisting of at least one (1) licensed psychologist and either a certified psychologist with autonomous functioning or a licensed psychological practitioner. The candidate shall demonstrate an acceptable level of knowledge on the ethical principles, professional practice, and Kentucky mental health law. The candidate shall demonstrate an acceptable level of knowledge in each of the three (3) areas in order to pass the examination.

(5) Each examiner shall independently rate the applicant's performance, using the same criteria as the oral examination for licensed psychologist candidates.

(c) An applicant who receives a pass rating from each of the examiners shall have successfully passed the oral examination.

(6) If the applicant fails the first oral examination, the applicant may reapply and shall be administered an oral examination by a second team composed in the same manner as the first team.

(7) If the applicant fails the second oral examination, the applicant may reapply and shall be administered an oral examination by a team of the licensed members of the board and appointed examiners as needed. A majority of the examination team shall rate the applicant as having passed [in each of the three (3) areas in order to pass] the examination.

Section 5. Examination for Licensure as a Psychological Associate. (1) The applicant shall obtain a computerized EPPP scaled score of 400 or shall have obtained an EPPP passing score for licensure at the master's level in effect at the time of test administration. The applicant shall be notified by the board of the score, as well as of passing or failing the examination. [The applicant shall obtain an EPPP - a passing score of sixty-five (65) percent (raw score of 120 on the paper-and-pencil form - until April 1, 2002) or computerized scaled score of 400. The applicant shall be notified of the score, as well as of passing or failing the examination by the board.]

(2) Pursuant to KRS 319.064(3), an applicant for licensure as a psychological associate who has been approved to sit for examination and whose supervisory arrangement has been approved by the board, shall be considered to have passed by temporary license until the results of the next regularly scheduled examination are known.

(3) If an applicant for licensure as a psychological associate fails the examination, the applicant shall:

(a) File a remediation plan, as signed by the supervisor within thirty (30) days of notice of failure; and

(b) Be eligible to retake the examination upon approval of the plan by the board [the board shall, upon the development of a remediation plan acceptable to the board, reissue the temporary license to function under supervision until the results of the next regularly scheduled examination are known. A temporary license shall not be renewed by the board more than two (2) times].

(4) If an applicant for certification fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination - such as illness or death in the immediate family, the examination may be deferred until the next regularly scheduled examination - the application shall be considered effective for two years. The applications shall be considered effective for two years. The application shall be considered effective for two years. The application shall be considered effective for two years.
November 23, 2004 at 2 p.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 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 December 1, 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: John C. Parrish, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John C. Parrish

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes exam requirements for applicants for a credential from this board.

(b) The necessity of this administrative regulation: The necessity of this regulation is to provide applicants with guidance regarding examination requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes explicit guidelines to carry out the provisions of KRS 319.032(1)(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes explicit guidelines enabling this board to implement KRS 319.032(1)(a).

(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 eliminates obsolete language, clarifies the timing for taking the written examination, and clarifies required steps to re-take the examination upon failing an examination administration.

(b) The necessity of the amendment to this administrative regulation: To improve clarity, to remove inadvertent ambiguities in timing to take the examination.

(c) How the amendment conforms to the content of the authorizing statutes: It conforms with KRS 319.032(1)(a).

(d) How the amendment will assist in the effective administration of the statutes: It will communicate testing requirements more effectively.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure.

(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: Sets perimeters for taking the written exam.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional costs will be encountered by the implementation of this regulation.

(a) Initially: No additional costs will be encountered by the implementation of this regulation.

(b) On a Continuing basis: No additional costs will be encountered by the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by credential holders and applicants.

(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 additional fees will be required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect costs.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria to all applicants.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(Amendment)

201 KAR 26:80. Licensed psychological associate: application procedures and temporary license.

RELATES TO: KRS 319.064
STATUTORY AUTHORITY: 319.032(1)(a), (c)
NECESSITY FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychological associate. This administrative regulation establishes the requirements for applicants for licensure, and the conditions for a temporary license.

Section 1. Application. (1) An application for a credential to perform certain functions as a licensed psychological associate may be submitted after the requirements established in KRS 319.064(2) are met.

(2) The application required by subsection (1) of this section shall be made by submitting a completed Form Psy-1 to the board. The application shall:

(a) Include a certification by the applicant that the:
   1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and
   2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:
   1. A check or money order payable to the Kentucky State Treasurer for the application fees as required by 201 KAR 26:160;
   2. Three (3) letters of reference from persons qualified to evaluate the candidate's professional ability, including two (2) persons who have received a doctorate in psychology (Ph.D. Psy.D., or Ed.D.); and
   3. An official transcript for all levels of education required for licensure.

Section 2. Temporary Licensure. (1) An applicant may request permission to perform functions as a licensed psychological associate on a temporary basis pursuant to KRS 319.064(3).

(2) The request for a temporary credential shall be co-signed by the candidate and the proposed supervisor, who shall be a licensed psychologist approved by the board and who holds the health services provider designation.

(3) The period of temporary licensure shall be terminated upon successful completion of all credentials and examination procedures or if the candidate fails to pass the EPPP within one (1) year of the date of the notice of approval by the board [authorization-to-test letter-after approval] for a temporary license.

Section 3. Grace Period for Submission of Credentials. In order to allow for processing of the candidate's materials by the board, there shall be a grace period not to exceed sixty (60) days within which candidates who have completed their degree requirements may begin employment by an agency to practice psychology under supervision with a board-approved supervisor.

(1) Upon acceptance of employment, the candidate and the licensed psychologist who shall serve as the supervisor shall immediately submit a letter of notice to the board indicating that he or she has begun to practice in Kentucky and that application materials are forthcoming. Failure to submit this notice may be deemed as grounds for disciplinary action against the candidate and the supervisor.

(2) It is the responsibility of the candidate to ensure that all materials are forwarded to the board within thirty (30) days from the date of agency employment. Once the application is complete, the board will review the material at its next scheduled meeting.
and, if appropriate, issue either a temporary or permanent credential. If the candidate does not meet the requirements for the credential, or if their application material is insufficient to take any action, he or she shall be directed to cease practice until the requirements are met.

(3) The grace period shall not be extended beyond sixty (60) days. A candidate who fails to achieve approval within this time-frame shall not practice psychology until credentialed by the board.

(4) Upon filing the notice set forth in subsection (1) of this section, the candidate is deemed to be practicing psychology under the jurisdiction of the board, and is subject to all relevant laws and regulations.

TRACY DWIGHT EELLS, MBA, Ph.D., Chair
R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: September 15, 2004
FILED WITH LRC: September 16, 2004 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2004 at 2 p.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 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 December 1, 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: John C. Parrish, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John C. Parrish

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes requirements for applicants for licensure as a psychological associate, including provisions for temporary licensure.
(b) The necessity of this administrative regulation: The necessity of this regulation is to provide potential credential holders with procedures guidelines for applying for a license, qualifying for the written examinations required by statute, and obtaining a temporary license.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes explicit guidelines to carry out the mandate of the statute.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes explicit guidelines enabling this board to carry out the mandate of the statute.

(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 clarifies timelines for pursuing licensed psychological associate credentialing.
(b) The necessity of the amendment to this administrative regulation: New wording eliminates the likelihood of misunderstanding the regulation.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment uses language consistent with KRS Chapter 319.
(d) How the amendment will assist in the effective administration of the statutes: Improved wording clarifies potential misunderstanding of the regulation.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for status as licensed psychological associates.
(f) 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: Clearly spells out the time frame for applicants to complete the testing for licensed psychological associate credential.
(g) Provide an estimate of how much it will cost to implement this administrative regulation: No changes in current practice will occur as a function of this regulation.

(a) Initially: No changes in current practice will occur as a function of this regulation.
(b) On a Continuing basis: No changes in current practice will occur as a function of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by 'ees paid by credential holders and applicants.

(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 additional fees will be required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect costs.

(9) TIERING: Is tiering applied? Tiering was not applied as a criteria applies to all candidates for licensure as psychological associates.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology (Amendment)


RELATES TO: KRS 319.053
STATUTORY AUTHORITY: 319.032(1)(a), (c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.053 requires the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychological practitioner. This administrative regulation establishes the requirements for applicants.

Section 1. Application. (1) An application for a credential as a licensed psychological practitioner may be submitted on form PSY 1, as incorporated in 201 KAR 28:185, after the requirements established in KRS 319.053(1) are met.

(2) The application shall:
(a) Include a certification by the applicant that the:
1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief;
2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and
(b) Be accompanied by:
1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160;
2. Three (3) letters of reference from persons who are familiar with the clinical work of the applicant. One (1) letter shall be from the current board-approved supervisor of record outlining the candidate's scope of practice and the other two (2) letters shall be from licensed mental health professionals acceptable to the board; and
3. An official transcript for all levels of education required for licensure.

Section 2. Temporary Licensure. Temporary credentials shall not be issued to persons applying for licensed psychological practitioner status. An applicant may continue to practice under board-approved supervision as a licensed psychological associate or as a certified psychologist pending successful completion of requirements for a change of status to a licensed psychological practitioner.

(1) The candidate shall obtain an acceptable score on the
objective (EPPC) examination as established in 201 KAR 26:230, Section 4;

(2) The board shall accept the applicant’s previous examination results for the objective (EPPC) examination if the original test scores satisfied the doctoral licensure requirement as to criterion level at the time of that examination, or

(3) if the original test scores did not satisfy the requirements of paragraph (a) of this subsection, the candidate shall take the Examination for Professional Practice in Psychology (EPPC) within sixty (60) days from the date on the authorization to test letter, which comes from the ASPPB examination contractor. Upon receipt of the application for licensure, the candidate will receive a packet of materials from the board about the EPPC which will instruct the candidate to contact the ASPPB examination contractor directly for the procedures to follow regarding test application, payment, and taking the examination.

(2) The applicant shall pass the structured oral examination established in 201 KAR 26:230, Section 4(5).

TRACY DWIGHT EELLS, MBA, Ph.D., Chair
R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: September 15, 2004
FILED WITH LRC: September 16, 2004 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2004 at 2 p.m. at Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notice 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 December 1, 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: John C. Parrish, Director, Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John C. Parrish

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes requirements for applicants for licensure as a psychological practitioner, including provisions for temporary licensure.

(b) The necessity of this administrative regulation: The necessity of this regulation is to provide potential credential holders with procedures guidelines for applying for a license, and for qualifying for the written and oral examinations required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes implicit guidelines to carry out the mandate of the statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes explicit guidelines enabling this board to carry out the mandate of the statute.

(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: Referenced 201 KAR 26:230, Section 4. For clarity, removed superfluous verbiage.

(b) The necessity of the amendment to this administrative regulation: Clarified administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment uses language consistent with KRS Chapter 319.

(d) How the amendment will assist in the effective administration of the statutes: Improved language, focuses only on licensed psychological practitioner applicants, updates terminology and procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for status as licensed psychological practitioners.

(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: No changes in current practice will occur as a function of this regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional costs will be encountered by the implementation of this regulation.

(a) Initially: No additional costs will be encountered by the implementation of this regulation.

(b) On a Continuing basis: No additional costs will be encountered by the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by credential holders and applicants.

(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 additional fees will be required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect costs.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria applies to all candidates for licensure as psychological practitioners.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers (Amendment)

601 KAR 1:005. Safety administrative regulation.


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;

(c) Generally thought of as farm machinery; and

(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 and Transportation Security Administration Regulations adopted and issued by the United States Department of Transportation, and hereby adopted without change:

(1) 49 C.F.R. Part 40, as effective October 1, 2004 [2003].
(2) 49 C.F.R. Part 382, as effective October 1, 2004 [2003].
(3) 49 C.F.R. Part 383, as effective October 1, 2004 [2003], as amended by 68 Fed. Reg. 63000, November 7, 2003, Commercial Driver's License Standards; Requirements and Penalties;
(4) 49 C.F.R. Part 384, as effective October 1, 2004 [2003], State Compliance with Commercial Driver's License Program;
(5) 49 C.F.R. Part 385, as effective October 1, 2004 [2003], Safety Fitness Procedures;
(6) 49 C.F.R. Part 390, as effective October 1, 2004 [2003], General;
(7) 49 C.F.R. Part 391, as effective October 1, 2004 [2003], Qualifications of Drivers;
(8) 49 C.F.R. Part 392, as effective October 1, 2004 [2003], Driving of Commercial Motor Vehicles;
(9) 49 C.F.R. Part 393, as effective October 1, 2004 [2003], Parts and Accessories Necessary for Safe Operation;
(10) 49 C.F.R. Part 395, as effective October 1, 2004 [2003], Hours of Service of Drivers;
(11) 49 C.F.R. Part 396, as effective October 1, 2004 [2003], Inspection, Repair and Maintenance;
(12) 49 C.F.R. Part 397, as effective October 1, 2004 [2003], Transportation of Hazardous Materials; Driving and Parking Rules; and

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

(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) A commercial 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, 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.

(C) 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, 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.

(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. 390.5 during an emergency as defined in 49 C.F.R. 390.5 which requires their employees to work to provide service. As authorized by 49 C.F.R. 350.331(d), the Transportation and Justice Cabinets shall delay the implementation and enforcement of state regulations tracking changes to the federal hours of service regulations, 49 C.F.R. Part 395, only as they apply to utility service vehicles, until the earlier of June 27, 2006 or the enactment by Congress of the highway funding reauthorization bill, currently known as the Safe, Accountable, Flexible, and Efficient Transportation Equity Act, or its successor legislation, provided that the delay does not result in the loss of federal Motor Carrier Safety Assistance Program funding. If the U.S. Department of Transportation issues an official finding that this provision may result in the loss of federal funding, the department may promulgate administrative regulations modifying this exemption as necessary to prevent the loss of federal funding.

(7) Medical waivers for intrastate drivers.

(a) A commercial vehicle operator 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 11:04.

(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. 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. 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. 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, small luggage, 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 or commercial motor vehicle carrier 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 cause 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 administrative regulation.

(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 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) Physicain 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.

Section 8. 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. Random Alcohol Testing Rates. Commercial Motor Vehicle employees shall randomly test a percentage of the active 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.

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

(a) "North American Uniform Out-Of-Service Criteria" revised January 1, 2004 by the Commercial Vehicle Safety Alliance;

(b) TC 95-1, revised April, 2000; and

(c) 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 Carriers, 2nd Floor, Transportation Cabinet Office Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

GREG HOWARD, Commissioner MAXWELL C. BAILEY, Secretary
APPROVED BY ACPC October 14, 2004
FILED WITH LRC: October 15, 2004 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2004, at 10 a.m. local time at the Transportation Cabinet, Transportation Cabinet Office Building, Conference Room 612, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five workdays prior to the hearing. 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 1, 2004. Send written notification of intent to attend by the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street Station: W6-20-01, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Dana Fugazzi
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation sets forth the federal safety standards that have been adopted by this state and are applicable to the interstate motor carriers. It also sets forth the safety standards for intrastate carriers. These safety standards include guidelines for passing a medical examination or obtaining some form of medical waiver for the individual driver.

(b) The necessity of this administrative regulation: Pursuant to KRS 281.600, the cabinet is required to regulate motor carriers and to apply the Federal Motor Carrier Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation adopts the federal safety regulations and clarifies other requirements for intrastate compliance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation
provides the guidelines for the Transportation Cabinet in maintaining and enforcing safety standards for motor carriers driving in the commonwealth.

2. If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: This amendment updates the state regulation by adopting current federal regulations.
   (b) The necessity of the amendment to this administrative regulation: It is necessary to adopt the updated federal regulations to remain compliant with the Federal Motor Carrier Act and fulfill the directive of the regulation in KRS 281.600.
   (c) How the amendment conforms to the content of the authorizing statutes: It adopts the Federal Motor Carrier Act provisions regarding motor carrier safety.
   (d) How the amendment will assist in the effective administration of the statutes: This will allow the cabinet to apply and enforce current safety requirements.
   (e) The type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect motor carriers directly and will have an indirect impact on the general motoring public.

3. List the estimated 40,000 motor carriers operating within the commonwealth.

4. Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: These safety standards (both state and federal) will be applicable to motor carriers.

5. What is the source of the funding to be used for the implementation of this administrative regulation: Road funds.

6. 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 cabinet has not increased fees and does not anticipate a need for increased fees.

7. State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: No

8. TIERING: Is tiering applied? Tiering is applied to the extent that these larger vehicles are subject to more stringent regulations with regard to their operation than standard-size vehicles.

**FEDERAL MANDATE ANALYSIS COMPARISON**

1. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:
   (a) Commercial Driver's License standards for the issuance, testing and withdrawal of a CDL;
   (b) Establishes the maximum number of hours a commercial vehicle driver may be on-duty and how he must keep a record of the amount of time he has worked;
   (d) Establishes the qualifications for a commercial driver including his physical fitness, age, emotional condition, prior driving history, and a drug testing program for interstate and intrastate motor carriers;
   (e) Defines the safe method in which a commercial vehicle must be operated including stopping at railroad crossings; cease driving when ill or fatigued; not to use drugs or alcohol while operating a commercial vehicle; conformance with the speed limit; required use of turn signals; use of seat belts; use of emergency flashers when the commercial vehicle is stopped on the highway; use of lights on the commercial vehicle; duty in case of accident; and fueling precautions;
   (f) Defines the parts and accessories necessary for the safe operation of a commercial vehicle;
   (g) Establishes a formal maintenance and repair schedule and records for the safe operation of a commercial vehicle and requires the maintenance and inspections to be performed by certified inspectors or mechanics; and
   (h) Driving and parking rules while transporting hazardous materials.

2. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, in fact, Kentucky, has imposed slightly less restrictive standards on intrastate drivers. For example, intrastate motor carriers have a minimal medical waiver program; however, the medical waiver program for intrastate commercial drivers has been expanded. Unless operating a school bus or transporting hazardous materials, the intrastate Kentucky driver must only be 18 rather than 21, and farmers in daylight hours have less restrictive lighting requirements than the operators of other commercial vehicles. Kentucky is stricter with regard to exemptions from medical examination for private motor carriers of passengers. 49 C.F.R. 391.68. This allows these carriers to avoid medical examination. Section 3(9) of this administrative regulation requires examination "notwithstanding" that provision.

3. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The less stringent requirements for intrastate motor carriers were adopted to allow Kentucky companies to continue operating as they had been doing for years. The Transportation Cabinet was strongly petitioned by legislators and public interest groups to allow these exceptions. The stricter requirement as to medical waivers is not new and has not been changed as a result of this amendment. This stricter standard was adopted out of concern for safety of passengers.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

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

**TRANSPORTATION CABINET**

Department of Vehicle Regulation (Amendment)

601 KAR 1:025. Transporting hazardous materials by air or highway.

*RELATES TO: KRS 174.400-174.425, 49 C.F.R. 107, 130, 171-173, 175, 177, 178, 180*

*STATUTORY AUTHORITY: KRS 174.410(2), 49 C.F.R. Parts 130, 171-173, 175, 177, 178, 180*

*Necessity. Function, and Conformity: KRS 174.410(2) provides that the Secretary of the Transportation Cabinet, in consultation with the Secretary of the Natural Resources and Environmental Protection Cabinet and the Secretary of the Cabinet for Health and Family Services, shall adopt by reference in its entirety, the federal hazardous materials transportation regulation, 49 C.F.R. (1978), as amended, to effectively carry out the intent of KRS 174.400 through 174.425 relating to the transportation of hazardous materials by air and highway. This administrative regulation is the result of that directive. Section 1. (1) The following hazardous materials transportation regulations adopted and issued by the United States Department of Transportation shall govern the transportation of hazardous materials within Kentucky if the transportation of hazardous material is by air or highway and are hereby adopted without change:*

(a) 49 C.F.R. Part 107, effective October 1, 2004 [2001]. Part 107 sets forth the requirements for a national registration of the transporters of hazardous materials.
(b) 49 C.F.R. Part 130 effective October 1, 2004 [2004]. Part 130 sets forth general information, regulations and definitions applicable to oil spill prevention and response plans;
1. Shipping papers;
2. Package marking; and
3. Labeling and transport vehicle placarding applicable to the shipment and transportation of those hazardous materials;
(e) 49 C.F.R. Part 173 effective October 1, 2004 [2001-as amended by 67 Fed. Reg. 16736, April 3, 2002]. Part 173 sets forth the general requirements which shippers are required to meet for shipments and packaging;
(f) 49 C.F.R. Part 175 effective October 1, 2004 [2004]. Part 175 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to aircraft operators transporting hazardous materials aboard, attached to or suspended from civil aircraft;
(g) 49 C.F.R. Part 177, effective October 1, 2004 [2001]. Part 177 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to private contract or common motor carriers transporting hazardous materials on public highways;
(h) 49 C.F.R. Part 178 effective October 1, 2004 [2001-as amended by 67 Fed. Reg. 16736]. Part 178 prescribes the manufacturer's and driver's specifications for packaging and containers used for the transportation of hazardous materials; and
(i) 49 C.F.R. Part 180, effective October 1, 2004 [2001-as amended by 67 Fed. Reg. 15736]. Part 180 prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection, any other function having an effect on the continuing qualification and use of a packaging used to transport hazardous materials.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Department [Division] of Kentucky [Motor Vehicle Enforcement, 200 Mero Street [8th Floor], State Office Building, 501 High Street], Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

GREG HOWARD, Commissioner
MAXWELL C. BAILEY, Secretary
APPROVED BY AGENCY: October 6, 2004
FILED WITH LRC: October 14, 2004 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2004 at 10 a.m. at the Kentucky Transportation Cabinet, Conference Room 612, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 2004, five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement by November 16, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 1, 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: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, W8-20-01, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dana C. Faggazi
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation sets forth the federal safety standards that have been adopted by this state and are applicable to transporters of hazardous materials.
(b) The necessity of this administrative regulation: Pursuant to KRS 174.410 the Transportation Cabinet is responsible for controlling and regulating the movement of all radioactive materials and the intrastate transport of other hazardous materials transported within the commonwealth. That statute goes on to state that the cabinet will adopt the Federal Hazardous Materials Transportation Regulations in 49 C.F.R. This amendment will merely update the adopted federal regulations so that Kentucky will be current with the federal safety standards.
(c) How this administrative regulation conforms to the content and purpose of KRS 174.410. This regulation adopts the federal safety regulations for transporters of hazardous materials and clarifies other requirements for intrastate compliance.
(d) How this administrative regulation currently assists or will assist in the effective enforcement of the statutes: This regulation provides the guidelines for the Transportation Cabinet in maintaining and enforcing safety standards for transporters of hazardous materials.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment updates the state regulation by adopting current federal regulations.
(b) The necessity of the amendment to this existing administrative law: It is necessary to adopt the updated federal regulations to remain compliant with the Federal and fulfill the directive of the legislature in KRS 174.410.
(c) How the amendment conforms to the content of the authorizing statutes: It adopts the Federal Hazardous Materials Transportation Regulations as required by KRS 174.410.
(d) How the amendment will assist in the effective administration of the statutes: This will allow the Transportation Cabinet to apply and enforce current safety requirements.
(e) List and type the number of individuals, businesses, organization, or state and local governments affected by this administrative regulation: This regulation will affect all transporters of hazardous materials by highway or air in Kentucky and will indirectly benefit all those who live in the commonwealth in light of the serious potential for hazard if these procedures are not followed.
(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. Interstate carriers are already subject to these federal provisions and this should not have an impact on their day-to-day operations. This regulation should also have a positive impact on other motorists by maintaining safety on roads and highways that they share with transporters of hazardous materials.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No known cost.
(b) On a continuing basis: There is ongoing cost related to administration of the hazardous materials program within the cabinet and enforcement of the incorporated regulations through vehicle enforcement. These amendments should not increase the current cost for these programs.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The cabinet
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has not increased fees and does not anticipate a need for increased funding.
State whether or not this administrative regulation established any fees or directly increase any fees: No.
(9) TIERING: Is tiering applied? Tiering is applied to the extent that the restrictions and requirements are different depending on the type of hazardous material being transported and the potential hazard.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Amendment)


STATUTORY AUTHORITY: KRS 156.070, 157.420
NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.420(4) requires that the capital outlay allotment from the public school fund be used by school districts for capital outlay projects approved by the chief state school officer in accordance with requirements of law and based on a survey made in accordance with administrative regulations of the Kentucky Board of [State Board for Elementary and Secondary Education]. KRS 157.622 sets forth certain requirements for school facilities plans relative to participation in funding by the School Facilities Construction Commission. KRS 157.620 states construction needs shall be approved by the Kentucky Board of [State Board for Elementary and Secondary Education]. This administrative regulation provides for the development and adoption of a written plan by the school district describing construction and use of school facilities.

Section 1. A school district [districts] shall develop a local facility plan once every four (4) years in accordance with the schedule set by the chief state school officer. The Kentucky Board of [State Board for Elementary and Secondary Education] shall approve the facility plan submitted by the district upon the recommendation of the chief state school officer. Nothing in this administrative regulation shall prohibit a school district from requesting an amendment to its facility plan at other times during the four (4) year cycle.

Section 2. A [Each] school district's facilities plan, and requested amendments thereto, shall be developed in accordance with the standards and hearing procedures contained in the "Kentucky School Facilities Planning Manual," June 2004 [December 1994], and the "Master Educational Facility Plan Guidelines," June 2004 [January 1995], which are hereby adopted and incorporated by reference. Copies of these documents may be inspected, copied, and obtained from the Division of Facilities Management, Department of Education, 15th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 3. The facilities plan shall remain in effect until any changes have been approved by the Kentucky Board of [State Board for Elementary and Secondary Education].

Section 4. The adopted facilities plan shall become the facilities plan of the local school district and shall be implemented to the extent that the financial ability of the district shall permit as determined by the chief state school officer and the School Facilities Construction Commission. The scope of any construction project recommended in the facilities plan shall remain in effect until any changes have been approved by the Kentucky Board of Education.

Section 5. Incorporation by Reference. (1) The following documents are incorporated by reference:
(a) "Kentucky School Facilities Planning Manual," dated June 2004; and

(2) These documents may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Division of Facilities Management, 15th Floor, Capital Plaza Tower, 500 Meri Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: October 12, 2004. FILED WITH LRC: October 12, 2004 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 29, 2004, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Meri 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 the 5th working day prior to the hearing, 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 December 1, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Meri 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: Kyna Koch/Mark Ryles
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth a process which requires every district in the state to prepare a Master Educational Facility Plan (MEFP) that contains an assessment of the school district's attributes and operations including the district profile, educational program, demographic information, facility conditions, transportation information, and finances (cost of delivery of services).
(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement the provisions of KRS 157.420, 157.622 and 157.620.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the local board with the guidelines necessary to administer the school facilities program including the use of the capital outlay allotment and participation in funding by the School Facilities Construction Commission.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The documents incorporated by reference in this administrative regulation provide guidelines and forms to be used in the school facilities planning program.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments will consider local, state and regional planning and zoning initiatives in the overall planning effort and placement of new construction by adding a local public or administrative planning official to each LPC, encourage the composition of each LPC to represent local demographics and ethnicity, and encourage greater participation of the KDE Division of Facilities Management Planning Branch staff in the "front end" planning effort instead of the final development of the District Facilities Plan. This effort will require orientation meetings for the LPC coordinated by the KDE Planning Branch staff and relieve the KDE staff of hearing officer responsibilities. The reporting process will be made more user friendly by encouraging the districts to utilize MUNIS reporting data and the Comprehensive School Improvement Plans in their assessment process, simplifying the wording of the planning man-

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ual and allow approval of the proposed District Facilities Plan by the LPC by a simple majority vote as is the case for the local board voting.

(b) The necessity of the amendment to this administrative regulation: The documents incorporated by reference were last modified in December 1994.

(c) How the amendment conforms to the content of the authorizing statute: This amendment does not affect the conformity of the administrative regulation to statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide updated guidelines for school facilities planning.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts and 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: All parties involved in the school facility planning process will have updated guidelines and forms. In addition, a local public or administrative planning official will be added to each local planning committee.

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

(a) Initially: There will be no additional costs to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional continuing costs to the agency 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: Agency 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 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 established fees for architectural evaluation and for the optional facilitator's services; these fees are not increased by this amendment and are not paid to the state.

(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 HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development

(1) "Benefit group" means a group composed of one (1) or more children and may include as specified relative a person pursuant to 921 KAR 2:005, Section 10.

(2) "Benefit group" shall include:

(a) The benefit group shall include:

1. The dependent child;
2. The child's parent living in the home with the needy child who is:
   a. Eligible for K-TAP; or
   b. Ineligible for K-TAP due to benefit time limitations pursuant to 921 KAR 2:005, Section 10; and
3. Except for a sibling who is an applicant or recipient of the Kinship Care Program pursuant to 921 KAR 1:130, eligible siblings living in the home with the needy child.

(b) If the benefits to the household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, this child shall not be included in the benefit group.

(c) If the dependent child's parent is a minor living in the home

4. Cabinet" means the Cabinet for Families and Children.

(4) "Change in a circumstance [circumstances]" means a change in income or dependent care expense affecting the ongoing K-TAP payment that includes [shall include]:

(a) Beginning or ending employment;
(b) Change in an employee's or an employer's employment or obtaining additional employment;
(c) Increase or decrease in the number of work hours;
(d) Increase or decrease in the rate of pay;
(e) Increase or decrease in the dependent care expense due to a change in:

1. Provider;
2. [ ] Number of hours of care;
3. [ ] Number of individuals for whom care is given; or
4. Amount charged; or
(f) Change in farm crop arrangement or type of self-employment activity.

(4) [16] "Claimant" means the individual responsible for the repayment of an overpayment.

(5) [68] "Countable income" means income that remains after excluded income and appropriate deductions are removed from gross income.

(6) [(7)] "Deduction" means an amount subtracted from gross income to determine countable income.

(7) [(8)] "Instantly" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(8) [(9)] "Excluded income" means income that is received but not counted in the gross income less.

(9) [(10)] "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(9) [(11)] "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in:

1. An adult basic education program;
2. A general educational development program; or
3. A literacy program; or
(b) A semester system in a college or university of:

1. Twelve (12) semester hours or more [in a college or university] or
2. Six (6) semester hours or more during the summer term; or
(c) The equivalent in a college or university if other than a semester system is used; or
(d) (6) The number of hours required by the individual high school or vocational school to fulfill the high school or vocational school's [their] definition of full time.

(11) [(12)] "Gross income limitation standard" means 185 percent of the assistance standard, as set forth in Section 8 of this administrative regulation.

(12) [(13)] "Kentucky Transitional Assistance Program or K-TAP [K-TAP]", Kentucky's Temporary Assistance for Needy Families (TANF) Program, means a money payment program for a child
who is deprived of parental support or care pursuant to 921 KAR 2:006, Section 1.

(13) (44) "Kentucky Works" means a program that assists a:
(a) Recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or
(b) Former K-TAP recipient with job retention service.

(14) (45) "Lump sum income" means income that does not:
(a) Occur on a regular basis; or
(b) Represent accumulated monthly income received in a single sum.

(15) (46) "Minor" means a person who is under the age of eighteen (18).

(16) (47) "Minor (teenage) parent" means an individual who:
(a) Has not attained eighteen (18) years of age;
(b) Is not married or has not lived with the spouse; and
(c) Has a minor child in the applicant's or recipient's care.

(17) (48) "Part-time employment" means employment of:
(a) Less than thirty (30) hours per week;
(b) Less than 130 hours per month; or
(c) Not employed throughout the entire month.

(18) (49) "Part-time school attendance" means a workload that is less than ["full-time school attendance."]

(19) (50) "Penalized individual" means a person who is required to be included in the benefit group but fails to fulfill an eligibility requirement that causes a [pro-rata] reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.

(20) (51) "Prospective budgeting" means computing the amount of assistance based on income and circumstances that will exist in the month the payment is made.

(21) (52) "Recoupment" means recovery of an overpayment of an assistance payment.

(22) (53) "Sanctioned individual" means a person who is required to be included in the benefit group but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(23) (54) "Self-employment income" means income from a business enterprise if taxes are not withheld prior to receipt of the income by the individual.

(24) (55) "Supplemental security income" or "SSI" ([SSR]) means a monthly cash payment made pursuant to:
(a) 42 U.S.C. 1381 to the aged, blind and disabled;
(b) 42 U.S.C. 1382a; or
(c) 42 U.S.C. 1382.

(25) (56) "Unavailable" means that the income is not accessible to the K-TAP benefit group for use toward basic food, clothing, shelter, and utilities.

(26) (57) "Workforce Investment Act" or [(57)] "WIA" means [Workforce Investment Act which is] a program to assist adults, dislocated workers, and youth with entering, retraining, and advancing within employment.

(27) (58) "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, and tools.

Section 2. Technical Eligibility. (1) A benefit group shall include:

(a) A dependent child;
(b) A child's parent living in the home with the needy child who is:
1. Eligible for K-TAP; or
2. Ineligible for K-TAP due to benefit time limitations pursuant to 921 KAR 2:006, Section 19;
(c) An eligible sibling living in the home with a needy child, except for a sibling who is an applicant or recipient of the Kinship Care Program pursuant to 922 KAR 1:130; or
(d) An eligible child who is:
1. In full-time school attendance or part-time school attendance; and
2. a Sixteen (16) through eighteen (18) years of age; or
b. A minor parent.

(2) If the K-TAP benefits to a household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, the child shall not be included in the benefit group.

(3) If a dependent child's parent is a minor living in the home with an eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.

(4) An incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors of 921 KAR 2:006 are met.

Section 3. Resource Limitations. (1) A liquid asset shall be considered a countable resource if:
(a) Available to the benefit group; and
(b) Owned in whole or in part by:
1. An applicant or recipient;
2. A sanctioned or penalized individual; or
3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.

(2) The total amount of resources reserved by a benefit group shall not be in excess of $2,000 in liquid assets, excluding an asset listed in subsection (3) of this section.

(3) Excluded resources.
(a) Resources from the following individuals shall be excluded from consideration:
1. A recipient of SSI or the state supplementation program living in the home;
2. A child excluded from the K-TAP grant;
3. An individual not receiving assistance but living in the home including:
   a. The stepparent;
   b. Parent or legal guardian of a minor parent;
   c. The spouse of a nonresponsible specified relative; or
   d. The spouse of a minor dependent child.
(b) The following resources shall not be included in the $2,000 resource limit:
1. Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home;
2. Funds in an individual retirement account, retirement or deferred compensation account during the period of availability;
3. An excluded income payment, pursuant to Section 5 [4] of this administrative regulation;
4. Principal and accrued interest of an irrevocable trust during a period of availability;
5. Prepaid burial funds;
6. Cash surrender value of all burial insurance policies per family member;
7. Principal of a verified loan;
8. Up to $12,000 to Aleutians and $20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;
9. Payment made from the Agent Orange Settlement Fund issued by Agent Life and Casualty to a veteran or veteran's [his] survivor;
10. Earned income tax credit payment in the month of receipt and the following month;
11. A payment received from the Radiation Exposure Compensation Trust Fund;
12. A nonrecurring lump sum SSI retroactive payment that is made to a K-TAP recipient who is not ongoing eligible for SSI, in the month paid and the next following month;
13. Up to a total of $5,000 in individual development accounts, excluding interest accruing, pursuant to subsection (7) of this section;
14. A payment received from the National Tobacco Growers Settlement Trust; and
15. A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1464.201.

(4) Disposition of resources.
(a) An applicant or recipient shall not have transferred or otherwise disposed of a liquid asset in order to qualify for assistance.
(b) The household's application shall be denied, or assistance discontinued if:
   1. It is determined by the cabinet that the transfer was made
expressly for the purpose of qualifying for assistance; and
2. The amount of the transfer, when added to total resources, exceeds the resource limit.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(3) If the amount of excess transferred resources does not exceed $500, the period of ineligibility shall be one (1) month.
(4) If the period of ineligibility shall be increased one (1) month for every $500 increment up to a maximum of twenty-four (24) months.

(5) Lifetime care agreement.
(a) The existence of a valid agreement between the applicant or recipient and another individual or organization that the applicant or recipient has surrendered his resources in exchange for lifetime care shall make the case ineligible.
(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.

(6) Resources held jointly by more than one (1) person.
(a) For a bank account requiring one (1) signature for withdrawal. 1. Unless the other owner is a recipient of SSI, the total balance of the account shall be considered available to the K-TAP applicant or recipient, unless the other owner is a recipient of SSI.
2. If the other owner receives SSI, the balance shall be divided evenly by the number of owners and the K-TAP applicant or recipient's share shall be considered available.
(b) For a bank account that requires more than one (1) signature for withdrawal, the K-TAP applicant or recipient's share shall be determined by obtaining a written statement from the other owners as to the division.
(c) If there is no predetermined allocation of shares from a business enterprise, the applicant or recipient's available share shall be determined by dividing the value of the business enterprise by the number of owners.
(d) If a resource is held jointly, other than a resource pursuant to paragraphs (a) through (c) of this subsection, the applicant or recipient's share shall be determined by dividing the value of the resource by the number of owners.
(e) Rebuttal of ownership may be accomplished if the applicant or recipient asserts no contribution or benefit (i.e., does not contribute to or benefit from a jointly held resource and [he] provides:
1. A written statement regarding ownership, who may deposit and withdraw;
2. A written statement from each of the other owners that corroborates the applicant's or recipient's statement, unless the account holder is a minor or is incompetent; and
3. Verification that the applicant's or recipient's name has been removed from the account.

(7) (a) To be considered an exempt resource, the individual development account shall have been:
1. Established on or after May 1, 1997, and
2. Funded through periodic contributions by a member of the benefit group using funds derived from earned income that was earned after May 1, 1997, for a qualified purpose.
(b) A qualified purpose to establish an individual development account shall be for:
1. Postsecondary educational expense that shall include:
   a. Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution;
   b. Fees, books, supplies and equipment required for a course of instruction at an eligible educational institution; and
   c. An eligible educational institution that shall be an:
      (i) Institution pursuant to 20 U.S.C. 1088(a)(1) or 1141(a); or
      (ii) Area vocational education school pursuant to 20 U.S.C. 2474(C)(C) or (D); 2. First home purchase that includes:
   a. Costs of acquiring, constructing, or reconstructing a residence; and
   b. Usual or reasonable settlement, financing, or other closing costs;
   3. A business capitalization expenditure for a business that does not contravene a law or public policy, as determined by the cabinet, pursuant to a qualified plan which a qualified plan shall:
   a. Include capital, plant, equipment, working capital, and inventory expenses;
   b. Be approved by a financial institution; and
   c. Include a description of a service or a good to be sold, a marketing plan, and projected financial statement. Assistance of an experienced entrepreneurial advisor may be required; or
   4. Other purpose allowed by a federal regulation or clarification.
(c) Funds held in an individual development account shall not be withdrawn except for one (1) or more of the qualified purposes pursuant to paragraph (b) of this subsection.
(d) To be considered an exempt resource, an individual development account shall be matched by funds from a:
1. [A Nonprofit organization; or
2. [Funding permitting; or
   (g) State or local government agency, funding permitted, acting in cooperation with an organization pursuant to subparagraph 1 of this paragraph.

Section 4(3) Income Limitations. In determining eligibility for K-TAP, the following shall apply:
(a) (1) Gross income test:
1. The total gross non-K-TAP income shall not exceed the gross income limitation standard and, if this income shall include:
   a. Income of the benefit group;
   b. Income of a parent who does not receive SSI or state supplementation pursuant to 212 SAR 2:015;
   c. Income of a sanctioned or penalized individual; and
   d. An amount deemed available from:
      a. The parent of a minor parent living in the home with the benefit group;
      b. A stepparent living in the home;
      c. The spouse of a minor dependent child living in the home; or
      d. An alien's sponsor and sponsor's spouse if living with the sponsor;
   (b) Excluded income types pursuant to Section 5(4)(1) of this administrative regulation shall apply; and
   (c) (1) If total gross income exceeds the gross income limitation standard, the benefit group shall be ineligible;
   (2) Benefit calculation:
      a. If the benefit group meets the criteria pursuant to subsection (1) of this section, benefits shall be determined by subtracting excluded income and applicable deductions pursuant to Section 5(4)(1), (2), and (3) of this administrative regulation;
      b. If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the standard of need for the appropriate benefit group size pursuant to Section 9(8) of this administrative regulation, the benefit group shall be ineligible; and
      c. Amount of assistance shall be determined prospectively;
   (3) Ineligibility period:
      a. A period of ineligibility shall be established for a benefit group whose income in the month of application or during a month the assistance is paid exceeds a limit pursuant to subsection (2) of this section due receipt of lump sum income;
      b. The ineligibility period shall be:
         1. The number of months that equals the quotient of the division of total countable income by the standard of need pursuant to Section 9(8) of this administrative regulation for the benefit group size; and
         2. Effective with the month of receipt of the nonrecurring lump sum amount; and
      c. The ineligibility period shall be recalculated:
         1. The standard of need pursuant to Section 9(8) of this administrative regulation increases and the amount of grant the benefit group would have received also changes;
         2. Income, that caused the calculation of the ineligibility period, has become unavailable for a reason that was beyond the control of the benefit group;
         3. The benefit group incurs and pays a necessary medical expense not reimbursable by a third party;
         4. An individual, who is required to be a member of the benefit group, joins the K-TAP household during an established ineligibility period; or
         5. The benefit group reappears during an established ineligibility
period and the cabinet determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 5.[4] Excluded Income and Deductions. (1) Gross non-K-TAP income received or anticipated to be received shall be considered with the application of excluded income and deduction policy:
(a) By the:
   1. [by-the] Benefit group;  
   2.[1] Sanctioned or penalized individual;  
   3[1] Natural parent;  
   4.[1] Spouse of a dependent child;  
   5. [and] Parent of a minor parent living in the home with the benefit group; and  
   6. Stepparent living in the home; and  
(b)[1]—shall be considered with the application of excluded income and deduction policy] Pursuant to the following subsections:
   2)[1][4] Gross income test. An income listed in this subsection shall be excluded:
   (a) A deduction applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, pursuant to Section 7[6] of this administrative regulation;  
   (b) A deduction applicable to an alien sponsor's income, pursuant to Section 8[7] of this administrative regulation;  
   (c) A deduction applicable to self-employment income;  
   (d) The difference between the standard of need and the payment maximum for the benefit group, pursuant to Section 9[8] of this administrative regulation, if a member of the benefit group receives a WIA stipend;  
   (e) Value of United States Department of Agriculture program benefits including:  
      1. Donated food;  
      2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;  
      3. Special food service program for a child pursuant to 42 U.S.C. 1775;  
      4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and  
   (f) The monthly food stamp allotment;  
   (g) Reimbursement for transportation in performance of an employment duty, if identifiable;  
   (h) The value of Kentucky Works supportive services payment pursuant to 921 KAR 2:017;  
   (i) Nonemergency medical transportation payment;  
   (j) Payment from complementary program if no duplication exists between the other assistance and the assistance provided by the K-TAP program;  
   (k) Educational grant, loan, scholarship, and work study income, including:  
      1. Payment obtained and used under a condition that preclude the recipient's [their] use for current living cost; and  
      2. An education grant or loan to an undergraduate made or insured under a program administered by:  
         a. The United States Commissioner of Education; or  
         b. The Bureau of Indian Affairs;  
   (l) Highway relocation assistance;  
   (m) Urban renewal assistance;  
   (n) Federal disaster assistance and state disaster grant;  
   (o) Home produce utilized for household consumption;  
   (p) Housing subsidy received from federal, state or local governments;  
   (q) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;  
   (r) Funds distributed per capita or to hold in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;  
   (s) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteer serving under a program pursuant to 42 U.S.C. 5001 and [42-U.S.C.] 5011, including a:  
      1. Foster grandparent;  
      2. Senior health aide;  
      3. Senior companion; or  
   (t) Payment to "Volunteers in Service to America" (VISTA) participant pursuant to 42 U.S.C. 1451 if less than the minimum wage under state or federal law whichever is greater;  
   (u) Payment from the cabinet for:  
      1. Child foster care; or  
      2. Adult foster care;  
   (v) Energy assistance payment made under:  
      1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or  
      2. Other energy assistance payment made to an energy provider or provided in-kind;  
   (w) The first fifty (50) dollars of child support payment;  
   (x) Earnings of an individual attending school who is age nineteen (19) or under;  
   (y) Earnings of a dependent child under eighteen (18) who is a high school graduate;  
   (z) Nonrecurring monetary gifts totaling thirty (30) dollars or less per month per individual;  
   (aa) Up to $12,000 to Aleuts and $2,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;  
   (bb) Income of an individual receiving SSI;  
   (cc) The essential person's portion of the SSI check;  
   (dd) Income of an individual receiving mandatory or optional state supplementary payment pursuant to 921 KAR 2:015;  
   (ee) The advance payment or refund of earned income tax credit;  
   (ff) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;  
   (gg) Interest and dividend income;  
   (hh) In-kind income;  
   (ii) Income of a technically ineligible child;  
   (jj) Payment made from the Agent Orange Settlement Fund;  
   (kk) K-TAP payment including back payment;  
   (ll) Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship pursuant to 921 KAR 2:006, Section 10;  
   (mm) Payment made from the Radiation Exposure Compensation Trust Fund;  
   (nn) Up to $2,000 per year of income received by individual Indians derived from a lease or other use of individually-owned trust or restricted lands;  
   (oo) Payment made to an individual because of the individual's [his] status as a victim of Nazi persecution;  
   (pp) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;  
   (qq) A payment received from the National Tobacco Growers Settlement Trust;  
   (rr) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1464.201;  
   (ss) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(o); and  
   (tt) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;  
   (uu) A payment made pursuant to 38 U.S.C. 1805 by the Veteran's Administration, to children of female Vietnam veterans; and  
   (vv) A discount or subsidy provided to Medicare beneficiaries pursuant to Section 1860D-31(a)(6) of the Social Security Act.

(3)(2) Benefit calculation. Excluded income pursuant to subsection [2][4] of this section and an applicable deduction listed in this subsection shall be applied:
(a) [Standard] Work expense standard deduction of ninety (90) dollars for full-time and part-time employment;  
(b) On or after November 1, 1995, if the caregiver is not the parent, legal guardian or a member of the benefit group, the dependent care disregard shall:
   1. Be allowed as a work expense for:  
      a. An able bodied child age thirteen (13) or over and not under
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court supervision;
   b. An incapacitated adult living in the home and receiving K-
      TAP;
   c. A sanctioned individual whose earned income is considered
      available to the K-TAP household;
   d. A K-TAP case that is [would] otherwise [be] ineligible for K-
      TAP without the benefit of the disregard for child care, at the option
      of the recipient; and
   e. The month of application for K-TAP benefits; and
   2. Not exceed:
      a. $175 per month per individual for full-time employment; or
      b. $150 per month per individual for part-time employment; or
      c. $200 per month per individual for child under age two (2);
   (c) Child support payment received and retained until notification
      of eligibility for K-TAP is received;
   (d) Child support payment assigned and actually forwarded or
      paid to the cabinet; and
   (e) First thirty (30) dollars and one-third (1/3) of the remainder
      of earned income not already deducted for each member of the
      benefit group calculated as follows:[1]
      1. The one-third (1/3) portion of this deduction shall be applied
         to each member's earned income for four (4) months;
      2. The thirty (30) dollar portion of this deduction shall be
         applied concurrently with the one-third (1/3) deduction and for an
         additional eight (8) consecutive months following the expiration of
         the concurrent period; and
   (f) For new employment, or increased wages, acquired after
      approval and reported timely, a one (1) time only disregard for
      employed adult member of the benefit group, the amount of two (2)
      full calendar months earnings calculated as follows:[2]
      1. The two (2) months earnings disregard shall be consecutive,
         and at the option of the recipient; and
      2. If otherwise eligible, a sanctioned or penalized member of
         the benefit group may receive the two (2) months earnings disre-
         gard.[3]
   (4)(3) Deductions from earnings pursuant to subsection
      (3)(2)(a), (b) and (e) of this section shall not apply for a month the
      individual;
      (a) Reduces, terminates, or refuses to accept employment
         within the period of thirty (30) days preceding such month, unless
         good cause exists pursuant to 921 KAR 2:370, Section 6(1); or;
      (b) Fails to report an increase in earnings, that impacts eligi-
         bility, within ten (10) days of the change, unless good cause exists as
         follows:
         1. The benefit group has been directly affected by a natural
            disaster;
         2. An immediate family member living in the home was institu-
            tionalized or died during the ten (10) day report period; or
         3. The responsible relative in the case, and if different, the
            member employed, is out of town for the entire ten (10) day report
            period.[4]
   (5)(4) Changes in income and resources of the benefit group
      that contains a member who is participating in the wage supple-
      mentation component of Kentucky Works pursuant to 921 KAR
      2:370 shall be disregarded for the first six (6) months of wage sup-
      plementation component participation.

Section 8.[7] Child Care Expense. With the exception of those
circumstances pursuant to Section 8(4)(2)(b) of this administrative
rule, a child care expense incurred as a result of employment shall be paid pursuant to 922 KAR 2:160.

Section 7.[6] Income and Resources of an Individual Not In-
cluded in the Benefit Group. (1) The income provisions of this sec-
tion shall apply to the following individuals, living in the home but
not included in the benefit group, pursuant to subsection (2) of this
section:
   (a) A stepparent;
   (b) The spouse of a minor dependent child;
   (c) The spouse of a specified relative other than a parent;
   (d) A parent barred from receiving assistance due to failure to
meet alien status; or
   (e) A parent of a minor parent.
   (2) [Income] The gross income of the individual shall be con-
      sidered available to the benefit group, subject to the following de-
      ductions:
      (a) The first ninety (90) dollars of the gross earned income; and
      (b)[1] An amount equal to the K-TAP standard of need for the appro-
         priate family size, pursuant to Section 9(8) of this administra-
         tive regulation for:
         a.[4] The support of the individual; and
         b.[2] A person living in the home if:
         1.[6] The needs of the person are not included in the K-TAP
            eligibility determination; and
         b.[6] The person [b.–He] is or may be claimed as a dependent for
            the purpose of determining his federal personal income tax liability
            by the individual;
         2.[6] An amount actually paid to a person not living in the
            home who is or may be claimed by him as a dependent for the
            purpose of determining his personal income tax liability by the
            individual;
         3.[6] Payment for alimony or child support to a person not
            living in the home by the individual;
         4.[6] Income of an SSI recipient who is listed in subsection (1)
            of this section; or
         5.[6] A retroactive SSI payment, that is counted in determining
            eligibility and the amount of payment to the K-TAP unit in the
            month received, in a subsequent month.
   (3) [Sanction exception.] The income of a sanctioned individual
      shall not be eligible for a deduction listed in this section.
   (4) A resource shall not be considered in determining eligibility of
      the parent, minor dependent child, or specified relative other
      than a parent or the benefit group that belongs solely to the:
      (a) Stepparent;
      (b) Spouse of a minor dependent child;
      (c) Spouse of a specified relative other than a parent; or
      (d) Parent of a minor parent.

Section 8. [7] Alien Income and Resources. (1)(a) For the
purpose of this section, the alien's sponsor and sponsor's spouse,
[If living with the sponsor][1] shall be referred to as sponsor.
(b) This subsection and subsections (2) through (3), (4), (6),
and (6) of this section shall apply to an immigrant who has an
agreement executed other than an agreement pursuant to 8 U.S.C.
1183a.
   (2) The gross non-K-TAP income and resources of an alien's
sponsor shall be deemed available to the alien, subject to a de-
duction set forth in this section, for a period of three (3) years following
entry into the United States.
   (3) If an individual is sponsoring two (2) or more aliens, the
income and resources shall be prorated among the sponsored
aliens.
   (4) A sponsored alien shall be ineligible for a month in that
adequate information on the sponsor or sponsor's spouse is not
provided.
   (5) If an alien is sponsored by an agency or organization, that
has executed an affidavit of support, the alien shall be ineligible for
benefits for a period of three (3) years from date of entry into the
United States, unless it is determined that the sponsoring agency
or organization:
      (a) Is no longer in existence; or
      (b) Does not have the financial ability to meet the alien's
needs.
   (6) The provisions of this subsection shall not apply to an alien
pursuant to subsection (5) or (7) of this section.
   (7) Income] The gross income of the sponsor shall be consid-
      ered available to the benefit group subject to the following de-
      ductions:
      1. Twenty (20) percent of the total monthly gross earned in-
come, not to exceed $175; and
   2. An amount equal to the K-TAP standard of need for the
appropriate family size pursuant to Section 9(8) of this administra-
tive regulation of:
      a. The sponsor; and
      b. Other person living in the household:
(i) Who is or may be claimed by the sponsor as a dependent in determining the sponsor's [his] federal personal income tax liability; and  
(ii) Whose [The person's] needs are not considered in making a determination of eligibility for K-TAP;  
3. An amount paid by the sponsor to a nonhousehold member  
who is or may be claimed as a dependent in determining the sponsor's [his] federal personal tax liability;  
4. Actual payment of alimony or child support paid to a non-  
household member; and  
5. Income of a sponsor receiving SSI or K-TAP.  
(b) [Resources] [Resources] deemed available to the alien shall  
be the total amount of the resources of the sponsor and sponsor's  
spouse determined as if the sponsor [he] were a K-TAP applicant  
in this state, less $1,500.  
(7)(a) For a sponsored alien who enters the United States on  
or after December 19, 1997, who is required to complete a spon-  
sorship agreement pursuant to 8 U.S.C. 1183a, the total gross  
income and resources of an alien's sponsor and sponsor's spouse  
shall be deemed available to the alien.  
(b) The sponsor's obligation shall be available until the:  
1. [The] immigrant:  
   a. Becomes a United States citizen;  
   b. Is credited with forty (40) quarters of work; or  
   c. Ceases to hold the status of an alien lawfully admitted for  
      permanent residence; or  
2. [The] sponsor dies.  
(c)(b) The immigrant shall provide the sponsorship agreement  
pursuant to 8 U.S.C. 1183a.  
(8)(a) If an amount less than the amount in the sponsorship  
agreement is made available to the immigrant, the actual amount  
provided by the sponsor shall be considered for a period up to  
twelve (12) months from the month of the determination if an  
alien is determined indigent.  
(b) An alien shall be determined indigent if:  
1.(a) The amount of the sponsor's income and resources  
given to the alien is less than the amount in the agreement; and  
2.(b) Without K-TAP assistance and after consideration of the  
alien's own income, cash, food, housing or assistance provided by  
an individual including the sponsor, the alien is unable to obtain  
food and shelter.  
(9) Deeming of the sponsor's income shall not apply for twelve  
(12) months if the:  
(a) Alien or alien's child has been subjected to extreme cruelty  
or battery while living in the United States and the individual  
committing the battery or extreme cruelty does not live with the child  
or parent if committed by a:  
1. Spouse or parent; or  
2. Spouse or parent's family living with the alien or alien's child  
and the spouse or parent allows the cruelty or battery; or  
(b) Alien is a child who lives with a parent who has been sub-  
jected to extreme cruelty or battery while living in the United States  
and the individual committing the battery or extreme cruelty does  
not live with the child or parent if committed by a:  
1. Spouse; or  
2. Member of the spouse's family living in the same household  
and the spouse allows the cruelty or battery.  

Section 9.8 Payment Maximum. (1) The K-TAP payment maximum  
includes an amount for food, clothing, shelter, and utili-  
ties.  
(2)(e) Countable income, pursuant to Section 10.9 of this ad-  
mministrative regulation, shall be subtracted in determining eligibility  
for and the amount of the K-TAP assistance payment as follows:  

<table>
<thead>
<tr>
<th>Number of Eligible Persons</th>
<th>Payment Maximum</th>
<th>Standard of Need</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 person</td>
<td>$186</td>
<td>$401</td>
</tr>
<tr>
<td>2 persons</td>
<td>$225</td>
<td>$460</td>
</tr>
<tr>
<td>3 persons</td>
<td>$262</td>
<td>$526</td>
</tr>
<tr>
<td>4 persons</td>
<td>$328</td>
<td>$592</td>
</tr>
<tr>
<td>5 persons</td>
<td>$383</td>
<td>$656</td>
</tr>
<tr>
<td>6 persons</td>
<td>$432</td>
<td>$724</td>
</tr>
<tr>
<td>7 or more persons</td>
<td>$482</td>
<td>$790</td>
</tr>
</tbody>
</table>

(3) The gross income limit shall be as follows for the appropriate  
family size:  

<table>
<thead>
<tr>
<th>Number of Eligible Persons</th>
<th>Maximum Gross Income Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Person</td>
<td>$742</td>
</tr>
<tr>
<td>2 Persons</td>
<td>$851</td>
</tr>
<tr>
<td>3 Persons</td>
<td>$974</td>
</tr>
<tr>
<td>4 Persons</td>
<td>$1096</td>
</tr>
<tr>
<td>5 Persons</td>
<td>$1218</td>
</tr>
<tr>
<td>6 Persons</td>
<td>$1340</td>
</tr>
<tr>
<td>7 or more Persons</td>
<td>$1462</td>
</tr>
</tbody>
</table>

(3) Since the payment maximum does not meet full need, effec- 
tive July 1, 1989, a forty-five (45) percent ratable reduction shall  
be applied to the deficit between the family's countable income and  
the standard of need for the appropriate family size.  
(4)(a) The assistance payment shall be the lesser amount of  
either:  
1. Fifty-five (55) percent of the deficit pursuant to subsection  
   (3) of this section; or  
2. The payment maximum pursuant to subsection (2)(a) of this  
   section.  
(b) As a result of applying the forty-five (45) percent ratable  
   reduction pursuant to subsection (3) of this section, an eligible  
   payment to an otherwise eligible family with no income shall be  
calculated pursuant to KRS 205.200(2).  

Section 10.9 Best Estimate. (1) The benefit shall be com- 
puted by using a best estimate of income that may exist in the  
payment month.  
(2) The following method shall be used to calculate a best  
estimate:  
(a) For a case with earned income, other than self-employment  
   earned income, a monthly amount shall be determined as follows:  
   1. Cents shall:  
      a. Not be rounded to the nearest dollar before adding or multi-  
         plying hourly or daily earnings; and  
      b. Be rounded to the nearest dollar before adding or multiplying  
         weekly, biweekly, semimonthly, monthly, quarterly, or annual  
         amounts.  
   2. Unless it does not represent the ongoing situation, income from  
      all pay periods in the preceding two (2) calendar months shall  
      be used.  
   3. A monthly amount shall be determined by:  
      a. Adding gross income from each pay period;  
      b. Dividing the total number of pay periods considered;  
      [and]  
      c. Converting the pay period figure to a monthly figure by mul-  
tiplying:  
         (i) Weekly amount by four and one-third (4 1/3);  
         (ii) Biweekly amount by two and one-sixth (2 1/6); or  
         (iii) Semimonthly amount by two (2); and  
         d. Rounding to the nearest dollar;[i]  
   4. If income has recently begun and the applicant or recipient  
      has not received two (2) calendar months of earned income, the  
      anticipated monthly income shall be computed by:  
      a. Multiplying the hourly rate by the estimated number of hours  
         to be worked in a pay period; or  
      b.(i) Multiplying the daily rate by the estimated number of days  
         to be worked in the pay period; and  
      (ii) Converting the resulting pay period figure to a monthly  
         amount pursuant to subparagraph 3c of this paragraph;[i] and  
      (e) Rounding to the nearest dollar;  
   (b) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:  
      1. Rounding cents to the nearest dollar;  
      2. Using the gross monthly amount of continuing, stable un-  
         earned income received on a monthly basis; and  
      3. [Unless it does not represent the ongoing situation] Aver-  
         aging the amount of nonstable unearned income received in the  
three (3) prior calendar months, unless it does not represent the  
ongoing situation; and  
      (c) For a case with self-employment income, a monthly amount  

- 1027 -
shall be determined as follows:
1. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);
2. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and
3. Profit shall be determined by:
   a. Rounding the total gross income to the nearest dollar;
   b. Rounding the total amount of allowable expenses to the nearest dollar;
   c. Dividing each by twelve (12), or the appropriate number of months, and rounding to the nearest dollar; and
   d. Subtracting the rounded monthly expense from the rounded monthly income.

(3) The best estimate shall be recalculated:
   a. At six (6) month intervals for a case with:
      1. Earned or unearned income other than self-employment; or
      2. Income from a self-employment enterprise that has not been in existence for at least one (1) year;
   b. At twelve (12) month intervals for a case with a self-employment enterprise that has been in existence for at least one (1) year;
   c. If the agency becomes aware of a change in a circumstance; or
   d. To reflect a mass change in the standard of need or payment maximum standard pursuant to Section 9(8) of this administrative regulation.

Section 11.10. K-TAP Recoupment. [Except for an overpayment in administrative regulation 921-KAR-2:047.] The following provisions shall apply for recoupment of a K-TAP overpayment [are effective for an overpayment discovered on or after April 1, 1992, regardless of when the overpayment occurred].

(1) Necessary action will be taken promptly to correct and recoup an overpayment.
(2) An overpayment, including assistance paid pending a hearing decision, shall be recovered;
   a. From an adult claimant [the individual member responsible for the overpayment], whether or not currently receiving K-TAP benefits;

   1. After notice and an opportunity for a fair hearing pursuant to 921-KAR-2:055 is given;
   2. After administrative and judicial remedies have been exhausted or abandoned; and
   3. Including assistance paid;
      a. Pending the hearing decision; or
      b. Due to cabinet error.
   (b) [a recipient].
(3) An overpayment shall be recovered through:
   1. [a(a)] Repayment by the client (individual) to the cabinet;
   2. [or(b)] Reduction of future K-TAP benefits, that shall result in the benefit group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income pursuant to Section 9(8) of this administrative regulation; or
   3.(e)] Civil action in the court of appropriate jurisdiction.

(3)(d) In a case that has both an overpayment and an underpayment [they] shall be offset against the other in correcting the payment to a current recipient.

[6] Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing pursuant to 921-KAR-2:055 is given and the administrative and judicial remedies have been exhausted or abandoned.

Section 12. Aid to Families with Dependent Children Recoupment. (1) The cabinet shall recoup an Aid to Families with Dependent Children overpayment discovered on or after April 1, 1992, pursuant to 45 C.F.R. 233.20(a)(13);
(2) An Aid to Families with Dependent Children overpayment shall be recovered from an adult or child member of the benefit group;
(a) Pursuant to 45 C.F.R. 233.20(a)(13); and
(b) In accordance with the recoupment process specified in Section 11 of this administrative regulation.

Section 13.14. Avoiding an Overpayment. (1) A K-TAP recipient may voluntarily return a benefit check to avoid an overpayment if:
   a. Case is totally ineligible for the month the check is issued; and
   b. Check has not been reduced for recoupment of a previous overpayment.
(2) If a check is voluntarily returned, the cabinet shall:
   a. Determine [a determination shall be made] whether or not the recipient is due a refund as described in Section 13 [42] of this administrative regulation; and
   b. Complete a PA-30.2, "Payment Receipt" to verify for the K-TAP recipient the check has been returned.

Section 14.12. Refund. A recipient shall be due a refund in the following situations:
(1) An amount in excess of the actual overpayment is recouped;
(2) An overpayment and an underpayment is offset and a balance is owed to the recipient; and
(3) A K-TAP check that is voluntarily returned to avoid an overpayment is compared to the current month obligation of child support collected by the cabinet during the month the K-TAP check was intended to cover, leaving a balance owed to the recipient.

Section 15.13. Correction of Underpayments. The following provisions shall apply to a K-TAP payment:
(1) An underpayment shall be promptly corrected to:
   a. A current K-TAP recipient; and
   b. One (1) who would be a current recipient if the error causing the underpayment had not occurred;
(2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group;
(3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in the:
   a. [The] Month the payment is paid; or
   b. [The] Next following month.

Section 16. [44.] Incorporation by Reference. (1) "PA-30.2, Payment Receipt, edition 01/05." The following material is incorporated by reference;
(a) PA-30.2, "Payment Receipt, edition 01/05"; and
(b) FA-1, "Transitional Assistance Self-Assessment, edition 01/05."
(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.

MIKE ROBINSON, Commissioner
DUANE L. KILTY, JR., Ph.D., Undersecretary
JAMES W. HOLZINGER, JR., M.D., Secretary
APPROVED BY AGENCY: October 4, 2004
FILED WITH LRC: October 5, 2004 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2004, at 9 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 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. 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 ac-
this administrative regulation: The cabinet anticipates a savings to the K-TAP program with recoupment of benefits from recipients who were not eligible to receive.

(a) Initially: Indeterminable
(b) On a continuing basis: Indeterminable
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal TANF funding.

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 or increase fees. The amendments to this regulation are intended to provide savings to the cabinet.

8. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not contain fees.

9. TIERING: Is tiering applied? Tiering is not required, as these policies will become effective statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601 et seq.
2. State compliance standards. KRS 205.200(2) and KRS 205.211
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601 et seq.
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.
NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, AUGUST 15, 2003

KENTUCKY STATE BOARD OF ELECTIONS
(New Administrative Regulation)

31 KAR 4:140. Submitting absentee ballot applications to the Department of Defense Interim Voting Assistance System (IVAS) by electronic mail.

RELATES TO: KRS 117.079, 117.085, and 42 U.S.C. 1973 ff-1
STATUTORY AUTHORITY: KRS 117.015, 117.079, 117.085, 369.107(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. 99-410, authorizes the Department of Defense to implement an interim voting assistance system for the purposes of expediting the absentee voting process for deployed members of the Armed Forces of the United States using existing e-mail technology. This administrative regulation implements IVAS.

Section 1. Definitions. (1) "Absentee ballot application" means the Federal Postcard Absentee Ballot Application electronically mailed to the county clerk from IVAS.

(2) "Instructions to voter sheet" means the form containing instructions for voting.

(3) "IVAS" means the Department of Defense Interim Voting Assistance System.

(4) "Registered voter" means a resident of Kentucky who is eligible to vote and is a deployed member of the Armed Forces of the U.S.

(5) "Voter verification sheet" means the form the registered voter signs and the voter assistance oath.

Section 2. Processing a Completed Application by Electronic Mail. (1) If the application is received by electronic mail from IVAS less than seven (7) days before the applicable election, the county clerk shall not process the application.

(2) If the completed application is received by electronic mail from IVAS not less than seven (7) days before the election, then the county clerk shall affix his seal to the application.

(3) The county clerk shall then verify the voter eligibility. If the voter is eligible to vote in the current election, then the county clerk shall prepare an electronic copy in Portable Document Format (PDF) of the original absentee ballot. The original absentee ballot is then marked electronically mailed to IVAS and retained.

(4) The original absentee ballot shall not be reused. The electronic copy of the original absentee ballot shall be sent via electronic mail to IVAS, along with the Instructions to voter sheet and the voter verification sheet.

Section 3. Voter's Instructions on Completing an Electronic Absentee Ballot Received From IVAS. (1) When a voter receives an absentee ballot via electronic mail, the voter shall print the absentee ballot, mark the absentee ballot and seal it in an inner envelope.

(2) The voter shall then complete and sign the Voter Verification Sheet. If the voter required assistance, the person rendering assistance shall complete the voter assistance section on the voter verification sheet.

(3) The voter shall print his or her name, voting address and precinct number on the back of the outer envelope as found on the voter verification sheet. The voter shall then sign across the back flap of the outer envelope. The voter shall print "Absentee Ballot" on the front of the outer envelope, but shall not obstruct the address area.

(4) The voter shall mail the envelope to the appropriate county clerk. The absentee ballot must be received, by 6 p.m. local time on election day, to the county clerk through the mail in order to be counted.

Section 4. Incorporation by Reference. (1) "Federal Post Card Application. Standard Form 76A (1-2000);"

(2) "Instructions to Voter Sheet. SBE 46A (9/04);" and

(3) "Voter Verification Sheet. SBE 46B (9/04)."

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

APPROVED BY AGENCY: September 21, 2004
FILED WITH LRC: September 23, 2004 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2004, at 10 a.m. local time at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 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.

(7) 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 December 1, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Sarah Ball Johnson, Executive Director, Kentucky Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sarah Ball Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements the Department of Defense Interim Voting Assistance System to expedite the absentee voting process for deployed members of the Armed Services of the United States, using existing e-mail technology. This is a federal initiative under the Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. 99-410, 42 U.S.C.A. , 1973 ff-1.

(b) The necessity of this administrative regulation: This regulation is necessary to further the aims of the Uniformed and Overseas Citizens Absentee Voting Act, KRS 117.079 and 117.085 to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1) and 117.079 authorize the board to promulgate administrative regulations governing the absentee voting process for Kentucky residents who are military personnel serving on active duty outside the United States.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation provides another option for and expedites the absentee voting process for military personnel who are deployed overseas, many times on short notice, causing delays in regular mail service and access to facsimile machines in some cases is impractical.

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

(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 a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eligible voters who are members of the Armed Forces and deployed overseas and all county clerks in counties who have electronic mail capabilities to enter the Department of
Defense Interim Voting Assistance System. There are 66 counties who have the capability of entering the system.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: The county clerks will have to establish a link to the Interim Voting Assistance System website, a userid and password to participate in the program.

(5) Estimate how much it will cost to implement this administrative regulation:

(a) Initially: The costs for the program are minimal.

(b) On a continuing basis: The costs associated with participating in the program are minimal.

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing this regulation will be funded by state and local funds appropriated to the State Board of Elections and the county court clerks.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No fees are involved. Additional funding shall not 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 does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, this administrative regulation applies to all eligible voters who are deployed members of the Armed Forces of the United States.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
Office of the Controller
(New Administrative Regulation)

200 KAR 38:020. Allocation of driving under the influence service fees.

RELATES TO: KRS 189A.050
STATUTORY AUTHORITY: KRS 42.0201(3), (5)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.050 imposes a $325 service fee upon persons convicted of driving under the influence of alcohol or other substance impairing one’s driving ability and allocates the fee among designated agencies. This administrative regulation provides for the allocation of forty-six (46) percent of the service fee, as stated in KRS 189A.050(3)(f), for the purposes specified in the statute.

Section 1. Circuit clerks shall report to the Finance and Administration Cabinet and pay into the state treasury the fee imposed by KRS 189A.050 upon persons convicted of driving under the influence of alcohol or other substance impairing driving ability at the time other fees, fines, and forfeitures adjudged in the courts of their counties, are reported and paid into the treasury, as provided in KRS 30A.190.

Section 2. Pursuant to KRS 189A.050(3)(f), forty-six (46) percent of the $325 service fee collected shall be allocated quarterly by the Finance and Administration Cabinet, on a percentage basis, to the agencies, and for the purposes, indicated below:

1. Transportation Cabinet - five (5) percent for furnishing copies of driver history records to courts for use in driving under the influence cases.

2. Health and Family Services Cabinet - fifty-one and one-half (51.5) percent for costs of treatment programs for indigent offenders.

3. Finance and Administration Cabinet - twenty-nine and one-half (29.5) percent for distribution to counties in which drunk driving convictions are adjudged to assist in expense of maintaining jails, and which shall be in addition to other jail costs allowed by the state.

4. Justice and Public Safety Cabinet - fourteen (14) percent for enforcement of activities under the provisions of KRS 189A.010.

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: September 27, 2004
FILED WITH LRC: September 30, 2004 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 22, 2004, at 10 a.m. in Room 386 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by November 15, 2004, the hearing may be canceled. This hearing is open to the public, any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation.

A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 1, 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: Ed Ross, Controller, Finance and Administration Cabinet, Room 393 Capitol Annex; Frankfort, Kentucky 40601, phone (502) 564-2210, fax (502) 564-6597.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ed Ross
(1) Provide a brief summary of:
(a) What this administrative regulation does: Provides for the allocation to the executive branch of 46% of the $325 service fee paid by persons convicted of driving under the influence.
(b) The necessity of this administrative regulation: KRS 42.0201 authorizes the State Controller to promulgate administrative regulations relating to accounting policies and procedures, and to provide record keeping. KRS 189A.050 states that 46% of a $325 fee collected be transferred to be used for the purposes specified in the administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifies to whom the Finance and Administration will disburse 46% of the service fee collected pursuant to KRS 189A.050(3)(f).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the distribution of 46% of the $325 fee to the Transportation Cabinet, Health and Family Services Cabinet, Finance and Administration Cabinet, and Justice and Public Safety Cabinet.

(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: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Except as otherwise provided by law, this administrative regulation will apply to the Judicial Branch, Finance and Administration Cabinet, Transportation Cabinet, Cabinet for Health and Family Services, and the Justice and Public Protection Cabinet.

(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: There should be no impact on the Judicial Branch. The cabinets specified in the administrative regulation will receive a small increase in the amount received from each service fee paid above that authorized by 200 KAR 24:020. The following table provides the dollar amounts.
VOLUME 31, NUMBER 5 – NOVEMBER 1, 2004

<table>
<thead>
<tr>
<th>Cabinet</th>
<th>Percentage of 46% of Fee</th>
<th>Current $250 Fee</th>
<th>Proposed $325 Fee</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transportation</td>
<td>05.0%</td>
<td>7.38</td>
<td>7.48</td>
<td>+0.10</td>
</tr>
<tr>
<td>Health and Family Services</td>
<td>51.5%</td>
<td>75.96</td>
<td>76.99</td>
<td>+1.03</td>
</tr>
<tr>
<td>Finance and Administration</td>
<td>29.5%</td>
<td>43.51</td>
<td>44.10</td>
<td>+0.59</td>
</tr>
<tr>
<td>Justice and Public Protection</td>
<td>14.0%</td>
<td>20.65</td>
<td>20.93</td>
<td>+0.28</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>147.50</td>
<td>149.50</td>
<td>$2.00</td>
</tr>
</tbody>
</table>

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Administrative costs should be minimal.
(b) On a continuing basis: Administrative costs should be minimal.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fee collected pursuant to KRS 189A.050.
(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.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.
(9) TIERING: Is tiering applied? No, this regulation applies equally to all regulated entities.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
Office of the Controller
(New Administrative Regulation)


STATUTORY AUTHORITY: KRS 42.020(3), (5)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 23A.205 imposes a $100 court cost on a defendant convicted of a criminal offense in circuit court. KRS 23A.206 imposes a twenty (20) dollar fee and KRS 23A.2065 imposes a five (5) dollar fee on a defendant convicted of a criminal offense in circuit court. KRS 24A.175 imposes a $100 court cost on a defendant convicted of a criminal offense in district court. KRS 24A.176 imposes a twenty (20) dollar fee and KRS 24A.1765 imposes a five (5) dollar fee upon a defendant convicted of a criminal offense in district court. This administrative regulation provides for the distribution of the court costs and fees by the Finance and Administration Cabinet for the purposes specified in the statutes.

Section 1. Circuit Court Criminal Convictions Fees. (1) In accordance with KRS 23A.215(5), circuit clerks shall report to the Finance and Administration Cabinet and pay to the state treasury the $100 fee imposed by KRS 23A.205 upon a defendant convicted in criminal case in circuit court.
(2) Pursuant to KRS 42.320, the total amount of the $100 fee collected shall be allocated monthly by the Finance and Administration Cabinet, on a percentage basis, to the agencies and for the purposes indicated in the statute.
(3) In accordance with KRS 23A.215(5), circuit clerks shall report to the Finance and Administration Cabinet and pay to the state treasury the twenty (20) dollar fee imposed by KRS 23A.206 upon a defendant convicted in criminal case in circuit court.
(4) Pursuant to KRS 23A.205(5), the total amount of the twenty (20) dollar fee collected shall be allocated quarterly by the Finance and Administration Cabinet, on a percentage basis, to the agencies, and for the purposes, indicated below:
(a) Thirty (30) percent of the total shall be distributed equally to the cities, counties, urban-counties, charter counties or consolidated local governments with a police department or that contract for police services.
(b) Fifty (50) percent of the total shall be divided by the number of certified police officers, pursuant to KRS 15.380 to 15.404, and distributed to the cities, counties, urban-counties, charter counties or consolidated local governments with a police department or that contract for police services based on the number of certified police officers in the police department.
1. Annually, the number of certified police officers shall be based on a report prepared on or before August 1 by the Justice and Public Safety Cabinet specifying the number of certified police officers employed by a local government as of July 1.
2. For the purpose of this subsection, the number of contracted officers shall be calculated as follows:
(a) If the expenditure is $59,999 or less per fiscal year, the number of contracted officers calculated shall be zero.
(b) If the expenditure is $60,000 to $119,999 per fiscal year, the number of contracted officers calculated shall be one (1).
(c) An additional contractee officer shall be calculated for each $80,000 annually expended above $120,000 per fiscal year.
(d) Twenty (20) percent of the total shall be distributed equally to the fiscal court in counties with fiscal responsibility for jails or transporting prisoners.
(e) In accordance with KRS 23A.215(5), circuit clerks shall report to the Finance and Administration Cabinet and pay to the state treasury the five (5) dollar fee imposed by KRS 23A.2065 upon a defendant convicted in criminal case in circuit court.
(f) Pursuant to KRS 23A.2065, the total amount of the five (5) dollar fee collected shall be distributed quarterly by the Finance and Administration Cabinet to the Health and Family Services Cabinet for the purpose specified in the statute.

Section 2. District Court Criminal Convictions Fees. (1) In accordance with KRS 23A.215(5), circuit clerks shall report to the Finance and Administration Cabinet and pay to the state treasury the $100 fee imposed by KRS 24A.175 upon a defendant convicted in a criminal case in district court.
(2) Pursuant to KRS 42.320, the total amount of the $100 fee collected shall be allocated monthly by the Finance and Administration Cabinet, on a percentage basis, to the agencies and for the purposes indicated in the statute.
(3) In accordance with KRS 23A.215(5), circuit clerks shall report to the Finance and Administration Cabinet and pay to the state treasury the twenty (20) dollar fee imposed by KRS 24A.176 upon a defendant convicted in a criminal case in district court.
(4) Pursuant to KRS 24A.176(5), the total amount of the twenty (20) dollar fee collected shall be allocated quarterly by the Finance and Administration Cabinet, on a percentage basis, to the agencies, and for the purposes, indicated below:
(a) Thirty (30) percent of the total shall be distributed equally to the cities, counties, urban-counties, charter counties or consolidated local governments with a police department or that contract for police services.
(b) Fifty (50) percent of the total shall be divided by the number of certified police officers, pursuant to KRS 15.380 to 15.404, and distributed to the cities, counties, urban-counties, charter counties or consolidated local governments with a police department or that contract for police services based on the number of certified police officers in the police department.
1. Annually, the number of certified police officers shall be based on a report prepared on or before August 1 by the Justice and Public Safety Cabinet specifying the number of certified police officers employed by a local government as of July 1.
2. For the purpose of this subsection, the number of contracted officers shall be calculated as follows:
(a) If the expenditure is $59,999 or less per fiscal year, the number of contracted officers calculated shall be zero.
(b) If the expenditure is $60,000 to $119,999 per fiscal year, the number of contracted officers calculated shall be one (1).
c. An additional contracted officer shall be calculated for each $60,000 annually expended above $120,000 per fiscal year.

(c) Twenty (20) percent of the total shall be distributed equally to the fiscal court in counties with fiscal responsibility for jails or transporting prisoners.

(5) In accordance with KRS 23A.215(5), circuit clerks shall report to the Finance and Administration Cabinet to pay to the state treasury the five (5) dollar fee imposed by KRS 24A.1765 upon a defendant convicted in a criminal case in district court.

(6) Pursuant to KRS 24A.1765, the total amount of the five (5) dollar fee collected shall be distributed quarterly by the Finance and Administration Cabinet to the Health and Family Services Cabinet for the purpose specified in the statute.

Section 3. Distribution of Court Costs for Criminal Cases. (1) The Finance and Administration Cabinet shall distribute the collected court costs and fees from criminal cases in the circuit and district courts from the court cost distribution fund established pursuant to KRS 42:320 as a percentage of the total amount deposited in the fund.

(2) The Finance and Administration Cabinet shall allocate the total court costs and fees collected in three (3) pools.

(a) Eighty (80) percent of the fund shall be distributed monthly in accordance with Sections 1(2) and 2(2).

(b) Sixteen (16) percent of the fund shall be distributed quarterly in accordance with Sections 1(4) and 2(4).

(c) Four (4) percent of the fund shall be distributed quarterly in accordance with Sections 1(5) and 2(5).

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: September 27, 2004
FILED WITH LRC: September 30, 2004 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 22, 2004, at 11 a.m. in Room 386 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five weekdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by November 15, 2004, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 1, 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: Ed Ross, Controller, Finance & Administration Cabinet, Room 393 Capitol Annex; Frankfort, Kentucky 40601, phone (502) 564-2210, fax (502) 564-5697.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ed Ross

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides for the allocation of court costs paid by persons convicted of criminal offenses in circuit and district courts.

(b) The necessity of this administrative regulation: KRS 42.0201 authorizes the State Controller to promulgate administrative regulations relating to accounting policies and procedures, and to provide record keeping. The Finance and Administration Cabinet is responsible for the distribution of court costs collected pursuant to KRS 42.320.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifies to whom and the amount of court costs from criminal cases that the Finance and Administration Cabinet will disburse.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the distribution of the $125 court costs for criminal cases.

(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: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Except as otherwise provided by law, this administrative regulation will apply to the judicial branch, the executive branch, and counties.

(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: There should be minimal impact on the Judicial Branch. The Health and Family Services Cabinet will receive funds for the telephonic behavioral health jail triage system. Funds will be distributed to local governments to pay the expenses for operating police departments. Funds will be distributed to counties that operate jails or transport prisoners. The Finance and Administration Cabinet will allocate the court costs as a percentage of the entire amount collected to make the distribution process more efficient, rather than maintaining 3 separate funds to implement HB 157 and HB 413.

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

(a) Initially: Administrative costs should be minimal.

(b) On a continuing basis: Administrative costs should be minimal.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fee collected pursuant to 23A.205, 23A.206, 23A.2065, 24A.175, 24A.176, and 24A.1765.

(d) 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.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, this administrative regulation establishes the $5 court cost imposed by HB 157 and the $20 court cost imposed by HB 413.

(9) TIERING: Is tiering applied? No, this regulation applies equally to all regulated entities.

FINANCE AND ADMINISTRATION CABINET
Office of the Controller
Office of the Controller
(New Administrative Regulation)

200 KAR 38:040. Allocation of fees for disabled permit parking violations.

RELATES TO: KRS 24A.180, 189.456, 189.459, 189.990, 205.900 - 205.920

STATUTORY AUTHORITY: KRS 42.0201(3), (5)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.990 imposes a $250 fine on a person for violating disabled parking provisions set out in KRS 189.459(2) and (3). This administrative regulation provides for the allocation of those fines for the purposes specified in KRS 189.990.

Section 1. Monthly, district court clerks shall deposit the general fund of the state treasury and report to the Finance and Administration Cabinet the ESC fines collected pursuant to KRS 189.990 for violation of the disabled parking provisions.

Section 2. The fines and costs collected shall be allocated as follows:

(1) Ninety (90) percent of the amount remitted to the state treasury shall be distributed monthly by the Finance and Admini-
stration Cabinet to the Health and Family Services Cabinet to be used for the Personal Care Assistance Program pursuant to KRS 205.900 to 205.920.

(2) Ten (10) percent of the amount remitted to the State Treasury shall be distributed annually by the Finance and Administration Cabinet to the fiscal court in the county where the violation occurred, and then distributed equally by the fiscal court to all law enforcement agencies within the county.

R.B. RUDOPH, JR., Secretary
APPROVED BY AGENCY: September 27, 2004
FILED WITH LRC: September 30, 2004 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 22, 2004, at 8 a.m. in Room 386 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by November 15, 2004, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulatory document. Written comments shall be accepted through November 30, 2004. Send written notification of intent to be heard at the hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ed Ross, Controller, Finance & Administration Cabinet, Room 386 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-2210, fax (502) 564-6597.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ed Ross

(1) Provide a brief summary of:
(a) What this administrative regulation does: Provides for the allocation of a $250 fine for violations of subsection (2) or (3) of KRS 189.459 relating to disabled parking placards or license plates.
(b) The necessity of this administrative regulation: KRS 42.0201 authorizes the State Controller to promulgate administrative regulations relating to accounting policies and procedures, and to provide record keeping. KRS 189A.459 states that 90% of the $250 fine collected be used for the personal care assistance program and 10% of the fine collected be returned to the county where the offense occurred and distributed equally to law enforcement agencies within the county.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifies how the Finance and Administration Cabinet will disburse the fines collected pursuant to subsection (2) or (3) of KRS 189A.459.

(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: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Except as otherwise provided by law, this administrative regulation applies to the Judicial Branch, Finance and Administration Cabinet, and the Health and Family Services Cabinet.

(3) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The district court clerks will be responsible for collecting fines for violations of the disability parking provisions as specified in KRS 189.990 and remitting those fines collected to the general fund for disbursement by the Finance and Administration Cabinet to the agencies specified in the statute. The Health and Family Services Cabinet will receive additional funds for use in the personal care assistance program. The fiscal courts will receive additional funds for distribution to local law enforcement agencies.

(5) Provide an estimate of how much will it cost to implement this administrative regulation:
(a) Initially: Administrative costs should be minimal.
(b) On a continuing basis: Administrative costs should be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding will be required to implement and enforce the collection of fines pursuant to KRS 189.990(28).

(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.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, as specified in KRS 189.990(28) pursuant to HB 71, a $250 fine will be charged to violators.

(9) TIERING: Is tiering applied? No, this regulation applies equally to all regulated entities.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(New Administrative Regulation)

704 KAR 7:150. Secondary GED Program.

RELATES TO: KRS 151B.125, 158.145, 158.146, 158.6455
STATUTORY AUTHORITY: KRS 156.070, 156.180
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.146 requires the Department of Education to establish and implement a comprehensive statewide strategy to address the student dropout problem in Kentucky public schools and take into consideration comprehensive student programs and services that include, but are not limited to, identification, counseling, mentoring and other educational strategies for elementary, middle and high school students who are demonstrating little or no success in school, or who possess other risk factors that contribute to the likelihood of their dropping out of school. KRS 151B.125 requires that a high school equivalency diploma be issued upon successfully passing the GED tests given by the General Educational Development Testing Service (GEDTS) of the American Council on Education. The American Council on Education grants waivers to states to establish a Secondary GED Program as an integral component of a high school curriculum. The GEDTS specifies that the Secondary GED Program must align with the five (5) content areas measured by GED tests as well as with high school content in mathematics, writing, social studies, reading and science. The General Educational Development Testing Service requires that states request and receive approval prior to administering the GED tests to students enrolled in secondary schools. KRS 156.160 requires the Kentucky Board of Education to establish standards that school districts shall meet in student, program, service and operational performance. KRS 158.6455 requires that a student not be counted in a school's annual average dropout rate if enrolled in a district-operated or district-contracted alternative program leading to a certificate of completion or a General Education Development Program
(GED) diploma. The purpose of the Secondary GED Program shall be to provide a dropout student who has the academic capability to complete high school graduation requirements but who is behind the cohort group in the credits needed graduate the opportunity to stay in school and prepare for and obtain the GED certificate. This administrative regulation establishes requirements governing the Kentucky Secondary GED Program.

Section 1. Eligibility. (1) To be eligible for participation in the Secondary GED Program, a student shall:
(a) Be at least sixteen years old;
(b) Be at least two (2) grades behind (as measured by Carnegie Units) the cohort group the student entered high school with and have earned at least four (4) credits toward graduation;
(c) Be academically able to participate in the program as identified by:
   1. A Normal Curve Equivalent (NCE) of at least twenty-nine (29) in reading, language and mathematics on the Comprehensive Test of Basic Skills (CTBS) assessment administered in the ninth grade;
   2. Other assessment data; and
   3. Professional judgment by school and district staff; and
(d) Be provided all available intervention and support options to complete regular high school graduation requirements including counseling, appropriate remedial services, or alternative education before placement in the Secondary GED Program is considered.
(2) Prior to assigning an eligible student to a Secondary GED Program, a local district shall:
(a) Provide prentry counseling involving an administrator, teacher and counselor to the student and parent or guardian that includes discussion of alternative educational options available and a detailed explanation of the requirements of the GED program; and
(b) Obtain a written agreement from the student and parent or guardian to voluntary program participation and arrangements for payment of GED test fee, applying 702 KAR 3:220 for waiver of fee when appropriate.
(3) A student with a disability who has an Individual Education Program (IEP) or 504 Plan shall be placed in the Secondary GED Program only if the eligibility requirements established in subsection (1) of this section are met and the admissions and release committee of 504 committee determines and documents placement in the Secondary GED Program as appropriate.

Section 2. Instructional Program. (1) A local district implementing the Kentucky Secondary GED Program shall design a high school level instructional program that includes for each student who is to participate in the Secondary GED Program:
(a) The development of an individualized educational plan for each student consistent with the student's Individual Graduation Plan (IGP) and the student's goals for continuing education and employment;
(b) Curriculum and instruction aligned with the program of studies as established in 704 KAR 3:303, student learning goals applicable to all students in the school district, and the content assessed by the GED test;
(c) Student participation in the Commonwealth Accountability Testing System as established by 703 KAR Chapter 5 and KRS 158.6455 while enrolled in the program;
(d) Materials and resources specifically designed to prepare the student to pass the GED tests and obtain a GED certificate;
(e) Continuous assessment and progress reports;
(f) A minimum of fifteen (15) hours of direct instruction each week;
(g) Student participation, in addition to the required hours of direct instruction, in at least one (1) of the following each semester:
   1. Service learning;
   2. Vocational education;
   3. Additional coursework;
   4. An internship;
   5. A cooperative learning project; or
   6. Any other learning activity aligned with the student's Individual Graduation Plan; and
(h) Varied instructional strategies that shall include some combination of all of the following:
   1. Individualized instruction;
   2. Small group instruction;
   3. Applied instruction; and
   4. The development of basic technology literacy skills.
(2) A local district shall assign properly certified teachers to supervise the instruction of students enrolled in a Secondary GED Program.
(3) A local district shall provide a student to teacher ratio of no more than fifteen (15) to one (1) for students enrolled in a Secondary GED Program, unless an exception is approved by the Department of Education.
(4) A local district shall provide academic, career and personal counseling services to a student enrolled in a Secondary GED Program throughout program participation.
(5) A local district may contract with another provider to offer the secondary GED instructional program but shall ensure that the provider meets all student eligibility and instructional program requirements.

Section 3. GED Testing and Program Completion. (1) A local district shall establish criteria describing when students may take the GED tests.
(2) The student shall be prepared to take the GED test as measured by standard scores of not less than 430 on each of the five (5) tests and an average standard score of not less than 480 on the official GED practice test prior to taking the GED test.
(3) A local district shall coordinate the scheduling of and access to GED tests with the official state GED testing centers.
(4) A local district shall establish criteria for Secondary GED Program completion.
(5) A local district shall provide a student who has passed the GED tests and completed the Secondary GED Program with a certificate of high school completion in addition to the Kentucky High School Equivalency Diploma.
(6) A local district shall provide official, public recognition to a student completing a Secondary GED Program.

Section 4. Funding and Attendance Accounting. (1) For purposes of Support Education Excellence in Kentucky (SEEK) Program funding eligibility, for students enrolled in a Secondary GED Program a local district shall conform to the uniform method of recording pupil attendance as established in 702 KAR 7:125.
(2) A local district may seek approval from the Department of Education to administer a Secondary GED Program under a performance-based credit plan as identified in 704 KAR 3:304, Required Program of Studies.

Section 5. Application Procedures. (1) A local district shall submit an application to the Department of Education and secure approval prior to establishing a new Secondary GED Program. The written application shall describe how the local district will:
(a) Identify, counsel and admit eligible students in compliance with Section 1;
(b) Meet the instructional program requirements in compliance with Section 2;
(c) Meet the testing and program completion requirements identified in Section 3; and,
(d) Organize, administer, prepare teachers and counselors for the program, as well as evaluate the program.
(2) The initial application for a Secondary GED Program shall include written assurance from the local superintendent that the program will be administered in compliance with state statutes and administrative regulations.
(3) A local district shall submit an application to establish a new Secondary GED Program at least ninety (90) days prior to the first day on which services are to begin.
(4) The Commissioner of Education shall notify the local superintendent of a decision on the application no later than forty-five (45) days after the application is received.

Section 6. Reporting and Program Evaluation. A local district operating a Secondary GED Program shall submit to the Department of Education no later than June 30 of each year an annual
report on the Secondary GED Program that shall include:
(1) A summary of demographic information about the students who participated in the Secondary GED Program during the just concluded school year, including gender, age, race and ethnicity;
(2) The number of enrolled students who have an individual education program (IEP) or 504 plan;
(3) The number of enrolled students who are eligible for the national free and reduced lunch program;
(4) The number of students who attempted a GED test or tests;
(5) The number of students who passed a GED test or tests;
(6) The number of students who completed the Secondary GED Program; and
(7) The qualifications of the supervising teachers.

Section 7. Monitoring. (1) Based upon the data submitted in the annual report and desk audits, the Department of Education shall provide or identify appropriate assistance to a district that is not meeting the standards for a Secondary GED Program as set forth in this administrative regulation.

(2) The Department of Education may revoke program approval if a district fails to meet the standards for two (2) consecutive years. 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 of Education

KEITH TRAVIS, Chairperson

APPROVED BY AGENCY: October 8, 2004

FILED WITH LRC: October 12, 2004 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 29, 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 December 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:
(a) What this administrative regulation does: HB 178 amends KRS 158.6455 to establish that a student shall not be included in a school's annual dropout rate if the student is enrolled in a district-operated or district contracted alternative program leading to a certificate of completion or a GED and requires such a student to participate in the appropriate CATS assessment. In order for a state to offer a district operated GED program, the state must apply to the American Council on Education (ACE) and demonstrate how the state will ensure that instructional and administrative guidelines set forth by ACE will be met. This regulation provides guidance to districts that choose to implement the secondary GED option.
(b) The necessity of this administrative regulation: This regulation is required by KRS 158.6455 and HB 178.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation compiles with the change of status of and definition of dropout students.
(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: Local school districts and schools which choose to offer a Secondary GED Program, the Kentucky Department of Education staff who will coordinate the program, Kentucky GED Testing Centers which will administer the GED test to secondary students, and students who voluntarily participate.

(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 districts and schools which implement this program will have an option for students who choose to dropout of school. The Kentucky Department of Education will assign existing staff responsibilities concerning implementation and monitoring of the program. GED Testing Centers will provide KDE and districts with testing dates for students.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $20,000 annual fee to American Council on Education/GED Testing Service for program.
(b) On an ongoing basis: $20,000 annual fee to American Council on Education/GED Testing Service for program.
(5) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: State agency General Funds will be used for the $20,000 annual fee to the American Council on Education/GED Testing Service.

(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 with the implementation of this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not appropriate under these circumstances, as it applies equally to all school districts which choose to participate in this program.
VOLUME 31, NUMBER 5 – NOVEMBER 1, 2004

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of October 12, 2004

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 12, 2004, at 12:30 p.m. in Room 149 of the Capitol Annex. Representative Tanya Pullin, called the meeting to order, and the roll call was taken. The minutes of the September 14, 2004 meeting were approved.

Present were:

Members: Representative Tanya Pullin, Co-Chair; Senator Damon Thayer, Co-Chair; Senators Joey Pendleton, Richard Roeding, and Gary Tapp; Representatives Jimmie Lee, James Bruce, and Jon David Reinhardt.

LCR Staff: Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Karen Howard, Laura Milam, Jennifer Harrison and Emily Harkenrider.

Guests: Diana Barber, Tim Phelps, Kentucky Higher Education Assistance Authority; Eddie Mattingly, Mark Treesh, Department of Revenue; Jim Abbott, Angela Robinson, Ed Ross, Finance and Administration Cabinet; Catherine Ball, David W. Bratcher, Governor's Office of Agriculture Policy; Dena Moore, Board of Hairdressers; Mark Farrow, Department of Agriculture; Kevin Nolant, Kentucky Board of Education; B.J. Helton, Cheryl King, Council on Post-secondary Education; John Clay, Virginia Davis, Stephen B. Humphrey, Office of Alcoholic Beverage Control; Carrie Banahan, Lee Barnard, Betsy Johnson, Brenda M. Parker, Department of Insurance; Dr. Michael Auslander, Guy F. Delius, John Gray, Robert Gresham, Math McKinley, Lewis Rams, Rebecca Randall, Cabinet for Health and Family Services; Bob McBeath, Auditor of Public Accounts.

The Administrative Regulation Review Subcommittee met on October 12, 2004, and submits this report:

Kentucky Higher Education Assistance Authority: Authority

11 KAR 4:040. Educational institution participation requirements.

Diana Barber, Assistant General Counsel, and Tim Phelps, Student Aid Branch Manager, represented the Authority.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with KRS 13A.222(4)(a); and (2) to amend Sections 1 and 3 to correct statutory citations. Without objection, and with agreement of the agency, the amendments were approved.


11 KAR 5:145. CAP grant awards determination procedure.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct a statutory citation; and (2) to amend Section 6 to insert the word "and" for clarity. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 6:310. KHEAA Work-Study Program.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 6 to correct statutory citations; and (2) to amend Sections 1 and 10 to correct two typographical errors. Without objection, and with agreement of the agency, the amendments were approved.


A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct a statutory citation; and (2) to amend Sections 1, 3, and 4 for clarity and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 15:001. Definitions for 11 KAR Chapter 16.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to correct statutory citations. Without objection, and with agreement of the agency, the amendments were approved.

Finance And Administration Cabinet: Department of Revenue: General Admission

103 KAR 1:050. Forms manual. Mark Treesh, Commissioner, and Eddie Mattingly, Acting Director, Division of Legislative Serv-ices, represented the Department.

Finance And Administration Cabinet: Office of the Secretary:

Travel Expense and Reimbursement

200 KAR 2:006 & E. Employees' reimbursement for travel. Jim Abbott, Commissioner, Facilities and Support Services, Angela Robinson, Assistant General Counsel, and Ed Ross, State Control-ler, represented the Office.

A motion was made and seconded to approve the following amendments: (1) to amend Section 7 to delete the requirement that a state officer or employee have a receipt for the reimbursement of meals; (2) to amend Section 8 to state that receipts for actual and necessary expenses of official business travel were only required for items over ten (10) dollars; (3) to amend Section 9 to insert language stating how mileage shall be calculated and paid for if an employee's point of origin for travel was the employee's work station, the employee drove to a travel destination, and the employee's final destination was the employee's residence; and (4) to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Purchasing

200 KAR 5:365. Alternative project delivery methods for capital construction. In response to questions by Senator Pendleton, Commissioner Abbott stated that this administrative regulation defined and regulated alternative delivery methods for capital construction projects. In certain types of projects, alternative delivery methods were more efficient and cost-effective.

In response to questions by Co-Chair Pullin, Commissioner Abbott stated that examples of alternative delivery methods were design-build projects and construction management projects. It was important that Kentucky be able to utilize those methods for capital construction projects.

In response to a question by Senator Roeding, Commissioner Abbott stated that change orders could still be a problem even if alternative delivery methods were used for capital construction.

In response to a question by Senator Tapp, Commissioner Abbott stated that Secretary Rudolph closely monitored the Cabinet's use of change orders.

A motion was made and seconded to approve the following amendments: to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Governor's Office Of Agricultural Policy: Kentucky Agricultural Finance Corporation

200 KAR 18:021. Repeal of 200 KAR 18:020. Catherine Ball, General Counsel, and David Bratcher, Advisor, represented the Office.

General Government Cabinet: Board of Hairdressers and Cosmetologists

201 KAR 12:200. Requirements for continuing education for renewal of license. Dena Moore, Executive Secretary, represented the Board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to insert correct KRS and Ky. Acts 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 3, 4, and 5 to 11 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Governor's Office Of Agricultural Policy: Kentucky Agricultural Finance Corporation

202 KAR 9:010. Procedures for selling guaranteed security instruments. Catherine Ball, General Counsel, and David Bratcher,
Advisor, represented the Office.
A motion was made and seconded to approve the following amendments: to amend Sections 2 to 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department Of Agriculture: Division of Animal Health: Dog Law Administration
302 KAR 5:011. Repeal of 302 KAR 5:010, 5:030, 5:050, 5:060, and 5:070. Mark Farrow, Chief of Staff, represented the Department.
In response to questions by Senator Roeding, Mr. Farrow stated that in 1954, the state dog law was enacted with a $1.50 license tag fee. Because the law was unenforceable and widely ignored, Senate Bill 153 from the 2004 Session of the General Assembly repealed it. Now, counties could choose to enact local ordinances but they were not required to do so.

Education Cabinet: Kentucky Board of Education: Kentucky Department of Education: Office of Learning Support Services
704 KAR 7:140. World War II and Korean Veterans Diplomas. Kevin Noland represented the Department.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Council On Postsecondary Education: Adult Education and Literacy
785 KAR 1:010. GED Testing Program. Cheryl King, Vice President, and B.J. Helton, Senior Associate and GED Administrator, represented the Council.
In response to questions by Senator Roeding, Ms. King stated that the Council requested the testing fee increase with caution since most applicants were low-income individuals. However, the Council had not increased the fee since 1997 and currently, the testing centers were operating at a deficit. It cost the centers $37 to administer the test and the existing testing fee was $30. Although the centers retained the entire fee, the majority of the centers had no other sources of funding. With the proposed fee increase, Kentucky’s testing fee would continue to be lower than that of adjacent states and would be the 45th lowest fee in the nation. If applicants could not afford the fee, the adult education programs which provided the GED instruction would assist them in obtaining any available local resources such as from churches, businesses, the United Way, and other governmental agencies.
In response to questions by Co-Chair Pullin, Ms. King stated that the adult education programs could not use their state and federal funding for adult instruction to subsidize testing fees for low-income applicants, but the programs could assist them in obtaining any available community resources.
In response to a question by Senator Tapp, Ms. King stated that for the past two (2) years, the Council had utilized their adult education funds to waive the testing fee for low-income applicants in hopes of motivating more individuals to participate in the GED program. Unfortunately, the waiver did not result in a significant increase of testing applicants.
In response to questions by Senator Roeding, Ms. King stated that there were almost 600,000 Kentuckians without high school diplomas. Last year, 13,000 applicants took the GED test and about 9,700 of them passed. Currently, about twenty-two (22) percent of GED completers entered college and the Council hoped to increase that percentage to forty (40) or fifty (50) percent. Although GED completers initially had lower rates of college retention than high school graduates, if they succeeded in becoming sophomores, they had college graduation rates equal to high school graduates. Additionally, Ms. Helton stated that if Kentucky amended its GED program requirements, the existing GED testing standards would not change because the testing centers administered the national GED test.
In response to questions by Representative Lee, Ms. King stated that if an applicant took all parts of the GED test at one time, the new fee was forty (40) dollars. If the applicant had to retest any of the subparts, the new fee was ten (10) dollars each. An applicant only had to retest any failed subparts.
In response to questions by Representative Reinhardt, Ms. King stated that the Council had stopped waiving the testing fee due to state and federal budget cuts. These funds were new needed to finance the county adult education programs which provided the free GED instruction for applicants.
A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to properly reference the executive order; and (2) to amend Section 5 to specify that the testing fee shall be $40 if the applicant was taking all five subtests in a test session or $10 per subtest. Without objection, and with agreement of the agency, the amendments were approved.

Environmental And Public Protection Cabinet: Office of Alcoholic Beverage Control: Advertising Distilled Spirits and Wine
804 KAR 1:100. General advertising practices. John Clay, Executive Director, and Stephen B. Humphress, General Counsel, represented the Office.
In response to questions by Co-Chair Thayer, Mr. Clay stated that this package of amended administrative regulations implemented legislation from the 2004 Regular Session of the General Assembly. The amendments created more business-friendly license regulations, such as for caterers. 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 to 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.
Advertising Malt Liquor
804 KAR 2:071. Repeal of 804 KAR 2:007.

Licensing
804 KAR 4:010. Information required. 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 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.
804 KAR 4:100. Records to be retained. 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 Section 1 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to establish Section 3 to require the retention of records for entities licensed pursuant to the provision of KRS 242.123 and KRS 242.185. Without objection, and with agreement of the agency, the amendments were approved.
804 KAR 4:170. Through transporters. In response to a question by Senator Roeding, Mr. Clay stated that a through transporter was a trucker or trucking company moving liquor through the state on a cross-country route.
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; (2) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to establish Section 3 to incorporate by reference the required form. Without objection, and with agreement of the agency, the amendments were approved.
804 KAR 4:310. Caterer’s license.
804 KAR 4:370. Entertainment destination center license.
804 KAR 4:390. License renewals. 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; (2) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to establish Section 3 to require the retention of records for entities licensed pursuant to the provision of KRS 242.123 and KRS 242.185. Without objection, and with agreement of the agency, the amendments were approved.
state the necessity for and function served by this administrative regulation; and (2) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Conduct of Business; Employees**

804 KAR 5:070. Minos. A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to insert authorizing language; and (3) to amend Section 2 to comply with the format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Retail Premises**

804 KAR 7:010. Location in cities of first class. A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to insert authorizing language; (3) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 2 to comply with the statutory requirements of KRS 241.075 pertaining to certain liquor licenses for "combination business and residential areas." Without objection, and with agreement of the agency, the amendments were approved.

**Quotas**

805 KAR 9:010. Retail liquor license limit. In response to questions by Representative Reinhardt, Mr. Clay stated that the amendments to this administrative regulation deleted the 25,000 square footage parking requirement for retail package and drink liquor licenses. Local zoning and permit requirements would now govern that issue. However, the Office retained their general statutory authority to deny, suspend, or revoke licenses for sufficient cause, which could include parking and traffic safety considerations.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to insert authorizing language; (3) to amend Sections 1 and 2 to clarify how this administrative regulation applied to cities of the first class subject to KRS 241.065; and (4) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Malt Beverage Equipment, Supplies and Service**

804 KAR 11:010. Equipment and supplies. A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clarify the necessity for and function served by this administrative regulation; and (3) to amend the RELATES TO paragraph and Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Department of Insurance: Health Insurance Contracts**

806 KAR 17:290 & E. Independent external review program. Carrie Banahan, Director, Lee Barnard, and Betsy Johnson, Counsel, represented the Department.

A motion was made and seconded to approve the following amendments: to amend Section 3(6)(a) to require an Independent External Reviewer to verify credentials every three (3) years. Instead of every two (2) years. Without objection, and with agreement of the agency, the amendments were approved.

**Cabinet For Health And Family Services: Office of Certificate of Need: State Health Plan**

900 KAR 5:020 & E. State Health Plan for facilities and services. John Gray, Director, represented the Office.

In response to questions by Representative Bruce, Mr. Gray stated that ordinarily a certificate of need was required to establish a diagnostic and MRI clinic. However, some clinics were circumventing that requirement through the certificate of need exemption for private physician offices. The clinics claimed to be private physician offices even if there was no physician ownership or the offices were never used by a physician. The Office was addressing that issue by holding public hearings for the clinics to show cause why they didn't have certificates of need.

**Certificate of Need**

900 KAR 6:030 & E. Certificate of Need expenditure minimums. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to properly reference the executive order; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to specify that the provisions took effect on July 30, 2004, the effective date of the emergency administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

**Department for Public Health: Communicable Diseases**

900 KAR 2:070. Rabies control. Dr. Michael Auslander, State Public Health Veterinarian, represented the Department.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to specify citations; (2) to amend Sections 1, 5, 7, and 8 to delete provisions that repeated or conflicted with statutory provisions; (3) to amend Section 8 to incorporate by reference the required form; and (4) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 6, and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Milk and Milk Products.**

902 KAR 50:110. Grade A milk and milk products standards. Lewis Rams, Branch Manager, and Guy Delius, Assistant Director, represented the Department.

In response to a question by Representative Bruce, Mr. Delius stated that Kentucky's milk administrative regulations provided for safe milk consumption. This administrative regulation was amended so its standards would more closely follow the federal regulatory requirements.

A motion was made and seconded to approve the following amendments: to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Radiology**

902 KAR 100:012. Fee schedule. Guy Delius, Assistant Director, and Matt McKinley, Section Supervisor, represented the Department.

In response to questions by Senator Roeding, Mr. Delius stated that this administrative regulation established fees for the shipment of radioactive materials through Kentucky so Kentucky could recoup the costs associated with the shipments from the industries who were benefiting from them.

A motion was made and seconded to approve the following amendments: to amend Section 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**The Subcommittee and the promulgating agencies agreed to defer consideration of the following administrative regulations to the next meeting of the Subcommittee:**

**Finance And Administration Cabinet: Office of the Secretary: Purchasing**


**Environmental And Public Protection Cabinet: Department for Environmental Protection: Public Water Supply**

401 KAR 8:010. Definitions for 401 KAR Chapter 8.

401 KAR 8:020. Public and semipublic water supplies - general provisions.

401 KAR 8:070. Public notification.

401 KAR 8:075. Consumer confidence reports.

401 KAR 8:150. Disinfection, filtration, and recycling.

401 KAR 8:300. Lead and copper.

401 KAR 8:441. Repeal of 401 KAR 8:440.
Division of Waste Management: Solid Waste Planning
- 401 KAR 49:011. General provisions relating to area solid waste management plans.
- 401 KAR 49:080. Solid waste grant funds and solid waste collector and recycler registration.

Department for Natural Resources: 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

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

Special Performance Standards

Areas Unsuitable for Mining

Environmental And Public Protection Cabinet: Office of Housing, Buildings and Construction: Electrical Inspectors
- 815 KAR 35:070 & E. Low-voltage installer certification.

Cabinet For Health And Family Services: Department for Public Health: Radiology
- 902 KAR 100:071 Repeal of 902 KAR 100:073.
- 902 KAR 100:072. Use of radionuclides in the health arts.

Department for Medicaid Services: Payment and Services
- 907 KAR 3:010 & E. Reimbursement for physicians' services.

The subcommittee adjourned at 1:40 p.m., until Tuesday, November 9, 2004 at 10:30 a.m.
COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of September 13, 2004

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of September 13, 2004, having been referred to the Committee on September 3, 2004, pursuant to KRS 13A.290(6):

703 KAR 5:010

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 13, 2004 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of October 19, 2004

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of October 19, 2004, having been referred to the Committee on October 6, 2004, pursuant to KRS 13A.290(6):

201 KAR 28:090
201 KAR 28:110
201 KAR 28:210
902 KAR 20:058
908 KAR 3:050 & E

No action was taken on the administrative regulations. Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 19, 2004 meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE ON AGRICULTURE
AND NATURAL RESOURCES
Meeting of October 13, 2004

The following administrative regulations were available for consideration by the Interim Joint Committee on Agriculture and Natural Resources during its meeting of October 13, 2004, having been referred to the Committee on October 6, pursuant to KRS 13A.290(6):

302 KAR 20:115 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates
The Locator Index lists all administrative regulations published in VOLUME 31 of the Administrative Register from July, 2004 through June, 2005. 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 30 are those administrative regulations that were originally published in VOLUME 30 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2004 bound Volumes were published.

KRS Index
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 31 of the Administrative Register.

Subject Index
The Subject Index is a general index of administrative regulations published in VOLUME 31 of the Administrative Register, and is mainly broken down by agency.
### LOCATOR INDEX - EFFECTIVE DATES

#### VOLUME 30

The administrative regulations listed under VOLUME 30 are those administrative regulations that were originally published in Volume 30 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2004 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)

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