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MEETING NOTICE
The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on Tuesday, January 11, 2005 at 10:30 a.m. in Room 149 of the Capitol Annex. See tentative agenda on pages of this Administrative Register.
The ADMINISTRATIVE REGISTER OF KENTUCKY is the monthly supplement for the 2004 Edition of KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

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

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Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.
STATEMENT OF EMERGENCY
301 KAR 2:221E

This emergency administrative regulation establishes season dates, limits, shooting hours and other requirements for the 2004-2005 migratory game bird hunting season. Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, 50 C.F.R. Part 20, states that wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice, because the federal framework is not established until days before the start of the migratory bird season. This year the federal framework was established July 21, 2004. The Kentucky Fish and Wildlife Resources Commission approved the 2004-2005 waterfowl season, limits and requirements at its August 27, 2004, meeting. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the administrative regulations compiler on November 23, 2004.

ERNIE FLETCHER, Governor
C. THOMAS BENNETT, Commissioner

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Emergency Amendment)

301 KAR 2:221E. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 50 C.F.R. Parts 20, 21

STATUTORY AUTHORITY: KRS 150.025(1), 150.600(1), 50 C.F.R. Parts 20, 21

EFFECTIVE: November 23, 2004

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to establish waterfowl season dates and limits. This administrative regulation establishes the limits and dates within federal waterfowl hunting frameworks established by 50 C.F.R. Part 20.

Section 1. Definitions. (1) "Conservation Snow Goose Order" is defined by 50 C.F.R. Parts 20 and 21.
(2) "Dark goose" means a Canada goose, white-fronted goose, or brant.
(3) "Snow goose" means a snow goose or Ross' goose.
(4) "Waterfowl" is defined in KRS 150.010(40).

Section 2. (1) Except as authorized by 301 KAR 2:222, 301 KAR 2:225, or 301 KAR 2:226, a person shall not take waterfowl except on the dates and within the limits prescribed by this administrative regulation.
(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2:224.

Section 3. Gun and Archery Season Dates and Bag Limits for Duck, Coot, and Merganser, Except Canvassback and Pintail. (1) Season dates. There shall be a split season statewide,
(a) November 25 through November 28; and
(b) December 6 through [Statewide, Thanksgiving Day until the last Sunday in January],
(2) Canvassback season dates. Statewide, January 1 through January 30 [December 27 through January 26].
(3) Pintail season dates. Statewide, January 1 through January 30 [December 27 through January 26].
(4) The gun and archery daily bag limit shall be:
(a) Six (6) ducks, which shall not include more than:
1. Four (4) mallards, which shall not include more than two (2) hen mallards;
2. Two (2) wood ducks;
3. One (1) black duck;
4. Two (2) redheads;
5. One (1) pintail;
6. Three (3) scaup;
7. Three (3) mottled ducks;
8. One (1) canvassback;
(b) Fifteen (15) coots.
(c) Five (5) mergansers, which shall not include more than one (1) hooded merganser.
(5) The possession limits shall be double the daily bag limit.

Section 4. Gun and Archery Seasons Dates and Bag Limits for Geese. (1) White-fronted goose and Ross' goose seasons: Thanksgiving Day through January 31 [February 1], except that hunting for dark geese in the Western Goose Zone shall cease if a quota specified in Section 7 of this administrative regulation is reached.
(2) Snow goose season dates.
(a) Regular season: Thanksgiving Day through January 31 [February 1], except for the part of Fulton County in the Western Goose Zone, which shall have an ending date of February 15.
(b) Conservation Snow Goose Order.
1. The Conservation Snow Goose Order in the Western duck zone shall be February 1 [2] through February 4 [6] and February 7 [9] through March 31, unless otherwise specified below:
a. If the Canada goose quota is reached in either the Henderson Union or Ballard reporting area on or after January 30 [26], then the Snow Goose Season shall also close in that reporting area and the Snow Goose Conservation Order will begin one-half (1/2) hour before sunrise on the following day; and
b. In the Western Goose Zone, if the quota is reached and the season for Canada goose is closed on or after January 30 [26], the Snow Goose Season will also close and the Snow Goose Conservation Order will begin one-half (1/2) hour before sunrise on the following day,[and]
c. If the Canada Goose Season closes on or after February 1 in the part of Fulton County in the Western Goose Zone, then the Conservation Snow Goose Order will open one-half (1/2) hour before sunrise on the following day.
(3) Canada goose season dates shall be from the starting date listed below through January 31, except as provided in subparagraphs 5 and 6 of paragraph 4 of this subsection.
(a) The season shall not open until:
1. December 6 in the Western Goose Zone, including the portion of Fulton County which is in the Western Goose Zone;
2. December 13 in the Eastern Goose Zone;
3. December 13 in the Penneyroyal-Coafield Goose Zone;
4. December 13 in the West-Central Kentucky Hunt Zone; and
5. The last day of hunting shall be February 15 in that part of Fulton County which is in the Western Goose Zone.
6. There shall be a split season in the northeast Kentucky goose zone:
a. January 1 [December 27] through January 9 [4]; and
(b) Hunting for dark geese in the Western Goose Zone shall cease if a quota specified in Section 7 of this administrative regulation is reached.
(4) A person shall not goose hunt in:
(a) The areas of Laurel River Lake as posted by sign; and
(b) Cave Run Lake and the public land inside a boundary formed by Highways 801, 1274, 36, 211, US 60 and Highway 826.
(5) The gun and archery daily bag limit shall be:  
(a) Six (5) dark geese, to include no more than:  
1. Two (2) Canada geese;  
2. Two (2) white-fronted geese; and  
3. Two (2) brant.  
(b) Twenty (20) snow geese; except there shall be no daily limit on snow geese during the Conservation Snow Goose Order.  
(c) The possession limit shall be double the daily bag limit, except that there shall not be a possession limit on snow geese.

Section 5. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:  
(1) 2 p.m. in the Northeast Kentucky Hunt Zone during a Canada goose season;  
(2) Sunset in the remainder of the state, except as specified in 30 KAR 2:222; or  
(3) One-half (1/2) hour after sunset while hunting snow geese during the Conservation Snow Goose Order.

Section 6. Falconry Waterfowl Season and Limits. (1) Season dates:  
(a) Snow geese: November 5 through February 1, except in the part of Fulton County which is in the Western Goose Zone which shall have an ending date of February 15;  
(b) Conservation Snow Goose Order:  
1. Western duck zone: February 1-4 [2-6] and February 7 [9] through the last day of March.  
2. The part of Fulton County which is in the Western Goose Zone: February 16 through March 31.  
(c) Canada Goose Season: November 5 through February 1, except for that part of Fulton County in the Western Goose Zone where the Canada Goose season shall be November 10 [8] through February 15;  
(d) Other waterfowl: November 5 through February 1.  
(2) Daily limit: three (3) waterfowl; except that there shall be no limit on snow geese during the Conservation Snow Goose Order.  
(3) Possession limit: six (6) waterfowl; except that there shall be no limit on snow geese during the Conservation Snow Goose Order.

Section 7. Quotas and Early Goose Season Closings. (1) If hunters reach a quota of 6,700 [6,600] Canada geese in the Ballard Reporting Area before January 31, dark goose hunting shall cease in the Ballard Reporting Area.  
(2) If hunters reach a quota of 2,600 [3,200] Canada geese in the Henderson-Union Reporting Area before January 31 dark goose hunting shall cease in the Henderson-Union Reporting Area.  
(3) If the quotas are reached for both the Ballard and Henderson-Union reporting areas, dark goose hunting shall cease in the western goose zone:  
(a) Seven (7) days after the reporting area closes; or  
(b) On the scheduled closing date, whichever occurs first.  
(4) The department shall provide at least a twenty-four (24) hour notice of the time and date of an early closure.

Section 8. Permit for Conservation Snow Goose Order. (1) A person hunting snow goose during the Conservation Snow Goose Order shall first obtain a free permit from the department by contacting the Ballard WMA office at (270) 222-2244.  
(2) A hunter during the Conservation Snow Goose Order shall submit a Conservation Snow Goose Order report by April 10.

W. JAMES HOST, Secretary  
C. THOMAS BENNETT, Commissioner  
APPROVED BY AGENCY: August 27, 2004  
FILED WITH LRC: November 23, 2004 at 2 p.m.  
CONTACT PERSON: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of:  
(a) What this administrative regulation does: This administrative regulation establishes the limits and season dates within the federal waterfowl hunting frameworks established in 50 C.F.R. Part 20. This administrative regulation establishes the 2004-2005 early waterfowl season dates and bag limits according to the United States Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: To establish the 2004-2005 waterfowl season in accordance with the USFWS.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) and 150.600(1) authorize the department to establish waterfowl season dates and limits.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing the waterfowl hunting seasons and area specific requirements, this administrative regulation is maintaining and enhancing waterfowl conservation efforts consistent with national management goals.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:  
(a) How the amendment will change the existing administrative regulation: This is an amendment to an existing administrative regulation. Each fall the USFWS issues a federal mandate establishing the migratory bird season. This amendment reflects the federal mandate. There are few changes from last year's waterfowl season. The changes include splitting the statewide season for duck, coot, and merganser (November 25-November 28 and December 6-January 30); accommodating a calendar shift for canvasback (January 1-January 30) and pintail (January 1-January 30); accommodating a calendar shift for white-fronted goose and brant (November 25-January 31); accommodating the calendar shift for the conservation snow goose order (and deleting repetitious language regarding the Western Goose Zone); and accommodating the calendar shift for falconry. References to the "calendar shift" simply mean that the dates were changed to accommodate changes on this year's calendar. The amendment does little to change the existing administrative regulation. It simply accommodates the 2004-2005 calendar shift. Due to declines in canvasback and pintail duck populations, the USFWS has mandated a shortened season on canvasback and pintail ducks to be held concurrent with regular duck season dates.

(b) The necessity of the amendment to this administrative regulation: To implement the federal mandate from the USFWS and continue efforts to increase quality-hunting opportunity for waterfowl.

(c) How does the amendment conform to the authorizing statutes: The amendment establishes season dates as KRS 150.025(1) and 150.600(1) provide.

(d) How the amendment will assist in the effective administration of the statutes: See "D" above.

(e) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons who waterfowl hunt in Kentucky will be affected by this administrative regulation.

(f) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be little impact on waterfowl hunters in comparison with last year's administrative regulation. The changes are consistent with efforts to increase quality hunting opportunity for waterfowl hunters.

(g) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.

(h) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(i) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The department's Division of Law Enforcement and Wildlife already oversee law enforcement and waterfowl management. It will not be necessary to draw upon another budget or source of funding for implementation of this administrative regulation.

(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. It will not be necessary to increase a fee or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not used. There is not a need to apply tiering, because there are not different groups of waterfowl hunters. The same guidelines and limits contained in this administrative regulation apply to all waterfowl hunters.

FEDERAL MANDATE ANALYSIS COMPARISON

CONTACT PERSON: Ellen F. Benzing

1. Federal statute or administrative regulation constituting the federal mandate. 50 C.F.R. Part 20.
2. State compliance standards. State seasons and bag limits are within federal frameworks.
3. Minimum or uniform standards contained in the federal mandate. The USFWS annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that my be taken and possessed in the regular waterfowl seasons. The regular migratory bird season opens November 15. The framework is necessary to allow State selections of specific final seasons and limits to allow recreational harvest at levels compatible with population status and habitat conditions. This administrative regulation opens the regular migratory bird season November 15 and splits the statewide season for duck, coot, and merganser (November 25-November 28 and December 6-January 30); accommodates a calendar shift for canvasback (January 1-January 30) and pintail (January 1-January 30); accommodates a calendar shift to take white-fronted goose and brant (November 25-January 31); accommodates the calendar shift for the conservation snow goose order (and deleting repetitious language regarding the Western Goose Zone); and accommodates the calendar shift for falconry.
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. N/A

STATEMENT OF EMERGENCY

301 KAR 2:222E

This emergency administrative regulation establishes season dates, limits, shooting hours and other requirements for the 2004-2005 migratory game bird hunting season. Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, 50 C.F.R. Part 20, states that wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because the federal framework is not established until days before the start of the migratory bird season. This year the federal framework was established July 21, 2004. The Kentucky Fish and Wildlife Resources Commission approved the 2004-2005 waterfowl season, limits and requirements at its August 27, 2004, meeting. "This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the administrative regulations compiler on November 23, 2004.

ERNIE FLETCHER, Governor
C. THOMAS BENNETT, Commissioner

COMMERCE CABINET
Department of Fish and Wildfire Resources
(Emergency Amendment)

301 KAR 2:222E. Waterfowl hunting requirements.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 50 C.F.R. Parts 20, 21

STATUTORY AUTHORITY: KRS 150.025(1)(a), (b), 150.340(1), (2), (3), 150.600(1), 50 C.F.R. Parts 20, 21

EFFECTIVE: November 23, 2004

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to establish statewide waterfowl hunting requirements and to specify seasons and other requirements or Wildlife Management Areas. KRS 150.340 authorizes the department to establish bag and creel limits for waterfowl. This administrative regulation establishes waterfowl seasons in the Ballard Wildlife Management Area, Central Kentucky Wildlife Management Area, Cumberland Lake Wildlife Management Area, Addington Enterprises Wildlife Management Area, Land Between the Lakes, Ohio River Waterfowl Refuge, Robinson Forest Wildlife Management Area, and Yellowbank Wildlife Management Area which differ from and are shorter than federal regulations to optimize public use within sound waterfowl conservation practices.

Section 1. Definitions. (1) "Blind" means:
(a) A concealing enclosure;
(b) A pit; or
(c) A boat.
(2) "Party" means:
(a) A person hunting alone; or
(b) From two (2) to four (4) persons who share a blind.
(3) "Permanent blind" means a blind left in place more than twenty-four (24) hours.
(4) "Regular waterfowl season" means the late migratory bird hunting seasons referred to in 50 C.F.R. Part 20.
(5) "Statewide waterfowl seasons" means the provisions of this administrative regulation and of 301 KAR 2:221.
(6) "Waterfowl" is defined in KRS 150.010(40).

Section 2. A waterfowl hunter shall not use or carry a shotgun shell:
(1) Longer than three and one-half (3 1/2) inches; or
(2) Containing shot:
(a) Made of lead;
(b) Not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
(c) Larger than size "T."

Section 3. In the Ballard Reporting Area, as described in 301 KAR 2:224:
(1) A waterfowl hunter shall:
(a) Hunt from a blind unless hunting in flooded, standing timber;
(b) Not hunt from or establish a blind:
   1. Within 100 yards of another blind; or
   2. Within fifty (50) yards of a property line; and
   (c) Not possess more than one (1) shotgun while in a blind.
(2) More than five (5) persons shall not occupy a blind.
(3) The requirements of subsection (1) of this section shall not apply when the Conservation Snow Goose Order is the only waterfowl season open, excluding falconry seasons.

Section 4. (1) Except as specified in this section or in Section 5 of this administrative regulation, on a Wildlife Management Area:
(a) A waterfowl hunter shall not establish or hunt from:
   1. A permanent blind; or
   2. A blind within 200 yards of:
      a. Another blind; or
      b. A waterfowl refuge;
   (b) A person shall not hunt in a designated recreation area or access point;
(c) More than four (4) persons shall not occupy a blind; and
(d) A hunter shall remove decoys and personal effects from the Wildlife Management Area daily, except that a hunter drawn for a multiday hunt may leave decoys in place for the duration of his hunt.

(2) A person wishing to establish or use a permanent blind on Barkley Lake, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, or Sloughs Wildlife Management Areas:

(a) Shall first obtain a permit from the U.S. Army Corps of Engineers or the department;
(b) May designate one (1) other person as a partner; and
(c) Shall not hold more than one (1) permit per area; and
(d) Shall participate in a drawing for a blind permit on the Barkley, Barren, Green, Paintsville, or Sloughs Wildlife Management Areas:

1. At the time of the drawing, the hunter shall possess a valid hunting license, a Kentucky waterfowl permit and a federal waterfowl permit; and
2. Shall be eighteen (18) years of age or older.

(3) The holder of a blind permit shall:

(a) Construct or establish his blind before November 20 or forfeit the permit;
(b) Not lock a blind; and
(c) Unless an extension of time is granted, remove his blind and blind materials within thirty (30) days of the close of the regular waterfowl season or be ineligible for a permit the following year.

(4) A blind not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-serve basis.

(5) A blind restriction specified in this section shall not apply to a falconer if a gun or archery season is not open.

Section 5. On a Wildlife Management Area:

1. (a) Statewide waterfowl seasons shall apply unless otherwise stated in this section.

(b) If specific hunting dates and times are given in this section, a person shall not hunt waterfowl except on those days and times.

(c) Paragraph (b) of this subsection shall not apply to a waterfowl hunting season opening before October 15.

2. A person shall not:

(a) Hunt on an area or portion of an area marked by a sign as closed to hunting;
(b) Enter an area or a portion of an area marked by signs as closed to public access;
or
(c) Hunt a species on an area or a portion of an area marked by signs as closed to hunting for that species.

3. Wildlife management areas in Ballard County.

(a) Sliding shell limit scale.

1. The shell limit shall be twenty-five (25) when the daily bag limit for ducks is greater than three (3) and the Canada goose limit is greater than or equal to two (2); and
2. The shell limit shall be fifteen (15) when the daily bag limit for ducks is less than or equal to three (3) and the Canada goose limit is less than or equal to two (2) (a person shall not have more than ten (10) shotgun shells in one (1) day while waterfowl hunting).

(b) At least one (1) person in a blind shall be eighteen (18) years of age or older while hunting from a department blind at Ballard WMA or Boatwright WMA.

(c) At Ballard Wildlife Management Area:

1. Waterfowl hunting shall be permitted during an open waterfowl season occurring before October 15.
2. The duck, coot, and merganser season shall be:
   a. December 8 [40] through January 30 [26]; or
   b. Until the Ballard Reporting Area Canada Goose quota is reached.
3. The goose season shall be:
   a. December 8 [40] through January 30 [34] or
   b. Until the Ballard Reporting Area Canada Goose quota is reached.
4. Youth waterfowl season shall be the first weekend in February.
5. A waterfowl hunter shall not hunt on a Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, or New Year's Day.
6. A waterfowl hunter shall:
   a. Apply in advance in accordance with Section 6 of this administrative regulation;
   b. Case his gun while using department-supplied transportation to and from a blind;
   c. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to ninety (90) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15; and
   d. Not hunt after 12 noon.
    (d) At Boatwright Wildlife Management Area, including the Olmsted, Peal and Swan Lake units:

1. A person shall:
   a. Not hunt on a Monday, Tuesday, Christmas Day or New Year's Day;
   b. Check in daily at the designated check station by 8 a.m. during duck and Canada Goose season; and
   c. Check out after 8 a.m. by depositing a card at a department designated drop point.

2. Duck season shall be open one-half (1/2) hour before sunrise to sunset Thanksgiving Day for four (4) consecutive days on portions of Boatwright Wildlife Management Area open to hunting.

3. A department blind assignment shall be made in accordance with Section 6 of this administrative regulation.

4. A blind shall be made available to another hunter on a first-come, first-served basis, if the original assignee has not checked in by 5 a.m.

5. Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season except as authorized by the department.

6. Waterfowl hunters shall hunt from department blinds or within twenty-five (25) feet of designated points as marked by the department.

7. Boat blinds shall not be permitted in flooded timber, except during periods of flood where no other access is possible. When boat blinds are permitted, there shall be a 200 yard distance between boat blinds.

8. On the Olmsted unit, a person shall not:
   a. Hunt waterfowl except from a permanent department blind or within twenty-five (25) feet of department blinds if the area is under flood and only accessible by boat; and
   b. Hunt waterfowl except from a blind location assigned by the department during Canada Goose season.

9. On the Peal unit:

1. More than seven (7) parties shall not hunt at the same time on buck Lake or Flat Lake;
2. More than four (4) parties shall not hunt at the same time on Fish Lake;
3. More than three (3) parties shall not hunt at the same time on First Lake or Second Lake;
10. On the Swan Lake Unit, a person shall not hunt duck, coot, merganser, or goose other than a Canada Goose except from a blind assigned by the department and unless:
   a. The season for these species is open; and
   b. The season for Canada Goose is also open.

(4) Barkley Lake Wildlife Management Area.

(a) A permanent blind may be used as specified in Section 4 of this administrative regulation.

(b) A person shall establish a permanent blind within ten (10) yards of his assigned and numbered blind marker within:
1. An area bounded by the mouth of Donaldson Creek, the east side of the Cumberland River Channel and the boat ramp at Linton.
2. An area bounded by the Pryor's Creek Light, the west side of the Cumberland River Channel, Land Between the Lake Road 204 and river mile 73.5.
(c) The following refuge areas are closed to the public:
1. From November 1 through February 15 within an area west of the main river channel between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crocket Creek Light); and
   a. Including the row of islands on the west side of the main river channel;
   b. Not including Taylor Bay and Jake Fork Bay.
2. From November 1 through March 15 within Honker Bay and
Fulton Bay as marked by buoys and signs.

d) From October 15 through March 15, a person shall not hunt:
1. Within 200 yards of;
or
2. Within the area defined by the levee between river mile 68.4 and river mile 70.4.

(5) Barren River Lake Wildlife Management Area.
(a) A permanent blind may be used as specified in Section 4 of this administrative regulation.
(b) A waterfowl hunter:
1. May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and
2. Shall not use a breech-loading firearm elsewhere on the area.

(6) Buckhorn Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(7) Central Kentucky Wildlife Management Area. A person shall not hunt waterfowl from October 15 through January 14.

(8) Cumberland Lake Wildlife Management Area. The following sections shall be closed to the public from October 15 through March 15:
(a) Wesley Bend, the area bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road.
(b) Yellowhead, the area bounded by Fishing Creek Road and Hickory Nut Road.

(9) Daniel Boone National Forest Pioneer Weapons Wildlife Management Area. A waterfowl hunter:
(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and
(b) Shall not use a breech-loading firearm elsewhere on the area.

(10) Grayson Lake Wildlife Management Area. A person shall not hunt waterfowl:
(a) Within the no wake zone at the dam site marina;
(b) From the shore of Camp Webb;
(c) From the shore of the state park;
(d) On Deer Creek Fork; and
(e) Within three-quarters (3/4) of a mile from the dam.

(11) Green River Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(b) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(12) Kaler Bottoms Wildlife Management Area. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(13) Land Between the Lakes.
(a) The following portions shall be closed to the public from November 1 through March 15:
1. Long Creek Pond;
2. The eastern one-third (1/3) of Smith Bay; and
3. The eastern two-thirds (2/3) of Duncan Bay.
(b) The following portions shall be closed to waterfowl hunting:
1. The Environmental Education Center; and
2. Energy Lake.
(c) A person shall possess an annual Land Between the Lakes Hunting Permit when hunting waterfowl:
1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or
2. From a boat over a flooded portion of Land Between the Lakes when the lake level is above elevation 359.
(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.
(e) A person shall not establish or use a permanent blind:
1. On an inland area; or
2. Along the Kentucky Lake shoreline of Land Between the Lakes.
(f) A waterfowl hunter shall remove decoys and personal effects daily.

(14) Nolin River Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(15) Obion Creek Wildlife Management Area. Shooting hours are one-half (1/2) hour before sunrise until 2 p.m.

(16) Ohio River Waterfowl Refuge.
(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing at approximately river mile 911.5.
(b) Stewart Island shall be closed to the public from October 15 through March 15, except for quota deer hunting.

(17) Peabody Wildlife Management Area.
(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
(b) The following portions, as posted by signs, are closed to the public from October 15 through March 15:
1. Gibraltar Mine, as bounded by Rockport Road, the Western Kentucky Parkway, Pond Creek and the P&M Haul Road;
2. Sinclair Mine, as bounded by railroad tracks, the haul road and posted signs; and
3. Homestead, as bounded by the haul road and the Green River.

(18) [Daniel Boone National Forest Pioneer Weapons Wildlife Management Area. A waterfowl hunter:
(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and
(b) Shall not use a breech-loading firearm elsewhere on the area.

(49) The main block of Robinson Forest Wildlife Management Area shall be closed to waterfowl hunting.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
(b) Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.
(c) On the Grassly Pond Powell's Lake Unit, a waterfowl hunter: 1. Shall use a permanent blind provided by the department; and
2. Shall remove decoys and personal effects from a blind or the vicinity of a blind daily; and
3. A permanent blind may be used as specified in Section 4 of this administrative regulation.
(d) On the Jenny Hole-Highlands Creek Unit, a waterfowl hunter:
1. Shall not establish or hunt from a blind closer than 200 yards from another hunting party; and
2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily;
3. A permanent blind may be used as specified in Section 4 of this administrative regulation.
(e) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:
1. May hunt from a boat: without regard to department blinds; and
2. Shall not hunt closer than 200 yards from another boat.
(f) A waterfowl hunter on the Crenshaw and Duncan Tracts of the Sauerheber Unit:
1. Shall hunt from the blind assigned by the department through a drawing as stipulated in Section 6 of this administrative regulation;
2. May occupy a blind not claimed by the permittee one (1) hour before sunrise;
3. Shall be limited to twenty-five (25) shells when the daily bag limit for ducks is greater than three (3) and the Canada goose limit is greater than or equal to two (2);
4. Shall be limited to fifteen (15) shells when the daily bag limit for ducks is less than or equal to three (3) and the Canada goose limit is less than or equal to two (2) [shall not have more than fifteen (15) shotgun shells in one (1) day];
5. [4] Shall be accompanied by an adult if under eighteen (18) years of age; and
6. [5] The waterfowl blind for mobility-impaired persons will be open to the public only if the permit holder or another mobility-impaired person has not shown up to hunt on that day by one (1) hour before sunrise.

(g) The Crenshaw and Duncan II tracts of the Sauerheber Unit shall be closed to hunting except waterfowl from November 1
through March 15.

(b) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.

(20) South Shore Wildlife Management Area.

(a) Closed to all hunting November 15 through January 30, except quota hunt waterfowl and dove hunting.

(b) The quota hunt requires advance application and selection.

(c) Hunters shall use department blinds.

(d) Department blinds are allocated by preseason draw. Applicants shall mail a three (3) by five (5) white index card in an envelope to Grayson Lake WMA postmarked between November 1 and November 15.

(21) Starfire Wildlife Management Area shall be closed to waterfowl hunting.

(22) Taylorsville Lake Wildlife Management Area. The portion east of Van Buren Boat Ramp as marked by a sign shall be closed to the public from November 1 through the last day of February, except for the waters from the boat ramp to the Highway 248 bridge are open to fishing until November 15 and the entire area is open for quota deer hunting.

(23) [Reserved]


(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) The portion south of the Westvaco Road as posted by a sign shall be closed to the public from November 1 through March 15.

(c) A person shall obtain a Westvaco Permit before hunting.

(25) White City Wildlife Management Area. Shooting hours shall be from one-half (1/2) hour before sunrise until 2 p.m.

(26) Yatseville Lake Wildlife Management Area. The Greenbrier Creek Branch of Yatseville Lake, and Yatseville Lake, including all of the islands, north of the mouth of the Greenbrier Creek Branch is closed to all waterfowl hunting.

(27) Yellowbank Wildlife Management Area. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

Section 6. (1) A person wishing to apply to hunt waterfowl on Ballard, Boatwright or the Sauerheber Unit of Sloughs Wildlife Management Areas shall:

(a) Apply to the vendor supplied by the department by calling 877-598-2401;

(b) Register between September 1 and September 30; and

(c) Pay a three (3) dollar application fee for each application.

(2) A person shall not apply more than one (1) time for each hunt.

(3) Each hunter drawn may bring up to three (3) additional hunters.

Section 7. State Parks. (1) There shall be no waterfowl hunting on state parks except as specified in the subsection (2) of this section.

(2) Greenbo Lake State Park.

(a) There shall be an open waterfowl hunt December 13 through January 15 on selected portions of Greenbo Lake and adjacent shoreline.

(b) Hunters shall check in each day at the front desk of the Greenbo Lake State Park no sooner than 4 a.m.

(c) During check-in hunters shall be provided a map showing portions of the lake that are open to waterfowl hunting.

(d) Hunters shall check out each day at the front desk of the Greenbo Lake State Park.

(e) Statewide waterfowl hunting requirements apply. The requirements specified in Section 4 of this administrative regulation shall apply in addition to the requirements listed below.

(b) There shall be a department waterfowl lottery, where only those applicants, who are drawn shall hunt all waterfowl for selected periods established each year by the Department of Parks; December 13 through January 11.

(c) Hunters shall check in and out at designated department sites and times.

Section 8. Mentor Waterfowl Hunts at Minor Clark and Peter W. Pfeiffer Fish Hatcheries. (1) There shall be youth waterfowl mentor hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries.

(2) Dates shall be determined and published in the current Waterfowl Hunting Guide.

(3) Youth shall register in advance and carry postcard notification the day of the hunt.

(4) Youths shall be accompanied by an adult eighteen (18) years or older.

(5) One (1) youth shall not be accompanied by more than one (1) adult.

(6) One (1) adult may accompany two (2) youths.

(7) Hunting shall only be permitted from established blinds and hunters shall not change blinds.

(8) Four (4) hunters shall be permitted per blind.

(9) Hunters may only discharge firearms from the blind.

(10) Hunters may only have fifteen (15) shotshells per hunter.

(11) Hunters shall immediately retrieve downed birds. Chasing or harassing waterfowl outside the blinds is strictly prohibited.

(12) Firearms shall be encased when traveling to and from the blind.

(13) Hunting shall end at noon and hunters shall be off the premises by 1 p.m.

(14) All decoys and equipment shall be removed at the end of each hunter’s hunt.

(15) Hunters shall report harvest by dropping hunt permit at designated location.

W. JAMES HOST, Secretary
C. THOMAS BENNETT, Commissioner
APPROVED BY AGENCY: August 27, 2004
FILED WITH LRC: November 23, 2004 at 2 p.m.
CONTACT PERSON: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of: This administrative regulation establishes the waterfowl hunting requirements, seasons and limits for hunting waterfowl on Wildlife Management Areas within the federal waterfowl hunting frameworks established in 50 C.F.R. Part 20.

(2) What the administrative regulation does: establishes the 2004-2005 regular waterfowl season dates and bag limits according to the United States Fish and Wildlife Service (USFWS).

(3) The necessity of the administrative regulation: To establish the 2004-2005 waterfowl season in accordance with the USFWS.

(4) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) and 150.600(1) authorize the department to establish waterfowl season dates and limits. KRS 150.340 authorizes the department to establish bag and creel limits for waterfowl.

(5) How will this administrative regulation aid in the effective administration of the statutes: By establishing the waterfowl hunting seasons and limits and area specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with national management goals on the department’s Wildlife Management Areas.

(6) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is an amendment to an existing administrative regulation. Each fall the USFWS issues a federal mandate establishing the migratory bird season based on last season’s migratory bird harvest data. This amendment reflects the federal mandate. There are few changes from last year’s migratory bird season. The changes include creating a sliding season limit for Ballard, Boatwright and Sloughs Wildlife Management Areas; changing the shooting hours during the duck season to one-half hour before sunrise to sunset; issuing department waterfowl blinds to preregistered hunters during a draw at Sloughs Wildlife Management Area; and opening the South Shore Wildlife Management Area to waterfowl hunting. The Wildlife Management Areas were alphabetized in this regulation. - 1225 -
(a) How the amendment will change the existing administrative regulation: The amendment does little to change the existing administrative regulation. Shell limits were changed for Ballard, Boatwright and Sloughs Wildlife Management Areas. A shell limit is useful in deterring "sky blasting" by reducing conflicts to adjacent hunters and reducing the potential number of crippled birds. The initial shell limit was set when the daily bag was 3 ducks (2 mallards) and 2 Canada geese. Under the liberal season option used to set seasons the last several years the daily duck bag limit has increased to 6 (4 mallards) while the Canada goose limit is unchanged. Raising the shell limit from 15 to 25 will maintain the ration of approximately 1 bird per 3 shots fired, the ratio first used in the regulations. Area-specific changes to Boatwright, Sloughs and South Shore will increase hunter opportunity. The alphabetization of the WMAs within the regulation should assist with organization of the regulation.

(b) The necessity of the amendment to this administrative regulation: To implement the federal mandate from the USFWS and continue efforts to increase quality-hunting opportunity for waterfowl, this amendment is necessary to the administration of the Department's WMAs.

(c) How does the amendment conform to the authorizing statutes: The amendment establishes season dates and limits as KRS 150.025(1), 150.600(1) and 150.340 provide.

(d) How the amendment will assist in the effective administration of the statutes: See "D" above.

(3) List the type and number of individuals, businesses, organizations, and governmental bodies that will be affected: Persons who waterfowl hunt on department WMAs will be affected by this administrative regulation. Those persons shall be minimally affected in comparison to last year's waterfowl season, with the exception of the shot shell limit discussed above and increased waterfowl hunting opportunity created at South Shore WMA.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be little impact on waterfowl hunters in comparison with last year's administrative regulation, with the exception of the shot shell limit discussed above and increased waterfowl hunting opportunity as created at South Shore WMA.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The Division of Law Enforcement and Wildlife Management budgets already include law enforcement and conservation management of Kentucky's waterfowl. There will not be a need to draw upon another budget or source of funding for implementation.

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

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

(9) TIERING: Is tiering applied? Tiering was not used. There is not a need to apply tiering because there are not different groups of waterfowl hunters. The same guidelines and limits contained in this administrative regulation apply to all waterfowl hunters.

STATEMENT OF EMERGENCY
301 KAR 2:223E

This emergency administrative regulation establishes season dates, limits, shooting hours and other requirements for the 2004-2005 migratory game bird hunting season. Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, 50 C.F.R. Part 20, States that wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six weeks before the opening dates of the hunting season in Kentucky. An emergency administrative regulation will not suffice because the federal framework is not established until days before the start of the migratory bird season. This year the federal framework was established July 21, 2004. The Kentucky Fish and Wildlife Resources Commission approved the 2004-2005 waterfowl season, limits and requirements at its August 27, 2004, meeting. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the administrative regulations compiler on November 23, 2004.

COMMERCE CABINET
Department of Fish and Wildlife
(Emergency Amendment)

301 KAR 2:223E. Waterfowl reporting requirements.

RELATES TO: KRS 150.010, 150.015, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 15.603, 150.630, 150.990, 50 C.F.R. Parts 20, 21

STATUTORY AUTHORITY: KRS 150.025(1), 150.600(1), 50 C.F.R. Parts 20, 21

EFFECTIVE: November 23, 2004

NECESSITY, FUNCTION, AND CONFORMITY: 50 C.F.R. Parts 20 and 21 establish Canada goose quota and require the state to close goose hunting season if these quotas are reached. KRS 150.025(1) and 150.600(1) authorize the department to promulgate administrative regulations governing the taking of waterfowl. This administrative regulation is necessary to assure that complete harvest data are collected in a timely manner.

Section 1. Definitions. (1) "Commercial waterfowl hunting area" means private lands or waters where a fee is charged for hunting waterfowl,

(2) "Noncommercial waterfowl hunting area" means private land or water where a fee is not charged for hunting waterfowl.

(3) "Operator" means:

(a) The owner, manager or other person in charge of a commercial waterfowl hunting area;

(b) The owner or tenant of a noncommercial waterfowl hunting area;

(c) A person to whom the owner or tenant has assigned, in writing, on forms provided by the department, exclusive control of waterfowl hunting rights on a noncommercial waterfowl hunting area.

Section 2. When Canada goose season is open in the Ballard Reporting Area or the Henderson-Union Reporting Area, as described in 301 KAR 2:224:

(1) The operator of a commercial waterfowl hunting area shall obtain a commercial waterfowl shooting area permit for each area he operates.

(a) A tract of land divided by a public road may operate under one (1) permit.

(b) Tracts of land separated by property belonging to another person shall require a separate permit for each tract.

(2) The operator of a commercial waterfowl hunting area shall:

(a) Display the permit openly on the area; and

(b) Maintain complete and accurate records of waterfowl harvested on a daily waterfowl harvest register form.

(3) The operator of a noncommercial waterfowl hunting area shall:

(a) Obtain a noncommercial migratory goose hunting permit from the department.

(b) Display the permit openly on the area.

(c) Make a daily waterfowl harvest register form available to goose hunters.

(d) Require a goose hunter to enter:

1. His name, address, hunting license number and the date on
the register before hunting; and

2. The number of geese taken by species before leaving the area

(4) The operator of a commercial or a noncommercial waterfowl hunting area shall:

(a) Close the waterfowl harvest register after shooting hours on

(Wednesday and Sunday.

(b) Mail or hand-deliver:

1. The harvest report card to the address indicated so that it
shall arrive no later than the following Monday or Thursday; and

2. The original forms to the address indicated so that they shall
arrive within five (5) days after the close of goose season.

(c) Retain a form for two (2) months after the close of goose

season.

(d) Allow an agent of the department or the U. S. Fish and
Wildlife Service to inspect his permit and harvest record.

(5) A person goose hunting on a commercial or a noncommer-
cial waterfowl hunting area shall:

(a) Enter his name, address, hunting license number and the
date on the register form before hunting; and

(b) Record the number of geese taken by species on the reg-
ister form before leaving the area.

(6) A person goose hunting on a public area [here], including

the Ohio or Mississippi Rivers or their overflow areas, within the

Ballard or Hendrickson Reporting Areas shall:

(a) Obtain a daily waterfowl harvest register form;[3]

(b) Before hunting, enter on the register:

1. His name, address, and hunting license number;

2. The name, address and hunting license number of each

member of the hunting party; and

3. The date.

(c) Shall record on the register the number of geese by species
taken each day; and[4]

(d) Shall mail or hand deliver the completed harvest report card
to the address indicated on the form so that it arrives no later than
the following Monday or Thursday.

Section 3. A person goose hunting in the [West-Central- or
Northeast Special Hunt Zone, as defined in 301 KAR 2:224 shall:

(1) Carry a permit to hunt Canada Geese on special areas

form.

(2) Complete and return the harvest survey portion of the per-
mit within ten (10) days after the season closes.

(3) Not be eligible for permits the following year if they do not
return harvest surveys within ten (10) days after the season closes.

Section 4. Incorporation by Reference. (1) The following mate-
rials is incorporated by reference:

(a) Kentucky Permit to Hunt Canada Geese on Special Areas,

(b) Noncommercial Migratory Goose Hunting Permit, August,
1995.

(c) Daily Waterfowl Harvest Register, August, 1995.

(d) Application for Commercial Waterfowl Shooting Area Per-
mit, August, 1995.

(e) Assignment of Waterfowl Hunting Rights, August, 1995.


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Monday through Friday, 6 a.m. until 4:30 p.m.

W. JAMES HOST, Secretary
C. THOMAS BENNETT, Commissioner
APPROVED BY AGENCY: November 18, 2004
FILED WITH LRC: November 23, 2004 at 2 p.m.
CONTACT PERSON: Ellen Benzing, Attorney, Department of
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative

regulation establishes the reporting requirements for waterfowl

hunters. The USFWS established Canada goose quotas and re-

quires the state to close goose hunting season if these quotas are

reached. This administrative regulation establishes the procedures

to assure that complete harvest data is collected in a timely manner.
The collected data is used for closing quota areas and establish-

ing the next season's waterfowl hunting dates.

(b) The necessity of the administrative regulation: To assure

that complete harvest data is collected in a timely manner.

(c) How does this administrative regulation conform to the

authorizing statute: KRS 150.025(1) and 150.660(1) authorize the

department to establish the taking of waterfowl. This administrative

regulation establishes the procedures for reporting waterfowl
taken.

(d) How will this administrative regulation assist in the effective

administration of the statute: This regulation will assist in the ad-

ministration of the statutes by establishing reporting requirements

for waterfowl which can then be used to establish seasons and

limits for the continued conservation and management of water-

fowl.

(2) If this is an amendment to an existing administrative regu-

lation, provide a brief summary of:

(a) How the amendment changes the existing administrative regu-

lation: The amendment does little to change the existing ad-

ministrative regulation. It simply deletes the requirement that a

special free Canada goose permit is required in the West-Central

Goose Zone.

(b) The necessity of the amendment to this administrative regu-

lation: The Canada goose numbers have increased in the West-

Central Goose Zone, therefore the requirement for a special

free Canada goose permit is no longer necessary.

(c) How does the amendment conform to the authorizing stat-

utes: KRS 150.025 and 150.500 authorize the Department to

promulgate administrative regulations governing the taking of wa-

terfowl. The amendment deletes a reporting requirement regarding

the taking of waterfowl.

(d) How the amendment will assist in the effective administra-

tion of the statutes: See "D" above.

(3) List the type and number of individuals, businesses, organi-

zations or state and local governments that will be affected:

Persons who wallpaper hunter on the west-central Canada goose zone
will be affected (they will no longer need to acquire a free Canada

goose permit).

(4) Provide an assessment of how the above groups will be

influenced by either the implementation of this administrative regu-

lation, if new, or by the change if it is an amendment: There will be

little impact on waterfowl hunters in comparison with last year's

administrative regulation. There changes are consistent with efforts

to increase quality hunting opportunity for waterfowl hunters.

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

this administrative regulation: There will be no cost associated with

the implementation of this administrative regulation.

(a) Initially: There will be no additional cost to the agency to

implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to

the agency.

(6) What is the source of funding to be used for implementation

and enforcement of this administrative regulation. The divisions of

Law Enforcement and Wildlife currently oversee law enforcement and

management of waterfowl. It will not be necessary to draw

upon another budget or source of funding for implementation.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regu-

lation, if new, or by the change if it is an amendment. It will not be

necessary to increase a fee or funding to implement this adminis-

trative regulation.

(8) State whether or not this administrative regulation estab-

lishes any fees directly or indirectly increases any fees: No fees.

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

no need to apply tiering, because there are not different groups of

waterfowl hunters. The same guidelines and limits contained in this

administrative regulation apply to all waterfowl hunters.
FEDERAL MANDATE ANALYSIS COMPARISON

Agency Contact: Ellen F. Benzing
1. Federal statute or administrative regulation constituting the federal mandate. 50 C.F.R. Part 20.
2. State compliance standards. State seasons and bag limits are within federal frameworks.
3. Minimum or uniform standards contained in the federal mandate. The USFWS annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in the regular waterfowl seasons. The regular migratory bird season opens November 15. The framework is necessary to allow State selections of specific final seasons and limits to allow recreational harvest at levels compatible with population status and habitat conditions. This administrative regulation deletes the requirement of a permit to hunt Canada goose on the West Central Special Hunt Zone and deletes the requirement that the hunter return the harvest survey portion of the permit. Canada goose numbers have increased on the West Central Special Hunt Zone no longer making it necessary to collect the harvest data.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or responsibilities; than those required by the federal mandate? No.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

STATEMENT OF EMERGENCY
907 KAR 1:018E

This emergency administrative regulation is being promulgated to enable the Department for Medicaid Services (DMS) to establish a state maximum allowable cost (MAC) for any drug, including generic, for which two (2) or more multi-source drugs with a significant cost difference exist; to determine a state maximum allowable cost for a drug by reviewing the pricing sources AWP, WAC, and direct price for the drug and utilizing the weighted majority of volume purchases; to establish that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only one (1) dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and to add gross amount due to drug reimbursement options. This action must be taken on an emergency basis to ensure the viability of the Medicaid Program. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health; safety or welfare of Medicaid recipients whose receipt of services may be jeopardized due to a lack of funding. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Office of the Commissioner
(Emergency Amendment)

907 KAR 1:018E. Reimbursement for drugs.

RELATES TO: KRS 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5636, 205.5638, 205.5639, 205.6316(4), 217.015, 311.550, 311.560, 42 C.F.R. 440.120, 447.331, 447.332, 447.333, 42 U.S.C. 256b, 1396a-d


EFFECTIVE: December 3, 2004

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 Medi-
caid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.6316(4) requires the department to promulgate an administrative regulation to establish a dispensing fee for prescriptions. This administrative regulation establishes the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program and the dispensing fees.

Section 1. Definitions. (1) "A-rated generic product" means a product that the FDA has found to be bioequivalent.
(2) "Average wholesale price" or "AWP" means the average wholesale price published in a nationally-recognized comprehensive drug data file for which the department has contracted.
(3) [907 KAR 1:018E was added by Roll Call 121 on June 29, 2004.]
(4) [46] "Department" means the Department for Medicaid Services or its designated agent.
(5) [46] "Direct price" means the estimated acquisition cost for which a retailer can purchase a drug product directly from the manufacturer as listed in a nationally-recognized comprehensive drug data file for which the department has contracted.
(6) [66] "Dispensing fee" means a professional fee paid to reimburse a pharmacy for costs associated with the dispensing of a prescribed drug.
(7) [66] "Food and Drug Administration" or "FDA" means the Food and Drug Administration of the United States Department of Health and Human Services.
(8) "Gross amount due" means the total price of a drug claimed from all sources.
(9) [66] "Nonbrand" or "Nonbrand dosage form" means a covered drug item other than an oral tablet, oral capsule, or inhaler.
(10) "Wholesale acquisition cost" or "WAC" means the estimated acquisition cost for the wholesaler as listed in a nationally-recognized comprehensive drug data file for which the department has contracted.

Section 2. Reimbursement. (1) Except as specified in subsection (4)(e) of this section, reimbursement to a participating provider shall be comprised of a dispensing fee and the cost of the drug product. If a recipient is required to pay a copayment for a drug in accordance with 907 KAR 1:504, the reimbursement to the participating provider [for the dispensing fee] shall be reduced by the amount of the copayment.
(2) The department [shall]:
(a) May establish a state maximum allowable cost for a drug, including a generic drug:
1. If two (2) or more multi-source drugs with a significant cost difference exist for the given drug; and
2. By reviewing the pricing sources AWP, WAC, and direct price for the drug as identified in a nationally-recognized comprehensive drug data file for which the department has contracted and using the weighted majority of volume purchased; and
(b) Shall maintain a current listing of drugs and their corresponding state maximum allowable costs via a link from the department web site located at the following address: http://www.chfs.ky.gov/dms.
- [For which a federal upper limit does not exist; and
2. For which at least one (1) readily and nationally available A-rated generic product exists;
(b) Determine a state maximum allowable cost for a drug by identifying the lowest price for a drug regardless of manufacturers, including both generic and brand name, and multiplying that price by 150 percent. The lowest price for a drug shall be:
1. Identified in a nationally-recognized comprehensive drug data file for which the department has contracted; and
2. Determined by reviewing the pricing determinations of AWP, WAC, and direct price for the drug;
(c) Remove a state maximum allowable cost for a drug if a federal upper limit becomes available for the drug; and
(d) Maintain a current listing of drugs and their corresponding state maximum allowable costs at the department web site located at the following address: http://chfs.ky.gov/dms.]
(3) A provider may submit drug acquisition cost or product
availability information to the department. Upon receipt of accurate documentation (including recent drug purchase summaries, invoices for remittances or credit memos) from the provider, the department shall review the referenced product and its corresponding value to reflect the reports of Ix-rate according to schedule and (a) Shall review the referenced product and its corresponding value to reflect the reports of Ix-rate according to schedule and (b) May consider adjusting, delaying or removing the state maximum allowable cost for any drug that the department determines that the state maximum allowable cost does not accurately reflect current market prices or costs;

(c) Reimbursement to a pharmacy participating in the Medicaid Program for a drug listed in the Kentucky Medicaid Outpatient Drug List [Formulary] established in 907 KAR 1:019 and provided to an eligible recipient shall be determined in accordance with the requirements established in this subsection.

(a) An appropriate rebate agreement shall be signed by the drug manufacturer or the drug shall be provided based on a prior authorized exception from the rebate requirement in accordance with 907 KAR 1:019.

(b) Drug costs shall be determined in the Pharmacy Program using drug pricing and coding information obtained from a nationally recognized comprehensive drug data file for which the department has contracted with pricing based on the actual package size utilized.

(c) Except as provided in paragraphs (d) and (e) of this subsection, reimbursement for a drug shall be the lesser of:

1. The federal upper limit plus a dispensing fee and unit dose add-on as appropriate;
2. The state maximum allowable cost plus a dispensing fee and unit dose add-on as appropriate; or
3. The estimated acquisition cost (EAC) which shall equal the AWP minus twelve (12) percent, plus a dispensing fee and unit dose add-on as appropriate; or
4. The usual and customary billed charge; or
5. The gross amount due.

(d) Except as provided in paragraph (e) of this subsection, if a prescriber has met the requirements specified in 907 KAR 1:019 for obtaining a brand name drug for which one (1) or more generic forms of the drug are available and has written "brand medically necessary" or "brand necessary" on the Brand Name Drug Request Form or other form in accordance with 907 KAR 1:019, the reimbursement shall be the lesser of:

1. The estimated acquisition cost (EAC) which shall equal the AWP minus twelve (12) percent, plus a dispensing fee and unit dose add-on as appropriate; or
2. The usual and customary billed charge; or
3. The gross amount due.

(e) Reimbursement for the dispensing of an emergency supply of a drug shall be made only outside normal business hours of the department's drug prior authorization office and as permitted in accordance with 907 KAR 1:019, Section 4.

2. Except as specified in subparagraph 3 of this paragraph, reimbursement for the dispensing of an emergency supply of a drug the reimbursement shall be the lesser of:

1. The federal upper limit plus the dispensing fee for the prescription and, if applicable, a unit dose add-on; or
2. The state maximum allowable cost plus a dispensing fee and unit dose add-on as appropriate; or
3. The estimated acquisition cost (EAC), which shall equal the average wholesale price (AWP) minus twelve (12) percent, plus the dispensing fee for the prescription and, if applicable, a unit dose add-on; or
4. The usual and customary billed charge; or
5. The gross amount due.

3. If a prescriber has met the requirements specified in 907 KAR 1:019 for obtaining a brand name drug for which one (1) or more generic forms of the drug are available and has written "brand medically necessary" or "brand necessary" on the Brand Name Drug Request Form or other form in accordance with 907 KAR 1:019, the reimbursement for the dispensing of an emergency supply of a drug shall be the lesser of:

1. The estimated acquisition cost (EAC), which shall equal the average wholesale price (AWP) minus twelve (12) percent, plus
2. The usual and customary billed charge; or
3. The gross amount due.

4. If the dispensing of an emergency supply results in partial filling of the quantity or amount prescribed, reimbursement for the partial filling of the remainder of the prescription shall utilize the methodology specified in subparagraphs 2 and 3 of this paragraph, except that only one (1) dispensing fee shall be allowed for the combined partial fill and subsequent completion fill (reimbursement shall not include a dispensing fee).

(f) Reimbursement shall be denied if:

1. The recipient is ineligible on the date of service;
2. The drug is excluded from coverage in accordance with 907 KAR 1:019, Section 3; or
3. Prior authorization is required by the department and has been denied or has not been requested.

(g) For a nursing facility resident meeting Medicaid nursing facility level of care criteria in accordance with 907 KAR 1:022, there shall not be more than:

1. One (1) dispensing fee allowed per drug within a calendar month for a drug classified by the Medicaid Program as a maintenance drug unless the prescribed dosage has been changed;
2. Except as specified in subparagraphs 1 and 3 of this paragraph, two (2) dispensing fees allowed per drug within a calendar month for other drugs; and
3. Four (4) dispensing fees per drug within a calendar month for a nonsolid dosage form, a Schedule II, III or IV controlled substance or a legend intravenous drug.

(h) For a nursing facility resident meeting Medicaid nursing facility level of care criteria and if appropriate and in accordance with 907 KAR 2:190 and 907 KAR 65:055, an unused drug, paid for by Medicaid, shall be returned to the originating pharmacy and the department shall be credited for the cost of the drug and the unit dose packaging cost.

(i) For an outpatient or personal care recipient there shall not be more than:

1. One (1) dispensing fee allowed per drug per calendar month for a drug classified by the Medicaid Program as a maintenance drug unless there is an exception described in subparagraph 3 of this paragraph;
2. Four (4) dispensing fees allowed per drug within a calendar month for a legend intravenous drug or a Schedule II, III or IV controlled substance; or
3. a. Two (2) dispensing fees allowed per drug within a six (6) month period for a refill of a maintenance prescription requested less than twenty-three (23) days from the last date the medication was dispensed; or
b. Four (4) dispensing fees allowed per maintenance drug in one (1) month if a prescriber requests to prescribe less than a thirty (30) day supply based on medical specialty, best practice standards, and appropriateness of care.

(j) Reimbursement shall not be made for more than one (1) prescription to the same recipient on the same day for a drug within the same:

1. National Drug Code (NDC); or
2. Generic name, strength, and dosage form.

(5) For a Medicaid recipient participating in a hospice program, payment for a drug shall be in accordance with 42 C.F.R. 447.46.

(5) For a Medicaid recipient participating in a hospice program, payment for a drug shall be in accordance with 42 C.F.R. 447.46.

(5) A pharmacy claim shall meet the point of sale (POS) requirements for services in accordance with 907 KAR 1:573.

(7) If a payment is made for a drug for which there is no authorization as required in accordance with 907 KAR 1:019, the provider shall reimburse the department the amount of the payment.

(8) A timely claim payment shall be processed in accordance with 42 C.F.R. 447.46.

(9) A claim in which retroactive eligibility is established shall be submitted up to twelve (12) months from the issue date noted on the Medicaid recipient's medical assistance identification card. If the date of service is greater than twelve (12) months old, the claim shall be submitted as a paper claim with a copy of the retroactive medical assistance identification card attached.

(10) Pursuant to KRS 205.622, prior to billing the department,
a provider shall submit a bill to Medicare if the provider has knowledge that Medicare may be liable for payment.

(11)(a) If the medical assistance identification card indicates that the Medicaid recipient has additional insurance, the provider shall submit a bill to the third party in accordance with KRS 205.622.

(h) A provider who is aware that a recipient has other insurance, but no insurance is indicated on the medical assistance identification card, shall submit a Third-party Liability Lead Form to the department's fiscal agent.

(12) Adherence to the requirements established in this section shall be monitored through an on-site audit, postpayment review of the claim, a computer audit or an edit of the claim.

(13)(a) A pharmacy of a covered entity as defined in 42 U.S.C. 256b which purchases drugs through the United States Public Health Service Discount Program in accordance with 42 U.S.C. 256b shall bill the department the pharmacy's actual acquisition cost for a drug; and

(b) The department shall reimburse the pharmacy's actual acquisition cost for the drug plus a dispensing fee in accordance with Section 3 of this administrative regulation.

(14) If a covered entity as defined in 42 U.S.C. 256b notifies the United States Office of Pharmacy Affairs that its pharmacy is not included under 42 U.S.C. 256b:

(a) The pharmacy shall bill its usual and customary amount and gross amount due for a drug; and

(b) The department shall reimburse for a drug in accordance with Section 2 of this administrative regulation plus a dispensing fee in accordance with Section 3 of this administrative regulation.

Section 3. Dispensing Fees. (1) To determine a dispensing fee, the department shall comply with KRS 205.561.

(2) Except as provided in subsection (3) of this section, based on the conclusion of the dispensing fee study of the report conducted in accordance with KRS 205.561, the dispensing fee, unless excluded by Section 2(4)(e) of this administrative regulation, shall be four (4) dollars and fifty-one (51) cents per prescription for a drug reimbursed through the outpatient drug program if dispensed to an eligible recipient, including an eligible recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022.

(3)(a) For a recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022, a unit dose addition to the usual reimbursement shall be made for a drug dispensed through the Pharmacy Outpatient Drug Program in the amount of:

1. Two (2) cents per unit dose for a unit dose drug packaged in unit dose form by the manufacturer; and

2. Four (4) cents per unit dose for a unit dose drug packaged in unit dose form by the pharmacist.

(b) The unit dose addition shall be paid, as appropriate, even though the usual dispensing fee of four (4) dollars and fifty-one (51) cents is not paid due to monthly limits on dispensing fees or in accordance with Section 2(4)(e) of this administrative regulation.

Section 4. Reimbursement to Dispensing Physicians. A participating dispensing physician who practices in a county where a pharmacy is not located shall be reimbursed for the cost of the drug, with the cost computed:

(1) As the lesser of:

(a) The maximum-allowable cost or estimated acquisition cost established in Section 2(4) of this administrative regulation;

(b) The physician's usual and customary amount and gross amount due [charge to the general public for the drug]; or

(c) The federal upper limit; or

(2) In accordance with 907 KAR 3:010 for a free immunization through the Vaccines for Children Program.

SHANNON TURNER, Acting Commissioner
DUANE L. KILTY, JR., Ph.D, Undersecretary
JAMES W. HOLSINGER, Jr., M.D., Secretary
APPROVED BY AGENCY: December 2, 2004
FILED WITH LRC: December 3, 2004 at 3 p.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - SW-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists and will continue to assist in the effective administration of the authorizing statutes by establishing the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy 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 to this administrative regulation establishes that DMS may establish a state maximum allowable cost (MAC) for a drug if 2 or more multi-source drugs (including generic) with a significant cost difference exist for the given drug; that a state MAC shall be established by reviewing average wholesale price (AWP), wholesale acquisition cost (WAC), and direct price for a given drug and utilizing the weighted majority of volume purchased; that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, then only one dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and adds gross amount due to drug reimbursement options.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to control rising pharmacy reimbursement costs in the Medicaid program in order to maintain the financial viability of the Department for Medicaid and Insurance.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by establishing that DMS may establish a state maximum allowable cost (MAC) for a drug if 2 or more multi-source drugs (including generic) with a significant cost difference exist for the given drug; that a state MAC shall be established by reviewing average wholesale price (AWP), wholesale acquisition cost (WAC), and direct price for a given drug and utilizing the weighted majority of volume purchased; that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, then only one dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and by adding gross amount due to drug reimbursement options.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by establishing that DMS may establish a state maximum allowable cost (MAC) for a drug if 2 or more multi-source drugs (including generic) with a significant cost difference exist for the given drug; that a state MAC shall be established by reviewing average wholesale price (AWP), wholesale acquisition cost (WAC), and direct price for a given drug and utilizing the weighted majority of volume purchased; that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, then only one dispensing fee shall be allowed for the com-
bined partial fill and subsequent completion fill; and by adding gross amount due to drug reimbursement options.

3. List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid outpatient pharmacy providers will be affected by this administrative regulation.

4. Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Pharmaceutical providers shall be affected in that the prior methodology for determining a state maximum allowable cost is being replaced; that a state maximum allowable cost may now be implemented by DMS even if a federal upper limit exists for a given drug; and that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only one dispensing fee shall be allowed for the combined partial fill and subsequent completion fill.

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 could reduce expenditures as much as $21.0 million annually ($14.66 million federal funds; $6.34 million state funds).

(b) On a continuing basis: DMS estimates that the amendment to this administrative regulation could reduce expenditures as much as $21.0 million annually ($14.66 million federal funds; $6.34 million state funds).

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX, and matching funds of general fund appropriations and collections will be used to fund the implementation and enforcement of this administrative regulation.

7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement this administrative regulation.

8. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

9. Tiering: Is tiering applied? Tiering 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. This administrative regulation complies with federal statutes/regulations governing the Medicaid Program and drug reimbursement.

2. State compliance standards. This administrative regulation establishes the Department for Medicaid Services reimbursement for drugs in compliance with federal regulations governing drug reimbursement.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation establishes the Department for Medicaid Services reimbursement for drugs in compliance with federal regulations governing drug reimbursement.

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 impose stricter (than federal) requirements.

-1231-
KENTUCKY STATE BOARD OF ELECTIONS
(As Amended at ARRS, December 14, 2004)

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, 369.107(1), and 42 U.S.C. 1973 ff-1
STATUTORY AUTHORITY: KRS 117.015(1), 117.079[4], 117.085, 369.107(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) amends the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. The Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973f [Pub. L. 99-440], 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.
deposit for any prior calendar year;
(4) Outstanding judgments. Nonparticipating manufacturers that have failed to pay any judgment, including any civil penalty;
(5) Large sales volume. Nonparticipating manufacturers that have more than 2,500,000 of their cigarettes sold in Kentucky during a quarter; and
(6) Other reasonable cause. In addition to the reasons specified above, the Attorney General may require quarterly escrow deposits from a nonparticipating manufacturer if the Attorney General has reasonable cause to believe the nonparticipating manufacturer may not make its full required escrow deposit by April 15 of the year following the year in which the cigarette sales were made.

Section 2. Deadline for Quarterly Escrow Deposits. Nonparticipating manufacturers who are required to make quarterly escrow deposits shall [must] do so no later than thirty (30) days after the end of the quarter in which the sales are made. For example, the deadline for making a quarterly escrow deposit for cigarette sales that occurred during the first quarter of the year (January through March) is April 30 of the same year.

Section 3. Deadline for Submitting Quarterly Certification and Notice to Attorney General. Nonparticipating manufacturers who are required to make quarterly escrow deposits shall [must] provide the Attorney General with their quarterly certifications and official notification of the quarterly escrow deposit no later than ten (10) days after the deadline for which an escrow deposit is required. For example, the deadline for certifying and officially notifying the Attorney General of a quarterly escrow deposit for sales of cigarettes that occurred during the first quarter of the year (January through March) is May 10 of the same year.

Section 4. Quarterly Periods Defined. For purposes of this administrative regulation [section], the calendar year shall be divided into the following quarters: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

Section 5. Notice to Nonparticipating Manufacturers. Any nonparticipating manufacturer required to make quarterly escrow deposits and to certify its compliance with this rule shall be notified of those requirements by first class mail sent to its last known address.

Section 6. Decertification. If the required quarterly escrow deposit is not timely made in full, or the required quarterly certification is not provided to the Attorney General, or the Attorney General does not receive timely official notice of the quarterly escrow deposit, the nonparticipating manufacturer and its brand families may be decertified and removed from Kentucky's Directory of Tobacco Products Approved for Sale in Kentucky.

GREGORY D. STUMBO, Attorney General
APPROVED BY AGENCY: August 27, 2004
FILED WITH LRC: September 1, 2004 at 11 a.m.
CONTACT PERSON: Michael Plumley, Assistant Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118 Frankfort, Kentucky 40601, phone (502) 696-5527, fax (502) 564-6801.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(As Amended at ARRS, December 14, 2004)

200 KAR 5:375. Multistep Competitive Sealed Bidding.
RELATES TO: KRS 45A.080
STATUTORY AUTHORITY: KRS 45A.035
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This administrative regulation implements a multistep bidding process under the provisions of KRS 45A.080.

Section 1. Definitions. (1) "Acceptable" means the unpriced technical offer is compliant with technical specifications described in the solicitation.
(2) "Multistep sealed bidding" means a two (2) phase process consisting of a technical first phase composed of one (1) or more steps in which bidders may submit unpriced technical offers to be evaluated by the purchasing agency, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.
(3) "Potentially acceptable" means the unpriced technical offer [is materially compliant with the technical specifications described in the solicitation, thereby providing a reasonable expectation of being made acceptable by amendment to the offer. If the bidder does not amend the offer by the specified date, the offer shall be deemed unacceptable].
(4) "Prebid conference" means a meeting or discussion with the purchasing officer and interested bidders.
(5) "Reverse auction" means a real-time, structured bidding process, usually lasting less than one (1) hour and taking place during a previously scheduled time and Internet location, during which multiple suppliers, and bidders, submit their offers to each other, submit revised, lower bids to provide the solicited good or service.
(6) "Unacceptable" means the unpriced technical offer is not materially compliant with the technical specifications described in the solicitation to such an extent that there is no reasonable assurance that, by amendment, the offer will meet or exceed the specifications and other requirements.

Section 2. General Terms. (1) Except for the variations described in this administrative regulation, the provisions of 200 KAR 5:306 shall apply to multistep bidding.
(2) Reverse auction may be used as a form of competitive bidding in a multistep bidding process, and as an alternative to sealed bidding if it is determined by the purchasing officer that it is in the best interest of the commonwealth.
(3) A contract resulting from multistep bidding shall not be awarded for an amount greater than the published price in an existing fixed-price contract with the commonwealth for substantially similar good or service that was solicited through competitive sealed bids.

Section 3. Multistep Sealed Bidding. (1) The multistep sealed bidding method may be used if the procurement officer determines in writing that:
(a) Definite criteria exist for evaluation of technical proposals and more than one (1) technically qualified source is expected to be available; or
(b) A reverse auction is in the best interest of the commonwealth; and
(2) It will be advantageous to the purchasing agency to:
1. Invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirements;
2. Conduct discussions for the purposes of facilitating understanding of the technical offer and, if appropriate, obtaining supplemental information, permitting amendments of technical offers, or amending the purchase description;
3. Accomplish paragraphs [subsections] (a) and (b) of this section prior to soliciting priced bids; and
4. Award the contract to the responsive and responsible bidder providing the best value to the commonwealth.

Sections 4. Procedural for Multistep Sealed Bidding. (1) Multistep sealed bidding shall be initiated by the issuance of a
solicitation as required by KRS 45A.080 and FAP 111-35-00, incorporated by reference in 200 KAR 5:021. The multistep solicitation shall state: (a) That unpriced technical offers are requested; (b) Whether price bids are to be submitted at the same time as unpriced technical offers or if a reverse auction shall be conducted. If a price bid is submitted with the unpriced technical offer, the price bids shall be submitted in a separate sealed envelope; [3] (c) That it is a multistep sealed bid procurement, and priced bids shall be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase; (d) The criteria to be used in the evaluation of the unpriced technical offers; (e) That the purchasing agency, to the extent the procurement officer finds necessary, may conduct oral or written discussions of the unpriced technical offers in accordance with subsection (5) of this section; (f) That bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data that are to remain confidential; (g) That the good or service being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable; and (h) The manner in which the second phase reverse auction shall be conducted, if applicable. (2) Amendments to the solicitation. After receipt of unpriced technical offers, amendments to the solicitation shall be distributed only to bidders who submitted unpriced technical offers, and those bidders shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the procurement, the solicitation shall be canceled in accordance with KRS 45A.105, and a new solicitation issued. (3) Receipt and handling of unpriced technical offers. Unpriced technical offers shall be opened publicly, identifying only the names of the bidders. Technical offers and modifications shall be time stamped upon receipt and held in a secure place until the specified date and time. After the date established for receipt of bids, a register of bids shall be open to public inspection and shall include the name of each bidder. Prior to the completion of phase two of the multistep bidding process, documents related to the bid evaluation process shall be considered preliminary and may only be disclosed to authorized state personnel and those involved in the evaluation process who have a legitimate interest in a particular matter. [Phase Two of the multistep bidding process, a technical offer shall be shown only to purchasing-agency personnel and those involved in the selection process who have a legitimate interest in the offer.] (4) Evaluation of unpriced technical offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the solicitation. A bidder shall submit a technical offer in sufficient detail so as to substantially comply with the technical specifications of the solicitation. The unpriced technical offers shall be categorized as: (a) Acceptable; (b) Potentially acceptable; or (c) Unacceptable. (5) If the unpriced technical offer is categorized as “potentially acceptable,” the bidder shall amend the offer by the specified date. If the offer is not amended by the specified date, the offer shall be classified as unacceptable. (6) [6] Discussion of unpriced technical offers. (a) The procurement officer may hold a conference with all bidders at any time during the evaluation of the unpriced technical offers. The purchasing officer may discuss with bidders, including any subcontractor or supplier of goods or services, acceptable and potentially acceptable bids. Discussions may be conducted for the purposes of facilitating understanding of technical offers and specifications and may include, [but shall not be limited to: 1. Obtaining supplemental information;] 2. Amendments to the technical offer;] 3. Amendments to the solicitation[;] or 4. A potentially-acceptable offer being amended to become an acceptable offer. (b) During the course of these discussions the procurement officer shall not disclose any information derived from one (1) unpriced technical offer to any other bidder. Once discussions have begun, any bidder who has submitted an offer found acceptable or potentially acceptable [not to be notified that its offer has been finally found unacceptable] may submit supplemental information modifying or otherwise amending its technical offer at any time until the closing date established by the procurement officer. The procurement officer shall notify all acceptable or potentially acceptable bidders in writing when no additional supplemental information may be submitted. (7) Technical evaluation. The evaluation of technical offers shall be in writing. If the solicitation is for computer hardware, software and related services, the purchasing agency shall comply with FAP 111-15-00(2), incorporated by reference in 200 KAR 5:021. A written record shall be maintained and become a part of the bid file. (8) Unacceptable unpriced technical offer. The procurement officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file. A bidder whose technical offer is determined to be unacceptable shall not be allowed to amend or supplement the technical offer. (9) The procurement officer may initiate Phase Two of the multistep bidding if, in the procurement officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without modification or alteration of the offers. If the procurement officer finds that there are not sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without modification or alteration of the offers, the procurement officer shall issue an amendment to the solicitation or engage in technical discussions as set forth in subsection (5) of this section. (10) Mistakes during multistep sealed bidding. Mistakes may be corrected or bids may be withdrawn during: (a) Before unpriced technical offers are evaluated; (b) After any discussions have commenced under subsection (5) of this section; (c) If responding to any amendment of the solicitation; or (d) In accordance with 200 KAR 5:306 and FAP 111-35-00, incorporated by reference in 200 KAR 5:021. Section 5. Procedure for Phase Two of Multistep Sealed Bidding. (1) Upon the completion of the multistep bidding process, [ Monaco public notice shall not be required for Phase Two. The procurement officer shall either: (a) Open price bids submitted in from bidders whose unpriced technical offers were found to be acceptable; if the offers have remained unchanged and the solicitation has not been amended; (b) Invite each bidder whose technical offer was determined to be acceptable to submit a price bid; or (c) Conduct a reverse auction. (2) If in the best interest of the commonwealth, the reverse auction shall be an open and interactive process where pricing is submitted, made public immediately, and bidders are given opportunity to submit revised, lower bids, until the bidding process is closed. (3) The solicitation of price bids for a reverse auction shall establish a date and time for the beginning and close of the reverse auction. The closing date and time may be a fixed point in time or may remain dependent on a variable specified in the solicitation. (4) (a) Following receipt of the first bid after the beginning of the reverse auction, the lowest bid price shall be posted electronically, and updated as other bidders submit bids. (b) At any time before the closing date and time, a bidder may submit a lower bid. (5) Mistakes during reverse auctions. [Withdrawal. If a mistake in a bid is attributable to an error in judgment, the bid may be withdrawn. If a mistake in a bid is inadvertent, withdrawal or correction may be permitted [at the discretion of the procurement officer] and to the extent it is not contrary to the interest of the purchasing agency or the fair treatment of other bidders. If a bid is withdrawn, a later bid submitted by the
same bidder may not be for a higher price. If the lowest responsive bid is withdrawn due to an inadvertent mistake after the closing date and time, the procurement officer shall determine in writing whether to:

1. Award the contract to the next lowest responsive vendor;
2. Cancel the solicitation; or
3. Reopen Phase Two bidding to all bidders whose technical offers were determined acceptable during.

(b) If Phase Two bidding is reopened, the procurement office shall notify all other bidders whose technical offers were determined acceptable during of the new date and time for the beginning and close of Phase Two bidding.

(c) Confirmation of bid. If it appears from a review of the bid that a mistake has been made, the bidder shall be requested to confirm the bid. Situations in which confirmation shall be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in subsection (5)(a) of this section are met.

ROBERT B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: July 14, 2004
FILED WITH LRC: July 14, 2004, at 1 p.m.
CONTACT PERSON: Angela R. Robinson, Assistant General Counsel, Finance and Administration Cabinet, Room 374 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
Office of the Controller
(As Amended at ARRS, December 14, 2004)


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 on 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.

(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.
   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.

(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.2065 upon a defendant convicted in criminal case in district court.

(6) 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 24A.180(5) [23A.215(6)], 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 24A.180(5) [23A.215(6)], 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.175(6), 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.
   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.

(5) In accordance with KRS 24A.180(5) [23A.215(6)], 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.

(5) 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 (2)(d) and (2)(e) of this administrative regulation.

(b) Sixteen (16) percent of the fund shall be distributed quarterly in accordance with Sections (2)(d) and (2)(e) of this administrative regulation.

(c) Four (4) percent of the fund shall be distributed quarterly in accordance with Sections (2)(d) and (2)(e) of this administrative regulation.

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 & Administration Cabinet, Room 393 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-2210, fax (502) 564-6597.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(As Amended at ARRS, December 14, 2004)

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(1), (11), (12), (13), (14), (15)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.041 authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine whether physical therapist applicants meet the qualifications and standards required by KRS Chapter 327.

(a) [R337-1226-001] KRS 327.040(1) allows the Board to promulgate administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine whether physical therapist applicants meet the qualifications and standards required by KRS Chapter 327. KRS 327.040(13) allows the board to promulgate administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(13) allows the board to promulgate administrative regulations for the effectuation of the purposes of KRS Chapter 327.

Section 1. Applications shall be accepted for credentialing based on successful completion by the applicant of one (1) of the following processes:

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

Section 2. To be eligible [to-sit] for the [licensure] examination, the applicant shall:

(1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by [the] CAPTE [Commission on Accreditation in Physical Therapy Education];

(2) Submit certification of completion by the educational administrator of that program;

(3) Have completed an educational course at least four (4) hours in length which has been approved by the Cabinet for Health Services (CHS) on the transmission, control, treatment and prevention of human immunodeficiency virus infection and AIDS;

(4) Submit a completed application for credentialing;

(a) Application for License as a Physical Therapist; or
(b) Application for Certification as a Physical Therapist's Assistant;

(5) Submit the correct fee as required in 201 KAR 22:135; and

(6) Register for the examination.

Section 3. An applicant [Applicants] for credentialing who is [are] registered for the examination in another jurisdiction shall:

(1) Meet the eligibility requirements of Section 2 of this administrative regulation; and

(2) Register with the Federation of State Boards of Physical Therapy (FSBPT) Score Transfer Service to have results submitted to Kentucky.

Section 4. [R337-1226-002] To be eligible for credentialing [licensure application] by endorsement, the applicant shall:

(1) Meet the requirements established in Section 2(1), (3), (4), and (6) [4] 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, a passing score shall be 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 may [can] be approved in lieu of, or in addition to, the NPTE; [R337-1226-003] and

(3) Have an active credential in this profession in another jurisdiction;

(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. (1) Upon issuance of a temporary permit for a physical therapist applicant:

(a) [R337-1226-004] The physical therapist applicant shall work only under the supervision of a physical therapist practicing in Kentucky on an unrestricted credential; [R337-1226-005]

(b) [R337-1226-006] The supervising physical therapist for the physical therapist applicant shall:

1. [R337-1226-007] Be available and accessible by telecommunications at all times during the working hours of the applicant with a temporary permit;

2. [R337-1226-008] Be responsible for the direction of the actions of the person supervised when services are performed by the person with a temporary permit;

3. [R337-1226-009] Sign all evaluations and physical therapy notes within fourteen (14) days; and

4. [R337-1226-010] Document the data of the record review.

(2) Upon issuance of a temporary permit for a physical therapist assistant applicant:

(a) [R337-1226-011] The physical therapist assistant applicant shall work only under the supervision of a physical therapist practicing in Kentucky on an unrestricted credential;

(b) [R337-1226-012] The supervising physical therapist for the physical therapist assistant applicant shall:

1. [R337-1226-013] Be on-site at all times during the working hours of the
applicant with a temporary permit;
2. [cb] Be responsible for the direction of the actions of the applicant supervised when services are performed by the applicant with a temporary permit;
3. [c(e)] Cosign all physical therapy notes within seven (7) days; and
4. [d] Document the date of the record review.

(3) [55] 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 uneven-numbered year, as required by 201 KAR 22:031, Section (2).

Section 2. To be eligible for licensure and endorsement, the applicant-shall:

(1) Meet the requirements established in Section 1 of this administrative regulation; and
(2) Have successfully completed the examination required by 201 KAR 22:031, Section 3. Candidates shall be accepted for licensure based on successful completion of one (1) of the following processes:
   (1) Examination;
   (2) Endorsement; or
   (3) Reinstantiation.

Section 9. [4] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Credentialing 9/2/04"; [Licensee as a Physical Therapist 1/1/04]; and
(b) "Supervision Agreement for Physical Therapist Examination Candidate, 9/2/04"; and [Application for Certification as a Physical Therapist's Assistant 2/2/04].
(c) "Supervision Agreement for Physical Therapist Assistant Examination Candidate, 9/2/04."

(2) This material shall be copied, obtained, subject to applicable copyright law, at the State Board of Physical Therapy, 5110 Leesgate 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
CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 5110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-9159, phone (502)327-8497, fax (502)423-0934.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, December 14, 2004)

401 KAR 49:011. General provisions relating to area solid waste management plans.

RELATES TO: KRS 109.041, 224.10-105, 224.43-310(5), 224.43-340(2), (8), (9), 224.43-345, 224.43-505 [224.41, 224.43]

STATUTORY AUTHORITY: KRS 224.43-340(1) authorizes the cabinet to promulgate administrative regulations pursuant to KRS Chapter 224 for the reduction and management of solid waste. [The purpose of the area solid waste management plan is to develop goals and objectives for improving solid waste management in all areas of Kentucky. By addressing all area solid waste management components, including collection, transportation, disposal, recycling, resource recovery, and public education, counties can create a management structure capable of supporting the local solid waste system.] This administrative regulation sets forth general requirements and procedures for submittal, processing, and amending of area solid waste management plans. [This administrative regulation incorporates, by reference, documents for preparing five (5)-year updates of area solid waste management plans and annual reports] [is being promulgated as a result of the enactment of statutory changes resulting from the First Biennial Legislative Call of 1991-1992.] This administrative regulation supersedes three (3) administrative regulations that are being repealed due to conflicts with the 1994 statutory revisions: 401 KAR 49:010, 49:060, and 49:070.

Section 1. Preparation of an Area Solid Waste Management Plan. (1) An area solid waste management plan, referred to in this administrative regulation as the "plan," shall contain the information specified in 224.43-345.
   (2) The plan shall be prepared and formatted in accordance with [guidelines provided by the cabinet].
   (3) The requirements set forth in the document entitled "Guidance for Preparing an Area Solid Waste Management Plan 5-Year Update" DEP Form 6602 (February 2004), incorporated by reference in Section 8 of this administrative regulation. ["Guidelines for Preparation of an Area Solid Waste Management Plan" (June 1992), are incorporated in this administrative regulation by reference. The guidelines may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6746, between the hours of 8 a.m. to 4:30 p.m. Eastern Time, Monday through Friday.]

Section 2. Public Information Procedures. (1) The governing body of a solid waste management area shall be responsible for conducting a public information period on the contents of the plan, or an amendment to the plan pursuant to Section 4 of this administrative regulation, prior to the submittal to the cabinet.
(2) The public information period shall include a thirty (30) day comment period that shall commence with the publishing of a public notice in accordance with subsection (3) of this section.
(3) A public notice shall be published by the governing body that meets the following requirements:
   (a) [The public notice form provided by the cabinet shall be completed by the governing body. The public notice form is part of the guidelines incorporated by reference in Section 1(2) of this administrative regulation;
   (b) The public notice shall be of a size to include not less than two (2) column widths and shall be in a display format; and]
   (b) [d] The public notice shall be published in a daily or weekly newspaper of general circulation in each county in the area designated by the plan; and
   (c) The public notice shall include a description of the proposed action, location where the plan may be reviewed, procedures for submitting comments, and location of the public hearing, if a hearing is requested.
(4) The governing body shall hold a public hearing if, during the public comment period, one is requested. The hearing shall be held within fifteen (15) days of the close of the public comment period, with at least seven (7) days public notice. The public notice for a hearing shall be published in accordance with subsection (3) of this section. The hearing may occur in conjunction with the governing body's normally scheduled official meeting. [The governing body shall provide at least seven- (7) days notice for the scheduling of a public hearing on the plan in accordance with subsection (3) of this section.]
(5) The governing body shall respond in writing to written public comments within fifteen (15) days after the close of the public comment period. The governing body shall publish a notice in a daily or weekly newspaper of general circulation in each county in the area designated by the plan that the written response to public comments is available to the public. The notice shall state where copies of the response are maintained and how it may be obtained. The governing body shall also mail the response to all comments to each individual who commented on the plan during the public comment period.

Section 3. Submittal and Plan Review Process. (1) All plans shall be submitted no later than the deadlines specified in 224.43-340 and 224.43-345 and shall be accompanied by an ordinance, resolution, or administrative regulation approving the plan from the appropriate governing body of the solid waste management area [approving].
(2) The original and one (1) copy of the plan shall be sent to the supervisor, Local Assistance Section, Resource Conservation and Local Assistance Branch [director], Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601.

(3) The cabinet shall review each submitted plan for consistency with KRS 224.43-340, KRS 224.43-345, and this administrative regulation.

(4) The cabinet shall notify the governing body in writing if the plan is approved.

(5) If the cabinet [disapproves a plan [disapproved by the cabinet]], the cabinet shall notify the governing body in writing of each deficiency. The governing body shall have up to ninety (90) days from the date of the first notice of deficiency to correct all deficiencies and submit an approvable plan to the cabinet. The time elapsed during the governing body's correction of deficiencies shall not count toward the cabinet's 120-day review deadline specified in KRS 224.43-325(2). The cabinet may issue up to three (3) notices of deficiency during the ninety (90) day period following the calendar days from the date of the notice to correct the deficiencies and submit a corrected plan. The time elapsed during the governing bodies' correction of deficiencies shall not count toward the cabinet's 120-day review deadline specified in KRS 224.43-345(2). The cabinet shall disapprove a plan after issuance of and failure of the governing body to respond to three (3) notices of deficiency. [cabinet may grant the governing body up to 90 days to correct all deficiencies in the plan.] The cabinet may require the governing body to repeat the public information process described in [accordance with] Section 2 of this administrative regulation for any plans significantly modified during the review process [prior to cabinet approval of the plan].

(6) If the governing body fails to submit a plan, fails to correct all identified deficiencies within time frames specified by the cabinet, or fails to amend a plan in accordance with Section 4 of this administrative regulation, the cabinet may take one (1) or more of the following actions:

(a) Initiate enforcement proceedings against the governing body pursuant to 401 KAR Chapter 40;
(b) Withhold any grants or monies for the area and the counties and cities located within the area pursuant to KRS 224.10-105 and KRS 224.43-340 until the governing body submits its plan, including grants and reimbursements awarded under KRS 224.43-505; [a plan is approved by the cabinet]; and
(c) Prepare a plan for the governing body, conduct the public information process specified in Section 2 of this administrative regulation, and charge the governing body all expenses incurred by the cabinet.

Section 4. Plan Amendment Process. (1) A plan may be amended upon either the initiative of the governing body of the solid waste management area or the cabinet if the current plan is inadequate because of new or revised information or to meet the requirements of KRS Chapter 224 and this administrative regulation.

(2) If the cabinet makes a determination that an amendment to a plan is necessary under subsection (1) of this section, the cabinet shall inform the governing body in writing of the needed changes. The governing body shall have ninety (90) days to prepare and submit an amendment in accordance with subsection (5) of this section.

(3) If the governing body makes a determination to amend its plan, it shall prepare and submit to the cabinet a request to amend that contains the following:

1. Name of the county or area that intends to amend its plan;
2. Name and address of the governing body;
3. Name, address, and phone number of a contact person;
4. Identification of the pages of the plan to be affected and a brief statement of the nature of the amendment; and
5. A written description outlining the justification, desired outcome, implementation schedules, and the financial impact of the proposed amendment.

(b) The cabinet shall review the request to amend within thirty (30) calendar days of receipt and determine whether a plan amendment is necessary. If the plan amendment is not necessary, the cabinet shall inform the governing body that no amendment is required. If a plan amendment is necessary, the cabinet shall notify the governing body to proceed with amending [to amend] its plan in accordance with subsections (4) and (5) of this section.

(c) The governing body shall publish a public notice regarding the proposed amendment to its plan in accordance with Section 2[36] of this administrative regulation unless the cabinet informs the governing body in writing that a public notice is not necessary. The cabinet shall not require the governing body to publish a public notice if the proposed amendment is to:

1. Correct a clerical error;
2. Correct a typographical error;
3. Change the name, address, or phone number of a person identified in the plan;
4. Make revisions to solid waste ordinances pertaining to changes in waste haulers, franchise agreements, or similar service changes in which services are revised and a public notice and comment period have already been conducted as part of the local ordinance approval process; or
5. Make similar minor administrative changes.

(b) Solid waste plan amendments which require the governing body to undertake the public information process described in Section 2 shall include any solid waste plan amendment that:

1. Increases fees to the public;
2. Increases services to the public;
3. Closes a solid waste facility;
4. Establishes a new solid waste facility;
5. Expands the size or capacity of an existing facility; or
6. Changes the location of a solid waste facility [if a proposed amendment is to correct a clerical error, the cabinet shall not require the governing body to publish a public notice].

(5) Upon approval by the governing body of the proposed plan amendment, the governing body shall submit the following to the cabinet:

(a) Two (2) copies of each page of the plan that is being amended;
(b) A copy of the public notice, as published, from each newspaper that published the notice verifying the date of publication;
(c) A copy of the ordinance, resolution, or administrative regulation of the governing body approving the amendment and its submission to the cabinet;
(d) Copies of any ordinances, resolutions, or administrative regulations approving the amendment by the first or second class city governing body that developed its portion of the plan, if required;
(e) Copies of any agreements or contracts relating to the plan amendment, if applicable;
(f) Copies of any proposed ordinances, resolutions, administrative regulations, or by-laws relating to the plan amendment, if applicable; and
(g) Any other supporting documentation as required by the cabinet.

(6) The cabinet shall inform the governing body in writing of the cabinet's decision to approve or disapprove the amendment to the plan.

Section 5. Plan Update Process. (1) The governing body shall submit to the cabinet for reapproval an updated plan on or before October 1, 2007 [January 4, 1998], and every five (5) years thereafter.

(2) The plan update shall be subject to the public information procedures of Section 2 of this administrative regulation.

(3) The cabinet shall review the plan update in accordance with Section 3 of this administrative regulation.

Section 6. Implementation of the Plan. (1) Each governing body shall implement its plan as approved by the cabinet.

(2) If a governing body fails [fails] to implement an approved plan, [shall result in one or both of the following actions by the cabinet]:

(a) Shall not endorse projects that generate solid waste under the Kentucky intergovernmental review process for the area and the counties and cities located in the area pursuant to KRS 224.43-
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340 until the governing body is in compliance with its plan [initiate enforcement proceedings against the governing body pursuant to KRS 224.99-010 and 224.99-020]; [and]
(b) May withhold any grants, loans, or other monies for the area and the counties and cities located in the area pursuant to KRS 224.10-105, including grants and reimbursements awarded under KRS 224.43-505, [and KRS 224.43-340] until the governing body is in compliance with its plan; and
(c) May initiate enforcement proceedings against the governing body pursuant to KRS 224.99-010 and 224.99-020.

Section 7. Annual Reports. (1) The annual report, specified in KRS 224.43-310(5), shall be prepared by the governing body of each solid waste management area [on a form provided by the cabinet]. The original and one (1) copy of the report shall be sent to the supervisor, Local Assistance Section, Resource Conservation and Local Assistance Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601.
(2) The annual report shall be prepared and formatted using the "Solid Waste Management Area Annual Report Form", DEP Form 6061 (February 2004), incorporated by reference in Section 8 of this administrative regulation. This form shall be effective January 1, 2005, for the annual report covering calendar year 2006.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Guidance for Preparing an Area Solid Waste Management Plan 5-Year Update (February 2004)"; and
(b) "Solid Waste Management Area Annual Report Form (February 2004)")
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, requirements of the annual report, form DEP-1016 entitled "Area Solid Waste Management Plan Annual Report" (August 1992) are incorporated in this administrative regulation by reference. The annual report may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, [between the hours of 8 a.m. to 4:30 p.m., Eastern Time], Monday through Friday 8 a.m. to 4:30 p.m.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: July 15, 2004
FILED WITH LRC: July 15, 2004 at 4 p.m.
CONTACT PERSON: Nini Hughes, Planning Section Supervisor, PPA Branch, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716 ext. 628, fax (502) 564-3492.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, December 14, 2004)

401 KAR 49:080. Solid waste grant funds and solid waste collector and recycler registration.

RELATES TO: KRS 224.43-310, 224.43-315, 224.43-345, 224.43-505
STATUTORY AUTHORITY: KRS 224.43-340, 224.43-345, 224.43-505
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.43-340 authorizes the cabinet to promulgate administrative regulations pursuant to KRS Chapter 224 for the management of solid waste. This administrative regulation establishes administrative procedures concerning the area solid waste management plans described in KRS 224.43-345 and the Kentucky Pride Fund described in KRS 224.43-505.

Section 1. Definitions. (1) "City street cleanup" means the cleanup of litter along a number of city street miles equivalent to one-half (1/2) of a city's total street miles in accordance with KRS 224.43-345(1)(q)(q)
(2) "County" means the governing body of a solid waste management area.
(3) "Legal open dump" means any facility or site for the disposal of solid waste that does not have a valid permit issued by the cabinet or does not meet the standards established by the cabinet and is equal to or greater than two (2) consolidated cubic yards of solid waste.
(4) "In-kind services" means the value of noncash contributions provided by parties in the form of real property, equipment, supplies, and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.
(5) "Public road cleanup" means the cleanup of litter along a number of public road miles equivalent to one-third (1/3) of the total public road miles in the solid waste management area, excluding total city street miles in accordance with KRS 224.43-345(1)(i)(q)
(6) "Recycler" means the following:
(a) Any person who operates a business for the purpose of recycling recovered material, as defined in KRS 224.01-010(20), [reselling recyclables] collected from the municipal solid waste stream, excluding any business operated for the exclusive purpose of collecting motor vehicles or motor vehicle parts to be sold for repair or
(b) A recycling program operated by a municipality for the purpose of collecting recovered material, as defined in KRS 224.01-010(20), [recyclables] from the municipal solid waste stream.
(7) "Solid waste collector" means a person who provides collection of municipal solid waste, including collection for the purpose of recycling.

Section 2. Waste Collector and Recycler Registration and Reporting. (1) By February 1 of each year, each solid waste collector and recycler shall register and report in accordance with KRS 224.43-315(2) and (3).
(2) By February 1 of each year, each solid waste collector shall register with each county in which they collect waste.
(3) By February 1 of each year, each solid waste collector shall report collection totals for the previous calendar year to each county in which they provide service.
(4) By February 1 of each year, each recycler shall report recycled totals for the previous calendar year to each county in which they provide service.

Solid waste collectors and recyclers required to register and report, pursuant to KRS 224.43-315(2) and (3), and this administrative regulation, shall utilize DEP Form #5033 "Municipal Solid Waste (MSW) Collector and Recycler Registration and Reporting Form" incorporated by reference in Section 7 of this administrative regulation.

Section 3. Litter Abatement Funding. (1) Litter abatement funding to complete the public road litter cleanup requirements established in KRS 224.43-345(1)(q)(q) shall be [is] available to the counties and those incorporated cities that provide garbage collection service, either directly by the city or the county, or by contract between the municipality and a registered solid waste collector.
(2) Litter abatement funding shall be utilized for direct expenses associated with public road cleanup requirements established in KRS 224.43-345 [litter abatement activities along public roads]. Direct expenses include staff time, supplies, contract costs, expenditures related to the operation of equipment, street sweeping activities, actual disposal costs incurred, and education activities focusing on litter prevention and litter cleanup activities along public roadways [public road cleanup]. Direct expenses do not include the purchase of a motor vehicle, or lease of a motor vehicle, when the lease includes the purchase option.
(3) All recipients of litter abatement funds shall provide a twenty-five (25) percent match to the litter abatement funding in accordance with KRS 224.43-505(3). The match may be fulfilled through in-kind services.
(4) Counties and cities shall complete and return a "County Request for Litter Abatement Funding" document to [must enter an}
agreement with the cabinet [pursuant to KRS 224.43-505(2)(e)(3)] to be eligible for funding.

Section 4. Litter Abatement Activities. (1) Three (3) public road cleanups shall be performed annually by the county.

(2) Two (2) city street cleanups shall be performed annually by incorporated cities receiving litter abatement funds or by the county, if the incorporated city does not receive funding.

(3) Counties shall report to the cabinet on litter abatement activities in the annual report required by KRS 224.43-310(5).

(4) Incorporated cities that enter into an agreement with the cabinet to receive a portion of a county's litter abatement funding shall report annually to their county by February 1, demonstrating that the city used the litter abatement funds it received appropriately pursuant to Section 3(2) of this administrative regulation.

(5) Counties and incorporated cities that utilize litter abatement funding in accordance with Section 3(2) of this administrative regulation to meet public road clean up requirements established in KRS 224.43-345(1)(c) and Section 4 of this administrative regulation shall not be deemed out of compliance with the public road cleanup requirements of KRS 224.43-345(1)(d).

Section 5. Illegal Dump Remediation Costs Reimbursement. (1) Funding for illegal open dump remediation established in KRS 224.43-505 is available to counties that meet the eligibility requirements of KRS 224.33-605(2)(c) [eligible counties]. The cabinet shall reimburse eligible counties seventy-five (75) percent of remediation costs of eliminating illegal open dumps that pose the greatest public health and environmental risks as determined by the cabinet.

(2) Eligible counties shall be reimbursed for direct costs associated with illegal open dump remediation. Direct costs include staff time, supplies, contract costs, expenditures related to the operation of equipment for remediation, and actual disposal costs. Direct costs do not include the purchase of a motor vehicle, or lease of a motor vehicle, when the lease includes a purchase option.

(3) Expenditures paid for with other grant dollars do not qualify as a direct cost.

(4) Beginning July 1, 2004, a county shall be eligible for reimbursement if the county:

(a) Meets the criteria described in KRS 224.43-505(2)(c)3a-f; and

(b) [224.43-506(2)(c)3c-f]

(2) [Employ] a solid waste coordinator, required pursuant to KRS 224.43-505(2)(c)3b, who shall not be an elected official, [2] a state or local government official who serves as a solid waste collection service, who will participate in the state and countywide solid waste collection rate, as published by the cabinet in the "Solid Waste Management Report Annual Update" or certifies to the cabinet that the county has less than five (5) illegal open dumps; and

(c) [Employ] a solid waste coordinator, who is not an elected official.

1. The solid waste coordinator shall be responsible for the implementation of all components of the solid waste management plan described in KRS 224.43-340.

2. The county, through an ordinance or resolution, shall empower the solid waste coordinator with enforcement powers necessary to implement all components of the solid waste management plan described in KRS 224.43-340.

3. Counties may employ a solid waste coordinator and an enforcement officer for the duties required to implement all components of the solid waste management plan described in KRS 224.43-340.

(5) Counties shall not be reimbursed for the costs of remediating the following types of illegal open dumps:

(a) Illegal open dumps eliminated prior to qualification; or

(b) Illegal open dumps that recur after being remediated more than two (2) times with assistance from the Kentucky Pride Fund.

Section 6. Enforcement. Any county or incorporated city failing to comply with the terms of the agreement specified in Section 3(4) of this administrative regulation[,] shall be ineligible for litter abatement funding for the following year.

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

(a) [44] "Municipal Solid Waste (MSW) Collector and Recycler Registration and Reporting Form (January 2004)");

(b) [County Request for Litter Abatement Funding (July 2004)].

[Is incorporated by reference]

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

LAUJANA S. WILCHER, Secretary
APPROVED BY AGENCY: July 15, 2004
FILED WITH LRC: July 15, 2004 at 10 a.m.
CONTACT PERSON: Nikki Hughes, Planning Section Supervisor, EPA Branch, 14 Reily Road, Frankfort, Kentucky 40601, phone (502) 564-6716 ext. 628, fax (502) 564-3482.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(As Amended at ARRS, December 14, 2004)

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 for motor vehicles and the method of operation, including adoption of any federal motor carrier safety regulations. This administrative regulation establishes requirements for motor carriers operating in Kentucky.

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

(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, as a private motor carrier, is a vehicle:

(a) To transport agricultural products from his or her farm;

2. To transport farm machinery or farm supplies to his or her farm; or

3. Generally thought of as farm machinery; and

(b) Which is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 501 KAR 1:025.

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

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

(6) "Utility" means an entity which provides water, electricity, gas, 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], Procedures for Transportation Workplace Drug and Alcohol Testing Programs;

(2) 49 C.F.R. Part 382, as effective October 1, 2004 [2003], Controlled Substances and Alcohol Use and Testing;
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(3) 49 C.F.R. Part 383, as effective October 1, 2004 [2003, as amended by 68 Fed. Reg. 63030, 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 Qualifications of Drivers;
(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:

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

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

(1) Comply with the provisions of 49 C.F.R. Parts 382 and 383; and
2. a. Provide proof of having passed the medical examination set forth in 49 C.F.R. Part 391; or
b. Have received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section for intrastate operators or as set forth in 49 C.F.R. Part 381 for interstate operators.

(2) A motor carrier, if 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, except as required by paragraphs (b) and (c) of this subsection.

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

1. Having passed the medical examination set forth in 49 C.F.R. Part 391; or
2. Having received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section for intrastate operators or as set forth in 49 C.F.R. Part 381 for interstate operators.

(c) The operator of a vehicle specified in paragraph (a) of this subsection shall meet the requirements of 49 C.F.R. Part 362 relating to drug and alcohol testing.

(3) (a) A motor vehicle which is used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier shall not be required to comply with 49 C.F.R. 393.9 to 393.33, relative to lighting device requirements, except as required by paragraph (b) of this subsection.

(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.

(4) (a) A motor vehicle which is used exclusively in intrastate commerce and exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles (eighty and five-tenths (80.5) air kilometers) from the harvest area when operated during daylight hours shall not be required to comply with 49 C.F.R. 393.9 to 393.33, relative to lighting device requirements, except as required by paragraph (b) of this subsection.

(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. 395.3 during an emergency as defined in 49 C.F.R. 390.6 which requires their employees to work to restore 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, Pub.L. 109-176 or its successor legislation, if [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 driver who operates a commercial vehicle exclusively in intrastate commerce within Kentucky[] may apply for a medical waiver of the requirements of 49 C.F.R. Part 391 under the provisions of 601 KAR 11:040.

(b) If a medical waiver is issued, the waiver shall be in the possession of the commercial driver at any time the driver [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".

Notwithstanding 49 C.F.R. 391.65(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 or her 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 or her passengers and control his or her operations in the public interest.

(5) Express and freight, mail bags, newspapers and baggage shall be so placed as to interfere with the driver or wheel
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 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 for the officer or inspector to place the vehicle out-of-service until the permission is granted.

(c) Operation of a vehicle in violation of the out of service notice affixed to it shall constitute a separate violation of this administrative regulation.

(d) (a) If a commercial motor vehicle is determined to be unqualified or 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 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 vehicle out of service until the permission is granted.

(d) Operating a commercial motor vehicle in violation of an out of service order shall constitute a separate violation of this administrative regulation.

Section 7. Persons Allowed to Perform Physical Examinations. A physical examination required pursuant to state or federal law shall be conducted by a medical examiner as defined in 49 C.F.R. § 390.5. The following shall qualify:

(1) Physician licensed by the Kentucky Board of Medical Licensure;

(2) Osteopath licensed by the Kentucky Board of Medical Licensure;

(3) Physician assistant certified by the Kentucky Board of Medical Licensure if 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 provisions 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 Rate. A commercial motor vehicle employer shall randomly test a percentage of the average number of driver positions employed by the employer.

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 October 2004 [April, 2004]; and

(c) TC 92-150, revised March, 1996.

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 AGENCY: October 14, 2004
FILED WITH LRC: October 15, 2004 at 10 a.m.
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) 564-7660, fax (502) 564-5238.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, December 14, 2004)


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;[...and] 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. A school district may request [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 1996], 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, 4th 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 [State] Board of Education.

Section 5. Incorporation by Reference. (1) The following material [These documents] are incorporated by reference:
   (a) "Kentucky School Facilities Planning Manual," dated June 2004; and

(2) This material [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 Mero 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.
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.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Office of Workplace Standards
Division of Employment Standards, Apprenticeship and Training
(As Amended at ARRS, December 14, 2004)

803 KAR 1:070. Executive, administrative, supervisory or professional employees; salesmen.

RELATES TO: KRS 337.275, 337.285
STATUTORY AUTHORITY: KRS 337.010(2)(a)(2), 337.295
NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.010(2)(a)(2) [28] exempts any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as the [such] terms are defined by administrative regulations of the commissioner from both the minimum wage and overtime requirements set forth in KRS 337.275 and 337.285. The function of this administrative regulation defines [is to define] what constitutes an individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of an outside salesman or [and] outside collector.

Section 1. Scope. (1) The exemptions set forth in KRS 337.010(2)(a)(2) [28], as defined by this administrative regulation, do not apply to manual laborers or other "blue collar" workers who perform work involving repetitive operations with their hands, physical skill, and energy. These [such] nonexempt "blue collar" employees gain the skills and knowledge required for performance of their routine manual and physical work through apprenticeships and on-the-job training, not through the prolonged course of specialized intellectual instruction required for exempt learned professionals such as medical doctors, architects, and archeologists. Thus, for example, nonmanagement production line employees and nonmanagement employees in maintenance, construction, and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, and laborers are entitled to minimum wage and overtime premium pay under KRS Chapter 337, and are not exempt under this administrative regulation no matter how simply paid they are.

(2)(a) The KRS 337.010(2)(a)(2) [28] exemptions and this administrative regulation also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers, and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling, or extinguishing fires of any type; rescuing fire, crime, or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining, and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

(b) These [such] employees do not qualify as exempt executive employees, because their primary duty is not management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof as required under Section 2 of this administrative regulation. Thus, for example, a police officer or fire fighter whose primary duty is not to investi- gate crimes or theft or fire is not exempt under KRS 337.010(2)(a)(2) merely because the police officer or fire fighter also directs the work of other employees in the conduct of an investigation or fighting a fire.

(c) These [such] employees do not qualify as exempt administrative employees, because their primary duty is not the performance of work directly related to the management or general business operations of the employer or the employer's customers as required under Section 3 of this administrative regulation.

(d) These [such] employees do not qualify as exempt professionals, because their primary duty is not the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor as required under Section 4 of this administrative regulation. Although some police officers, fire fighters, paramedics, emergency medical technicians, and similar employees have college degrees, a specialized academic degree is not a standard prerequisite for employment in these [such] occupations.

Section 2. General Rule for Executive Employees. (1) The term "individual employed in a bona fide executive capacity" in KRS 337.010(2)(a)(2) [28] shall mean an employee:

(a) Compensated on a salary basis at a rate of not less than $455 per week, exclusive of board, lodging, or other facilities;

(b) Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;

(c) Who customarily and regularly directs the work of two (2) or more other employees; and

(d) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees are given particular weight.

The business owner. The term "employee employed in a bona fide executive capacity" in KRS 337.010(2)(a)(2) [28] also include includes any employee who owns at least a bona fide twenty (20) percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management. The salary requirements of Section 8 of this administrative regulation shall not apply to business owners described in this subsection.

(3) Management, [Generally,] "Management shall include includes," but is not limited to activities such as interviewing, selecting, and training employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose
of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; appointing the work among the employees; determining the types of material and supplies to be purchased for the work; supervising the purchase of merchandise to be bought, stocked, or sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

(4) Department or subdivision.

This phrase "customarily-recognized department or subdivision" distinguishes [sic] intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. A customarily-recognized department or subdivision shall [must] have a permanent status and continuing function. For example, a large employer's human resources department might have a subdivision for handling employee benefit claims and another for employee training. The phrase "two (2) or more other employees" means two (2) full-time employees or their equivalent. One (1) full-time and two (2) half-time employees, for example, are equivalent to two (2) full-time employees. Four (4) half-time employees are also equivalent.

(b) If [when] an enterprise has more than one (1) establishment, the employee in charge of each establishment may be considered in charge of a recognized subdivision of the enterprise.

(c) A recognized department or subdivision may [need not] be physically located within the employee's establishment and may be more from the standpoint of the functions performed by the employee. The mere fact that the employee works in more than one (1) location does not invalidate the exemption if other factors show that the employee is actually in charge of a recognized unit with a continuing function in the organization.

(d) Continuity of the same subordinate personnel is not essential to the existence of a recognized unit with a continuing function. An employee assigned to an exempt plant may not lose the benefits simply because the employee draws and supervises workers from a pool or supervises a team of workers drawn from other recognized units, if other factors are present that indicate that the employee is in charge of a recognized unit with a continuing function.

(5) Two (2) or more other employees.

(a) To qualify as an exempt executive under this section, the employee shall [must] customarily and regularly direct the work of two (2) or more other employees. The phrase "two (2) or more other employees" means two (2) full-time employees or their equivalent. One (1) full-time and two (2) half-time employees, for example, are equivalent to two (2) full-time employees. Four (4) half-time employees are also equivalent.

(b) The supervision may [can be] distributed among two (2), three (3), or more employees, but each [such] employee shall [must] customarily and regularly direct the work of two (2) or more other employees, and need not lose the benefit merely because the employee draws and supervises workers from a pool or supervises a team of workers drawn from other recognized units, if other factors are present that indicate that the employee is in charge of a recognized unit with a continuing function.

(c) An employee who merely assists the manager of a particular department and supervises two (2) or more employees only in the discharge of the manager's duties does not meet this requirement.

(d) Hours worked by an employee shall [need not] be credited more than once for different executives. Thus, a shared responsibility for the supervision of the same two (2) employees in the same department does not satisfy this requirement. However, a full-time employee who works four (4) hours for one (1) supervisor and four (4) hours for a different supervisor, for example, may [can] be credited as a half-time employee for both supervisors.

(6) [6(b)] Particular weight. To determine whether an employee's suggestions and recommendations are given "particular weight," factors to be considered include, but are not limited to, whether it is part of the employee's job duties to make the [such] suggestions and recommendations; the frequency with which the [such] suggestions and recommendations are made or requested; and whether the employee's suggestions and recommendations are relied upon. [Generally, an executive's suggestions and recommendations shall [must] pertain to employees whom the executive customarily and regularly directs. It shall [does] not include an occasional suggestion with regard to the change in status of a coworker. An employee's suggestions and recommendations may be deemed to have "particular weight" even if a higher level manager's recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee's change in status.

(7) [6(a)] Concurrent.

(a) Concurrent performance of exempt and nonexempt work does not disqualify an employee from the executive exemption if the requirements of this administrative regulation are otherwise met. Whether an employee meets the requirements of this administrative regulation when the employee performs concurrent duties is determined on a case-by-case basis. [Generally, exempt executive shall make the decision regarding when to perform non-exempt duties and remain responsible for the success or failure of business operations under their management while performing the nonexempt work. In contrast, the nonexempt employee shall be generally directed by a supervisor to perform the exempt work or performs the exempt work for defined time periods. An employee whose primary duty is ordinary production work or routine, recurrent, or repetitive tasks shall not [must not] qualify for exemption as an executive.

(b) For example, an assistant manager in a retail establishment may perform work such as serving customers, cooking food, stocking shelves, and clearing the establishment, except [but] performance of the exempt nonexempt work does not preclude the exemption if the assistant manager's primary duty is management. An assistant manager may [can] supervise employees and serve customers at the same time without losing the exemption. An exempt employee may [can] also simultaneously direct the work of other employees and stock shelves.

(c) In contrast, a relief supervisor or working supervisor whose primary duty is performing nonexempt work on the production line in a manufacturing plant does not become exempt merely because the nonexempt production line occasionally has some responsibility for directing the work of other nonexempt production line employees if [when], for example, the exempt supervisor is unavailable. Similarly, an employee whose primary duty is to work as an electrician is not an exempt executive even if the employee also directs the work of other employees on the job site, orders parts and materials for the job, and handles requests from the prime contractor.

Section 3. General Rule or "Administrative Employees. (1) The term "individual employed in a bona fide administrative capacity" in KRS 337.010(2)(a)(2) shall mean any employee:

(a) Compensated on a salary or fee basis at a rate of not less than $455 per week, exclusive of board, lodging, or other facilities; (b) Whose primary duty is the performance of office or non-manual work directly related to the internal operations of the employer or the employer's customers; and (c) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

(2) Directly related to management or general business operations.

(a) To qualify for the administrative exemption, an employee's primary duty shall [must] be the performance of work directly related to the management or general business operations of the employer or the employer's customers. The phrase "directly related to the management or general business operations" refers to the type of work performed by the employee. To meet this requirement, an employee shall [must] perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.

(b) Work directly related to management or general business operations includes, but is not limited to, work in functional areas such as tax, finance, accounting, budgeting, auditing, insurance, quality control, purchasing, procurement, advertising, marketing, research, safety and health; personnel management; human resource management and development; public relations; procurement relations; computer network; internet and database administration; legal and regulatory compliance; and similar activities. Some of these activities may be performed by employees who also would qualify for another exemption.

(c) An employee may qualify for the administrative exemption if
the employee's primary duty is the performance of work directly related to the management or general business operations of the employer's customers. (For example, employees acting as advisers or counselors to the employer's clients or customers (as tax experts or financial consultants, for example) may be exempt.)

(3) Discretion and independent judgment.

(a) To qualify for the administrative exemption, an employee's primary duty shall [shall] include the exercise of discretion and independent judgment with respect to matters of significance. [In general, the exercise of discretion and independent judgment shall involve [involve] the consideration of the several possibilities of courses of conduct, and acting or making a decision after the various possibilities have been considered. The term "matters of significance" refers to the level of importance or consequence of the work performed.]

(b) The phrase "discretion and independent judgment" shall [shall] be applied in the light of all the facts involved in the particular employment situation in which the question arises. Factors to consider if [when] determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs a function traditionally performed by top-level management; whether the employee's assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate the company on matters of significance; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes, or resolving grievances.

(c) For the exercise of discretion and independent judgment [shall] the employee shall have [has] authority to make an independent choice, free from immediate direction or supervision.

Except [However], employees may [an] exercise discretion and independent judgment even if their decisions or recommendations are reviewed at a higher level. Thus, the term "discretion and independent judgment" does not require that the decisions made by an employee have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. For example, the policies formulated by the credit manager of a large corporation may be subject to review by higher company officials who may approve or disapprove these policies. The management consultant who has made a study of the operations of a business and who has drawn a proposed change in organization may have the plan reviewed or revised by superiors before it is submitted to the client.

(d) An employer's volume of business may make it necessary to employ a large number of employees in similar positions. The fact that many employees perform identical work or work of the same relative importance does not mean that the work of each employee does not involve the exercise of discretion and independent judgment with respect to matters of significance.

(e) The exercise of discretion and independent judgment shall [shall] be more than the use of skill in applying well-established techniques, processes, or rules or in operating machine, recording, or tabulating data, or performing other mechanical, repetitive, or routine work. An employee who simply tabulates data is not exempt; even if labeled as a "statistician".

(f) An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly. For example, a passenger who is charged with carrying large sums of money does not exercise discretion and independent judgment with respect to matters of significance even though serious consequences may flow from the employee's neglect. Similarly, an employee who operates very expensive equipment does not exercise discretion and independent judgment with respect to matters of significance merely because improper performance of the employee's duties may cause serious financial loss to the employer.

(4) Administrative exemption examples.

(a) Insurance claims adjusters [generally] meet the duties requirements for the administrative exemption, whether they work for an insurance company or other type of company, if their duties include activities such as interviewing insureds, witnesses, and physicians; inspecting property damage; reviewing factual information to prepare damage estimates; attempting and making recommendations regarding coverage of claims; determining liability and total value of a claim; negotiating settlements; and making recommendations regarding litigation.

(b) Employees in the financial services industries [generally] meet the duties requirements for the administrative exemption if their duties include work such as collecting and analyzing information, preparing the customer's financial statements or income statements or other statements of financial condition, determining which financial products best meet the customer's needs and financial circumstances; advising the customer regarding the advantages and disadvantages of different financial products; and marketing, services, or promoting the employer's financial products. Except [However], an employee whose primary duty is selling financial products does not qualify for the administrative exemption.

(c) An employee who leads a team of other employees assigned to complete major projects for the employer (such as purchasing, selling, or closing all or part of the business, negotiating a real estate transaction or a collective bargaining agreement, or designing and implementing productivity improvements) [generally] meets the duties requirements for the administrative exemption, even if the employee does not have direct supervisory responsibility over the other employees on the team.

(d) An executive assistant or administrative assistant to a business owner or senior executive of a large business generally meets the duties requirements for the administrative exemption if the [the] employee, without specific instructions or prescribed procedures, has been delegated authority regarding matters of significance.

(e) Human resources managers who formulate, interpret, or implement employment policies and management consultants who study the operations of a business and propose changes in organization [generally] meet the duties requirements for the administrative exemption. However, personnel clerks who "screen" applicants to obtain data regarding their minimum qualifications and fitness for employment [generally] do not meet the duties requirements for the administrative exemption. The [these] personnel clerks typically will reject all applicants who do not meet minimum standards for the particular job or for employment by the company. The minimum standards are usually set by the exempt human resources manager or other company official, and the decision to hire from the group of qualified applicants who do meet the minimum standards is simply made by the exempt human resources manager or other company official. Thus, if [when] the interviewing and screening functions are performed by the human resources manager or personnel manager who makes the hiring decision or makes recommendations for hiring from the pool of qualified applicants, the [the] duties constitute exempt work, even though routine, because this work is directly and closely related to the employee's exempt functions.

(f) Purchasing agents with authority to bind the company on significant purchases [generally] meet the duties requirements for the administrative exemption even if they must consult with top management officials when making a purchase commitment for raw materials in excess of the contemplated plant needs.

(g) Ordinary inspection work [generally] does not meet the duties requirements for the administrative exemption. Inspectors
normally perform specialized work along standardized lines involving well-established techniques and procedures which may have been catalogued and described in manuals or other sources. The [name] inspectors rely on techniques and skills acquired by special training or experience; they may have some leeway in the performance of their work but only within closely prescribed limits.

(h) Employees usually called examiners or graders, such as employees that grade lumber, [generally] do not meet the duties requirements for the administrative exemption. The [name] employees usually perform work involving the comparison of products with established standards which are frequently catalogued. Often, after continued reference to the written standards and through experience, the employee acquires sufficient knowledge so that reference to written standards is unnecessary. The substitution of the employee's memory for a manual of standards does not convert the character of the work performed to exempt work requiring the exercise of discretion and independent judgment.

(i) Comparison shopping performed by an employee of a retail store who merely reports to the buyer the prices at a competitor's store does not qualify for the administrative exemption. Except [however], the buyer who evaluates the [such] reports on competitor prices to set the employer's prices [generally] meets the duties requirements for the administrative exemption.

(j) Public sector inspectors or investigators of various types, such as fire prevention or safety, building or construction, health or sanitary inspectors, enforcers, agents, and similar employees, [generally] do not meet the duties requirements for the administrative exemption because their work typically does not involve work directly related to the management or general business operations of the employer. The [name] employees also do not qualify for the administrative exemption because their work involves the use of skills and technical abilities in gathering factual information, applying standards or prescribed procedures, determining which procedure to follow, or determining whether prescribed standards or criteria are met.

(k) Educational establishments.

(a) The term "individual employed in a bona fide administrative capacity" shall also include [includer] employees:

1. Compensated for services on a salary or fee basis at a rate of not less than $455 per week, exclusive of board, lodging, or other facilities, or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed, and

2. Whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment, department, or subdivision thereof.

(b) The term "educational establishment" means an elementary or secondary school, an institution of higher education, or other educational institution. Elementary and secondary schools are those day or residential schools that provide elementary or secondary education, as determined by state law. The term "other educational establishment" includes special schools for mentally or physically disabled or gifted children, regardless of any classification of the [such] schools as elementary, secondary, or higher. Factors relevant in determining whether post-secondary career programs are educational institutions include whether the school is licensed by a state agency responsible for the state's educational system or accredited by a nationally-recognized accrediting organization for career schools. Also, for the purposes of the exemption, a [name] distinction shall not be [be drawn] between public and private schools, or between those operated for profit and those that are nonprofit.

(c) The phrase "performing administrative functions directly related to academic instruction or training" means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. [Name] Academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.

1. Employees engaged in academic administrative functions include: the superintendent or other head of an elementary or secondary school system, and any assistants, responsible for administration of [such] matters such as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program; the principal and any vice-principals; department heads in institutions for higher education; academic counselors who perform work such as administering school testing programs, assisting students with academic problems, and advising students concerning degree requirements; and other employees with similar responsibilities;

2. Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social workers, psychologists, lunch room managers, or dieticians do not perform academic administrative functions. Although the [such] work is not considered academic administration, the [such] employees may qualify for another exemption. If [provided] the requirements for the [such] exemption are met.

Section 4. General Rule for Professional Employees. (1) The term "individual employed in a bona fide professional capacity" in KRS 337.010(2)(a)(2) shall mean any employee:

(a) Compensated on a salary or fee basis at a rate of not less than $455 per week, exclusive of board, lodging, or other facilities; and

(b) Whose primary duty is the performance of work:

1. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction;

2. Requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

(2) Learned professionals.

(a) To qualify for the learned professional exemption, an employee's primary duty shall [be] be the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. This primary duty test includes three (3) elements:

1. The employee shall [must] perform work requiring advanced knowledge;

2. The advance knowledge shall [must] be in a field of science or learning, and

3. The advanced knowledge shall [must] be customarily acquired by a prolonged course of specialized intellectual instruction.

(b) The phrase "work requiring advanced knowledge" means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical, or physical work. An employee who performs work requiring advanced knowledge [generally] uses the advanced knowledge to analyze, interpret, or make deductions from varying facts or circumstances. Advanced knowledge shall not [be] be attained at the high school level.

(c) The phrase "field of science or learning" includes the traditional professions of law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy, and other similar occupations that have a recognized professional status as distinguished from the mechanical arts or skilled trades where in some instances the knowledge is of a fairly advanced type, but is not in a field of science or learning.

(d) The phrase "customarily acquired by a prolonged course of specialized intellectual instruction" restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree. Except [however], the work "customarily" means that the exemption shall [is] also be available to employees in those [such] professions who have substantially the same knowledge level and perform substantially the same work as the degree-holding employee, and who attained the advanced knowledge through a combination of specialized academic instruction. Thus, for example, the learned professional exemption is available to the occasional lawyer who has not gone to law school, or the occasional chemist who does not possess a degree in chemistry. Except [however], the learned professional exemption shall not [be] be available for occupations that customarily
may be performed with only the general knowledge acquired by an academic degree in any field, with knowledge acquired through an apprenticeship, or with training in the performance of routine mental, manual, mechanical, or physical work. Including the performance of the duties required for the learned professional exemption only if they are required to complete successfully four (4) academic years of preprofessional and professional study, including graduation from a college of mortuary science accredited by the American Board of Funeral Service Education, in order to be licensed.

(n) The areas in which the professional exemption may be available are expanding. As knowledge is developed, academic training is broadened, and specialized degrees are offered in new and diverse fields, thus creating new specialists in particular fields of science or learning. When an advanced, specialized degree has become the standard requirement for a particular profession, the duties of that profession may have acquired the characteristics of a learned profession. Accrediting and certifying organizations similar to those listed in this section also may be created in the future. Those organizations may develop similar specialized curriculums and certification programs which, if a standard requirement for a particular occupation, may indicate that the occupation has acquired characteristics of a learned profession.

(3) Creative professionals.

(a) To qualify for the creative professional exemption, an employee's primary duty shall include the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual, mechanical, or physical work. The employee shall not apply to work which can be performed by a person without a rhetorical, manual or intellectual ability training.

(b) To qualify for exemption as a creative professional, the work performed shall include "in a recognized field of artistic or creative endeavor". This includes fields such as music, writing, acting, and the graphic arts.

(c) The requirement of "invention, imagination, originality, or talent" distinguishes the creative professional from work that primarily depends on: intellectual, diligence, and accuracy. The duties of employees vary widely. What is considered an exempt creative professional depends on the extent of the invention, imagination, originality, or talent exercised by the employee. Determination of exempt creative professional status, therefore, shall be made either case-by-case basis. It may be by the courts, met by actors, musicians, composers, conductors, and lobbyists; painters who are merely told the title or underlying concept of a cartoon and rely on their own creative ability to express the concept; essayists, novelists, short-story writers, and screenplay writers who choose their own subjects and hand in a finished piece of work to their employers (the majority of these persons [exempt persons] are, of course, not employees, but self-employed); and persons engaging in the works of fiction, literature, or art in any written, printed, or recorded form, or in any electronic media, regardless of the manner in which the works are used. This requirement is met by a person who is employed as a copyist, an "artist" of motion picture cartoons, or as a retoucher of photographs, since the work is not properly described as creative in character.

(d) Journalists may satisfy the duties requirements for the creative professional exemption if their primary duty is work requiring invention, imagination, originality, or talent, as opposed to work which depends primarily on intelligence, diligence, and accuracy. Employees of newspapers, magazines, television, and other media are not exempt creative professionals if they only collect, organize, and record information that is routine or already public, or if they do not contribute a unique interpretation or analysis to a news product. Thus, for example, newspaper reporters who merely rewrite press releases or who write standard recounts of public information by gathering facts on routine community events are not exempt creative professionals. Reporters also do not qualify as exempt creative professionals if their work product is subject to substantial control by the employer. Except [However], journalists may qualify as exempt creative professionals if their primary duty is performing on the air in radio, television, or other electronic media; conducting investigative interviews; analyzing or interpreting public events; editorializing; or acting as a narrative or commentator.

(4) Teachers.

(a) The term "individual employed in a bona fide professional capacity" in KRS 337, §10(2)(a)(2) shall mean "professionals" [exclude] any employee with a primary duty of
teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed.

(b) Exempt teachers include, but are not limited to: regular academic teachers; teachers of kindergarten or nursery school pupils; teachers of gifted or disabled children; teachers of skilled and semiskilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrumental music instructors. Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate, or journalism are engaged in teaching. Those [Such] activities are recognized part of the schools’ responsibility in contributing to the educational development of the student.

(c) The possession of an elementary or secondary teacher’s certificate provides a clear means of identifying the individual contemplated as being within the scope of the exception for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the state to refer to different kinds of certificates. [However] private schools and public schools are not uniform in requiring a certificate for employment as an elementary or secondary school teacher [unless, and] a teacher certificate is not generally necessary for employment in institutions of higher education or other educational establishments. Therefore, a teacher who is not certified may be considered for exemption, if [provided] that [such] individual is employed as a teacher by the employing school or school system.

(d) The salary requirements of Section 8 [2] of this administrative regulation shall [do] not apply to the outside sales employees described in this subsection [section].

(5) Practice of law or medicine.

(a) The term “individual employed in a bona fide professional capacity” in KRS 337.010(2)(a)(2) [2] shall also mean:

1. Any employee who holds a valid license or certificate to practice law or medicine, or any of their branches, and is actually engaged in that practice; and

2. Any employee who holds the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of the profession.

(b) For [In the case of] medicine, the exemption shall apply [apply] to physicians and other practitioners licensed and practicing in the field of medicine, science, and healing, or any of the medical specialties practiced by physicians or practitioners. The term “medical specialists” includes, but is not limited to, medical practitioners, specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or bachelors of science in optometry).

(c) Employees engaged in internship or resident programs, whether or not licensed to practice prior to commencement of the program, qualify as exempt personnel if they enter the internship or resident programs after earning the appropriate degree required for the general practice of their profession.

(d) The salary requirements of Section 8 [2] of this administrative regulation shall [do] not apply to the employees described in this subsection.

Section 5. The term “individual employed in a bona fide supervisory capacity” in KRS 337.010(2)(a)(2) [2] shall mean any employee:

(1) Whose primary duty consists of customarily and regularly directing [Who customarily and regularly directs] the work of two (2) or more other employees, as defined in Section 2(5) of this administrative regulation, where he is employed; and

(2) Who is compensated on a basis at a rate of not less than $455 per week, exclusive of board, lodging, or other facilities.

Section 6. General Rule for Outside Sales Employees. (1) The term “individual employed in the capacity of outside salesman” shall mean any employee:

(a) Whose primary duty is:

1. Making sales; or

2. Obtaining orders or contracts for services or for the use of facilities for which consideration will be paid by the client or customer.

(b) Who is customarily and regularly engaged away from the employer’s place or places of business in performing the employee’s primary duty.

(2) In determining the primary duty of an outside sales employee, work performed incidental to and in conjunction with the employee’s own outside sales or solicitations, including incidental deliveries and collections, shall be regarded as exempt outside sales work. Other work that furthers the employee’s sales efforts also shall be regarded as exempt work including, for example, writing sales reports, updating or revising the employee’s sales or display catalogues, planning itineraries and attending sales conferences.

(3) The salary requirements of Section 8 [2] of this administrative regulation shall [do] not apply to the outside sales employees described in this section.

(4) Making sales or obtaining orders.

(a) Making sales within the meaning of this section includes the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property. Sale includes agreements to sell, exchange, consignment for sale, shipment for sale, or other disposition.

(b) Obtaining orders for the use of facilities includes the selling of time on radio or television, the solicitation of advertising for newspapers and other periodicals, and the solicitation of freight for railroads and other transportation agencies.

(c) The word “services” extends the outside sales exemption to employees who sell or take orders for a service, which may be performed for the customer by someone other than the person taking the order.

(5) Away from the employer’s place of business. An outside sales employee shall [must] be customarily and regularly engaged away from the employer’s place of business. The outside sales employee shall be [as] an employee who makes sales at the customer’s place of business or, if selling door to door, at the customer’s home. Outside sales shall [must] not include sales made by mail, telephone, or the Internet unless the contact is used merely as an adjunct to personal calls. Thus, any fixed site, whether home or office, used by a salesperson as a headquarters for telephonic solicitation of sales is considered one (1) of the employer’s places of business, even though the employer is not in any fashion the owner of the premises of the property. Except [However], an outside sales employee does not lose the exemption by displaying samples in hotel sample rooms during trips from city to city; these sample rooms shall [should] not be considered as the employer’s places of business. Similarly, on outside sales employee does not lose the exemption by displaying the employer’s products at a trade show. If selling actually occurs, rather than just sales promotion, trade shows of short duration (i.e., one (1) or two (2) weeks) shall [should] not be considered as the employer’s place of business.

(6) Promotion work.

(a) Promotion work is one (1) type of activity often performed by persons who make sales which may or may not be exempt outside sales work, depending upon the circumstances under which it is performed. Promotion work that is actually performed incidental to and in conjunction with an employee’s own outside sales or solicitations is exempt work. On the other hand, promotional work that is incidental to sales made, or to be made, by someone else is not exempt outside sales work. An employee who does not satisfy the requirements of this section may still qualify as an exempt employee under other sections of this administrative regulation; and

(b) A manufacturer’s representative, for example, may perform various types of promotional activities such as putting up displays and posters, removing damaged or spoiled stock from the merchant’s shelves, or rearranging the merchandise. That [such an] employee may [can] be considered an exempt outside sales em-
employees if the employee's primary duty is making sales or contracts. Promotion activities directed toward consummation of the employee's own sales are exempt. Promotional activities designed to stimulate sales that will be made by someone else are not exempt outside sales work.

(c) Another example is a company representative who visits chain stores, arranges the merchandise on shelves, replenishes stock by replacing old with new merchandise, sets up displays and consults with the store manager when inventory runs low, but does not obtain a commitment for additional purchases. The arrangement of merchandise on the shelves or the replenishment of material is not exempt work unless it is incidental to and in conjunction with the employee's own outside sales. Because the employee in this instance does not consummate the sale nor direct efforts toward the consummation of a sale, the work is not exempt outside sales work.

(7) Workers who sell.
(a) Workers who deliver products and also sell the [these] products may qualify as exempt outside sales employees only if the employee has a primary duty of making sales. In determining the primary duty of workers who sell, perform work incidental to and in conjunction with the employee's own outside sales or solicitation, including loading, driving, or delivering products, shall be regarded as exempt outside sales work.
(b) Several factors shall be considered in determining if a worker has a primary duty of making sales, including, but not limited to: a comparison of the worker's duties with those of other employees engaged as truck drivers and as salespersons; possession of a selling or solicitor's license when the [these] license is required by law or ordinances; presence or absence of customary or contractual arrangements concerning amount of products to be delivered; description of the employee's occupation in collective bargaining agreements; the employer's specifications as to qualifications for hiring; sales training; attendance at sales conferences; methods of payment; and proportion of earnings directly attributable to sales.
(c) Workers who may qualify as exempt outside sales employees include:
1. A driver who provides the only sales contact between the employer and the customer, who calls on customers and takes orders for products, who delivers products from stock in the employee's vehicle or procures and delivers the product to the customer on a later trip, and who receives compensation commensurate with the volume of products sold.
2. A driver who obtains or solicits orders for the employer's products from persons who have authority to commit the customer for purchase.
3. A driver who calls on new prospects for customers along the employee's route and attempts to convince them of the desirability of accepting regular delivery of goods.
4. A driver who calls on established customers along the route and persuades regular customers to accept delivery of increased amounts of goods or of new products, even though the initial sale or agreement for delivery was made by someone else.
(d) Drivers who do [generally would not qualify as exempt outside sales employees include:
1. A route driver whose primary duty is to transport products sold by the employer through vending machines and to keep the [these] machines stocked, in good operating condition, and in good locations.
2. A driver who often calls on established customers day after day or week after week, delivering a quantity of the employer's products at each call if when the sale was not significantly affected by solicitations of the customer by the delivering driver, or the amount of the sale is determined by the volume of the customer's sales since the previous delivery.
3. A driver primarily engaged in making deliveries to customers and performing activities intended to promote sales by customers (including placing, point-of-sale, and other advertising materials, price stamping commodities, arranging merchandise on shelves, in coolers or in cabinets, rotating stock according to date, and cleaning and otherwise servicing display cases), unless the [these] work is in furtherance of the driver's own sales efforts.

Section 7. [82] The term "individual employed as an outside collector" shall mean any employee:
(1) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business and whose primary duty is:
(a) Collecting money for goods or services previously or presently furnished by his employer or
(b) Collecting money from an account placed in the hands of his employer for collection.
(2) In determining the primary duty of an outside collector, work performed incidental to and in conjunction with the employee's outside collection activities shall be regarded as exempt work.
(3) The salary requirements of Section 7 of this administrative regulation do not apply to the outside collector employees described in this section.

Section 8. [72] Salary Requirements. Amount of salary required.
(1) To qualify as an exempt executive, administrative, professional, or supervisory employee under KRS 337.010(2)(a) [29], an employee shall [must] be compensated on a salary basis at a rate of not less than $455 per week, exclusive of board, lodging, or other facilities. Administrative and professional employees may also be paid on a fee basis as defined in Section 12 [45] of this administrative regulation.
(2) The $455 a week may be translated into equivalent amounts for periods longer than one (1) week. The requirement will be met if the employee is compensated biweekly on a salary basis of $910, semimonthly on a salary basis of $865.83, or monthly on a salary basis of $1,971.66. Except [However], the shortest period of payment that meets [will meet] this compensation requirement is one (1) week.
(3) For [In the case of] academic administrative employees, the compensation requirement also may be met by compensation on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment by which the employee is employed, as provided in Section 3(d) of this administrative regulation.
(4) For [In the case of] computer employees, the compensation requirement also may be met by compensation on an hourly basis at a rate not less than twenty-seven (27) dollars and sixty-three (63) cents an hour, as provided in Section 14 [43] of this administrative regulation.
(5) For [In the case of] professional employees, the compensation requirement in this section shall not apply to employees engaged as teachers; employees who hold a valid license or certificate permitting the practice of law, or who are actually engaged in the practice thereof; or to employee who hold the requisite academic degree for the general practice of medicine and are engaged in an internship or resident program pursuant to the practice of the profession. In the case of medical occupations, the exception from the salary or fee requirement shall [does] not apply to pharmacists, nurses, therapists, psychologists, or other professions which service the medical profession.

Section 9. [83] Highly-Compensated Employees. (1) An employee with total annual compensation of at least $100,000 is deemed exempt under KRS 337.010(2)(a) [29] if the employee customarily and regularly performs any one (1) or more of the exempt duties or responsibilities of an executive, administrative, or professional employee identified in this administrative regulation.
(2) (a) "Total annual compensation" shall [must] include, at least $455 per week paid on a salary or fee basis. Total annual compensation may also include commissions, nondiscretionary bonuses, and other nondiscretionary compensation earned during a fifteen-week (52) week period. Total annual compensation shall [must] not include board, lodging, or other facilities as defined in Section 13 [42] of this administrative regulation, and shall [does] not include payments for medical insurance, payments for life insurance, contributions to retirement plans, and the cost of other fringe benefits.
(b) If an employee's total annual compensation does not total
at least the minimum amount established in subsection (1) of this section by the last pay period of the fifty-two (52) week period, the employer may, during the last pay period or within one (1) month after the end of the fifty-two (52) week period, make one (1) final payment sufficient to provide the required level. For example, an employee may earn $80,000 in base salary, and the employer may anticipate based upon past sales that the employee also will earn $20,000 in commissions. Except [However], due to poor sales in the first quarter of the year, the employee actually only earns $10,000 in commissions. In this situation, the employer may within one (1) month after the end of the year make a payment of at least $100,000 to the employee. The [However] payment then through the end of the fifty-two (52) week period shall [may] count only toward the prior year’s total annual compensation and not toward the total annual compensation in the year it was paid. If the employer fails to make the [such] payment, the employee shall [does] not qualify as a highly compensated employee, but may still qualify as exempt under other sections of this administrative regulation. 

(c) An employee who does not work a full year for the employer, either because the employee is newly hired after the beginning of the year or ends the employment before the end of the year, may qualify for exemption under this section if the employee receives a pro rata portion of the minimum amount established in subsection (1) of this section, based upon the number of weeks that the employee will or has been employed. An exempt employee may make one (1) payment as under subsection (1) of this section within one (1) month after the end of employment. 

(d) The employer may use any fifty-two (52) week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year shall [will] apply. 

(2) A high level of compensation is a strong indicator of an employee’s exempt status, thus eliminating the need for a detailed analysis of the employee’s job duties. Thus, a highly compensated employee shall [will] qualify for exemption if the employee customarily and regularly performs any one (1) of the exempt duties or responsibilities of an executive, administrative, or professional employee identified in this administrative regulation. An employee may qualify as a highly compensated executive employee, for example, if the employee customarily and regularly directs the work of two (2) or more other employees, even though the employee does not meet all of the other requirements for the executive exemption under Section 2 of this administrative regulation. 

(4) This section shall apply [applies] only to employees whose primary duty includes performing office or nonmanual work. Thus, for example, nonmanagement production line workers and nonmanagement employees in maintenance, construction, and similar occupations such as carpenters, countermen, iron workers, craftsmen, operating engineers, longshoremen, construction workers, laborers, and other employees who perform work involving repetitive operations with their hands, physical skill, and energy are not exempt under this section no matter how highly paid they might be. 

Section 10. FG.1 Salary Basis. (1)(a) An employee will be considered to be paid “on a salary basis” within the meaning of this administrative regulation if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee’s compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions in subsection 2 of this section [provided below], the employee shall [must] receive his or her full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work. 

(b) An employee shall [will] not be considered to be “on a salary basis” if the employee’s predetermined compensation is made for absences occasioned by the employer or by the operating requirements of the business. Accordingly, if the employee is ready, willing and able to work, deductions shall [may] not be made for time when work is not available. 

(2) The prohibition against deductions from pay in the salary basis requirement is subject to the following exceptions: 

(a) Deductions from pay may be made if [However] when an exempt employee is absent from work for one (1) or more full days for personal reasons, other than sickness or disability. Thus, if an employee is absent for two (2) full days to handle personal affairs, the employee’s salary for the period he is absent shall be affected if deductions are made from his salary for the same (2) full days. Except [However], if an exempt employee is absent for one and one-half (1 1/2) days for personal reasons, the employer may deduct only for the one (1) full day’s absence. 

(b) Deductions may also be made for absences of one (1) or more full days occasioned by sickness or disability if the deduction is made in accordance with a bona fide plan, policy, or practice of providing compensation for loss of salary occasioned by both sickness and disability. Thus, if the employer’s particular plan, policy or practice provides compensation for the [such] absences, deductions for absences of one (1) or more full days because of sickness or disability may be made before an employee has qualified under the [such] plan, policy, or practice, and after the employee has exhausted his or her leave allowance thereunder. It is not required that the employee be paid any portion of his or her salary for the [such] day or days for which the employee receives compensation for leave under the [such] plan, policy, or practice. Similarly, if the employer operates under a state sickness and disability insurance law, or a private sickness and disability insurance plan, deductions may be made for absences of one (1) or more full days if benefits are paid. [If] In the case of an industrial accident, the “salary basis” requirement will be met if the employee is compensated for loss of salary in accordance with the applicable compensation law or the plan adopted by the employer, if [provided]. The employer also has some plan, policy or practice of providing compensation for sickness and disability other than that relating to industrial accidents, nor shall it affect the validity of the requirement if the employee is compensated for a sickness or disability caused by jury duty, attendance as a witness, or temporary military leave. Except the employer may [may]. However, if the employer may [may] offset any amounts received by an employee as jury or witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption. 

(c) Deductions from pay of exempt employees may be made for penalties imposed in good faith for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees, such as rules prohibiting smoking in explosive plants, oil refineries, and coal mines. 

(d) Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of one (1) or more full days imposed in good faith in accordance with workplace conduct rules. These [Such] suspensions or other days [shall] must be paid in accordance with a written policy applicable to all employees. Thus, for example [except], an employer may suspend an exempt employee without pay for three (3) days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for ten (10) days for violating a generally applicable written policy prohibiting workplace violence. 

(f) An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an employee’s full salary for the time actually worked in the first and last week of employment. In those [such] weeks, the payment of an hourly or daily equivalent of the employee’s full salary for the time actually worked will meet the requirement. Except [However], employees are not paid on a salary basis within the meaning of these administrative regulations if they are employed occasionally for a few days, and the employer pays them a proportionate part of the weekly salary when so employed. 

(g) An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act if the employee’s full salary for the period he takes unpaid leave under the Family and Medical Leave Act, an employer may pay a proportionate part of the full salary for time actually worked. For example, if an employee who normally works forty (40) hours per week uses four (4) hours of unpaid leave under the Family and Medical Leave Act, the employer may [may] de-
duct ten (10) percent of the employee's normal salary that week.

(3) If [name] calculating the amount of a deduction from pay allowable under subsection (a) of this section, the employer may use the hourly or daily equivalent of the employee’s full weekly salary or any other amount proportional to the time actually missed by the employee. A deduction from pay as a penalty for violations of major safety rules allowed under subsection (2)(d) of this section may be made in any amount.

(4) Effect of improper deductions from salary

An exempt employee makes improper deductions from salary shall lose the exemption if the facts demonstrate that the employer did not intend to pay employees on a salary basis. An actual practice of making improper deductions demonstrates that the employer did not intend to pay employees on a salary basis. The factors to consider if [when] determining whether an employer has an actual practice of making improper deductions include, but are not limited to: the number of improper deductions, particularly as compared to the number of employee infractions warranting discipline; the time period during which the employer makes improper deductions; the number and geographic location of managers responsible for making the improper deductions; and whether the employer has a clearly communicated policy permitting or prohibiting improper deductions.

(b) If the facts demonstrate that the employer has an actual practice of making improper deductions, the exemption is lost during the time period in which the improper deductions were made for employees in the same job classification working for the same managers responsible for the actual improper deductions. Employees in different job classifications or who work for different managers shall not lose their status as exempt employees. Thus, for example, a manager at a company facility routinely dice the pay of employees who fail to call in for their shifts. Since three of the four employees in the same job classification working for the same manager failed to call in for shifts, all employees at the facility whose pay could have been improperly docked by the manager [would] lose the exemption; except engineers at other facilities or working for other managers, however, would remain exempt.

(c) Improper deductions that are either isolated or inadvertent shall [will] not result in the loss of the exemption for any employees subject to the [such] improper deductions, if the employer reimburses the employees for the [such] improper deductions.

(d) If an employer has a clearly communicated policy that prohibits the improper pay deductions specified in this section and includes a complaint mechanism, reimburses employees for any improper deductions, and makes a good faith commitment to comply in the future, the [such] employer shall [will] not lose the exemption for any employee for improper deductions in the past if the pay by overpaying to make improper deductions after receiving employee complaints, if an employer fails to reimburse employees for any improper deductions or continues to make improper deductions after receiving employee complaints, the exemption is lost during the time period in which the improper deductions were made for employees in the same job classification working for the same managers responsible for the actual improper deductions. A written policy that was distributed to employees prior to the improper pay deductions by, for example, providing a copy of the policy to employees at the time of hire, publishing the policy in an employee handbook, or publishing the policy on the employer’s intranet.

(e) This subsection [section] shall not be construed in an unduly technical manner so as to defeat its purpose.

Section 11. (10) Minimum Guarantee Plus Extra. (1) An employer may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement. If the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis, then an exempt employee may receive additional compensation of at least $455 each week paid on a salary basis. An exempt employee also may receive a percentage of the sales or profits of the employer if the employment arrangement also includes a guarantee of at least $455 each week paid on a salary basis. Similarly, the exemption is not lost if an exempt employee who is guaranteed at least $455 each week paid on a salary basis also receives additional compensation based on hours worked for work performed under the usual and customary conditions of employment. Compensation may be paid on any basis (e.g., flat sum, bonus payment, straight-time hourly amount, time and one-half (1/2), or any other basis), and may include paid time off.

(2) An exempt employee's earnings may be computed on an hourly, a daily, or a shift basis, without losing the exemption or violating the salary basis requirement. If the employment arrangement includes a guarantee of at least the minimum weekly-required amount paid on a salary basis regardless of the number of hours, days, or shifts worked, and a reasonable relationship exists between the guaranteed amount and the amount actually earned. The reasonable relationship test is [will be] met if the weekly guarantee is roughly equivalent to the employee’s usual earnings at the assigned hourly, daily, or shift rate for the employee's normal schedule workweek. Thus, for example, an exempt employee guaranteed compensation of at least $500 for any week in which the employee performs any work, and who normally works four (4) or five (5) shifts each week, may be paid $150 per shift without violating the salary basis requirement. The reasonable relationship requirement shall apply [applies] only if the employee’s pay is computed on an hourly, daily, or shift basis. If the employee fails to apply, for example, correctly, to an exempt store manager paid a guaranteed salary of $500 per week, a lower weekly guarantee would raise a commission of one-half (1/2) percent of the store’s sales. The percentage of the store's profits, which in some weeks may total as much as, or even more than, the guaranteed salary.

Section 12. (14) Fee Basis. (1) Administrative and professional employees may be paid on a fee basis, rather than on a salary basis. An employee shall [will] be considered to be paid on a "fee basis" within the meaning of this administrative regulation if the employee is paid an agreed sum for a single job regardless of the time required for its completion. These payments resemble piecework payments with the important distinction that generally a "fee" is paid for the kind of job that is unique rather than for a series of jobs repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task shall [are] not be considered payments on a fee basis.

(2) To determine whether the fee payment meets the minimum amount of salary required for exemption under this administrative regulation, the amount paid to the employee shall [will] be tested by determining the time work is attributable to the fee the employee is paid by computing the amount the employee would earn if the employee worked forty (40) hours. Thus, an artist paid $250 for a picture that took twenty (20) hours to complete meets the minimum salary requirements for exemption since earnings at this rate would yield the artist $500 if forty (40) hours were worked.

Section 13. (12) Board, Lodging, or Other Facilities. (1) The phrase "exclusive of board, lodging, or other facilities" shall mean [means] "free and clear" or independent of any claimed credit for noncash items of value that an employee may provide to an employee. Thus, the costs incurred by an employer to provide an employee with board, lodging or other facilities shall [may] not count towards the minimum salary amount required for exemption under the administrative regulation. Separate transactions are not prohibited between employers and their employees, but the costs to employers associated with the [such] transactions may not be considered in [when] determining if an employee has received the full required minimum salary payment.

(2) "Other facilities" refers to items similar to board and lodging, such as meals furnished at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees; meals, dormitory rooms, and tuition furnished by a college to its student employees; merchandise furnished at company stores or commissaries, including articles of food, clothing, and household effects; and transportation furnished to employees for ordinary commuting between their homes and work.

Section 14. (13) General Rule for Computer Employees. (1)
Computer system analysts, computer programmers, software engineers, or other similarly skilled workers in the computer field shall be [are] eligible for an exemption as professionals under KRS 337.010(2)(a)(12) [16]. Because job titles vary widely and change quickly in the computer industry, job titles shall [are] not be determinative of the applicability of this exemption.

(2) The exemption shall apply [applyies] to any computer employee compensated on a salary or fee basis at a rate of not less than $455 [455] per week, exclusive of board, lodging, or other facilities, or on an hourly basis at a rate of not less than twenty-seven [27] dollars and sixty-three [63] cents an hour, whose primary duty consists of:

(a) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

(b) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(c) The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

(d) A combination of the aforementioned duties, the performance of which requires the same level of skills.

(3) The exemption for employees in computer occupations shall not be extended to employees in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters, and other skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations, shall not be exempt from the ordinary professional work required.

(4) Computer employees, either within or outside the scope of this exemption, may also have executive and administrative duties which qualify the employees for exemption under Sections 2 and 3 of this administrative regulation. For example, systems analysts and computer programmers (generally) meet the duties requirements for the administrative exemption if their primary duty includes work such as planning, scheduling, and coordinating activities required to develop systems to solve complex business, scientific, or engineering problems of the employer or the employer's customers. Similarly, a senior or lead computer programmer who manages the work of two (2) or more other programmers in a customarily recognized department or subdivision of the employer, and whose recommendations as to the hiring, firing, advancement, promotion, or other change of status of the other programmers are given particular weight, (generally) meets the duties requirements for the executive exemption.


(a) To qualify for exemption under this administrative regulation, an employee's "primary duty" shall [must] be the performance of exempt work. The term "primary duty" shall [must] mean [mean] the principal, major, or most important duty that the employee performs. Determination of an employee's primary duty shall [must] be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Factors to consider if [wee] determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other types of duties, the amount of time spent performing exempt work, the employee's relative freedom from direct supervision, and the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.

(b) The amount of time spent performing exempt work may [can] be a useful guide in determining whether exempt work is the primary duty of an employee. Thus, employees who spend more than fifty percent (50%) of their time performing exempt work [will generally] satisfy the primary duty requirement. Except time alone, [however], is not the sole test, and nothing in this subsection requires that exempt employees spend more than fifty percent (50%) of their time performing exempt work. Employees who do not spend more than fifty percent (50%) of their time performing exempt duties may nonetheless meet the primary duty requirement if the other factors support that [these] conclusion.

(c) Thus, for example, assistant managers in retail establishments who perform exempt executive work such as supervising and directing the work of other employees, ordering merchandise, managing the budget, and authorizing payments of bills may have management as their primary duty even if the assistant managers spend more than fifty (50) percent of the time performing nonexempt work such as running the cash register. Except [However], if the [these] assistant managers are closely supervised and earn little more than the nonexempt employees, the assistant managers do [generally] not have management as their primary duty.

(2) Customarily and regularly. The phrase "customarily and regularly" shall [mean] a frequency that shall [must] be greater than occasional but which, [of course,] may be less than constant. Tasks or work performed "customarily and regularly" includes work normally and recurrently performed every workweek; it does not [must] include isolated or one (1) time tasks.

(3) Exempt or nonexempt work. The term "exempt work" shall [mean] all work described in this administrative regulation and the activities directly and closely related to the [these] work. All other work shall be [is] considered "nonexempt".

(4) Directly and closely related.

(a) Work that is "directly and closely related" to the performance of exempt work shall [is] also considered exempt work. Thus, tasks or work "directly and closely related" to exempt duties and that contribute to or facilitate performance of exempt work. Thus, "directly and closely related" work may include physical tasks and mental tasks that arise out of exempt duties, and the routine work without which the exempt employee's exempt work cannot be performed properly. Work is directly and closely related to the performance of exempt duties may also include recordkeeping, monitoring, and adjusting machinery, taking notes using the computer and software programs, presentations, and reports, and other duties related to the exempt duties.

(b) The following examples further illustrate the type of work that is and is not normally considered as directly and closely related to exempt work:

1. Keeping time, production, or sales records for subordinates is work directly and closely related to an exempt executive's function of managing a department and supervising employees.

2. The distribution of materials, merchandise, or supplies to maintain control of the flow of and expenditures for the [these] items is directly and closely related to the performance of exempt duties.

3. A supervisor who sets up a machine may be engaged in exempt work, depending upon the nature of the machine and the operation. In some cases the setup work, or adjustment of the machine for a particular job is typically performed by the same employees who operate the machine. Thus, [these] setup work is part of the production operation and is not exempt. In other cases, the setup work is a highly skilled operation which the ordinary production worker or machine tender typically does not perform. In large plants, nonsupervisors may perform the [these] setup work. [However, particularly in small plants, the [these] setup work may be a regular duty of the exempt executive and is directly and closely related to the executive's responsibilities for the work performance of subordinates and for the adequacy of the final product. Under these circumstances, it is exempt work.]
and supervisory functions.

6. A business consultant may take extensive notes recording the flow of work and materials through the office plant of the client, after returning to the office of the employer, the consultant may personally use the computer to type a report and create a proposed table of organization. Standing alone, or separated from the primary duty, the [such] note-taking and typing would be routine in nature. Except [however], because this work is necessary for analyzing the data and making recommendations, the work is directly and closely related to exempt work. While it is possible to assign note-taking and typing to nonexempt employees, and in fact it is frequently the practice to do so, delegating those [such] routine tasks is not required as a condition of exemption.

7. A credit manager who makes and administers the credit policy of the employer, establishes credit limits for customers, authorizes the shipment of orders on credit, and makes decisions on whether to exceed credit limits is [would be] performing exempt work. Work that is directly and closely related to these exempt duties may include checking the status of accounts to determine whether the credit limit would be exceeded by the shipment of a new order, removing credit reports from the files for analysis, and writing letters giving credit data and experience to other employers or credit agencies.

8. A traffic manager in charge of planning a company's transportation, including the most economical and quickest routes for shipping merchandise to and from the plant, contracting for common-carrier and other transportation facilities, negotiating with carriers for adjustments for damages to merchandise, and making the necessary rearrangements resulting from delays, damages or irregularities in transit, is performing exempt work. If the employee also spends part of the day taking telephone orders for local deliveries, the [such] work is a routine function and is not directly related to the exempt work.

9. An example of work directly and closely related to exempt professional duties is a chemist performing menial tasks such as cleaning a test tube in the middle of an original experiment, even though the [such] menial tasks can be assigned to laboratory assistants.

10. A teacher performs work directly and closely related to exempt duties if, [when] while taking students on a field trip, the teacher drives a school van or monitors the students' behavior in a restaurant.

(5) Use of manuals. The use of manuals, guidelines, or other established procedures concerning or relating to highly technical, scientific, legal, financial, or other similarly complex matters that can be understood or interpreted only by those with advanced or specialized knowledge or skills by the [such] employee under exemption under KRS 337.010(2)(a)(2) or this administrative regulation. The [such] manuals and procedures provide guidance in addressing difficult or novel circumstances and thus use of the [such] reference material does [would] not affect an employee's exempt status. Except the exceptions set forth in KRS 337.101(2)(a)(2) are not available, however, for employees who simply apply well-established techniques or procedures described in manuals or other sources within closely prescribed limits to determine the correct response to an inquiry or set of circumstances.

(5) Trainees. The executive, administrative, professional, supervisory, outside sales, and computer employee exemptions shall [do] not apply to employees training for employment in an executive, administrative, professional, supervisory, outside sales, or computer employee category who are not actually performing the duties of an executive, administrative, professional, supervisory, outside sales or computer employee.

(7) Emergencies.

(a) An exempt employee shall [will] not lose the exemption by performing work of a normally nonexempt nature because of the existence of an emergency. Thus, if [when] emergencies arise that threaten the safety of employees, a cessation of normal business or serious damage to the employer's property, any work performed in an effort to prevent those [such] results is considered exempt work.

(b) An "emergency" shall [does] not include occurrences that are not beyond control or for which the employer can reasonably provide in the normal course of business. Emergencies generally occur only rarely, and are events that the employer cannot reasonably anticipate.

(8) The following examples illustrate the distinction between emergency work considered exempt work and routine work that is not exempt work:

1. A mine superintendent who pitches in after an explosion and digs out workers who are trapped in the mine is still a bona fide executive.

2. Assisting nonexempt employees with their work during periods of particularly heavy workload or to handle rush orders is not exempt work.

3. Replacing a nonexempt employee during the first day or partial day of an illness may be considered exempt emergency work depending upon factors such as the size of the establishment and of the executive's department, the nature of the industry, the consequences that would flow from the failure to replace the ailing employee immediately, and the feasibility of filling the employee's place promptly.

4. Regular repair and cleaning of equipment is not emergency work, even if [when] necessary to prevent fire or explosion; except [however], repairing equipment may be emergency work if the breakdown or damage to the equipment was caused by accident or carelessness that the employer could not reasonably anticipate.

(9) Occasional tasks. Occasional, infrequently recurring tasks that cannot practically be performed by nonexempt employees, but for which the employer can provide the means for an employee to carry out properly, are considered exempt functions and responsibilities, shall be [are] considered exempt work. The following factors shall [would] be considered in determining whether the [such] work is exempt work: Whether the same work is performed by any of the exempt employee's subordinates: practicality of delegating the work to a nonexempt employee: whether the exempt employee performs the task frequently or occasionally: and existence of an industry practice for the exempt employee to perform the task.

(9) Combination exemptions. Employees who perform a combination of exempt duties as set forth in this administrative regulation for executive, administrative, professional, supervisory, outside sales, and computer employees may qualify for exemption. Thus, for example, an employee whose primary duty involves a combination of exempt administrative and exempt executive work may qualify for exemption. In other words, work that is exempt under one (1) section of this administrative regulation shall [will] not defeat the exemption under any other section.

(10) Motion picture producing industry. The requirement that the employee be paid "on a salary basis" shall [does] not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $565 a week or at the rate of not less than $9 an hour for work in the following facilities: a motion picture studio, a laboratory, an editing room or other facilities. Thus, an employee employed in the industry who is otherwise exempt under Sections 2, 3, or 4 of this administrative regulation, and who is employed at a base rate of at least $565 a week is exempt if paid a proportionate amount (based on a week of not more than six (6) days) for any week in which the employee does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if the employee is employed at a daily rate under the following circumstances:

(a) The employee is in a job category for which a weekly base rate is not provided, and the weekly rate shall [does] at least $565 if six (6) days were worked; or

(b) The employee is in a job category having a weekly base rate of at least $565, and the daily rate is at least one-sixth (1/6) of such weekly base rate.}

(11) Employees of public agencies.

(a) An employee of a public agency who otherwise meets the salary basis requirements of Section 10 [9] of this administrative regulation shall not be disqualified from exemption under Sections 2, 3, 4, 5, or (4) of this administrative regulation on the basis that the [such] employee is paid according to a pay system established by statute, ordinance, regulation, or civil service regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or the [such] employee to be placed on leave without pay for absence for personal reasons or because of illness or injury of less than one (1) workday if [when] accrued leave is not
used by an employee because
  1. Permission for its use has not been sought or has been
     sought and denied;
  2. Accrued leave has been exhausted; or
  3. The employee chooses to use leave without pay.
(b) Deductions from the pay of an employee of a public agency
for absences due to a budget-required furlough shall not disqualify
the employee from being paid on a salary basis except in the
workweek in which the furlough occurs and for which the em-
ployee’s pay is accordingly reduced. The term “individual em-
ployed in a bona fide executive capacity” shall mean any em-
ployee:
   (1) Whose primary duty consists of the management of the
       enterprise in which he is employed or of a customarily-recognized
       department or subdivision thereof;
   (2) Who customarily and regularly directs the work of two (2) or
       more other employees therein;
   (3) Who has the authority to hires or fire other employees or
       whose suggestions and recommendations as to the hiring or firing
       and as to the advancement and promotion or any other change of
       status of other employees will be given particular weight;
   (4) Who customarily and regularly exercises discretionary
       powers;
   (5) Who does not devote more than twenty (20) percent of his
       hours of work in the workweek to activities which are not directly
       and closely related to the performance of the work described in
       subsections (1) through (4) of this section; provided, that this sub-
       section shall not apply in the case of an employee who is in sole
       charge of an independent establishment or a physically separated
       branch establishment, or who owns at least a twenty (20) percent
       interest in the enterprise in which he is employed; and
   (6) Who is compensated for his services on a salary basis at a
       rate of not less than $155 per week, exclusive of board, lodging,
       or other facilities; provided, that an employee who is compensated
       on a salary basis at a rate of not less than $250 per week, exclusive
       of board, lodging, or other facilities, and whose primary duty consists
       of the management of the enterprise in which he is employed or of
       a customarily recognized department or subdivision thereof, and
       includes the customary and regular direction of the work of two (2)
       or more other employees therein, shall be deemed to meet all of the
       requirements of this section.

Section 2. The term “individual employed in a bona fide adm-
inistrative capacity” shall mean any employee:
   (1) Whose primary duty consists of either:
       (a) The performance of office or nonmanual work directly
           related to management policies or general business operations of
           his employer or his immediate superior; or
       (b) The performance of functions in the administration of a
           school system, or educational establishment or institution, or of a
           department or subdivision thereof, in work directly related to
           the administrative instruction or training carried on therein;
   (2) Who customarily and regularly exercises discretion and
       independent judgment;
   (3) Who regularly and directly assists a proprietor, or an
       employee employed in a bona fide executive or administrative
       capacity; or
   (4) Who performs under only general supervision work along
       specialized or technical lines requiring special training, experience,
       or knowledge; or
   (5) Who executes under only general supervision special as-
       signments and tasks; and
   (6) Who does not devote more than twenty (20) percent of his
       hours worked in the workweek to activities which are not directly
       and closely related to the performance of the work described in
       subsections (1) through (3) of this section;
   (7) Who is compensated for his services on a salary or fee
       basis at a rate of not less than $155 per week, exclusive of board, lodg-
       ing, or other facilities; provided, that an employee who is compensated
       on a salary or fee basis at a rate of not less than $250 per week, exclusive
       of board, lodging, or other facilities, and whose primary duty consists
       of the performance either of work described in subsection (1) or (2) of
       this section, which includes work requiring the consistent exercise of
       discretion and judgment, or of work requiring the exercise of discri-
       mination, imagination, or tenacity in a recognized field of artistic
       endeavor, shall be deemed to meet all of the requirements of this section.

Section 3. The term “individual employed in a bona fide profes-
sional capacity” shall mean any employee:
   (1) Whose primary duty consists of the performance of
       work requiring a knowledge of an advanced type in a field of
       science or learning customarily acquired by a prolonged course of
       specialized intellectual instruction and study, as distinguished from
       a general academic education and from an apprenticeship, and
       from training in the performance of routine mental, manual, or
       physical processes; or
   (2) Whose work requires the consistent exercise of discretion
       and judgment in its performance;
   (3) Whose work is predominantly intellectual and varied in
       character (as opposed to routine mental, manual, mechanical, or
       physical work) and is of such character that the output produced
       or the result accomplished cannot be standardized in relation to a
       given period of time;
   (4) Who does not devote more than twenty (20) percent of his
       hours worked in the workweek to activities which are not an essen-
       tial part of and necessarily incident to the work described in sub-
       sections (1) through (3) of this section; and
   (5) Who is compensated for his services on a salary or fee
       basis at a rate of not less than $170 per week, exclusive of board, lodg-
       ing, or other facilities; provided, that this subsection shall not apply
       in the case of an employee who is engaged in the practice of
       a physician or a lawyer who is the holder of a valid license permit-
       ting such practice, nor in the case of an employee who is the
       holder of the requisite academic degree to practice as a physician
       and is engaged in an internship or resident program pursuant to
       the practice, nor in the case of an employee employed and en-
       gaged exclusively on a teacher-employee basis in a school system or
       educational establishment or institution by which he is employed;
       provided, further, that an employee who is compensated on a
       salary or fee basis at a rate of not less than $250 per week, exclusive
       of board, lodging, or other facilities, and whose primary duty consists
       of the performance of work described in subsection (1) or (2) of
       this section, which includes work requiring the consistent exercise of
       discretion and judgment, or of work requiring the exercise of discri-
       mination, imagination, or tenacity in a recognized field of artistic
       endeavor, shall be deemed to meet all of the requirements of this section.

Section 4. The term “individual employed in a bona fide super-
visory capacity” shall mean any employee:
   (1) Who customarily and regularly directs the work of two (2) or
       more other employees where he is employed;
   (2) Who does not devote more than twenty (20) percent of his
       hours of work in the workweek to activities of the same nature as
       the employees under his supervision; and
   (3) Who is compensated for his services on a salary basis at a
       rate of not less than $155 per week, exclusive of board, lodging, or
       other facilities; provided, that an employee who is compensated on a
       salary basis at a rate of not less than $250 per week, exclusive of board, lodg-
       ing, or other facilities, and whose primary duty consists of the performance of
       work described in subsection (1) or (2) of this section, which includes work requiring the
       consistent exercise of discretion and judgment, or of work requiring the
       exercise of discrimination, imagination, or tenacity in a recognized field of
       artistic endeavor, shall be deemed to meet all of the requirements of this section.
Section 5. The term "individual employed in the capacity of outside salesman" shall mean any employee:
(1) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place of business in:
   (a) Making sales, which shall mean the transfer of title to both tangible and intangible property; or
   (b) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or cus-
       tomer;
(2) Whose hours of work of a nature other than those described in subsection (1) of this section do not exceed twenty (20) percent
       of the hours worked in the workweek by nonexempt em-
       ployees of the employer, provided, that work performed incidental
to and in conjunction with the employee's own outside sales or solicitions, including incidental deliveries and collections, shall
       not be regarded as nonexempt work.

Section 6. The term "individual employed as an outside collector" shall mean any employee:
(1) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place of business in:
   (a) Collecting money for goods or services previously or presently furnished by his employer; or
   (b) Collecting money for an account placed in the hands of his employer for collection; and
(2) Whose hours of work of a nature other than those described in subsection (1) of this section do not exceed twenty (20)
       percent of the hours worked in the workweek by nonexempt em-
       ployees of the employer, provided, that work performed incidental
to and in conjunction with the employee's own outside collections, shall not be regarded as nonexempt work.

Section 7. Salary Basis. (1) An employee will be considered to be paid "on a salary basis" within the meaning of this administrative
rule if, under his employment agreement, he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the excep-
tions provided below, the employee must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked. This policy is also subject to the general rule that an employee need not be paid for any workweek in which he performs no work. An employee will not be considered to be "on a salary ba-
sis" if deductions from his predetermined compensation are made for absences occasioned by the employer or by the operating re-
quirements of the business. Accordingly, if the employee is ready, willing and able to work, deductions may not be made for time when work is not available.
(2) Deductions may be made, however, when the employee absents himself from work for a day or more for personal reasons,
other than sickness or accident. Thus, if an employee is absent for a day or longer to handle personal affairs, his salaried status will not be affected if deductions are made from his salary for such absences.
(3) Deductions may also be made for absences of a day or more occasioned by sickness or disability, if the deduction is made in accordance with the plan or practice of providing compensation for loss of salary occasioned by both sickness and disability. Thus, if the employer's particular plan, policy or practice provides compensation for such absences, deductions for ab-
sences of a day or longer because of sickness or disability may be made before an employee has qualified under such plan, policy, or practice, and after he has exhausted his leave allowance thereun-
der, it is not required that the employee be paid any portion of his salary for such day or days for which he receives compensation for leave under such plan, policy or practice. Similarly, if the employer operates under a state sickness and disability insurance law, or a private sickness and disability insurance plan, deductions may be made for absences of a working day or longer if benefits are pro-
vided in accordance with the particular law or plan. In the case of
an industrial accident, the "salary basis" requirement will be met if the employee is compensated for loss of salary in accordance with the applicable compensation law or the plan adopted by the em-
ployer, provided, the employer also has some plan, policy or prac-
tice of providing compensation for sickness and disability other
than that relating to industrial accidents.
(4) Deductions may not be made for absences of an employee caused by jury duty, attendance as a witness, or temporary military
leave. The employer may, however, offset any amounts received by the employee as jury or witness fees or military pay for a par-
ticular week against the salary due for that particular week without loss of the exemption.
(5) The effect of making a deduction which is not permitted under these interpretations will depend upon the facts in the par-
ticular case. Where deductions are generally made when there is no work available, it indicates that there was no intention to pay the employee on a salary basis. In such a case the exemption would not be applicable to him during the entire period when such deduc-
tions were being made. On the other hand, where a deduction not permitted by these interpretations is inadvertent, or is made for reasons other than lack of work, the exemption will not be consid-
ered to have been lost if the employer reimburses the employee for such deductions and promises to comply in the future.
(6) It should be noted that the salary may consist of a prede-
termined amount constituting all or part of the employee's compensa-
tion. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment.
(7) Failure to pay the full salary in the initial or terminal week of employment is not considered inconsistent with the salary basis of
payment. In such weeks the payment of a proportionate part of the employee's salary for the time actually worked will meet the re-
quirement. However, the deduction should not be so made as to mean that an employee is on a salary basis within the meaning of the admin-
istrative regulation if he is employed occasionally for a few days and
is paid a proportionate part of the weekly salary when so em-
ployed.

Section 8. Fee Basis. (1) The requirements for exemption as a professional or administrative employee may be met by an em-
ployee who is compensated on a fee basis as well as by one who
is paid on a salary basis.
(2) Little or no difficulty arises in determining whether a par-
ticular employment arrangement involves payment on a fee basis.
Such arrangements are characterized by the payment of an agreed sum for a single job regardless of the time required for its com-
pletion. These payments in a sense resemble piecework payments with the important difference that generally an employ-
ment is made for the kind of job which is unique rather than for a series of jobs which are repeated an indefinite number of times and
for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not con-
sidered payments on a fee basis.
(3) The adequacy of a fee payment, whether it amounts to payment at a rate of not less than $170 per week to a professional employee or at a rate of not less than $155 per week to an admin-
istrative employee, can ordinarily be determined only after the time worked on the job has been determined. In determining whether payment is at the rate required in this administrative regulation, the amount paid to the employee will be tested by reference to a stan-
ard forty-week of forty (40) hours. Thus, compliance will be tested in each case of a fee payment by determining whether the pay-
ment is at a rate which would amount to at least $170 per week to a professional employee or at a rate of not less than $155 per week to an administrative employee if forty (40) hours were worked.

Section 9. Special Provision for Employees in Computer Systems Analysis and Programming Work. (1) The requirements of
Sections 2 and 3 of this administrative regulation shall not apply to computer systems analysts, computer programmers, software
engineers, and other similarly skilled employees who meet the requirements of subsection (2) of this section and who are paid a
regular hourly rate of pay that exceeds six-and-one-half (6 1/2)
times the minimum wage set forth in KRS 337.275.

(2) Employees who qualify for the exemption in subsection (1) of this section are highly skilled in computer systems analysis or programming; and, because of the wide variety of job titles applied to such work, job titles alone are insufficient to make this determination. To qualify for exemption as an individual employed in a bona fide administrative or professional capacity, the employee's primary duty shall consist of one (1) or more of the following:

(a) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware and software-functional specifications;
(b) The design of computer systems based on and related to user specifications;
(c) The creation or modification of computer programs based on and related to system design specifications;
(d) The creation or modification of computer programs related to machine operating systems; or
(e) A combination of the aforementioned duties, the performance of which requires the same level of skill.

(3) Whether or not an employee's regular hourly rate of pay exceeds six and one-half (6.5) times the minimum wage set forth in KRS 337.275 shall be determined by dividing the amount of compensation earned in the workweek by the number of hours worked in the workweek.

MARK YORK, Deputy Secretary
authorized by Luther S. Witcher, Secretary

PHILIP J. ANDERSON, Commissioner
APPROVED BY AGENCY: July 12, 2004
FILED WITH LRC: July 15, 2004 at 10 a.m.


ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Kentucky Public Service Commission
(As Amended at ARRIS, December 14, 2004)

807 KAR 5:120. Applications for certificate of public convenience 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(8) includes "a person over whose property the proposed transmission line will cross" among those persons who are an "interested party" who may move to intervene in the proceeding. This administrative regulation establishes procedures and minimum filing requirements for an application 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 application 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 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 construction will be proposed.

Section 2. Application. To apply for a certificate of public convenience 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, Section 9(2)(a) through (c) and (e) through (g);
(2) [a] Three (3) maps of 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 provided. A separate map of the same scale shall show any alternative routes that were considered;
(3) [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 adjoins those properties 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 delivered:
(a) [1] Notice of the proposed construction;
(b) [2] The commission docket number under which the application will be processed and a map showing the proposed route of the line;
(c) [3] The address and telephone number of the executive director of the commission;
(d) [4] A description of his or her rights to request a local public hearing and to request to intervene in the case; and
(e) [5] A description of the project;[1] 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, return 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;
(4) [d][e] 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 property owner, pursuant to the preceding paragraph];
(5) [e][f] A statement that a notice of the intent to construct the proposed transmission line has been published in a newspaper of general circulation in the county or counties in which the construction is proposed, which notice included:
(a) [1] A map showing the proposed route;
(b) [2] A statement of the right to request a local public hearing; and
(c) [3] A statement that interested persons have the right to request to intervene; [A statement of the right to move to intervene];
(6) [f][g] A copy of the newspaper notice described in subsection 5 of this section and [the preceding paragraph];
(6) A statement describing or summarizing discussions occurring 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 archaeological impact of the proposed construction, if any, required by a governmental administrative agency with jurisdiction;
(2) (h) 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 279.020(8) [A resident of a county in which a transmission line of 138-kilovolts or more and of more than 5,280 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 615, 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 [sends 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 unsworn public comment.

(3) If a person requesting a local public hearing wishes to participate in an evidentiary hearing as well, that person shall [must] also apply to intervene in the commission proceeding on the application pursuant to 807 KAR 5:001, Section 3(b) [the written request shall include a request, pursuant to 807 KAR 5:001, Section 3(b), to intervene in the commission proceeding 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, except that the commission shall not permit a deviation from the requirements of this administrative regulation unless the commission finds that failure to permit the deviation will adversely affect utility rates or service.

MARK DAVID GOSS, Chairman
JAMES L. ADAMS, Commissioner
LAUJANA 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) 564-7279.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives
(As Amended at ARRS, December 14, 2004)

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, e, f, g, i, l, n, o, p, r, r-2, r-3, r-5, s

STATUTORY AUTHORITY: KRS 194A.030(2) [43], 194A.050(1), 205.520(3), 205.558, 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 in 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 citizenry. 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] for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy recipients.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.
(2) "High-intensity nursing care services" means care provided:
(a) To a Medicaid-eligible individual who meets high-intensity nursing care patient status criteria in accordance with Section 4 of this administrative regulation; and
(b) 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 federal standards for an intermediate care facility for individuals with mental retardation or a developmental disability [facilities for the mentally retarded and developmentally disabled].
(5) [43] "Intermediate care facility for individuals with mental retardation or a developmental disability [the mentally retarded and developmentally-disabled] services" means care provided:
(a) To a Medicaid-eligible individual who meets ICF-MR-DD patient status criteria in accordance with Section 4 of this administrative regulation; and
(b) By an ICF-MR-DD participating in the Medicaid Program [that is consistent with a combination of the services listed in Section 6 of this administrative regulation].
(6) [43] "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:
(a) To a Medicaid-eligible individual who meets low-intensity nursing care patient status criteria in accordance with Section 4 of this administrative regulation; and
(b) 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, or advanced registered nurse practitioner.
(9) [7] "Nursing care services" means care provided that is consistent with a combination of the services listed in Section 4 of this administrative regulation and that is provided by or under the supervision of technical or professional staff in an institutional setting.
(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; or
(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395t and 1395i, 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. 1396(b), (c), (d), 42 C.F.R.
"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.

(10) [99] "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.

(11) "Patient stability" means that an individual possesses care needs in accordance with Section 4 of this administrative regulation for treatment in an institutional setting.

(12) "Personal care" means services to help an individual achieve and maintain good personal hygiene which may include [including but not limited to] assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth and washing, and grooming and cutting of hair;

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

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

(1) An application for participation shall be made in accordance with 907 KAR 1:571 and 907 KAR 1:672.

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

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

(4) A nursing facility or a nursing facility with waiver shall be required to comply with the preadmission screening and resident review requirements specified in 42 U.S.C. 1396r and 907 KAR 1:755. A facility failing to comply with these requirements shall be subject to disenrollment, with exclusion from participation to be accomplished in accordance with 907 KAR 1:571, 42 C.F.R. 431.153 and 431.154.

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

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

(7) A participating nursing facility shall be certified in accordance with standards and conditions specified in the Medicaid Nursing Facility Services Manual before the facility may operate a unit that provides:
(a) Preauthorized specialized rehabilitation services for a person with a brain injury; or
(b) Care for a person who is ventilator dependent.

Section 3. Payment Provisions. (1) Payment for 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 participating [certified] bed that is 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) [99] 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 inpatient 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 noninstitutional 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 is qualified for admission, and continued stay as appropriate, under the preadmission screening and resident review criteria specified in 42 U.S.C. 1396r and 907 KAR 1:755.]

(2) An individual shall qualify for high-intensity nursing care [skilled nursing care services].

(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 [4] care needs in the following areas:
   1. Intravenous, intramuscular, or subcutaneous injections and hydromedroxy or intravenous feeding;
   2. Nasogastric or gastrostomy tube feedings;
   3. Nasopharyngeal and tracheotomy aspiration;
   4. Recent or complicated ostomy requiring extensive care and self-help training;
   5. In-dwelling catheter for therapeutic management of a urinary tract condition;
   6. Bladder irrigations in relation to previously indicated stipulation;
   7. Special vital signs evaluation necessary in the management of related conditions;
   8. Sterile dressings;
   9. Changes in bed position to maintain proper body alignment;
   10. Treatment of extensive decubitus ulcers or other widespread skin disorders;
   11. Receiving medication recently initiated, which requires
12. Initial phases of a regimen involving administration of medical gases; or
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;
   b. Therapeutic exercises which have been performed by or under the supervision of a qualified therapist;
   c. Gait evaluation and training performed by or under the supervision of a qualified physical therapist;
   d. Range of motion exercises which are part of the active treatment of a specific disease state which has resulted in a loss of, or restriction of, mobility;
   e. Maintenance therapy if the specialized knowledge and judgment of a qualified therapist is required to design and establish a maintenance program based on an initial evaluation and periodic reassessment of the patient's needs, and consistent with the patient's capacity and tolerance;
   f. Ultrasound, short wave, and microwave therapy treatments;
   g. Hot pack, hydrocollator infrared treatments, paraffin baths, and whirlpool if the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures or other complications and the skills, knowledge, and judgment of a qualified therapist are required; or
   h. Services by or under the supervision of a speech pathologist or audiologist if necessary for the restoration of function in speech or hearing.

(3) An individual shall be determined to meet low-intensity patient status if the individual requires, unrelated to age appropriate dependencies with respect to a minor, intermittent high-intensity nursing care, continuous personal care or supervision in an institutional setting, in making the decision as to patient status, the following criteria shall be applicable:

   a. An individual with a stable medical condition requiring intermittent high-intensity nursing care services not provided in a personal care home shall be considered to meet patient status;
   b. An individual with a stable medical condition, who has a complicating problem which prevents the individual from caring for himself in an ordinary manner outside the institution shall be considered to meet patient status, for example, an ambulatory cardiac patient with hypertension may be reasonably stable on appropriate medication, but have intellectual deficiencies preventing safe use of self-medication, or other problems requiring frequent nursing appraisal, and thus be considered to meet patient status;
   c. An individual with a stable medical condition manifesting a significant combination of at least two (2) or more of the following care needs shall be determined to meet low-intensity patient status if the professional staff determines that the combination of needs can be met satisfactorily only by provision of intermittent high-intensity nursing care, continuous personal care or supervision in an institutional setting:
      1. Assistance with wheelchair;
      2. Physical or environmental management for confusion and mild agitation;
      3. Must be fed;
      4. Assistance with going to bathroom or using bedpan for elimination;
      5. Old colostomy care;
      6. Indwelling catheter for dry care;
      7. Changes in bed position;
      8. Administration of stabilized dosages of medication;
      9. Restorative and supportive nursing care to maintain the individual and prevent deterioration of his condition;
      10. Administration of injections during time licensed personnel is available;
   d. Services that could ordinarily be provided or administered by the individual but due to physical or mental condition is not capable of self-care; or
   e. Routine administration of medical gases after a regimen of therapy has been established;
   f. An individual shall not be considered to meet patient status criteria if care needs are limited to the following:
      1. Minimal assistance with activities of daily living;
      2. Independent use of mechanical devices, for example, assistance in mobility by means of a wheelchair, walker, crutch or cane;
      3. A limited diet such as low salt, low residue, reducing or another minor restrictive diet; or
      4. Medications that can be self-administered or the individual requires minimal supervision.

(4) An individual with a mental illness or mental retardation or a developmental disability requiring the health status and care needs specified in subsections (2) or (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;
      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 rehabilitation for moderate to severe retardation and meets the following criteria:

   a. The individual has significant developmental disabilities or significantly subaverage intellectual 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 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:
      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 not 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.

(6) An individual with a mental retardation, for an individual with a developmental disability to qualify for ICF-MR-DD services, the disability shall have manifested itself prior to the individual's 22nd birthday.

(7) 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 no 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.

(8) A Medicaid recipient who meets transfer trauma criteria in accordance with subsection (b) of this section:
(a) Shall remain in an NF and continue to be covered by the department for provider reimbursement at least until he 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 (g) of this section shall not apply to an individual who resides in a facility which experiences closure or a license or certificate revocation.

12. An individual with a stable medical condition manifesting a combination of at least three (3) of the following care need categories shall be determined to meet nursing facility level of care:

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

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

2. Changes in bed-position or transfer. The individual is incapable or untended of transferring 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 danger to self or others;

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

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

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

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

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

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

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

13. An individual shall not be considered to meet nursing facility level of care criteria if care needs are limited to:

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

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

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

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

(e) General supervision;

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

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

14. An individual with a mental illness, mental retardation, or a developmental disability who meets 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. 1396r and 907 KAS 255 for entering or remaining in a facility.

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

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

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

(a) Learning fundamental living skills;

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

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

(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;

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

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

(2) If a reevaluation of care needs reveals that an individual no longer requires high-intensity nursing care, low-intensity nursing care, or intermediate care for an individual with mental retardation or a developmental disability:

(a) Payment shall continue for ten (10) days to permit orderly discharge or transfer to an appropriate level of care; and

(b) Ten (10) days from the date [of] the reevaluation is finalized, payment shall no longer be appropriate in the facility.

Section 6. [7] Requirements, Standards and Preauthorization of Specialized Rehabilitation Services for Individuals with Brain Injuries. An individual who has a brain injury [is 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 certificated 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;

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

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

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

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

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

(d) The individual requires coma management; or

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

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

(a) The presenting problem;

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

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

(d) The services needed.

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

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

(b) A spinal cord injury in which there is no known or obvious injury to the interstitial 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) The [ 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 [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 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;

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

3. 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

4. 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 hypoventilation, restrictive lung, ventilatory muscular dysfunction, or obstructive airway disorders needs which may necessitate mechanical ventilator and related care;
(d) Nonhospital management factors and needs;
(e) Patient treatment characteristics;
(f) Home care potential;
(g) Suitability of transfer to the ventilator care unit;
(h) Provision of an appropriate place of care; and
(i) Other facility admission indicators as established in the Medicaid Nursing Facility Services Manual.

Section 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. [40] Reserved Bed Days. The department shall cover reserved bed days in accordance with the following criteria:
(1) In accordance with subsection (3) of this section, reserved bed days, per resident, for an NF or an NF-W shall be covered for a maximum of:
(a) Fourteen (14) days per temporary absence due to hospitalization, with an overall maximum of forty-five (45) days during a calendar year;
(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. [44+] 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. HOLSINGER, Jr., M.D., Secretary
SHANNON TURNER, Acting Commissioner
DR. DIANNE KILTY, Undersecretary
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, 6A-B, Frankfort, Kentucky 40621, phone (502) 564-7906, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives
(As Amended at ARRS, December 14, 2004)

907 KAR 1:065. Payments for price-based nursing facility services.

RELATES TO: KRS 142.361, 142.363, 42 C.F.R. Parts 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 483.101(1), 42 U.S.C. section 1396, a. 3, c. d. g. h. i. p. q. r. s. t. u. n. 2, 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 citizenry. 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
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(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 reimbursement stay in a price-based nursing facility, and is based on Minimum Data Set (MDS) 2.0 data classified through the RUG III, M3 p1, (version 5.12B) thirty-four (34) group model resident classification system.

(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, 2002, and ending June 30, 2004.

(12) "Governmental entity" means a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).

(13) (14) "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.

(15) (16) "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;
(c) Including site preparation and improvements.

(17) (18) Local unit of government means a city, county, special purpose district, or other governmental unit in the state.

(19) (20) "Metropolitan Statistical Area" or "MSA" means the designation of urban population centers based on the national census and updated on a yearly basis, as published by the Federal Office of Management and Budget.

(21) (22) "NF" or "nursing facility" means:
(a) A facility;
(b) To which the state survey agency has granted an NF license;
(c) For which the state survey agency has recommended to the department certification as a Medicaid provider; and
(d) To which the department has granted certification for Medicaid participation;

(23) (24) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395t and 1395fi, 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. 1395b(r), (c), (d), 42 C.F.R. 447.260 and 462.66.

(25) (26) "NF building" means a roofed and walled structure served by electricity, heating and cooling which is also an NF.

(27) (28) "Nursing facility with a mental retardation specialty" or "NF-MR" means an NF in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation as determined by the department.

(29) (30) "Nursing facility with Medicaid waiver" or "NF-W" means an NF to which the state survey agency has granted a waiver to the nursing staff requirement.

(31) "Provider assessment" means the evaluation assessment imposed by KRS 142.361 and 142.363 [18-262 of the 2004 Session of the General Assembly].


(34) "R.S.-Means Construction Index" means an index of changes in construction costs from year to year developed by the R.S.-Means Company, Inc.

(35) (36) "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.

(37) (38) "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.

(39) (40) "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care Facilities and Services [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) 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 facility-defined swing bed shall be:
(a) The average rate per patient day paid to freestanding price-based NF’s for routine services furnished during the preceding calendar year, excluding any payment made pursuant to Section 144 [18] 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 2009, 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. Beroch Commercial Building Valuation System to appraise an NF identified in Section 2 of this administrative regulation:
(a) Provider number;
(b) Property owner - NF name;
(c) Address;
(d) Zip code;
(e) Section number - the lowest number shall be assigned to.
the oldest section and a basement, appraised as a separate section, immediately follows the section it is beneath;
(f) Occupancy code - nursing home or substructure;
(g) Average story height;
(h) Construction type;
(i) Number of stories;
(j) Gross floor area (which shall be the determination of the exterior dimensions of all interior areas including stairwells of each floor, specifically excluding outdoor patios, covered walkways, carports and similar areas). In addition, interior square footage measurements shall be reported for:
1. A non-NF area;
2. A shared service area by type of service; and
3. A revenue-generating area;
(k) Gross perimeter (common walls between sections shall be excluded from both sections);
(l) Construction quality;
(m) Year built;
(n) Building effective age;
(o) Building condition;
(p) Depreciation percent;
(q) Exterior wall material;
(r) Roof covering material and roof pitch;
(s) Heating system;
(t) Cooling system;
(u) Floor finish;
(v) Ceiling finish;
(w) Partition wall structure and finish;
(x) Passenger and freight elevators - actual number;
(y) Fire protection system (sprinklers, manual fire alarms, and automatic fire detection) - percent of gross area served. If both the floor and attic areas are protected by a sprinkler system or automatic detection, the percent of gross area served shall be twice the floor area; and
(z) Miscellaneous additional features which shall be limited to:
1. Canopies;
2. Entry foyers (sheltered entry ways): glass and aluminum standard allowance shall be twenty (20) dollars per square foot; bulkhead standard allowance shall be 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, Wanderguards, or other special electronically-secured doorways (standard allowance shall be $1,500 for each fully-functioning door at the time of appraisal);
6. Automatic sliding doors (standard allowance shall be $2,700 per doorway);
7. Detached garages or storage sheds (which shall have an attached reinforced concrete floor and a minimum of 200 square feet);
8. Modular buildings or trailers, if the structure has a minimum of 200 square feet, electrical service, and heating or cooling services (standard allowance shall be thirty-eight (38) dollars and fifty (50) cents per square foot);
9. Walk-in coolers or freezers;
10. Laundry chutes (standard allowance shall be $1,000 per floor serviced);
11. Dumb waiters (which shall have a minimum speed of fifty (50) feet per minute. The standard allowance shall be $4,500 for initial two (2) stops; $2,100 per additional stop);
12. Skylights (standard allowance shall be twenty-six (26) dollars per square foot);
13. Operable built-in oxygen delivery systems (valued at $250 per serviced bed); and
14. Carpeted wainscoting (standard allowance shall be three (3) dollars and fifty (50) cents per linear foot).
(4) An item listed in subsection (3)(x) of this section shall be subject to the Boeck model #503 monetary limit unless a monetary limit is provided for that item in subsection (3)(z) of this section.
(5) The department shall use the corresponding E.H. Boeck 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. Boeck 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. Boeck tables, as of July 1, 1999, shall be used for an appraisal conducted during the appraisal period beginning January 1, 2000.
(7) In addition to an appraisal cited in subsection (1) of this section, the department shall appraise an NF identified in Section 2(1) of this administrative regulation if:
(a) The NF submits written proof of construction costs to the department; and
(b) 1. The NF undergoes renovations or additions costing a minimum of $150,000 and the NF has more than sixty (60) licensed beds; or
2. The NF undergoes renovations or additions costing a minimum of $75,000 and the NF has sixty (60) or fewer licensed beds.
(8) An auxiliary building shall be:
(a) High-priced if it rests on land, as defined in Section 1(13) [14] 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. Boeck 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 3, 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; and
(f) Noncapital facility-related component.
(4) The following components shall comprise the case-mix adjustable portion of an NF's standard price:
(a) The personnel cost of:
1. A director of nursing;
2. A registered nurse (RN);
3. A licensed practical nurse (LPN);
4. A nurse 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 NFs; 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:

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<thead>
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<tbody>
<tr>
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<td></td>
<td>($56.93)</td>
<td>($36.83)</td>
<td>($87.66)</td>
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(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 rate 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 through an appraisal conducted in accordance with Section 4 of this administrative regulation, by the NF’s total licensed NF beds; and
   b. Not exceed $40,000;
2. A value for land which shall be ten (10) percent of the NF’s average licensed NF bed value, established in accordance with subparagraph 1 of this paragraph; and
3. A value for equipment which shall be $2,000 per licensed NF bed;
(b) The department shall multiply the sum of paragraph (a) of this subsection by a rate of return factor which shall:
1. Be equal to the sum of:
   a. The yield on a twenty (20) year treasury bond as of the first business day on or after May 31 of the most recent year; and
   b. A risk factor of two (2) percent; and
2. Not be less than nine (9) percent nor exceed twelve (12) percent;
(c) The department shall determine the NF’s capital cost-per-bed day by:
1. Dividing the NF’s total patient days by the NF’s available bed days to determine the NF’s occupancy percentage;
2. If the NF’s occupancy percentage is less than ninety (90) percent, multiplying ninety (90) percent by 365 days; and
3. If the NF’s occupancy percentage exceeds ninety (90) percent, multiplying the NF’s occupancy percentage by 365 days; and
(d) The department shall divide the sum of paragraphs (a) and (b) of this subsection by the NF’s capital cost per bed day established in paragraph (c) of this subsection to determine an NF’s capital rate component.
(3) The Department shall utilize the R.S. Means Construction Index to annually adjust an NF’s capital rate component.
(4) If a change of ownership occurs pursuant to 42 C.F.R. 447.253(d), the new owner shall:
(a) Receive the capital cost rate of the previous owner unless the NF is eligible for a reappraisal pursuant to Section 4(7) of this administrative regulation; and
(b) File an updated provider application with the Medicaid Program pursuant to Section 3(4) of 907 KAR 1:872.
(5) A new facility shall be:
(a) Classified as a new facility if the facility does not have a July 1, of the current state fiscal year, Medicaid rate;
(b) Determined to be urban or rural; and
(c) Reimbursed at its standard price which shall:
1. Be based on a case mix of 1.0;
2. Be adjusted prospectively based upon no less than one (1) complete calendar quarter of available MDS 2.0 data following the facility’s Medicaid certification;
3. Utilize $40,000 as the facility’s average licensed NF bed value until the facility is appraised in accordance with Section 4 of this administrative regulation; and
4. Be adjusted, if necessary, following the facility’s appraisal if the appraisal determines the facility’s average licensed NF bed value to be less than $40,000.

Section 7. Minimum Data Set (MDS) 2.0, Resource Utilization Group (RUG) III, and Validation. (1) A price-based NF’s Medicaid MDS data shall be utilized to determine its case mix index each quarter.
(2) A price-based NF’s case mix index shall be applied to its case mix adjustable portion of its standard price.
(3) To determine a price-based NF’s case mix index, the department shall:
(a) Extract the required MDS data from the NF’s MDS form;
   1. Incorporated by reference in 907 KAR 1:755;
   2. Transmitted by the NF to the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care Facilities and Services [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 RUGs (M3 p1), version five point twelve (5.12B) thirty-four (34) group model resident classification system; and
(c) Validate the data cited in paragraph (a) of this subsection as follows:
1. The department shall generate a random sample of twenty-five (25) percent of the price-based NF’s Medicaid MDS assessments;
2. The department shall review medical records corresponding to the individuals included in the sample identified in subparagraph.
1 of this paragraph to determine if the medical records accurately support the MDS assessments submitted for the sample residents; and
3. If a review of records cited in subparagraph 2 of this paragraph reveals that the price-based NF fails to meet the minimum accuracy threshold, the department shall review 100 percent of the price-based NF's MDS assessments extracted in accordance with paragraph (a)3 of this subsection to determine whether the NF fails to meet the minimum accuracy threshold.

(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 revisions to MDS data extracted December 31, 2000 shall not be accepted after March 31, 2001;
(c) That a rate effective date shall be the first date of the second quarter following the MDS extraction date;
(d) That MDS audits shall be initiated in the same month containing the corresponding rate effective date;
(e) MDS assessment accuracy thresholds and corresponding rate sanctions. For example if a price-based NF's percentage of accurate MDS assessments is below fifty (50) percent for MDS data extracted March 31, 2002, then effective October 1, 2002, the price-based NF's rate shall be sanctioned by fifteen (15) cents per patient day; and
(f) Rate sanction effective dates:

<table>
<thead>
<tr>
<th>MDS Data Extraction Date</th>
<th>MDS Data Revision Cut-Off Date</th>
<th>Rate Effective Date</th>
<th>Audits Initiated</th>
<th>Required MDS Accuracy Threshold</th>
<th>Rate Sanction</th>
<th>Sanction Effective Date</th>
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<td>10/2001</td>
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<tr>
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<td>4/1/02</td>
</tr>
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<td>3/31/02</td>
<td>4/1/02</td>
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<td>50%</td>
<td>$0.15 ppd</td>
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<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>
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<tr>
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<td>12/31/01</td>
<td>1/1/03</td>
<td>12/2003</td>
<td>65%</td>
<td>$0.20 ppd</td>
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</tr>
<tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Below 40%</td>
<td>$0.70 ppd</td>
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</tr>
</tbody>
</table>

Section 8. Limitation on Charges to Residents. (1) Except for applicable deductible and coinsurance amounts, an NF that receives reimbursement for a resident pursuant to Section 6 of this administrative regulation shall not charge a resident or his representative for the cost of routine or ancillary services.

(2) An NF may charge a resident or his representative for an item pursuant to 42 C.F.R. 483.10 (c)(8)(i) if:
(a) The item is requested by the resident;
(b) The NF inform 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 service 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 beds, per day, 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 CMS claim pursuant to 907 KAR 1:476, 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) A Effective January 1, 2003. a county-owned hospital-based nursing facility shall not receive a rate that is less than the rate that was in effect on June 30, 2002.

(2) For each year of the biennium, a price-based NF shall:
(a) Receive an increase pursuant to Section 5(8) and (9) of this administrative regulation; or
(b) Except for a county-owned hospital-based nursing facility pursuant to subsection (1) of this section, not receive an increase if the price-based NF's rate is greater than its standard price.

(3) Available price-based nursing facility funds shall be used to increase rates for facilities whose rates are less than their standard price.

(a) A facility receiving an increase shall receive an increase equal to a percentage of the difference between its existing rate and its standard price.

(b) The percentage shall be the same for each applicable facility.

(4) Available funds under this section shall be funds appropriated in a biennium budget less:
(a) Any reduction due to a programmatic change that affects nursing facility reimbursement; or
(b) Any reduction in the department's budget that affects nursing facility reimbursement.

Section 11. Cost Report. (1) A 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. [(4)] [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
(3) [(c)] Respiratory therapy and respiratory therapy supplies shall be a routine service;
(d) The department shall calculate an add-on amount, to be in effect from November 1, 2003 through June 30, 2004, to a nursing facility’s routine services per diem rate if the nursing facility incurred cost providing respiratory therapy or respiratory therapy supplies for the period July 1, 2003 through September 30, 2003 and
(e) The add-on referenced in paragraph (d) of this subsection shall be equal to a nursing facility’s annualized Medicaid allowed cost of respiratory therapy and respiratory therapy supplies for the period July 1, 2003 through September 30, 2003 divided by the nursing facility’s Medicaid days reported on the most recent cost report filed with the department as of November 1, 2003.

(2) A nursing facility shall apply for a routine services per diem add-on referenced in subsection (1)(d) 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 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(6) and 10(3) of this administrative regulation.

Section 13. [44.] Appeal Rights. A price-based NF may appeal a department decision as to the application of this administrative regulation in accordance with 907 KAR 1:76.

Section 14. [45.] Supplemental Payments to Nonstate Govern-
ment-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(e)(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 qualifying nursing facility by dividing the qualifying nursing facility’s total Medicaid days by the total Medicaid days for all qualifying nursing facilities.

(6) The department shall determine a supplemental payment for a qualifying nursing facility by applying the supplemental payment factor established in subsection (5) of this section to the total amount available for funding under this section.

(7) Total payments made under this section shall not exceed the amount determined in subsection (3) of this section.

(8) Payments made under this section shall:
(a) Apply to services provided on or after April 1, 2001; and
(b) Be made on a quarterly basis.

Section 15. [46.] 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
(d) The "Schedule J Request for Reimbursement, November 2003 Edition".

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

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 - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Adult and Child Health Improvements
(As Amended at ARRS, December 14, 2004)

911 KAR 2:110. Kentucky Early Intervention Program Point of Entry.

STATUTORY AUTHORITY: KRS 194A.050, 200.660(8)
[200.650-676], EO 2004-726[444]
NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726[444], effective July 9 [May 14], 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 250.660 requires the cabinet [The cabinet for Health Services] is directed by KRS 200.660 to 200.676] to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.660 to 200.676. 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 ensure 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 42 U.S.C. 14001 to 15009, 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 teams and the district early intervention committee (DEIC).
   (c) 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; and
      (c) Utilizing the Image Consistency Kit developed by the Interagency Coordinating Council Public Awareness Committee.

(4) The DEIC maintain communication with the DEIC, district technical assistance teams 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 and []
   (b) Soliciting [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.

(5) 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.
   (b) 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; and [ ]
   (d) Administer the Department for Public Health approved screening test.
   (e) 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.
   (f) 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 reinstate 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.
   (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.
   (h) 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 the signature of a parent on the statement of assurance;
      (e) Obtain a release of information for medical or developmental information from a parent;
      (f) Determine the 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 and record findings [record on the "Family Input Page" or similar document] to help record the child's developmental status, social relationships and contents 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 forms;
   (i) Determine the next action needed with the family to determine the eligibility of the child;
      (j) Discussed evaluation and service options that include:
         1. Family convenience and preference [Convenience];
         2. Funding sources; and
         3. Natural environment [Family preference] [ ];
   (k) Establish the potential date for developing an Individualized Family Service Plan (IFSP);
   (l) Discuss options for a primary service coordinator; and
   (m) Collect data necessary for billing.

(5) 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.

The POE staff shall use the following to assist in the determination 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 screening has been done, the child and family shall be notified to contact their pediatrician or a clinic for an audiological screening to determine hearing status.

(b) If the referral is a birth to three (3) year old child who is suspected of having a hearing problem, but not suspected of having any developmental problems, the family shall be notified to contact their pediatrician or a clinic for an audiological screening to
determine hearing status.

(c) If the referral is a birth to three (3) year old child with a diagnosis of significant hearing loss, as specified by KRS 589.020(6)(4)(b) [2004Am 64: (b)], the child shall be [is] considered to have an "established risk" diagnosis and [the child] shall be eligible for First Steps services and the referral process shall continue [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 diagnosis, and suspected of having delays in developmental areas, POE staff shall initiate the evaluation for First Steps, which shall [should] include an audiological evaluation.

(e) If a child is suspected of having delays in developmental areas, the POE shall complete the hearing checklist prior to IFSP meeting.

(10) POE staff shall coordinate the evaluation process for eligibility determination within the federally mandated time line of forty-five (45) days from receipt of the referral.

(a) The POE staff shall:

(g) 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 services.]

(12) The POE staff shall ensure that referrals for needed assessments 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 the initial IFSP.

(a) The POE staff shall make the appropriate referrals for needed assessments prior to the initial IFSP.

(b) The POE staff shall request copies of the completed assessment 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 the 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 the 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 shall send copies of the following information to the requested primary service coordinator:

1. Initial referral information;
2. Developmental and health 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. If [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 participation, the array of services currently available, [i] 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 reintact the POE anytime.

(b) If the child is eligible but the family is not interested in services, the POE staff shall document the refusal of services and make the family aware they can reintact the POE anytime for reevaluation.

(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 the primary service coordinator.

(d) The POE staff shall ensure that the written IFSP is developed and recorded at the meeting.

(e) POE staff shall send the completed IFSP to the family within five (5) working days of the IFSP meeting:

(i) 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.

(ii) The identified primary service coordinator shall send copies of the IFSP to other IFSP team members and to the parties requested by the family within ten (10) working days of the IFSP meeting.

(i) 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 responsible for referrals to services identified on the IFSP.

(14) The POE staff shall:

(a) Provide consultation and support to the primary service coordinator 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; and

(d) Track and notify the primary service coordinator that a transition conference shall be completed within the federal time frame of no less than ninety (90) days prior to the 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 conference is due and the date by which it shall be held; and
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 shall [should] include at least:
   a. Basic demographic information;
   b. A listing of family preferences;
   c. Family resources and concerns; and
   d. Documentation of the transition meeting and outcomes.

(15) The POE staff shall function as the primary service coordinator to ensure that the transition conference and plan are completed if [the event] if the primary service coordinator resigns and no other primary service coordinator can be assigned in time, or the referral is received within forty-five (45) days of the child's third birthday.

(a) The POE staff shall be responsible for knowing the following transition procedure that shall include:

1. Ensuring all potential agencies and programs that could provide services to a particular child after the age of three (3) [are included]; and

2. Priming the referrals of all children who are less than the age of two (2) years ten 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 shall [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) If [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 or 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 shall be the [i]:

(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; and [i]
(i) Age of each child at the time of referral.

(19) The POE shall collect and maintain the District Service
Provider Directory.

(e) The POE shall:
(a) Collect data on all available First Steps service providers,

Section 2. Material Incorporated by Reference. Incorporated
by reference. (1) The following material is incorporated by
reference:

(a) Hearing Checklist, 1998; and

(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. On Monday through Friday, 8 a.m. to 4:30 p.m. (1) In-

Section 1. Evaluation. (1)(a) A child referred to the First Steps Program shall be initially evaluated to determine eligibility if
when:

1. a. The screen indicates a developmental delay; or

2. [2] The screen does not indicate a delay, but the family still

(b) A child with established risk as listed in Section 2(3)(b) of
this administrative regulation shall receive a five (5) area assess-
ment 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

[c] 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 assess-
ment 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

(c) 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 in-
itial service coordinator and shall be utilized for eligibility determi-
nation if:

(a) The records meet First Steps evaluation time lines estab-
lished in subsection (4)(a) of this section; and

(b) The records contain the developmental evaluation informa-
tion 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 and] 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

2. 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. c. 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 timeframe established in paragraph [a1] (subparagraph-4) of this subsection [paragraph] but there are no other referrals or evaluations no longer valid, the initial service coordinator shall request a new primary level evaluation.

(c) Primary level evaluations 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 who shall include:
   a. 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; 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)2b 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 not determined eligible, the team shall discuss available community resources, such as Medicaid, EPSDT, the Department for Public Health's and the Commission for Children with Special Health Care Need's (CCSCHC's) Title V programs, and other third-party insurance.

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 (8) 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 to date.

6. If the situation described in clause (a)(i) of this subparagraph occurs, the procedures 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 in the IFSP. This shall include identifying:

1. The discipline;
2. The professional, paraprofessional, 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 review 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) Beginning [The provisions of this subsection shall apply to annual IFSP meetings scheduled on or after January 1, 2005, an annual IFSP meeting shall be held in [[-(a)-in] accordance with KRS 200.664(7). In order to determine continuing program eligibility and the effectiveness of services provided to the child, a [1-4] 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, in accordance with KRS 200.664(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)(e)1c 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 Section 1(15); 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 not administered, the service coordinator shall refer the information required by subsection (2)(b) of this section to the record review team within five (5) working days 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(14) of this administrative regulation, the IFSP team shall be convened for the annual IFSP meeting in accordance with 911 KAR 2:130, Section 2.
(9) A review of the child's First Steps record by the Record Review Team 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 [CCSHCN-staff] for a record review by a team consisting of at least one (1) professional designated in 911 KAR 2:150, Section 1.
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 the 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 [CCSHCN-staff] at the following:
[a.] A cover letter from the service coordinator or primary evaluator justifying the referral for a record review;
[b.] Primary level evaluation information specified in subsection (11) [940] of this section;
[c.] Available assessment reports required in 911 KAR 2:130;
[d.] Available IFSPs and amendments;
[e.] Most recent progress reports from the IFSP team members.
Reports older than three (3) months shall include an addendum reflecting current progress;
[f.] Therapeutic staff notes from the previous two (2) months; and
[g.] 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 [CCSHCN-staff] shall conduct a record review.
2. After conducting the record review, a 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. If there are not 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 provide the IFSP team with a recommendation for transition planning.
5. Upon the record review team reviewing the child's record, the team shall provide the family and service coordinator with a letter, within fourteen (14) calendar days of the review, informing them of the information described in this paragraph.
(d) Intensive level evaluations shall be [are] conducted by one (1) or more of the following as determined by the Department for Public Health approved Record Review Team. [Upon request of the child's IFSP team, a team consisting of at least one (1) professional designated in 911 KAR 2:150, Section 1;]
   a. [a.] A board certified developmental pediatrician;
   b. [b.] A pediatrician who has experience in the area of early childhood development;
   c. [c.] A pediatric physiatrist; or
   d. [d.] A pediatric neurologist; or [and]
   e. [e.] [3-6.] One (1) or more development professionals identified in 911 KAR 2:150, Section 1; or
   f. [f.] If an IFSP is currently in place, a developmental professional representing at least one (1) [each] discipline that is currently on the IFSP in addition to a professional whose scope of work addresses additional concerns expressed by the Record Review [intensive level evaluation] Team.
10. [10] [140] Family rights shall be respected and procedural safeguards followed in providing evaluation services.
(a) Written parental consent shall be obtained before conducting an evaluation or assessment by the evaluator or assessor respectively.
(b) If a parent or guardian refuses to allow a child to undergo a physical or medical examination for eligibility because of religious beliefs,
   1. Documentation shall be obtained in the form of a notarized statement. The notarized statement shall be signed by the parent or guardian to the effect that the physical examination or evaluation is in conflict with the practice of a recognized church or religious denomination to which they belong;
   2. If a child is determined to be eligible, First Steps shall provide, at the parent's request, services that do not require, by statute, court order, physical or medical evaluations; and
   3. The initial service coordinator shall explain to the family that refusal due to religious beliefs may result in a denial of services which require a medical assessment to which base treatment protocols.
11. [11] [440] A report shall be written in accordance with the time frames established in paragraph (c) of this subsection upon completion of each primary level and intensive level evaluation.
(a) A report resulting from a primary level evaluation or an intensive level evaluation shall include the following components:
  1. Date of evaluation;
  2. Names of evaluators and those present during the evaluation, professional degree, and discipline;
  3. The setting of the evaluation;
  4. Name and telephone number of the contact person;
  5. Identifying information that includes the:
    a. Child's Central Billing and Information System (CBIS) 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;
d. Health of the child during the evaluation;
e. Date of birth;
g. Reason for referral or presenting problems;
6. 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;
7. Test results and interpretation of strengths and needs of the child;
8.a. Test results reported in standard deviation pursuant to subsection (4)(e)2 of this section; (b) and
b. A rank on the delay ranking scale for each of the five (5) developmental areas identified in Section 2(1)(c)1 through 5 of this administrative regulation;
9. Factors that may have influenced the test conclusion;
10. Eligibility;
11. Developmental status or diagnosis;
12. Suggestions regarding how services may be provided in a natural environment that address the child's holistic needs based on the evaluation;
13. Parent's assessment of the child's performance in comparison to abilities demonstrated by the child in more familiar circumstances;
14. A narrative description of the five (5) areas of the child's developmental status;
15. Social history;
16. Progress reports, if any, on the submitted information; and
17. A statement that results of the evaluation were discussed with the child's parent.
(b) The report required by paragraph (a) of this subsection shall be written in clear, concise language that is easily understood by the family.
(c)1. 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.
2. 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.
3. 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 19(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 the child:
(a) Is [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
In accordance with West's criterion established in [KRS 200.65410(10)], [who] has one (1) of the following conditions diagnosed by a physician or advanced registered nurse practitioner (ARNP):
Aase-Smith syndrome
Aase syndrome
Acrocallosal syndrome
Acrodysostosis
Acro-Fronto-Facio-Nasal Dysostosis
Adrenoleukodystrophy
Agnesia of the Corpus Callosum
Agyria
Aicardi syndrome
Alexander's Disease
Alper's syndrome
Amelia
Angeleman syndrome
Antiridia
Anophthalmia/Microphthalmia
Antley-Bixler syndrome
Apert syndrome
Arachnoid cyst with neuro-developmental delay
Arhinencephaly
Arthrogryposis
Ataxia
Atelioosteogenesis
Autism
Baller-Gerold syndrome
Bannayan-Riley-Ruvalcaba syndrome
Bardet-Biedl syndrome
Bartsocas-Papas syndrome
Beals syndrome (congenital contractual arachnodactyly)
Biotinidase Deficiency
Bixler syndrome
Blackfan-Diamond syndrome
Bobble Head Doll syndrome
Borjeson-Forssman-Lehmann syndrome
Brachial Plexopathy
<table>
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<tr>
<th>Brancio-Oto-Renal (BOR) syndrome</th>
<th>Ecephalocoele</th>
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<tr>
<td>Campomelic Dysplasia</td>
<td>Ecephalo-Cranio-Cutaneous syndrome</td>
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<tr>
<td>Canavan Disease</td>
<td>Ecephalomalacia</td>
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<tr>
<td>Carbohydrate Deficient Glycoprotein syndrome</td>
<td>Exencephaly</td>
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<tr>
<td>Cardio-Facio-Cutaneous syndrome</td>
<td>Facio-Auriculo-Radial dysplasia</td>
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<tr>
<td>Carpenter syndrome</td>
<td>Facio-Cardio-Renal (Eastman-Bixler) syndrome</td>
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<tr>
<td>Cataracts - Congenital</td>
<td>Familial Dysautonomia (Riley-Day syndrome)</td>
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<tr>
<td>Caudal Dysplasia</td>
<td>Fanconi Anemia</td>
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<tr>
<td>Cerebro-Costo-Mandibular syndrome</td>
<td>Faber syndrome</td>
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<td>Cerebellar Aplasia/Hypoplasia/Degeneration</td>
<td>Fatty Acid Oxidation Disorder (SCAD, ICAD, LCHAD)</td>
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<td>Cerebral Atrophy</td>
<td>Femoral Hypoplasia</td>
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<tr>
<td>Cerebral Palsy</td>
<td>Fetal Alcohol syndrome/Effects</td>
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<td>Cerebro-oculo-facial-skeletal syndrome</td>
<td>Fetal Dyskinesia</td>
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<td>CHARGE Association</td>
<td>Fetal Hydantoin syndrome</td>
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<td>Chediak Higashi syndrome</td>
<td>Fetal Valproate syndrome</td>
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<td>Chondrodysplasia Punctata</td>
<td>Fetal Varicella syndrome</td>
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<td>Christian syndrome</td>
<td>FG syndrome</td>
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<td>Chromosome Abnormality</td>
<td>Fibrochondrogenesis</td>
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<td>a. unbalanced numerical (autosomal)</td>
<td>Floating Harbor syndrome</td>
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<td>b. numerical trisomy (chromosomes 1-22)</td>
<td>Fragile X syndrome</td>
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<tr>
<td>c. sex chromosomes XXX; XXXX; XXXXY; XXXYY</td>
<td>Fretman-Sheldon (Whistling Facies) syndrome</td>
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<td>CNS Aneurysm with Neuro-Developmental Delay</td>
<td>Frisyn syndrome</td>
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<td>CNS Tumor with Neuro Developmental Delay</td>
<td>Fucosidosia</td>
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<td>Cockayne syndrome</td>
<td>Glaucoma - Congenital</td>
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<td>Coffin Lowry syndrome</td>
<td>Glutaric Aciduria Type I and II</td>
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<td>Coffin Siris syndrome</td>
<td>Glycogen Storage Disease</td>
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<td>Cohen syndrome</td>
<td>Goldberg-Shprintzen syndrome</td>
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<td>Grebe syndrome</td>
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<td>Congenital Rubella</td>
<td>Head Trauma with Neurological Sequelae/Developmental Delay</td>
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<td>Congenital Syphilis</td>
<td>Hearing Loss (30dB or greater in better ear as determined by ABR audiometry or audiometric behavioral measurements) ([Bilateral permanent hearing loss with pure-tone average of 30dB or greater])</td>
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<td>Congenital Toxoplasmosis</td>
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<td>Cortical Blindness</td>
<td>Hemiplegia/Hemiparesis</td>
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<td>Costello syndrome</td>
<td>Hemorrhage-Intraventricular Grade III, IV</td>
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<td>Cri du chat syndrome</td>
<td>Hereditary Sensory &amp; Autonomic Neuropathy</td>
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<td>Hereditary Sensory Motor Neuropathy (Charcot Marie Tooth Disease)</td>
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<td>Cutis Laxa</td>
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<td>Cytochrome-c Oxidase Deficiency</td>
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<td>Hunter syndrome (MPSII)</td>
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<td>EEC (Ectrodactyly-ectodermal dysplasia-clefting) syndrome</td>
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<td>I-Cell (mucolipidosis II) Disease</td>
<td>Moya-Moya Disease</td>
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<td>Pendred's syndrome</td>
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<td>Poland Sequence</td>
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<td>Maternal PKU Effects</td>
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<td>Retinoblastoma</td>
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<td>Retinopathy of Prematurity Sages III, IV</td>
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<td>Rett syndrome</td>
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<td>Rickets</td>
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<td>Rieger syndrome</td>
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Roberts SC Phocomelia
Robinow syndrome
Rubinstein-Taybi syndrome
Sanfilippo syndrome (MPS III)
Schinzel-Giedion syndrome
Schimmelpenning syndrome (Epidermal Nevus syndrome)
Schizencephaly
Schwartz-Jampel syndrome
Séckel syndrome
Septo-Optic Dysplasia
Shaken Baby syndrome
Short syndrome
Sialidosis
Simpson-Golabi-Behmel syndrome
Sly syndrome (MPS VII)
Smith-Fineman-Myers syndrome
Smith-Limitz-Opitz syndrome
Smith-Magenis syndrome
Sotos syndrome
Spina Bifida (Meningomyelocele)
Spinal Muscular Atrophy
Spondyloepiphyseal Dysplasia Congenita
Spondyloepimetaphyseal Dysplasia
Stroke
Sturge-Weber syndrome
TAR (Thrombocytopenia-Absent Radii syndrome)
Thanatophoric Dysplasia
Tibial Aplasia (Hypoplasia)
Torello-Carey syndrome
Townes-Brocks syndrome
Treachер-Collins syndrome
Trisomy 13
Trisomy 18
Tuberous Sclerosis
Urea Cycle Defect
Velocardiofacial syndrome (22q11.2 deletion)
Wildervanck syndrome
Walker-Warburg syndrome
Weaver syndrome
Wiedemann-Rautenstrauch syndrome
Williams syndrome
Winchester syndrome
Wolf Hirschhorn syndrome
Yunis-Varon syndrome
Zellweger syndrome

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.


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JAMES W. HOLNSINGER, Jr. M.D., Secretary
WILLIAM D. HACKER, M.D., Acting Commissioner
DR. DUANE KILTY, Undersecretary, Administration and Fiscal Affairs
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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Adult and Child Health Improvements
(As Amended at ARRS, December 14, 2004)

911 KAR 2:130. Kentucky Early Intervention Program assessment and service planning.

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-7284444, effective June 8 [May 11], 2004; reconvened 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 200.660 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the provisions of assessment and the Individualized Family Service Plans used in First Steps, Kentucky’s Early Intervention Program.

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 EPSD 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 docu-
mented 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 on-going procedure used by per-
sont meeting the qualifications established in 911 KAR 2:150 
throughout the period of a child's eligibility for First Steps. An 
as-
seessment 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 per-
sonal interview; and
(d) The supports and services necessary to enhance the fam-
ily's capacity to meet the developmental needs of their child.
(3)(a) Assessments shall be ecologically valid and reflect ap-
propriate multisource and multimodal. One (1) source or one 
(1) measure shall not be used as the sole criterion for determin-
ing 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 assessment reports, which shall:
a. Include the use of open-ended questioning after the assess-
er 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 par-
ticipation in natural environments; and
3. Behavioral checklists 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 instru-
ments:
1. That are appropriate for an infant or toddler and that allows 
for adaptations for a disability as needed; and
2. That are criterion-related, 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 as-
seessment 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 neces-
sitate 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 ca-
pacity to address their child's 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 
diagnosed medically fragile. The consent shall be specific as to the 
skill areas that may be assessed.
(6) [The written] An assessment [Assessments] shall have a 
written report that shall include:
(a) A description of the assessment instruments used in accord-
dance with subsection (3)(b) of this section;
(b) A description of the assessment activities and the informa-
tion 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 com-
parison to abilities demonstrated by the child in more familiar cir-
cumstances;
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, needs and preferences;
3. Skills achieved since last report, if applicable;
4. Current and emerging skills, including skills performed inde-
dependently 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 pro-
viders in building on the team's focus for the child and family.
(7)(a) 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 coordi-
nator. The complete assessment referral request shall include:
1. The point of entry's intake and child history documentation;
2. [The Point of Entry Update Form]; and
3. [The primary level evaluation report];
4. The current IFSP; and
5. Authorizing CBS form.
(b) Prior to January 1, 2004, if an IFSP is in place, page 1 of 
the IFSP (Form 10) authorizing the assessment;
(c) The IFSP Meeting Summary Sheet Services Form; and
(d) The primary level evaluation report; or
(e) If the January 1, 2004 edition of the IFSP is in place, the 
"Assessment: Assessment Not Indicated by PLE Score" page of 
the IFSP;
(f) The "Ongoing Evaluation and Eligibility" page;
(ii) The "Ongoing Evaluation Assessment Progress Report Results" page; and
(g) 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 coor-
dinator within the time frame established in paragraph (a) of this 
subsection; and
3. Write the report in family-appropriate language that the 
child's family can easily understand.
(c) If the time frame established in paragraph (a) of this sub-
section is not met due to illness of the child or a request by the 
parent, the assessor shall document the delay circumstances in his 
staff notes with supportive documentation made in the child's rec-
ord by the service coordinator, and the report shall be provided to 
the service coordinator within five (5) calendar days of completing 
the assessment.
(8) Information gathered in the assessment shall be used to 
determine the service decisions included in the IFSP.
(9)(a) A child enrolled in First Steps shall receive an assess-
ment as an integral part of service delivery.
(b) Assessment shall be ongoing in the First Steps Program to 
ensure concerns and strategies are focused to meet the child and 
family's current needs. An assessment provided as a general prac-
tice of a discipline, not due to the child or family's needs, shall be
considered therapeutic intervention, not an assessment.
(c) Ongoing assessment shall ensure that the IFSP and services are flexible and accessible.

10) Ten (10) calendar days prior to the earlier of the annual or six (6) month review of the IFSP or the expiration date of the IFSP, a service provider shall supply progress reports to the primary service coordinator and family.

Section 2. Individualized Family Service Plan (IFSP). (1) The signed IFSP shall be a contract with the family and providers. A service plan included in the IFSP shall be provided unless the family chooses not to receive the service.

2) The First Steps approved IFSP Form shall be used to record the IFSP. [For meetings that occur prior to January 1, 2004, the October 1998 IFSP form shall be used. For meetings that occur on or after January 1, 2004, the January 2004 IFSP form shall be used] Items on the IFSP form shall be completed as instructed on the form. The accompanying initial IFSP documentation shall include:
(a) Appropriate evaluation reports in accordance with 911 KAR 2:120, Section 1 and assessments reports in accordance with this section;
(b) Identification of covered services [i] and early intervention approaches;
(c) Service delivery settings;
(d) Signed approval by the IFSP team that shall include all individuals identified in the responsible party column of the IFSP including each parent or guardian present [the parent/guardian or parents/guardians].

3) A. With the exception of a situation established in paragraphs (b) or (c) of this subsection, an authorized IFSP shall be valid for a period not to exceed six (6) months in length. An amendment that occurs to the IFSP shall be valid for the remaining period of the plan.
(b) If an IFSP is expected to expire within twenty-one (21) calendar days of a child turning age three (3), an extension of the current IFSP shall be granted if the service coordinator provides the payment authorization coordinator at the Department for Public Health [Louisville-GCSHC] office with the following information:
1. A copy of the transition plan developed at the transition conference held at least ninety (90) calendar days prior to the child turning three (3);
2. A list of who attended the transition conference;
3. A copy of the IFSP that is expiring or has expired; and
4. A letter indicating that the:
   a. IFSP team agrees with the decision to extend the IFSP; and
   b. Parents are aware that they have the option of:
      (i) Having the IFSP terminated; or
      (ii) Waiving their right to meet as an IFSP team.
(c) If an IFSP team meeting cannot be scheduled and convened prior to the current IFSP expiring, an extension may be authorized if the service coordinator provides the following information to the Department for Public Health [GCSHC]:
1. A letter requesting an extension of the current IFSP, including the dates the extension is to cover;
2. A detailed description of attempts made to hold an IFSP 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/her notes.
(e) The following shall be adhered to in the development and implementation of the IFSP: The 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 which 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. Examine their traditional roles and practices and develop new practices as appropriate 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 [the services that shall:]
      1. Be provided in a normal fashion and environment as possible; and
      2. Be [and] that Promote the integration of the child and family within the community;
      3. Be which are embedded in the family's normal routine and activities; and
      4. Be [these services] shall be conducted in the family's natural environment if [whenever possible]; and in [fashion] a way that services promote integration into a community atmosphere which includes children without disabilities.

5) (a) For a child who has been evaluated for the first time and determined eligible in accordance with 911 KAR 2:120, a request to develop the individualized Early Intervention Services Plan shall be conducted within forty-five (45) days after the date entry receives the referral. If the 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.
(b) 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)(b), the following must be documented:
1. In the case of an IFSP team meeting requests, the IFSP team members must document the consent and approval in their IFSP.
2. The contact and approval data shall be documented. An IFSP may be amended without a meeting in accordance with the procedures established in paragraphs (b) and (c) of this subsection if:
   a. A child is discharged from:
      a. A service due to achieving developmental milestones in that area;
      b. The First Steps Program;
   b. A service provider recommends [There is a decrease in the frequency, intensity or duration of the [child] a service provided by that service provider];
   c. The frequency of a service increases but not the number of units, such as changing from one a week for one (1) hour to twice a week for thirty (30) minutes;
   d. A member of the IFSP team determines that an additional assessment is needed;
   e. The family requests that transportation services;
   a. A service provider is being replaced; or
   b. [The current IFSP indicates the replacement shall be;]
   c. The replacement provider does not change the outcomes identified on the current IFSP;
   d. The [replacement service coordinator];
   e. A primary service coordinator changes at the request of the previous primary service coordinator or the family;
   f. The replacement primary service coordinator does not change the outcomes identified on the IFSP;
   g. The family agrees to the primary service coordinator change;
and

d. The primary service coordinator notifies the team members of the change;

8. A team member changes provider numbers and the family wishes to retain that team member’s services;

8. (b) 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.

(c) The family shall be given prior written notice of any changes to the IFSP. [See change identified in paragraph (e) 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 (b) 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 (e) 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 [as discussed to conference 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.

(3) The IFSP shall include:
(a) A summary of the family rights handbook;
(b) A signed statement of assurances by the family; and
(c) A signed statement by the parent that complies with KRS 200.664(5).

(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 includes 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-child bonding];
   b. Interactions with non-disabled peers and adults;
   c. Play skills; and
   d. Self-concept development; [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; [and]
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 how the criteria, procedures, and timelines 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 outcome 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 shall [must] complete and sign staff notes and the First Steps provider shall [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 911 KAR 2:200, 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;
   e. Orientation and mobility specialist;
   f. Physician;
   g. Physical therapist or physical therapist assistant;
   h. Psychologist, certified psychologist with autonomous functioning, 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) [3]-a. A description of the natural environment, which includes natural settings and service delivery systems, in which the early intervention service 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; and

c. How the child's services may be integrated into a setting in which other children without disabilities participate; and

5. [4] If the service cannot be provided in a natural environment, the IFSP shall be documented with the reason;

(h) 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 services 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 coordinator 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 conference 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); and

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 chair will chair this meeting; and

4. Documentation substantiating the following if the child is being provided group intervention:

   1. If the child is enrolled in day care or attending a group during normal routines, when the therapeutic intervention cannot be provided in the child's current group setting; and

   2. Therapeutic intervention during group shall be directly related to the child’s individualized strategies and activities as identified on the IFSP.

(10) 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 include:

   a. Which disciplines are providing the therapy using this approach;

   b. Evidence of transdisciplinary planning and practice, including 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 cotreatment 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 heighten 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 assessment process by using language the family uses and understands.

(14) The families may agree, disagree, or refuse the assessment information.

(15) The family’s interpretation and perception of the assessment results shall be ascertained and the family’s wishes and desires 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, verifies that it relates to a chosen outcome, and agrees to it.

Section 3. Incorporation by Reference. (1) The First Steps Individualized Family Service Plan (IFSP), January 2005, is incorporated by reference. [The following material is incorporated by reference:]

(a) First Steps Individualized Family Service Plan (IFSP), October 28, 1998; and

(b) First Steps Individualized Family Service Plan (IFSP), January 2004;]

(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, 682 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, Administration and Fiscal Affairs
NICKOLAS Z. KAFOLGIS, M.D., Chairman
APPROVED BY AGENCY: October 8, 2004
FILED WITH LRC: October 8, 2004 at 4 p.m.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Adult and Child Health Improvements
(As Amended at ARRS, December 14, 2004)

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. KRS 200.680 requires the cabinet [The cabinet for Health Services is directed by KRS 200.650 to 200.678] 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 Audiology.

   (b) A family therapist shall have in accordance with KRS 335.300:

      1. A master's degree; and

      2. A license [certificate] from the Kentucky Board of License [Certification] of Marriage and Family Therapists [Therapist].

   (c) A developmental interventionist shall have in accordance with KRS 161.028:
1. A bachelor's degree; and
2. A [certificate-and] license from the Kentucky Board of Licensure for Occupational Therapy [Board];

(i) An occupational therapist shall have in accordance with KRS 319A.110: 1. A bachelor's degree; and
2. A [certificate-and] license from the Kentucky Board of Licensure for Occupational Therapy [Board];

(ii) 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.

(k) A psychologist shall have in accordance with KRS 319.032: 1. A doctoral degree; and
2. A certificate from the Kentucky Board of Examiners of Psychology.

(l) A certified psychologist with a master's degree shall have in accordance with KRS 319.065 or 319.066: 1. A master's degree; and
2. A certificate from the Kentucky Board of Examiners of Psychology.

(m) A social worker shall have in accordance with KRS 335.090: 1. A bachelor's degree; and
2. A license from the Kentucky Board of Social Work [Board of Social Work].

(n) A speech-language pathologist shall have in accordance with KRS 334A.050: 1. A [certificate-and] license from the Kentucky Board of Speech-Language Pathology and Audiology; and
2. A certificate from the Kentucky Board of Speech-Language Pathology and Audiology; or

(b) [3] An interim license from the Kentucky Board of Speech-Language Pathology and Audiology; or

(c) A teacher who has a master's degree and a [certificate-and] license from the Kentucky Board of Education Professional Standards Board [Board];

(d) A teacher who is a certified teacher of the visually impaired or hearing impaired, K-12 issued by the Kentucky Education Professional Standards Board, Division of Certification.

(p) A teacher of the visually impaired shall have in accordance with KRS 161.030: 1. A bachelor's degree; and
2. A certificate for teaching the visually impaired, grades P-12, issued by the Kentucky Education Professional Standards Board, Division of Certification.

(q) The qualifications for paraprofessionals providing early interventions services shall be:

(a) A developmental associate shall:
1. Have a [associate-] degree in a field of study recognized as relevant to child development and early childhood education;
2. Have a [associate-] degree in a field of study recognized as relevant to child development and early childhood education, and a high school diploma or GED, and
3. Be supervised by a developmental interventionist or a developmental associate.

(b) A developmental interventionist shall:
1. Have a [associate-] degree in a field of study recognized as relevant to child development and early childhood education, and
2. Be supervised by a developmental interventionist or a developmental associate.

(c) An [A certified] occupational therapy assistant shall have in accordance with KRS 319A.110: 1. A master's degree; and
2. A certificate from the Kentucky Board of Examiners of Psychology.

(d) A speech-language pathologist shall have in accordance with KRS 334A.050: 1. A [certificate-and] license from the Kentucky Board of Speech-Language Pathology and Audiology; and
2. A certificate from the Kentucky Board of Education Professional Standards Board [Board].

(e) A teacher who is a certified teacher of the deaf or hard of hearing, grades P-12, shall have in accordance with KRS 161.030: 1. A bachelor's degree; and

(f) A teacher who is a certified teacher of the deaf or hard of hearing, grades P-12, shall have in accordance with KRS 161.030: 1. A bachelor's degree; and
2. A certificate for teaching the hearing impaired, grades P-12, issued by the Kentucky Education Professional Standards Board, Division of Certification.

(g) A teacher who is a certified teacher of the deaf or hard of hearing, grades P-12, shall have in accordance with KRS 161.030: 1. A bachelor's degree; and
2. A certificate for teaching the hearing impaired, grades P-12, issued by the Kentucky Education Professional Standards Board, Division of Certification.

(h) A teacher who is a certified teacher of the deaf or hard of hearing, grades P-12, shall have in accordance with KRS 161.030: 1. A bachelor's degree; and
2. A certificate for teaching the hearing impaired, grades P-12, issued by the Kentucky Education Professional Standards Board, Division of Certification.

(i) A teacher who is a certified teacher of the deaf or hard of hearing, grades P-12, shall have in accordance with KRS 161.030: 1. A bachelor's degree; and
2. A certificate for teaching the hearing impaired, grades P-12, issued by the Kentucky Education Professional Standards Board, Division of Certification.
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. Having [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;
   
   2. [and a.] Having a bachelor's degree in a related field; or
   
   3. [and b.] Having two (2) years' experience working directly with young children birth through two (2) years of age, including children with disabilities or atypical development; and
   
   4. [c.] Having had one (1) year of experience in using standardized instruments and procedures to evaluate infants and toddlers birth through two (2) years of age, completed as part of formal training or in supervised practice, or completing [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, administrative regulations, and other requirements applicable to the setting in which respite is provided; and
   
   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 employed in accordance with [as found in 911 KAR 2:150.] Section 1 of this administrative regulation.
   
   JAMES W. HOLSSINGER, Jr., Secretary
   
   DR. DUANE KILTY, Undersecretary, Administration and Fiscal Affairs
   
   WILLIAM D. HACKER M.D., Acting Commissioner
   
   NIKOLOAS 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.

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**VOLUME 31, NUMBER 7 – JANUARY 1, 2005**

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Community Based Services**

**Division of Policy Development**

(As Amended at ARRS, December 14, 2004)

921 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).


42 U.S.C. 601 et seq., 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 Community Based Services under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services (Families and Children) is required to administer these public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Kentucky Transitional Assistance Program (K-TAP), the block grant program funded by 42 U.S.C. 601 et seq. This administrative regulation sets forth the standards of the need for and the amount of a Kentucky Transitional Assistance Program payment.

Section 1. Definitions. (1) "Assistance" means the definition of "assistance" pursuant to 45 C.F.R. 260.31.

(2) "Benefit group" means a group composed of one (1) or more children and may include as specified relative a person pursuant to 921 KAR 2:006, Section 10.

(3) [a] The benefit group shall include:
   
   1. The dependent child;
   
   2. The child's parent living in the home with the needy child who is:
      a. Eligible for K-TAP; or
      b. Ineligible for K-TAP due to benefit time limitations pursuant to 921 KAR 2:006, Section 18; and

   3. Except for a sibling who is an applicant or recipient of the Kinship Care Program pursuant to 922 KAR 1:130, eligible siblings living in the home with the benefit members, this child shall not be included in the benefit group;

(4) If the dependent child's parent is a minor living in the home with his eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applies for assistance.

(5) The incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors are met.

(6) "Cabinet" means the Cabinet for Families and Children.

(4) "Change in a circumstance [circumstances]" means a change in income or dependent care cost affecting the ongoing K-TAP payment that includes [shall include]:
   
   a. Beginning or ending employment;
   
   b. Change in an employer or obtaining additional employment;
   
   c. Increase or decrease in the number of work hours;
   
   d. Change 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

(6) "Claimant" means the individual responsible for the repayment of an overpayment.

(5) [b] "Countable income" means income that remains after excluded income and appropriate deductions are removed from gross income.

(6) [c] "Deduction" means an amount subtracted from gross income to determine countable income.
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[7] (8) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(9) (9) "Excluded income" means income that is received but not counted in the gross income test.

(10) (10) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(11) (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 hour is used;
      (d) 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) (43) "Gross income limitation standard" means 185 percent of the assistance standard, as set forth in Section 8 of this administrative regulation.

(12) (43) "K-TAP" means Kentucky's Temporary Assistance Program or KTAP Program.

(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 year.

(15) (46) "Minor" means a person who is under the age of eighteen (18).

(16) (46) "Minor (teenage) parent" means an individual who:
   (a) Has not attained eighteen (18) years of age;
   (b) Is not married or is married and living with the spouse; and
   (c) Has a minor child in the applicant's or recipient's care.

(17) (46) "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-rate) reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.

(20) (21) "Prospective budgeting" means computing the amount of assistance based on income, and circumstances that will exist in the month the payment is made.

(22) "Recoupment" means recovery of an overpayment of an assistance payment.

(23) "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.

(24) "Self-employment income" means income from a business enterprise if taxes are not withheld prior to receipt of the income by the individual.

(25) "SSA" or "SSI" means a monthly cash payment made pursuant to:
   (a) 42 U.S.C. 1381 to 1386 to the aged, blind and disabled;
   (b) 42 U.S.C. 1382e; or
   (c) 42 U.S.C. 1382.

(26) "Unavailable" means that the income is not accessible to the K-TAP benefit group for use toward basic food, clothing, shelter, and utilities.

(27) "Workforce Investment Act" or "WIA" means Workforce Investment Act which is a program to assist adults, displaced workers, and youth with entering, retraining, and advancing within employment.

(28) "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. Eligible for K-TAP due to benefit time limitations pursuant to 921 KAR 2:006, Section 18;
      (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 it is:
   (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. An individual 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; or
         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 interest 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 unavailability;
      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 unavailability;
      5. Prepaid burial funds;
      6. Cash surrender value of all burial insurance policies per family member;

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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 Aetna Life and Casualty to a veteran or veteran's [he] 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.
(d) If the amount of excess transferred resources does not exceed $500, the period of ineligibility shall be one (1) month, but 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.
(c) Resources held jointly by more than one (1) person.

(1) For a bank account requiring one (1) signature for withdrawal,

4. 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 resources by the number of owners.

(2) Excluded income types pursuant to Section 5[4](1) of this administrative regulation shall apply; and
(3) 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 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 to receipt of lump sum income;
(b) The ineligibility period shall be:
1. The number of months that equals the quotient of the divi-
sion of total countable income by the standard of need pursuant to
Section 9[8] of this administrative regulation for the appropriate
benefit group size; and
2. Effective with the month of receipt of the nonrecurring lump
sum amount; and
(c) The ineligibility period shall be recalculated if:
1. The standard of need pursuant to Section 9 [8] of this ad-
ministrative 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,
have 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 reapplies during an established ineligibility
period and the cabinet determines that policy has changed to ex-
clude 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. Sanctioned or penalized individual;
3. [or]
4. Spouse of a dependent child;
5. Parent of a minor parent living in the home with the
benefit group; and
6. Stepparent living in the home; and
(b) [shall be considered with the application of excluded in-
come and deduction policy lineage of] Pursuant to [the following] subsections
(2) to (3) of this section:
(2) [Ends] 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, pur-
suant to Section 9[2] of this administrative regulation;
(c) A deduction applicable to self-employment income;
(d) The difference between the standard of need and the pay-
ment maximum for the benefit group, pursuant to Section 9[8] of
this administrative regulation, if a member of the benefit group
receives a VOA 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
5. The monthly food stamp allotment;
(f) Reimbursement for transportation in performance of an
employment duty, if identifiable;
(g) The value of Kentucky Works supportive services payment
pursuant to 521 KAR 2:017;
(h) Nonemergency medical transportation payment;
(i) Payment from complementary program if no duplication
exists between the other assistance and the assistance provided
by the K-TAP program;
(j) Educational grant, loan, scholarship, and work study in-
come, including:
1. Payment obtained and used under a condition that pre-
cludes [preclude] the recipient's [their] use for current living cost;
and
2. An education grant or loan to an undergraduate made or
inferred under a program administered by:
(a. The United States Commissioner of Education; or
b. The Bureau of Indian Affairs;
[continued]
(nn) Up to $2,000 per year of income received by individual Indians denied 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. 11, 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(c); [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. 1815 [1868] 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;

(ww) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.69(d); and

(xx) Reimbursement payment for a vocational rehabilitation supervised individual training in preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5).

(3)(2) Benefit calculation. Excluded income pursuant to subsection (2) 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 be

1. Be allowed as a work expense for:
   a. An able bodied child age thirteen (13) or over and not under court supervision;
   b. An incapacitated adult living in the home and receiving K-TAP;
   c. A sanctioned individual whose earned income is considered available to the K-TAP household;
   d. 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; or
   e. The month of application for K-TAP benefits; and

2. Not exceed:
   a. $175 per month per individual for full-time employment; [see]
   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 custodian; 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

3. Until the individual has earnings, reported timely, from new employment, the deductions shall not be available to the individual after expiration of the time limits; and

(f) For new employment, or increased wages, acquired after approval and reported timely, a one (1) time only disregard per employee adult member of the benefit group, the amount of two (2) full calendar months earnings calculated as follows:[1]

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 disregard.

(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);[a-

(b) Fails to report an increase in earnings, that impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:

1. The benefit group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case, and if different, the member employed, is out of town for the entire ten (10) day report period.[i]

(5)(4) Changes in income and resources of the benefit group that are a member who is participating in the wage supplementation component of Kentucky Works pursuant to 921 KAR 2:370 shall be disregarded for the first six (6) months of wage supplementation component participation.

Section 5(6) Child Care Expense. With the exception of those circumstances pursuant to Section 5(3)(b) [4][G(4)] of this administrative regulation, 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 Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, pursuant to 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) [Supplement] The gross income of the individual shall be considered available to the benefit group, subject to the following deductions:

(a) The first ninety (90) dollars of the gross earned income; and

(b) An amount equal to the K-TAP standard of need for the appropriate family size, pursuant to Section 9(8) of this administrative regulation for:

1. The support of the individual; and

2. A person living in the home if:

(1) The needs of the person are not included in the K-TAP eligibility determination; and

(ii) The person is or may be claimed as a dependent for the purpose of determining his federal personal income tax liability by the individual;

(3) 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;

(4) Payment for alimony or child support to a person not living in the home by the individual;

(5) Income of an SSI recipient who is listed in subsection (1) of this section; or

(6) A retroactive SSI payment, that is counted in determining eligibility and the amount of the K-TAP payment 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) Step-parent;

(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, shall be referred to as sponsor.

(b) This subsection and subsections (2) through (5), (6) and (7) 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 deduction 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, the alien who 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.

(a) Income: The gross income of the sponsor shall be considered available to the benefit subject pursuant to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, 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 administrative regulation:
   - 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 needs are not considered in making a determination of eligibility for K-TAP;
3. An amount paid by the sponsor to 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 sponsorship 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;
2. [The] sponsor dies.

(c)(d) 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 deemed indigent.

(b) An alien shall be deemed 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 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
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 utilities.

(2)(a) Countable income, pursuant to Section 10.6 of this administrative 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>$658</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>

(b) 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, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4)(a) The assistance payment shall be the lesser amount of either:
1. Fifty-five (55) percent of the deficit pursuant to subsection (3) of this section; or
2. The payment maximum pursuant to subsection (2)(a) of this section.

(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 10.6 Best Estimate. (1) The benefit shall be computed 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. Be not rounded to the nearest dollar before adding or multiplying 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 by the total number of pay periods considered;
   c. Converting the pay period figure to a monthly figure by multiplying a:
      (i) Weekly amount by four and one-third (4 1/3);
      (ii) Biweekly amount by two and one-sixth (2 1/6); or
      (iii) Semimonthly amount by two (2); and
   d. Rounding to the nearest dollar.

4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the amount is computed by:
   a. Multiplying the hourly rate by the estimated number of hours to be worked in a pay period;
   b. Multiplying the daily rate by the estimated number of days to be worked in the pay period; and
   c. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3c of this paragraph and [d] rounding to the nearest dollar.

5. 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 unearned income received on a monthly basis; and
   3. [Unless it does not represent the ongoing situation] Averaging 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 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; or
   (c) If the agency becomes aware of a change in a circumstance;
   (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 [40] K-TAP Recoupment. [Except for an overpayment in administrative regulation 921-KAR-2017.] The following provisions shall apply for recoupment of a K-TAP overpayment [are effective for an overpayment discovered on or after April 1, 1982, regardless of when the overpayment occurred].

1. Necessary action will be taken promptly to correct and recoup an overpayment.

2. An overpayment—including assistance paid or pending—shall not 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. (e) Repayment by the claimant [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 sixty (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)(4) In a case that has both an overpayment and an underpayment, the overpayment and underpayment [they] shall be offset one 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, 1982, 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 the:
   (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 14 [13] [42] of this administrative regulation, and
   (b) Complete a PA-302, "Payment Receipt" to verify for the K-TAP recipient the check has been returned.

Section 14. [42] 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;
   (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. [43] 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, (14.) 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 04/04; and
(b) PA-1, Transitional Assistance Self-Assessment, edition 05/04.

(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. HOLSINGER, JR., M.D., Secretary
APPROVED BY AGENCY: October 4, 2004
FILED WITH LRC: October 5, 2004 at 4 p.m.
CONTACT PERSON: Becky Conner, Office of Legal Services, 275 East Main Street 4W-C, Frankfort, Kentucky 40621, phone (502) 564-7900, fax (502) 564-9126.
GENERAL GOVERNMENT CABINET  
Board of Nursing  
(Amended After Comments)  

201 KAR 20:070. Licensure by examination.  

RELATES TO: KRS 194A.540, 214.615, 314.041(1), (2), 314.051(3)  
STATUTORY AUTHORITY: KRS 314.041(2), 314.051(3), 314.131(1)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Kentucky Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. This administrative regulation establishes the requirements for the licensure of nurses by examination.  

Section 1. Eligibility for Licensure by Examination for a Graduate of a Kentucky Program or Other State or Territorial Nursing Program. (1) To be eligible for licensure by examination an applicant shall:  
(a) Submit:  
1. A properly executed application for licensure, as required by 201 KAR 20:370, Section 1(1);  
2. The licensure application fee as established in 201 KAR 20:240;  
3. One (1) current passport type photograph;  
4. A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;  
5. A certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and  
6. A letter of explanation that addresses each conviction;  
(b) Notify the board as soon as a new address is established after submitting the application;  
(c) Submit a copy of a marriage certificate or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;  
(d) When taking the examination, abide by and cooperate with security procedures adopted by the board;  
(e) Apply to take and pass the National Council Licensure Examination; and  
(f) Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615 and 902 KAR 2:150; []  
(b) Submit evidence of completion of the clinical internship as required by KRS 314.041, KRS 314.051, and Section 4 of this administrative regulation; and  
(h)Submit evidence of completion of the practical nurse role delineation course, if applicable  
(2) An application for licensure shall be valid for a period of one (1) year from the date the application is filed with the board office or until the applicant fails the examination, whichever comes first.  
(3) The name of the applicant shall appear on the "Certified List of Program of Nursing Graduates" as established in 201 KAR 20:260 or the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements.  
(4) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.  

Section 2. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may retake the examination after meeting the requirements of Section 1 of this administrative regulation.  
(2) The applicant shall not be eligible to take the examination more often than once every forty-five (45) days.  

Section 3. Release of Examination Results. The board shall release examination results to:  
(1) The candidate;  
(2) Other state boards of nursing;  
(3) The National Council of State Boards of Nursing, Inc.;  
(4) The candidate's program of nursing; and  
(5) An individual or agency who submits an applicant's or licensee's written authorization for their release.  

Section 4. Clinical Internship. (1) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.  
(2) The board shall issue the provisional license to the applicant after Section 1(1)(a) and (3) of this administrative regulation are satisfied.  
(3) To be eligible for a clinical internship, the applicant shall hold a current provisional license.  
(4) A provisional license shall expire six (6) months from the date of issuance by the board and shall not be reissued unless the provisions of subsection (5) of this section apply.  
(5) A person with a temporary physical or mental inability to complete the clinical internship shall:  
(a) Complete the "Petition to Hold Provisional License in Abeyance"; and  
(b) Submit evidence from a licensed health care practitioner that documents a diagnosis of a temporary physical or mental inability to complete the internship within the original six (6) months.  
(6)(a) If the Petition to Hold Provisional License in Abeyance is granted, the current provisional license shall be void and shall be immediately returned to the board.  
(b) The person whose petition has been granted shall not engage in nursing practice.  
(7)(a)1. A person whose petition has been granted shall submit a written request to the board to reissue the provisional license when the temporary physical or mental inability has been resolved.  
2. The request shall include the name, address, telephone number, and Social Security number of the person.  
(8) The request shall also include written verification from a licensed health care practitioner that the temporary physical or mental inability has been resolved.  
(9) The person shall also submit a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System, if the previous one (1) is more than six (6) months old.  
(10) Upon submission of the required documentation and approval by the board, the board shall reissue the provisional license for six (6) months.  
(c) If the required documentation is submitted more than one (1) year from the date of the initial application for licensure, the person shall meet the requirements of Section 1 of this administrative regulation.  
(11) Documentation of completion of the clinical internship shall be submitted to the board in writing or electronically. It shall include the following:  
(a) Name, address, telephone number, social security number and date of birth of the applicant;  
(b) Provisional license number;  
(c) Name, address and telephone number of the facility where the clinical internship was completed; and  
(d) Name of the supervising nurse.  
(9) As used in KRS 314.041(5) and 314.051(6) the term "direct supervision" means that the nurse responsible for the applicant shall at all times be physically present in the facility and immediately available to [immediately-viditory-of] the applicant while the applicant is engaged in the clinical internship.  
(10) The nurse responsible for the applicant shall be currently licensed to practice as a nurse in Kentucky.
(11) The applicant shall successfully complete the clinical internship prior to taking the examination. The board shall not authorize the applicant to take the examination until verification of completion of the clinical internship is filed with the board.

(12) If the applicant fails the examination, the provisional license shall be void and shall be immediately returned to the board.

Section 5. Practical Nurse Role Delineation Course. (1) A graduate of a board-approved registered nurse program who is unsuccessful on the National Council Licensure Examination for registered nurses may apply for licensure by examination as a licensed practical nurse pursuant to KRS 314.041(13).

(2) (a) Prior to making application for licensure as a practical nurse, the applicant seeking practical nurse licensure pursuant to KRS 314.041(13) shall complete a board-approved practical nursing role delineation course.

(b) The applicant shall return the registered nurse provisional license if applicable.

(3) The course shall be taken only at an approved LPN program of nursing. The program of nursing shall seek approval of the course from the board.

(4) The course shall consist of at least eight (8) hours of didactic instruction and sixteen (16) hours of clinical instruction.

(5) At the conclusion of the course, the individual shall be able to make decisions and take actions that are consistent with the scope and standards of practical nursing practice, established policies, procedures, and licensing laws.

(6) The LPN program of nursing shall submit to the board a certified list of individuals who completed the course.

(7) After completion of the practical nurse role delineation course, the applicant shall comply with Section 1 of this administrative regulation.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certified List of Program of Nursing Graduates", (2/86), Kentucky Board of Nursing; and [-is incorporated by reference-]

(b) "Petition to Hold Provisional License in Abeyance", (8/04), Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

JIMMY T. ISENBERG, President
APPROVED BY AGENCY: November 18, 2004
FILED WITH LRC: November 24, 2004 at 11 a.m.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 329-7009, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets the requirements for licensure by examination.

(b) The necessity of this administrative regulation: KRS Chapter 314 requires the board to set these requirements for the administration of this regulatory program. The necessity of this administrative regulation conforms to the content of the authorizing statute: By setting requirements.

(c) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements.

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

(a) How the amendment will change this existing administrative regulation: It adds the requirements of completion of a clinical internship and the completion of an LPN role delineation course.

(b) The necessity of the amendment to this administrative regulation: 2004 Acts Chapter 55 made several changes to KRS Chapter 314. One change was to add the requirement of the completion of a clinical internship for licensure by examination. Another was to require the completion of an LPN role delineation course for graduates of an RN program that wish to take the licensure examination for LPNs. This amendment conforms the administrative regulation to these changes.

(c) How the amendment conforms to the content of the authorizing statute: By providing for the implementation of the statutory changes.

(d) How the amendment will assist in the effective administration of the statutes: By providing for the implementation of the statutory changes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure by examination, number unknown.

(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: Applicants will have to complete a clinical internship before licensure. Graduates of an RN program wishing to take the licensure examination for LPNs will have to complete an LPN role delineation course.

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

(a) Initially: It is impossible to estimate the cost to implement these changes.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General operating funds of the board.

(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: An increase in fees is not anticipated. It is possible that this will require an increase in funding.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

GENERAL GOVERNMENT CABINET
Board Of Nursing
(Amended After Comments)

201 KAR 20:110. Licensure by endorsement.


STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(4) and 314.051(5) authorize the board to issue a license to practice nursing as a registered nurse or a licensed practical nurse to an applicant who has passed the required examination or its equivalent and who was licensed to practice nursing in another jurisdiction. KRS 314.101(4) authorizes the board to issue a temporary work permit to a person who has completed the requirements for, applied for, and paid the fee for licensure by examination or endorsement. This administrative regulation establishes the requirements for licensure by endorsement and establishes the requirements for a temporary work permit for an applicant to practice nursing while the application for a license is being processed.

Section 1. Eligibility for Licensure by Endorsement. (1) To be eligible for licensure by endorsement, an applicant shall:

(a) Have completed a state approved program of [practical] nursing [for licensed practical nurse] licensure or a state approved program of registered nursing for registered nurse licensure] equivalent to Kentucky requirements;

(b) Have taken the State Board Test Pool Examination or National Council Licensure Examination or an examination that is
consistent with Section 5 of this administrative regulation;
(c) Provide proof of current, active licensure to practice nursing in another U.S. jurisdiction, territory, or foreign country;
(d) Complete the application form, as required by 201 KAR 20:370, Section 1(1);
(e) Submit one (1) current passport type photograph;
(f) Submit the current fee for a licensure application, as established by 201 KAR 20:240;
(g) Report each disciplinary action taken or pending on a license by another jurisdiction;
(h) Submit a certified copy of the court record of each misdemeanor or felony conviction and a letter of explanation that addresses each conviction as required by 201 KAR 20:370, Section 1(3);
(i) Request the U.S. jurisdiction or territory or foreign country of initial licensure to submit a verification of licensure by examination to the board which shall include the following information:
1. Name of the program of nursing completed and date of graduation; and
2. Statement that the applicant's license has not been revoked, suspended, limited, probated or otherwise disciplined by the licensing authority and is not subject to disciplinary action;
(j) Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615 and 902 KAR 2:150; and
(k) Submit a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI; and
(1) Submit evidence of completion of the clinical internship as required by KRS 314.041, KRS 314.051, and Section 5 of this administrative regulation, if applicable.
(2) An application shall be valid for a period of six (6) months, except as provided for in section 5 of this administrative regulation.
The applicant shall: 
(a) Submit a copy of a marriage certificate or court order to change the applicant's name, if the applicant's name is changed after the original application is filed; and
(b) Notify the board in writing as soon as a new address is established after submitting the application.
(3) After six (6) months, the applicant shall:
(a) Submit a new application;
(b) Submit the current licensure application fee; and
(c) Meet the requirements established in this section.
(4) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

Section 2. Nursing Practice and Continuing Education Requirements. (1) Except as provided in subsection (2) of this section, an applicant shall complete fourteen (14) fifteen (15) contact hours in continuing education for each year since the last year in which the applicant can demonstrate at least 100 hours of practice, with a minimum of twenty-eight (28) thirty (30) contact hours of continuing education.
(2) The requirement established in subsection (1) of this section shall not apply to an applicant who:
(a) Has been licensed for less than five (5) years from the date of initial licensure; or
(b) Has been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years; and
2. Submits evidence that verifies this practice; or
(c) Has not been engaged in nursing practice during the five (5) years preceding the date of the application. This applicant shall 1. Complete a refresher course approved by the board, pursuant to 201 KAR 20:380. The refresher course shall have been completed within two (2) years of the date of the application; or
2. Complete at least 120 contact hours of continuing education earned within one (1) year of the date of the application.
(3) An applicant shall not be required to complete more than seven (7) hours in continuing education if at least twenty-eight (28) thirty (30) contact hours shall have been earned within the twenty-four (24) months preceding the date of application for active Kentucky licensure status.
(4) Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting the requirements established in subsections (1) and (3) of this section.

Section 3. Temporary Work Permit. (1) An applicant for licensure by endorsement who meets the requirements of Section 1(1) (a) through (h) and (k) of this administrative regulation shall be issued a temporary work permit.
(2) A temporary work permit shall be valid for a period not to exceed six (6) months.
(3) An individual who practices as a nurse in this state without a current temporary work permit prior to issuance of a current active license shall be considered to be practicing without a license in violation of KRS 314.031 and subject to the penalties listed in KRS 314.091 and 314.991.

Section 4. Licensing Examination Standards. An applicant who has taken an examination other than the State Board Test Pool Examination, the National Council Licensure Examination, or the Canadian Registered Nurse Registration Examination (In English), or the Canadian Practical Nurse Registration Examination (In English), shall provide evidence to the board that the examination met the following standards of equivalency:
(1) Accepted psychometric procedures are used in the development of the examination;
(2) The examination is available on the board in the English language;
(3) The examination test plan blueprint is available for board review and adequately identifies test content and content weighting;
(4) Test items are available for board review and demonstrate the testing of competency necessary for safe practice;
(5) At least one (1) of the reliability estimates for the examination is 0.80 or higher; and
(6) The examination is revised after each administration to insure currency and security of content; and
(7) The examination is given under strict security measures.

Section 5. Clinical Internship. (1)(a) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.
(b) The provisional license shall be issued when the applicant meets the requirements of Section 1(a), (d) through (h), and (k) of this administrative regulation.
(2) To be eligible for a clinical internship, the applicant shall hold a current provisional license.
(3) A provisional license shall expire six (6) months from the date of issuance by the board and shall not be reissued unless the provisions of subsection (2) of this section apply.
(4) A person with a temporary physical or mental inability to complete the clinical internship shall:
(a) Complete the "Petition To Hold Provisional License in Abeyance" as incorporated by reference in 201 KAR 20:070, Section 4(5)(a); and
(b) Submit evidence from a licensed health care practitioner that documents a diagnosis of a temporary physical or mental inability to complete the internship within the original six (6) months.
(5)(a) If the "Petition To Hold Provisional License in Abeyance" is granted, the current provisional license shall be void and shall be immediately returned to the board.
(b) The person whose petition has been granted shall not engage in nursing practice.
(6) A person whose petition has been granted shall submit a written request to the board to reissue the provisional license when the temporary physical or mental inability has been resolved.
(7) The request shall include the name, address, telephone number, and Social Security number of the person.
(8) The request shall also include written verification from a licensed health care practitioner that the temporary physical or mental inability has been resolved.
(8) The person shall also submit a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System, if the previous one (1) is more than six (6) months old.
(b) Upon submission of the required documentation and ap
proval by the board, the board shall reissue the provisional license for six (6) months.

(c) If all the required documentation is submitted more than six (6) months from the date of the initial application for licensure, the person shall meet the requirements of Section 1 of this administrative regulation.

(7) Documentation of completion of the clinical internship shall be submitted to the board in writing or electronically. It shall include the following:

(a) Name, address, telephone number, Social Security number and date of birth of the applicant;
(b) Provisional license number;
(c) Name, address and telephone number of the facility where the clinical internship was completed; and
(d) Name of the supervising nurse.

(8) As used in KRS 314.041(5) and 314.051(6) the term "direct supervision" means that the nurse responsible for the applicant shall at all times be physically present in the facility and immediately available to immediately clinically to the applicant while the applicant is engaged in the clinical internship.

(9) The nurse responsible for the applicant shall be currently licensed to practice as a nurse in Kentucky.

Section 6. Applicants for LPN license pursuant to KRS 314.041(14).
(1) An applicant for an LPN license pursuant to KRS 314.041(14) shall meet the requirements of this administrative regulation.

JIMMY T. ISENBERG, President
APPROVED BY AGENCY: August 19, 2004
FILED WITH LRC: September 10, 2004, 11:00 a.m.
CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 329-7009, fax (502) 696-3938, email nathan.goldman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:
(a) What this administrative regulation does: It sets requirements for licensure for endorsement for nurses from other states.
(b) The necessity of this administrative regulation: KRS Chapter 314 requires the Board to set these requirements.
(c) How this administrative regulation conforms to the content of the authorizing statute: By setting requirements.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: By setting requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: 2004 Acts Chapter 55 added a clinical internship requirement to the license for endorsement statute. It also added a provision that would allow graduates of RN programs who are licensed as LPNs in other states to become licensed as LPNs in Kentucky.
(b) This amendment adds those provisions to the regulation.

The necessity of the amendment to this administrative regulation: It is required by the changes to the statute.
(c) How the amendment conforms to the content of the authorizing statute: By adding the new requirements.
(d) How the amendment will assist in the effective administration of the statute: By setting the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure by endorsement, number unknown.

(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: New graduates who apply for licensure by endorsement will have to complete a clinical internship. Graduates of an RN program who are licensed as LPNs in another state may apply for licensure as an LPN in Kentucky.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: It is impossible to estimate the cost to implement the changes.
(b) On a continuing basis: No additional cost is anticipated.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General operating funds of the Board.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or, by the change if it is an amendment: It will not.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amended After Comments)

301 KAR 3:120. Commercial Nuisance Wildlife Control.
RELATES TO: KRS 150.105, 150.183, 150.275, 150.410
STATUTORY AUTHORITY: KRS 150.025(1); 150.105; 150.275
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.275 authorizes the department to issue permits to qualified persons to take and transport wildlife at any time for commercial nuisance wildlife control, and KRS 150.105 authorizes the commissioner to permit wildlife causing damage to be destroyed or controlled by any means he deems necessary. This administrative regulation establishes the requirements for Commercial Nuisance Wildlife Control permits, and the conditions under which the permits shall be used.

Section 1. Definitions. (1) "Commercial purposes" means taking nuisance wildlife in exchange for payment, barter or trade.
(2) "Federal-protected wildlife" means any wildlife species listed by the U.S. Fish and Wildlife Service as threatened or endangered, and any birds protected under the Migratory Bird Treaty Act and the Bald Eagle Protection Act.
(3) "Nuisance wildlife" means vertebrate wildlife that causes or may cause damage or threat to agriculture, human health or safety, property or natural resources.
(4) "Nuisance Wildlife Control Operator" means the holder of a valid permit, issued by the department, authorizing the taking of nuisance wildlife for commercial purposes.
(5) "NWCO" means a Nuisance Wildlife Control Operator.
(6) "Permit" means the Nuisance Wildlife Control Operator's permit issued pursuant to this administrative regulation.
(7) "Rural area" means an area of the state not included within the boundaries of an incorporated or unincorporated city, village or borough having a population in excess of 1,500 inhabitants.

Section 2. NWCO Permit. (1) A person shall apply for a Nuisance Wildlife Control Operator permit on a form provided by the department.
(2) The department shall not grant a permit to a person:
(a) Less than eighteen (18) years old; [ ]
(b) Who has been convicted of a violation of KRS Chapter 150 or the administrative regulations promulgated under its authority within one (1) year of the date of application; or
(c) Who fails to achieve a score of seventy (70) percent or better on an examination administered by the department.

(3) Nothing in this subsection shall prohibit persons under eighteen (18) years old from assisting a NWCO.
(4) A person may appeal the denial of a permit for a violation of KRS Chapter 150 or the administrative regulations adopted under its authority by following the procedures established in Section 7 of this administrative regulation.
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(4) A NWCO shall have his or her permit in his or her possession at all times when taking or transporting wildlife.

(5) The permit shall be valid from March 1 through the last day of February.

Section 3. Reporting Requirements. (1) An operator shall file an annual activity report with the department between March 1 and the March 30 of each year.

(2) The annual activity report shall be filed:
(a) On a form:
1. Provided by the department, or
2. Photocopy from the department form.
(b) The form shall contain the following information regarding the activity for the period from March 1 of the previous year through the last day of February of the current year.

(3) The department shall not renew the permit of an operator who does not:
(a) Submit the annual activity report as required by this section; or
(b) Does not provide the information required by the annual activity report form.

(c) Report documents shall be made available to KDFWR Wildlife and Boating Officers or Division of Wildlife staff upon request and reasonable notice.

Section 4. Restrictions on Taking Wildlife. (1) A NWCO shall not:
(a) Take federally-protected wildlife unless he has a valid permit issued by the U. S. Fish and Wildlife Service;
(b) Take the following species unless authorized by the commissioner:
1. Copperbelly water snake (Nerodia erythrogaster neglecta);
2. White-tail deer (Odocoileus virginianus);
3. Elk (Cervus canadensis);
4. Black bear (Ursus americanus); or
5. Turkey (Meleagris gallopavo);
(c) Use lethal capture methods to take bats.

(2) A NWCO may take other nuisance wildlife year round using lethal or nonlethal capture methods, provided he has written or oral authorization from the person requesting control.

Section 5. Methods of taking nuisance wildlife. (1) A NWCO using traps shall adhere to the provisions of:
(a) KRS 150.410; and
(b) Section 10(2)(b) of 301 KAR 2.251.

(2) Except for taking raccoon and opossum, an operator shall obtain prior approval from the department before taking wildlife without a trap.

(3) A NWCO using a gun shall provide proof of completion of the Kentucky Hunter Education Program or a course offered by another jurisdiction that meets the course standards set by the International Hunter Education Association.

Section 6. Disposal of captured animals. (1) Unless the permit specifies that certain species shall be euthanized, an operator may euthanize or release captured wildlife.

(2) Methods of euthanizing wildlife shall include [must be approved by the department and include such methods as]:
(a) Captive bolt, gunshot, drowning (only for animals trapped in water sets), cervical dislocation and thoracic compression (for small mammals and birds), and mechanical stunning (stunning must be followed immediately by a method that ensures death);
(b) Inhalants, including halothane, isoflurane, carbon monoxide, and carbon dioxide;
(c) Noninhalants including Secobarbital/dibucaine; and
(d) Commercially-available agents for striped skunks, in accordance with manufacturer’s specifications.

(3) The department may, upon issuing a permit, specify that certain species shall be euthanized:
(a) The requirement that a species be euthanized may apply statewide or to certain geographical regions.
(b) If the requirement that a species be euthanized is made to apply:
1. Statewide, all permits issued in that permit year shall contain the same specification.
2. To a limited geographical area, all permits issued in that area shall contain the same specification.

(4) A NWCO shall:
(a) Euthanize wildlife that shows obvious symptoms of disease or injury.
(b) Transport wildlife for release in a safe manner that minimizes stress to the animal.
(c) [blank] Not release wildlife:
1. Except in a rural habitat suitable for the particular species; and
2. Without the written permission of:
   a. [blank] The private landowner of at least 100 [300] contiguous acres;
   b. [blank] The private landowners of contiguous properties totaling at least 100 [300] acres; or
   c. [blank] The agency responsible for management of public land totaling at least 300 acres; or
(d) [blank] Dispose of all wildlife carcasses [within forty-eight (48) hours] by:
1. Complete incineration of the entire carcass and all of its parts and products;
2. Disposition of the carcass in a contained landfill approved pursuant to KRS Chapter 224;
3. Burying the carcass and all its parts and products in the earth at a point which is at least 100 feet covered with the overflow of ponds or streams and which is not less than 100 feet distant from any watercourse, sinkhole, well, spring, public highway, residence, or stable. The carcass shall be placed in an opening in the earth at least one (1) foot deep and covered with one (1) foot of earth.
4. Removal of the carcass by a duly-licensed rendering establishment; or
5. Any other proven method of disposal with the prior approval of the department.

(5) A NWCO wishing to sell the pelts of furbearers taken during the statewide furbearer hunting and trapping season shall [must] also possess a valid trapping license or hunting license.

Section 7. Permit revocation, appeal process. (1) The department may [shall] revoke without refund the permit of a nuisance wildlife control operator who:
(a) Is convicted of a violation of a federal fish and wildlife law, a Kentucky fish and wildlife law, including KRS Chapter 150 or KAR Title 301 of the Kentucky Revised Statutes of the Kentucky Administrative Regulations, or another state’s fish and wildlife law; or
(b) Knowingly provides false information on:
1. The application for a permit, or
2. The Annual Activity Report.

(c)[blank] Have more than three (3) valid complaints from customers lodged against him in a calendar year.

(2) The department shall investigate customer complaints against an operator to assess the validity of the complaint.

(3) [blank] Offending personnel whose permit has been revoked shall be ineligible to apply for another Nuisance Wildlife Control Operator Permit or be an assistant on another Nuisance Wildlife Control Operator Permit for a period of three (3) years.

(4) [blank] An individual whose permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 8. Items incorporated by reference. (1) The following material is incorporated by reference:
(a) "NWCO Application," edition August 2004; and

(2) The material may be inspected, copied, or obtained subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky, Monday through Friday from 8 a.m. to 4:30 p.m.
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W. JAMES HOST, Secretary
C. THOMAS BENNETT, Commissioner
APPROVED AGENCY: December 5, 2004
FILED WITH LRC: December 15, 2004 at 11 a.m.
CONTACT PERSON: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of: This administrative regulation establishes the requirements for Commercial Nuisance Wildlife Control permits and the conditions under which the permits may be used. Application and reporting requirements are also established. (a) What the administrative regulation does: establishes the application procedure, the permit requirements (describes what may and may not be taken with a NWCO permit), the disposal requirements, the reporting requirements, methods of taking and events which will result in the revocation of a NWCO permit. (b) The necessity of the administrative regulation: To regulate the taking of nuisance wildlife so that the Department may have a record of who is a NWCO, what was taken as nuisance wildlife, that the taking is humane, and the species taken by NWCOs are effectively managed. (c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to regulate the taking of wildlife. KRS 150.275 authorizes the department to promulgate administrative regulations for the issuance of permits for the taking and transporting of wildlife for commercial nuisance wildlife control, scientific, or educational purposes. This administrative regulation conforms to the statute by establishing the requirements for Commercial Nuisance Wildlife Control permits and the conditions under which the permits may be used. (d) How will this administrative regulation assist in the effective administration of the statutes: the administrative regulation will establish the details and parameters for the permitting and taking of nuisance wildlife. (2) If this is an amendment to an existing administrative regulation, provide a brief summary of: A public hearing was held and comments received were considered and incorporated into this administrative regulation. The regulation was amended to clarify language and be less burdensome to NWCOs. For example, the requirement was deleted that required the revocation of a NWCO permit if 3 violations of the rule were committed in a calendar year. NWCOs felt that the potential for abuse exists. False complaints may be made to the KDFWR. Also, the administrative regulation was clarified to establish that persons under 18 years of age are not precluded from assisting a NWCO. The regulation was also amended to reflect the concern that animal rights organizations feel that it is beneficial for the KDFWR to have authority to request NWCOs business records upon notice and reasonable request. (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: Again, this is a new administrative regulation. Necessity discussed above. (c) How does the amendment conform to 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 that will be affected. There were approximately 201 NWCO permitted in Kentucky in 2003. (4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: With the promulgation of this administrative regulation, NWCO operators will be required to pay a fee of $100 and score 70% on a test administered by the department. (5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no costs associated with the implementation of this administrative regulation beyond the $100 permit fee. The money generated by the NWCO fee will be applied to defraying the administrative cost of administering the test, compiling the annual reports, and other administrative costs. (a) Initially: There will be no additional cost to the agency to implement this administrative regulation beyond the NWCO fee referenced above. (b) On a continuing basis: There will be no additional cost to the agency. (c) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The current budget of the Division of Wildlife oversees wildlife permits, including NWCO permits. The Division of Wildlife will not have to draw upon another source of funding or budget beyond the $100 permit fee. (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 it if it is an amendment. It was necessary to establish a $100 fee to implement this administrative regulation. (e) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: The $100 NWCO permit fee was established. (f) TIERING: Is tiering applied? Tiering was not applied as all NWCO will be required to comply with this administrative regulation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Environmental and Financial Standards Divisions
(Amended After Comments)

806 KAR 6:010. Valuation standards; audits.

RELATES TO: KRS 304.2-290, 304.6-130-304.6-180
STATUTORY AUTHORITY: KRS 304.2-110
NECESSITY, FUNCTION, AND CONFORMITY: FO 2004-731,
signed July 9, 2004, created the Office of Insurance. KRS 304.2-
110(1) authorizes the executive director of insurance to promulgate administrative regulations necessary for or as an aid to the effect-
tuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-110. KRS 304.6-130 to 304.6-180 requires the ex-
ecutive director [commissioner] to annually value the liability item of the Net Premium Annual Statement form as itemized in Exhibit 5 [8] of that statement. This administrative regulation provides the frame-
work for valuation standards that are acceptable [to the depart-
ment], and provides mortality tables for the that ["free"-audits are provided when company records and summaries are completed in a uniform, historical manner that facilitates] determination of adequate reserves.

Section 1. Definitions. (1) "1958 Commissioners Extended Term Table of Mortality" means the mortality table which:
(a) is based on underwriting requirements that do not in-
clude evidence of medical insurability; and
(b) incorporates mortality rates adequate to take into ac-
count the increase in mortality rate to which the class of per-
son whose lives are insured with credit life insurance are subject.
(2) "1958 Commissioners Standard Ordinary Table of Mor-
tality" means the mortality table which:
(a) is based on underwriting requirements that include
evidence of medical insurability; and
(b) is a recognized table of mortality that will produce sub-
stantially the same result as the "1958 Commissioners Ex-
tended Term Table of Mortality" if thirty (30) percent is added, the additional thirty (30) percent being the amount necessary
to result in mortality rates adequate to take into account the
increase in mortality to which the class or persons whose
lives are insured with credit life insurance are subject.
(3) "2001 Commissioners Standard Ordinary Male Com-
posite Ultimate Mortality Table" means a mortality table
which:
(a) Consists of rates for male lives in the ultimate form with smokers and nonsmokers combined;
(b) Was developed by the American Academy of Actuaries CSCO Task Force on an Experience Modification Credit Life Insurance Mortality Task Force and adopted by the NAIC in December 2002; and
(c) Includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.
(d) "Credit Life Insurance" is defined in KRS 304.19-02(01).
(e) "Single Premium Group Credit Life Insurance" means credit life insurance for which a charge often is passed on to the debtor for the term of the coverage of the term of the debt and that is often included in the total sum of the obligation.

Section 2. Valuation. In conjunction with the valuation required by KRS 304.6-130, each domestic life insurer shall, in the form of an affidavit by its actuary or consulting actuary, furnish the life actuary, in the [such] manner, form, and order as he may prescribe, [such] totals and summaries in connection with [such] valuation as the life actuary may deem necessary. In addition, each domestic life insurer shall supply and furnish to the life actuary, in corresponding order, with the necessary documentation, lists, tabulations and working papers for policy contract obligations to be valued which shall be in readily accessible and audible form at the home office of the [such] insurer.

Section 3. [2.] Certificate of Valuation. The executive director [commissioner] shall certify the valuation in writing to the company and the executive director [commissioner] may [at his discretion] accept for purposes of issuing a certificate of valuation, the "Request for Certification of Reserves" by a domestic life insurance company which is certified by an actuary on a form satisfactory to the purpose by the executive director [commissioner]. However, the executive director [commissioner] shall annually cause the records of domestic life insurance companies to be audited, using appropriate methods to assure himself that life insurance companies are properly valuing their reserve liabilities as provided by statute.

Section 4. [3.] Components of [Definitions.] Life insurance policies, annuities, and pure endowment contracts shall include [be deemed to mean such] contracts, any [with together with] riders or [and] additional benefits related to the contract [thereeto].

Section 5. [4.] Single Premium Credit Life Insurance. (1) Single premium credit life insurance is coverage for which a charge often is passed on to the debtor for the term of the coverage or the term of the debt. It is often included in the total sum of the obligation. The [such] charge is a single premium to the insurance company and must be remitted in that manner or mode and must be reserved by the company accordingly.

(2) Single premium group credit life insurance and single premium individual policies of credit life insurance constitute [and are] life insurance that is issued on a substantially basis. It is written without any evidence of medical insurability. Experience has demonstrated that persons, as a class, whose lives are insured by policies and contracts of credit life insurance do not live as long as persons, as a class, whose lives are insured by other types of life insurance with normal standards of underwriting.

(3) The 1958 Commissioners-Extended Term Table of Mortality, which is based upon underwriting requirements that do not include evidence of medical insurability, takes into account the increase in mortality rate to which the class of persons whose lives are insured with credit life insurance are subject and is a recognized mortality table that will result in the setting aside of reserves sufficient to pay all outstanding policies of credit life insurance as they mature and claims.

(4) The 1958 Commissioners-Extended Term Table of Mortality, which is based upon underwriting requirements that include evidence of medical insurability also is a recognized table of mortality that will produce substantially the same result as the 1958 [1986] Commissioners-Extended Term Table of Mortality if thirty (30) percent is added thereto, the additional thirty (30) percent being the amount necessary to take into account the increased mortality to which the class of persons whose lives are insured by credit life insurance are subject.

(5) Accordingly, and pursuant to the authority contained in KRS 304.6-140(2)(a) [1986], the reserves for all policies of single premium group credit life insurance and all single premium individual policies of credit life insurance issued to be effective prior to January 1, 2006 shall be computed [based] on the basis of:

(a) 100 percent of the 1958 [1986] Commissioners Extended Term Table of Mortality;
(b) For on-the-base [of] 130 percent of the 1958 Commissioners Standard Ordinary Table of Mortality; or
(c) In accordance with subsection (2) of this section.

(2) Pursuant to the authority contained in KRS 304.6-140(2)(a) the minimum standard for reserves for all policies of group credit life insurance and individual credit life insurance issued to be effective prior to January 1, 2006, may be determined according to the following:

(a) The interest rates used in determining the minimum standard for valuation shall be the calendar year statutory valuation interest rates as defined in KRS 304.6-145;
(b) The method used in determining the minimum standard for valuation shall be the commissioners reserve valuation method as defined in KRS 304.6-150;
(c) The minimum mortality standard for both male and female insureds shall be the 2001 Commissioners Standard Ordinary Male Composite Ultimate Mortality Table; and
(d) Where the credit life insurance policy or certificate insures two (2) lives, the minimum mortality standard shall be twice the mortality in the 2001 Commissioners Standard Ordinary Male Composite Ultimate Mortality Table based on the age of the older insured.

(3) Pursuant to the authority contained in KRS 304.6-140(2)(a) the minimum standard for reserves for all policies of group credit life insurance and individual credit life insurance issued to be effective on or after January 1, 2006, shall be determined according to the following:

(a) The interest rates used in determining the minimum standard for valuation shall be the calendar year statutory valuation interest rates as defined in KRS 304.6-145;
(b) The method used in determining the minimum standard for valuation shall be the commissioners reserve valuation method as defined in KRS 304.6-150;
(c) The minimum mortality standard for both male and female insureds shall be the 2001 Commissioners Standard Ordinary Male Composite Ultimate Mortality Table; and
(d) Where the credit life insurance policy or certificate insures two (2) lives, the minimum mortality standard shall be twice the mortality in the 2001 Commissioners Standard Ordinary Male Composite Ultimate Mortality Table based on the age of the older insured.

(4) [16] Office of Insurance [Departmental] examiners, in examining company affairs, shall deem reserves maintained in accordance with this administrative regulation to be in compliance with the Kentucky Insurance Code, KRS Chapter 304, for all years under examination.

Section 6. [5.] "Special" Policies. (1) "Coupon," "pure endowment," "founders," "charter," "special," and similar type policies,[if permissible under these administrative regulations] shall use all of the policy benefits afforded in the computation of the mean reserve formula. Mean reserve factors shall be printed for use in the computation of policy reserves. The timing, frequency of [frequency] contingency (if any), and the method of pure endowment payment shall be clearly shown in the formula used to compute the mean reserve. Mean reserve computation shall not deviate from the formula and factor [line] developed.

(2) Discriminatory and arbitrary action by the life insurance company to pay some benefits prior to contract date shall [will] not create an asset or create a reduction of aggregate reserve liability unless an enforceable negotiable instrument is evidenced.

(3) A separate file of the "special" type policies mentioned in subsection (1) of this section, shall [will] be initiated by the Life
Actuary of the Office [Department] of Insurance and shall be maintained by his office in addition to policies filed with the Policy Analyst in the Life Division for each domestic life insurance company, a folder for each "special" type policy in force shall [will] include a specimen policy, actuarial formula used to arrive at the mean reserve, and a factor table of the various factors by age at issue distributed for the in-force durations considered.

(4) For domestic life insurance companies with less than $500,000,000 of individual life in force and who do not use a standard program package with uniform programming, the following benefit breakdown shall [will] be necessary. In force volume used in the mean reserve valuation run shall [will] be segregated to allow for auditing of the various benefits. These benefits shall [will] be enumerated as provided for in the filed specimen policy and shall include [...as applicable, such items as] basic policy, return of premium, unmatured endowments, termination benefits, etc.

(5) Domestic life insurance company (the definition of the category of) subsection (4) of this section shall [will] have reporting procedures and requirements compatible with the program package without sacrificing any audit trail of factors and their application. The requirements vary from company to company based on the procedure but shall [will] be in a pattern consistent with that approved for that company and shall [will] closely follow the requirements for other domestic life insurance companies.

Section 7, [6.] Cost of [Penalties for] Noncompliance. (1) If [When] ... and the certificate issued by the office [department], the executive director [commissioner] ... (2) If [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 refilled NAIC annual statement on a significant error or describe corrective internal procedures in the company prior to the next filed NAIC statement for when the resultant error is not significant.

Section 8, [7.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "1958 Commissioners Extended Term Table of Mortality (1964)"; and
(b) "1958 Commissioners Standard Ordinary Table of Mortality (1968)";
(c) "2001 Commissioner Standard Ordinary Male Composites Ultimate Mortality Table (2001)."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the web site at: http://dop.ppr.ky.gov/Frankfury.

LAUANA S. WILCHER, Secretary
JAMES ADAMS, Commissioner

 MARTIN KOTTERS, Executive Director
APPROVED BY AGENCY: December 3, 2004
FILED WITH LRC: December 6, 2004 at noon
Contact Person: DJ Wasson, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40620-0517 phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the framework for valuation standards acceptable to the Office of Insurance, and sets out the conditions under which the actuary designated by the Office of Insurance will verify the valuation of a company's reserves without cost to the insurer.

(b) The necessity of this administrative regulation: This administrative regulation serves to establish standards and incorporates a new mortality table for the valuation of credit life insurance.

(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. Further, KRS 304.6-140 provides for its use in the valuation of credit life insurance policies. This administrative regulation provides the framework for valuation standards acceptable to the office of insurance, and provides mortality tables which have been approved for the determination of adequate reserves.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the framework for valuation standards acceptable to the office of insurance, and provides mortality tables which have been approved for the determination of adequate reserves.

(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 incorporates a mortality table for the valuation of group credit life insurance and individual credit life insurance. The necessity of the amendment to this administrative regulation: This amendment is necessary to fix typographical errors and other technical amendments. Further, KRS 304.6-140 states that the executive director must approve mortality tables by administrative action. This amendment reflects the executive director's approval of a mortality table.

(b) How the amendment conforms to the content of the authorizing statutes: KRS 304.3-140 states that the executive director must approve mortality tables by administrative regulation. This amendment reflects the executive director's approval of a mortality table.

(c) 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 304.6-140.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation should benefit approximately 250 life insurers by allowing them to utilize an updated mortality table for valuation standards for credit life insurance products.

(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 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? Yes. Pursuant to KRS 13A.210(2), tiering is applied to simplify and reduce report and recordkeeping requirements. Domestic life insurance companies with less than $500,000,000 of individual insurance in force and who do not use a standardized program package with uniform programming are permitted to have reporting procedures and requirements that are compatible with their program package rather than in the format requested by the company's actuary.
CABINET FOR HEALTH AND FAMILY SERVICES
Office of Certificate of Need
(Amended After Comments)


RELATES TO: KRS 216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990
STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a), 216B.330, EO 2004-726

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized on a previously issued certificate of need.
(2) "Cabinet" is defined by KRS 216B.016(5).
(3) "Certificate of Need Newsletter" means the monthly newsletter published by the cabinet regarding certificate of need matters.
(4) "Days" means calendar days.
(5) "Emergency circumstances" means situations that pose an imminent threat to the life, health, or safety of a citizen of the Commonwealth.
(6) "Formal review" means the review of applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.052(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and Section 6 of this administrative regulation.
(7) "Improvement" means change or addition to the premises of an existing facility that enhances its ability to deliver the services that it is authorized to offer under its existing license or an approved certificate of need.
(8) "Industrial ambulance service" means a Class I specialized provider licensed by the cabinet to serve the employees, customers, or patrons of a business, race track, recreational facility or similar organization excluding a health care facility.
(9) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, personal care beds, and Alzheimer nursing home beds.
(10) "Nonsubstantive review" is defined by KRS 216B.015(17).
(11) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensure and regulatory functions of health care facilities.
(12) "Owner" means a person as defined in KRS 216B.015(21) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.
(13) "Proposed service area" means the geographic area the applicant proposes to serve.
(14) "Public information channels" means the Office of Communications in the Cabinet for Health and Family Services.
(15) "Public notice" means notice given through:
(a) Public information channels;
(b) The cabinet's Certificate of Need Newsletter.
(16) "Show cause hearing" means a hearing before the cabinet at which a person is required to explain or demonstrate why that person is not required to obtain a certificate of need or is not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.
(17) "Swing bed" means an existing licensed bed within an acute care hospital or a critical access hospital (CAH) that the Office of Inspector General has designated as meeting the special requirements for a hospital or a CAH provider of long-term care services contained in 42 C.F.R. 482.66 and 485.645.

Section 2. Letter of Intent. (1) The Certificate of Need Letter of Intent (Form #71) shall be filed with the cabinet by all applicants for a certificate of need. This shall:
(a) Include those applicants requesting nonsubstantive review under the provisions of Section 8 of this administrative regulation; and
(b) Not include those applicants requesting nonsubstantive review under the provisions of KRS 216B.053(3)(a) through (e).
(2) Upon receipt of a letter of intent, the cabinet shall provide the sender with written acknowledgment of receipt of the letter and shall publish notice of the receipt in the next published certificate of need newsletter.
(3) An application for a certificate of need shall not be processed until the letter of intent has been on file with the cabinet for thirty (30) days.

Section 3. Certificate of Need Application. (1) An applicant for a certificate of need shall file an application with the cabinet on the appropriate Certificate of Need Application (forms 2A, 2B or 2C).
(2) When filing an application for certificate of need, the applicant shall file an original and one (1) copy of the appropriate certificate of need application, together with the prescribed fee set forth in 900 KAR 6:020 with the cabinet on or before the deadlines established by Section 4 of this administrative regulation. An application that is postmarked on or before the deadlines established by Section 4 of this administrative regulation shall be accepted by the cabinet as having been timely filed.
(3) Formal or nonsubstantive review of an application for a certificate of need shall not begin until the application has been deemed complete by the cabinet.
(4) The cabinet shall not deem an application complete unless:
(a) The applicant has provided the cabinet with all of the information necessary to complete the application; or
(b) The applicant has declined to submit the requested information and has requested that its application be reviewed as submitted.
(5) Once an application has been declared complete, the applicant shall not submit additional information regarding the application unless the information is introduced at a public hearing.
(6) Once an application has been declared complete, it shall not be amended to:
(a) Increase the scope of the project;
(b) Increase the amount of the capital expenditure;
(c) Expand the size of the proposed service area;
(d) Change the location of the health facility or health service;
(e) Change the owner, unless the application involves a licensed health facility and a change of ownership with appropriate notice has occurred after the application was submitted.
(7) An application that has been declared complete may be amended at a public hearing to:
(a) Decrease the scope of the project;
(b) Decrease the amount of the capital expenditure; or
(c) Decrease the proposed service area.
(8) Applicants who have had proposals for certificates of need approved under the nonsubstantive review provisions of Section 8 of this administrative regulation may request the cabinet to change the specific location to be designated on the certificate of need if:
(a) The facility has not yet been licensed;
(b) The location is within the county listed on the certificate of need application; and
(c) The applicant files a written request with the cabinet within 180 days of the date of issuance of the certificate of need. A request shall include the reason why the change is necessary.
(9) If an application is not filed with the cabinet within one (1) year of the date of the filing of a letter of intent, the letter of intent shall expire, and the applicant shall file a new letter of intent at least thirty (30) days prior to submitting an application.
(10) If an application is withdrawn, the applicant shall file a new letter of intent at least thirty (30) days prior to resubmittting an application.
Section 4. Timetable for Submission of Applications. (1) The cabinet's timetable for giving public notice for applications deemed complete for formal review and for applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(f) and Section 8 of this administrative regulation shall be as follows:
(a) Public notice for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, cardiac catheterization, open heart surgery, and new technological developments shall be given on the third Thursday of the following months:
   1. January; and
   2. July.
(b) Public notice for hospice and home health agencies shall be given on the third Thursday of the following months:
   1. February; and
   2. August.
(c) Public notice for ground ambulance providers, private duty nursing services, mobile services and rehabilitation agencies shall be given on the third Thursday of the following months:
   1. March; and
   2. September.
(d) Public notice for day health care programs and personal care beds shall be given on the third Thursday of the following months:
   1. April; and
   2. October.
(e) Public notice for hospital, psychiatric, comprehensive physical rehabilitation, chemical dependency facilities, ambulatory care centers, freestanding ambulatory surgical centers, and birthing centers shall be given on the third Thursday of the following months:
   1. May; and
   2. November.
(f) Public notice for long-term care beds shall be given on the third Thursday of November.
(g) Public notice for intermediate care beds for mental retardation, developmentally disabled facilities and psychiatric residential treatment facilities (PRTF) shall be given on the third Thursday of the following months:
   1. June; and
   2. December.
(h) A proposal not included in paragraphs (a) through (g) of this subsection shall be placed in the cycle that the cabinet determines to be most appropriate.
(2) In order to have an application deemed complete and placed on public notice, an application shall be filed with the cabinet at least fifty (50) days prior to the date of the desired public notice.

Section 5. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, all applications for certificate of need shall be reviewed for completeness pursuant to Section 6 of this administrative regulation.
(2) Unless granted nonsubstantive review status, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the formal review criteria set forth at Section 7 of this administrative regulation.
(3) If granted nonsubstantive review status under Section 8 of this administrative regulation, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth at Section 8 of this administrative regulation.

Section 6. Completeness Review. (1) Fifteen (15) days after the deadline for filing an application in the next appropriate batching cycle, the cabinet shall conduct an initial completeness review to determine whether the application is complete for applications for both formal review and nonsubstantive review requested pursuant to Section 8 of this administrative regulation. Applications for which nonsubstantive review status has been requested pursuant to KRS 216B.095(3)(a) through (e) shall be reviewed within fifteen (15) days of receipt.
(2) If the cabinet finds that the application for formal review is complete, the cabinet shall:
(a) Notify the applicant in writing that the application has been deemed complete and that review of the application for approval or denial of a certificate of need shall begin upon public notice being given; and
(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.
(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that the application has been deemed complete and that review of the application for approval or denial of a certificate of need shall begin upon public notice being given.
(4) A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.
(5) The cabinet shall give public notice for applications granted nonsubstantive review status under Section 8 of this administrative regulation in the next appropriate certificate of need newsletter that status has been granted and that review of the application for approval or denial of a certificate of need has begun.
Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) shall be mailed to affected persons.
(6) A determination that an application is complete shall:
(a) Indicate that the applicant has minimally responded to the necessary items on the application;
(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and
(c) Not imply that the application has met the review criteria for approval of a certificate of need.
(7) If the cabinet finds that the application is incomplete, the cabinet shall:
(a) Provide the applicant with written notice of the information necessary to complete the application; and
(b) Notify the applicant that the cabinet shall not deem the application complete unless within fifteen (15) days of the date of the cabinet's request for additional information:
   1. The applicant submits the information necessary to complete the application by the date specified in the request; or
   2. The applicant requests in writing that the cabinet review its application as submitted.
(8) if, upon the receipt of the additional information, the cabinet finds that the application for formal review is complete, the cabinet shall:
(a) Notify the applicant in writing that:
   1. The application for formal review has been deemed complete; and
   2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and
(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.
(9) If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall:
(a) Notify the applicant in writing that:
   1. The application has been deemed complete; and
   2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and
   2. A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date that the application was deemed complete; and
(b) Give public notice in the next appropriate certificate of need newsletter for applications granted nonsubstantive review status under Section 8 of this administrative regulation, that status has been granted and that review of the application for approval or denial of a certificate of need has begun.
Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) shall be mailed to affected persons.
(10) If the application, or if the information submitted, is insufficient to complete the application, the cabinet shall:

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(a) Request the information necessary to complete the application; and
(b) Inform the applicant that the application shall not be deemed complete and shall not be placed on public notice until:
1. The applicant submits the information necessary to complete the application; or
2. The applicant requests in writing that its application be reviewed as submitted.

(11) Once an application has been deemed complete, an applicant shall not submit additional information to be made part of the public record unless:
(a) The information is introduced at a hearing; or
(b) In the case of a deferred application, the additional information is submitted at least twenty (20) days prior to the date that the deferred application is placed on public notice.

(12) A determination that an application is complete shall:
(a) Indicate that the application is sufficiently complete to be reviewed for approval or disapproval;
(b) Be a determination of the accuracy of, or weight to be given to, the information contained in the application; and
(c) Not imply that the application has met the review criteria for approval.

Section 7. Considerations for Formal Review. In determining whether to approve or deny a certificate of need, the cabinet's review of applications under formal review shall be limited to the following considerations:

(1) Consistency with plans. (a) To be approved, a proposal shall be consistent with the State Health Plan established in 900 KAR 5:020 [900 KAR 17:041].
(b) In determining whether an application is consistent with the State Health Plan, the cabinet shall apply the latest inventories and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the cabinet's decision.

(2) Need. (a) For purposes of reviewing applications for long-term care beds other than personal care beds:
1. A nursing facility (NF) bed shall:
   a. Include long-term care beds licensed as Alzheimer beds, intermediate care beds, skilled nursing beds, nursing facility beds, and nursing home beds.
   b. Not include personal care beds, nursing home beds established under the continuing care retirement community (CCRC) provisions of this administrative regulation, or long-term care beds located in state or federally-operated facilities.
2. The average number of empty beds for a county shall be calculated by multiplying the number of nonstate and non-CCRC licensed NF beds reported in the cabinet’s latest Annual Long-Term Care Services Report times the occupancy percentage for the county as also reported in the cabinet’s latest Annual Long-Term Care Services Report.
3. The number of beds being requested by the applicant shall equal A.
4. As reported in the cabinet’s latest Annual Long-Term Care Services Report, the number of patients from the applicant’s county of location who found NF bed placement in a noncontiguous county shall equal B.
5. The average number of empty beds in the county of application and all counties contiguous to the county of application shall equal C.
(b) For purposes of reviewing applications for long-term care beds other than personal care beds Consistency with Criterion 2 (Need) shall only be found if:
   A < B – C
(3) Accessibility. The cabinet shall determine whether the health facility or health service proposed in the application will be accessible in terms of timeliness, amount, duration, and personnel sufficient to provide the services proposed.
(4) Interrelationships and linkages. The cabinet shall determine:
   (a) Whether the proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state; and
   (b) Whether the proposal is accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system.
(5) Costs, economic feasibility, and resource availability. The cabinet shall determine:
   (a) Whether it is economically feasible for the applicant to implement and operate the proposal; and
   (b) If applicable, whether the cost of alternative ways of meeting the need identified in the geographic area defined in the application would be a more effective and economical use of resources.
(6) Quality of services. The cabinet shall determine:
   (a) Whether the applicant is prepared to and underlines the activities and facilities involved in the proposal in a manner consistent with appropriate standards and requirements established by the cabinet; and
   (b) Whether the applicant has the ability to comply with applicable licensure requirements. The fact that there is not an applicable licensure category shall not constitute grounds for disapproving an application.

Section 8. Nonsubstantive Review. (1) The cabinet may grant a nonsubstantive review status to applications to change the location of a proposed health facility or to relocate a licensed health facility only if:
(a) There is no substantial change in health services or bed capacity; and
(b) The change of location or relocation is within the same county.
(2) In addition to the projects specified in KRS 216.B.095(3)(a) through (e), the Office of Certificate of Need may grant a nonsubstantive review status to an application for which a certificate of need is required if:
(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component [are no standards or review criteria] in the State Health Plan;
(b) The proposal involves the establishment of an ambulatory surgery center by an unlicensed ambulatory surgery center that was existing and operating by July 15, 1997, if:
   1. The unlicensed ambulatory surgery center was initially established as a private office or clinic of physicians; and
   2. The application to establish or expand was declared complete prior to January 8, 2003;
   [The proposal involves the conversion of no more than ten (10) hospital-based nursing facility beds to comprehensive rehabilitation beds by a facility that operates licensed comprehensive rehabilitation beds, if the application was declared complete prior to January 8, 2003;]
   (d) The proposal involves the conversion of hospital-based psychiatric beds to acute care beds, if the application was declared complete prior to January 8, 2003;
   (e) The proposal involves an existing hospital proposing to provide a service for which there are review criteria in the State Health Plan, if:
      1. The service is currently being provided at the hospital under a license held by a third party mobile provider;
      2. The hospital can demonstrate that the service can be provided under the hospital license more cost effectively than can be provided under a license held by a third party; and
      3. The application was declared complete prior to January 8, 2003; or
   (c) [If] The proposal involves an application from a hospital to reestablish the number of acute care beds that it converted to nursing facility beds pursuant to KRS 216.B.020(4), if the number of nursing facility beds so converted are delicensed.
   (d) The proposal involves an application to alleviate circumstances which the Office of Certificate of Need has recognized as emergency circumstances pursuant to Section 12 of this administrative regulation;
   (e) The proposal involves an application to establish a rehabilitation agency where the applicant agrees in writing not to seek Medicaid certification or Medicaid reimbursement;
   (e) The proposal involves an application to acquire and relocate nursing facility beds from one long term care facility to another long term care facility.
1. If the acquisition and relocation take place within the
same county, the following restrictions shall apply:

a. The letter of intent shall be filed on or before August 29, 2005 and the application shall be filed on or before September 28, 2005.

b. The application shall be accompanied by a properly completed notice of intent to acquire (Form #9), and by evidence of the selling facility's binding commitment to sell upon approval of the application.

c. If the respondent is to be from one county to another county, the following restrictions apply:

a. The letter of intent shall be filed no later than August 29, 2005 and the application shall be filed no later than September 28, 2005.

b. The application shall be accompanied by a properly completed notice of intent to acquire (Form #9), and by evidence of the selling facility's binding commitment to sell upon approval of the application.

c. The selling facility shall be located in a county that had a nursing facility bed occupancy rate of less than ninety-five (95) percent (rounded up to the next whole number if ninety-four and five-tenths (94.5) percent or greater and rounded down to the next whole number if less than ninety-four and five-tenths (94.5) percent) according to the latest published version of the Kentucky Annual Long Term Care Services Report.

d. The acquired beds shall only be relocated to a county whose nursing facility bed occupancy was ninety-five (95) percent or greater (rounded up to the next whole number if ninety-four and five-tenths (94.5) percent or greater and rounded down to the next whole number if less than ninety-four and five-tenths (94.5) percent) according to the latest published version of the Kentucky Annual Long Term Care Services Report.

e. No long term care facility shall sell or acquire more than ten (10) of its licensed nursing facility beds.

(f) The proposal involves an application to establish no more than thirty (30) nursing facility beds at a dual licensed pediatric facility as defined in 997 KAR 1:932, Section 1.

(ii) The proposal involves an application to relocate long term care beds from one (1) health facility to another health facility, provided that, where applicable, the application is accompanied by a properly completed notice of intent to acquire (Form #9), and by evidence of the selling facility's commitment to sell upon approval of the application.

(3) If an application is denied nonsubstantive review status by the Office of Certificate of Need, the application shall automatically be placed in the formal review process.

(4) If an application is granted nonsubstantive review status by the Office of Certificate of Need, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(5) If an application is granted nonsubstantive review status by the Office of Certificate of Need, any affected person who believes that the applicant is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review. The provisions of Section 16 of this administrative regulation shall govern the conduct of all nonsubstantive review hearings.

Nonsubstantive review hearings shall not be comparative reviews but may be consolidated for hearing purposes.

(6) If an application for certificate of need is granted nonsubstantive review status by the Office of Certificate of Need, there shall be a presumption that the facility or service is needed and applications granted nonsubstantive review status by the Office of Certificate of Need shall not be reviewed for consistency with the State Health Plan.

(7) The cabinet shall approve applications for certificates of need that have been granted nonsubstantive review status by the office of certificate of need if:

(a) The application does not propose a capital expenditure; or

(b) The application does propose a capital expenditure and the cabinet finds that the facility or service with respect to which the capital expenditure is proposed to be made is required. The cabinet shall find that the facility or service with respect to which the capital expenditure is proposed to be made is required, unless the cabinet finds that the presumption of need provided for in subsection (5) of this section has been rebutted by clear and convincing evidence by an affected party.

(8) The cabinet shall disapprove applications for certificates of need that have been granted nonsubstantive review if:

(a) The cabinet finds that the applicant is not entitled to nonsubstantive review status; or

(b) The cabinet finds that the presumption of need provided for in subsection (5) of this section has been rebutted by clear and convincing evidence by an affected party.

(9) The cabinet shall approve or disapprove an application which has been granted nonsubstantive review status by the Office of Certificate of Need within thirty-five (35) days of the date that public notice is given that nonsubstantive review status has been granted.

(10) If a certificate of need is denied following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and Section 17 of this administrative regulation;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

Section 9. Notice of Decision. (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application.

(2) Notification of approval shall be in writing and shall include:

(a) Verification that the review criteria for approval have been met;

(b) Specification of any terms or conditions limiting a certificate of need approval, including limitations regarding certain services or patients. This specification shall be listed on the facility or service's certificate of need and license;

(c) Notice of appeal rights; and

(d) The amount of capital expenditure authorized, if applicable.

(3) Written notification of disapproval shall include:

(a) The reason for the disapproval; and

(b) Notice of appeal rights.

(4) An application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months from the original date of filing, absent a showing of a significant change in circumstances.

Section 10. Deferral of Application. (1) An applicant may defer review of an application by notifying the cabinet in writing of its intent to defer review.

(a) If the application has been granted nonsubstantive review status, the notice to defer shall be filed no later than five (5) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed no later than six (6) days prior to the date of the hearing.

(b) If the application is being reviewed under formal review, the notice to defer shall be filed no later than ten (10) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed eight (8) days prior to the date of the hearing.

(2) If deferral is requested, the application shall be deferred to the next regular batching cycle and shall be placed on public notice pursuant to the timetables set forth in Section 4 of this administrative regulation.

(3) If an application is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty (20) days prior to the date that the deferred application is placed on public notice.

(4) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person if the application is subject to formal review, or an affected person if the application has been granted nonsubstantive review.
within:

(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or

(b) Seven (7) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

Section 11. Withdrawal of an Application. (1) An applicant may withdraw an application for certificate of need prior to the entry of a decision to deny or approve the application by notifying the cabinet in writing of the decision to withdraw the application.

(2) If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant's decision to withdraw the application.

Section 12. Emergency Circumstances. (1) If an emergency circumstance arises, a person may proceed to alleviate the emergency without first obtaining a certificate of need provided that [7]:

(a) The person is not a hospital, or the person shall be licensed by the appropriate licensing authority to provide the service necessary to alleviate the emergency; and

(b) If the person is a hospital, the hospital shall have an already-issued certificate of need to provide the service necessary to alleviate the emergency; and

(c) The Office of Certificate of Need [cabinet] is notified in writing within five (5) days of the commencement of the provision of the service required to alleviate the emergency.

(d) The Office of Certificate of Need acknowledges in writing that it recognizes that an emergency does exist.

(2) The notice to the Office of Certificate of Need shall be accompanied by a affidavit and other documentation from the person proposing to provide emergency services, which shall contain the following information:

(a) A detailed description of the emergency which shall include at least the following information:

1. A description of health care services that will be provided to the person or persons to whom the services will be provided, including proof of eligibility for the service.

2. A list of the providers in the county licensed to provide the services that will be provided during the emergency; and

3. Proof that other providers licensed in the service area to provide the service are aware of the need for the service to be provided to the person and have refused or are unable to provide the service.

(b) The steps taken to alleviate the emergency;

(c) The location or geographic area where the emergency services are being provided; and

(d) [If applicable] the name and address of each person to whom emergency services are being provided; and

(e) The expected duration of the emergency.

(3) The Office of Certificate of Need may request additional information from the person proposing to provide emergency services before it acknowledges that an emergency does exist.

(4) If the provision of service to meet the emergency circumstance is required to continue beyond thirty (30) days from the date that the notice is filed with the cabinet, the person providing the emergency service shall file an application for a certificate of need for the next appropriate public notice pursuant to Section 4 of this administrative regulation.

(5) [6] The person providing the emergency service may continue to alleviate the emergency circumstances without a certificate of need until:

(6) Once a Certificate Of Need is issued, it shall be issued for the limited purpose of alleviating the emergency and shall remain in effect until the emergency ceases to exist. An emergency shall cease to exist if the person or persons to whom the service is being rendered no longer require the service or an existing or new provider becomes licensed or certified to provide the service for which the emergency has been declared and provides notice to the CON office and the Office of Inspector General that it can meet the needs of the person or persons for whom the emergency service is being provided.

(7) When the emergency circumstance ceases to exist, the CON holder shall notify the CON office that it is no longer providing the service and the CON office shall notify the Office of Inspector General that the emergency no longer exists.

(8) The Office of Inspector General shall revoke the license of the emergency certificate of need holder upon notification of revocation by the CON office.

(a) The emergency cease to exist; or

(b) The cabinet issues a final decision to approve or disapprove the application for certificate of need.

Section 13. Transfers of Certificates of Need. (1) Certificate of need issued to an existing facility for purposes other than replacement of the facility may be transferred to the new owner of the facility if the change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) The purchase of all capital stock or a controlling interest of capital stock of a person who is the holder of an approved certificate of need for the establishment of a new health facility shall not constitute the sale, trade or transfer of a certificate of need to another person for purposes of KRS 216B.061(1)(h) and 216B.0615.

Section 14. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility shall be valid only for the location stated on the certificate.

Section 15. Filings. (1) The filing of all documents required by this administrative regulation shall be made by filing the documents with the Office of Certificate of Need, HS11E-D, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due date.

(2) Filings of documents, other than certificate of need application and proposed hearing reports, may be made by facsimile transmission if:

(a) The documents are received by the cabinet by facsimile transmission on or before 4:30 p.m. eastern time on the date due; and

(b) An original document is filed with the cabinet on or before 4:30 p.m. eastern time on the next working day after the due date.

(3) The Office of Certificate of Need shall endorse by file stamp the date that each filing is received and the endorsement shall constitute the filing of the document.

(4) In computing any period of time prescribed by this administrative regulation, the date of notice, decision or order shall not be included.

(5) The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal state holiday, in which case the event shall be extended three (3) days.

Section 16. Hearings. (1) Health facilities established without a certificate of need pursuant to KRS 216B.020(2)(a) shall not be considered affected persons for purposes of KRS 216B.085 and shall not have the right to request a public hearing pursuant to KRS 216B.085.

(2) Hearings on certificate of need matters shall be held by hearing officers from the Cabinet for Health and Family Service's Health Services Administrative Hearings Branch. A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(3) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner which shall promote the orderly and prompt conduct of the hearing.

(4) Notice of the time, date, place and subject matter of each hearing shall be:

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area not less than ten (10) days prior to the date of the hearing;

(b) Published in the CON newsletter if applicable; and

(c) Provided to members of the general public through public
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information channels.

(5) A public hearing shall be canceled if the person or persons who requested the hearing withdraws the request by giving written notification to the party of Certificate of Need that the hearing is no longer required. The consent of affected persons who have not requested a hearing shall not be required in order for a hearing to be canceled.

(9) Any dispositive motion made by a party to the proceedings shall be filed with the hearing officer three (3) working days prior to the scheduled date of the hearing.

(7) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:
1. Formulate and simplify the issues;
2. Identify additional information and evidence needed for the hearing; and
3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:
1. Tape record the conference; or
2. If requested by a party to the proceedings, arrange for a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:
1. Instruct the parties to:
   a. Formulate and submit a list of genuine contested issues to be decided at the hearing;
   b. Raise and address issues that can be decided before the hearing; or
   c. Formulate and submit stipulations to facts, laws, and other matters;
2. Prescribe the manner and extent of the participation of the parties or persons who shall participate;
3. Rule on any pending motions for discovery or subpoenas; or
4. Schedule dates for the submission of prefilled testimony, further preliminary conferences, and submission of briefs and documents.

(8) At least five (5) days prior to the scheduled date of any nonsubstantive review hearings and at least seven (7) days prior to the scheduled date of all other hearings, all persons wishing to participate in the party to the proceedings shall file an original and one (1) copy of the following for each affected application with the cabinet and serve copies on all other known parties to the proceedings:

(a) Notice of Appearance, Form #3;
(b) Witness List, Form #4; and
(c) Exhibit List, Form #5 and attached exhibits.

(9) (a) If a hearing is requested on an application which has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall:
1. File a new Notice of Appearance, Form #3; and
2. Either:
   a. Incorporate previously-filed witness lists (Form #4) and exhibit lists (Form #5); or
   b. File amended Forms #4 and #5.
(c) The new party to the hearings shall file original Forms #3, #4 and #5.

(c) Forms shall be filed in accordance with subsection (8) of this section.

(10) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. All parties appearing at the hearing shall file an appearance by stating their names and addresses.

(11) Each party shall have the opportunity to:
(a) Present its case;
(b) Make opening statements;
(c) Call and examine witnesses;
(d) Offer documentary evidence into the record;
(e) Make closing statements; and
(f) Cross-examine opposing witnesses on:
1. Matters covered in direct examination; and
2. At the discretion of the hearing officer, other matters relevant to the issues.

(12) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(13) The hearing officer may:
(a) Allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed;
(b) Act to exclude irrelevant, immaterial or unduly repetitious evidence; and
(c) Question any party or witness.

(14) The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed, at the discretion of the hearing officer.

(15) The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.

(16) Witnesses shall be examined under oath or affirmation.

(17) Witnesses may, at the discretion of the hearing officer:
(a) Appear through deposition or in person; and
(b) Provide written testimony in accordance with the following:
1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;
2. The witness shall authenticate the document under oath; and
3. The witness shall be subject to cross-examination.

(18) The hearing officer may accept documentary evidence in the form of copies of excerpts if:
(a) The original is not readily available;
(b) Upon request, parties are given an opportunity to compare the copy with the original; and
(c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (Form #5) and filed with the hearing officer and other parties at least:
   1. Seven (7) working days before the hearing for formal review applications; or
   2. Five (5) working days for nonsubstantive review applications.

(19) A document shall not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be precisely identified.

(20) The hearing officer may take official notice of facts which are not in dispute, or of generally-recognized technical or scientific facts within the agency's special knowledge.

(21) The hearing officer may permit a party to offer, or request a party to produce, additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(22) In a hearing on an application for a certificate of need, the hearing officer shall, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(23) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 17. Requests for Reconsideration. (1) In order to be considered, requests for reconsideration shall be filed within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:

(a) Approval or disapproval of an application for a certificate of need;
(b) An advisory opinion entered after a public hearing; or
(c) Revocation of a certificate of need.

(2) A copy of the request for reconsideration shall be served by the requester on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) The cabinet shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If reconsideration is granted:
(a) A hearing shall be held by the cabinet in accordance with
the provisions of Section 16 of this administrative regulation within thirty (30) days of the date of the decision to grant reconsideration; and
(b) A final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.
(6) If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of written documentation to be made a part of the record without a hearing.

Section 18. Show Cause Hearings. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of an affected person, to include hearings requested pursuant to Human of Kentucky v. NKC Hospitals, Ky., 751 S.W.2d 369 (1988), in order to determine whether a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation or is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B. Health facilities established without a certificate of need pursuant to KRS 216B.020(2)(a) shall not be considered affected persons for purposes of this section and shall not have the right to request a show cause hearing.
(a) In order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied by a statement or other evidence which demonstrates that there is probable cause to believe that a person:
1. Has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation; or
2. Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.
(b) If a show cause hearing is held, the person being charged shall have the burden of showing cause why that person should not be found to:
1. Have established or to be operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation; or
2. Be subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.
(2) The cabinet shall conduct a show cause hearing based on its own investigation pursuant to an annual licensure inspection or otherwise which reveals a possible violation of the terms or conditions which are a part of a certificate of need approval and license.
(3) The cabinet shall also conduct a show cause hearing regarding terms and conditions which are a part of a certificate of need approval and license at the request of any person.
(4) The show cause hearing regarding the terms and conditions shall determine whether a person is operating a health facility or health service in violation of any terms or conditions which are a part of their certificate of need approval and license.
(5) Show cause hearings shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.
(6) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation of section (1) of this section, the cabinet shall take action as provided by KRS Chapter 216B.
(12) If the person is found to have violated any of the terms or conditions of any certificate of need approval and license as a result of a show cause hearing conducted pursuant to subsection (2) of this section, the cabinet may take action:
(a) If the person had not previously been found to be in violation of the terms and conditions which were made a part of the person's certificate of need approval and license, the person shall be given a reasonable period of time, not to exceed sixty (60) days after issuance of the cabinet's decision, in which to demonstrate that the violation has been corrected. At the conclusion of this period, the cabinet shall verify that the facility or service is operating in compliance with the terms or conditions of the certificate of need and license at issue.
(b) If the cabinet is unable to verify that the facility or service has corrected the violation in accordance with paragraph (a) of this subsection, or if a person who had previously been found to be in violation of the terms and conditions which were a part of the person's certificate of need approval and license is found in a subsequent show cause hearing conducted pursuant to this section to be in violation of the terms and conditions again, the matter shall be referred to the Office of Inspector General for appropriate action.

Section 19. Administrative Escalations. (1) A person shall not obligate a capital expenditure in excess of the amount authorized by an existing certificate of need unless the person has received an administrative escalation or an additional certificate of need from the cabinet.
(2) Requests for administrative escalations shall be submitted to the cabinet on the Cost Escalation Form, Form #6.
(3) The cabinet shall authorize administrative escalations for funds which have not been obligated and which do not exceed the following limits if there is not a substantial change in the project:
(a) Twenty (20) percent of the capital expenditure authorized on the original certificate of need or $100,000, whichever is greater, if the capital expenditure authorized on the certificate of need is less than $500,000;
(b) Twenty (20) percent of the capital expenditure if the capital expenditure authorized on the certificate of need is $500,000 to $4,999,999;
(c) Ten (10) percent of the amount in excess of $5,000,000, plus $1,000,000, for projects if the capital expenditure authorized on the certificate of need is $5,000,000 to $24,999,999;
(d) Five (5) percent of the amount in excess of $25,000,000, plus $3,000,000, if the capital expenditure authorized on the certificate of need is $25,000,000 to $49,999,999; and
(e) Two (2) percent of the amount in excess of $50,000,000, plus $4,250,000, if the capital expenditure authorized on the certificate of need is $50,000,000 or more.
(4) If an administrative escalation is authorized, the certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure.
(5) The escalation of a capital expenditure in excess of the limits set forth in subsection (3) of this section shall:
(a) Constitute a substantial change in a project; and
(b) Require a certificate of need pursuant to KRS 216B.061(1)(e).
(6) The unauthorized obligation of a capital expenditure in excess of the amount authorized on a certificate of need shall be:
(a) Presumed to be a willful violation of KRS Chapter 216B; and
(b) Subject to the penalties set forth at KRS 216B.990(2).

Section 20. Timetables and Standards for Implementation. (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on the Certificate of Need Six (6) Month Progress Report, Form #8, at the six (6) month intervals specified in this section.
(2) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented.
(3) The cabinet or its designee shall review a progress report and shall determine:
(a) Whether the required elements have been completed; and
(b) If the required elements have not been completed, whether
sufficient reasons for non-completion have been provided.
(4) A certificate of need shall be deemed complete when:
(a) The project has been approved for licensure or occupancy
by the Office of Inspector General; and
(b) A final cost breakdown has been submitted.
(5) Until a project is deemed complete by the cabinet, the cabi-
et may require:
(a) The submission of additional reports as specified in sub-
sections (16) through (18) of this section; or
(b) Progress reports in addition to those required at six (6)
month intervals under the provisions of this section.
(6) Except for long-term care bed proposals, a certificate of
need shall not be revoked for failure to complete the items required
during a six (6) month period, if the holder of the certificate of need
establishes that:
(a) The failure was due to emergency circumstances or other
causes that could not reasonably be anticipated and avoided by
the holder; or
(b) Were not the result of action or inaction of the holder.
(7) If the cabinet determines that required elements have not
been completed for reasons other than those set forth in subsec-
tion (6) of this section, it shall notify the holder of the certificate of
need, in writing, that it has determined to revoke the certificate of
need.
(8) The revocation shall become final thirty (30) days from the
date of notice of revocation, unless the holder requests a hearing
pursuant to KRS 216B.086.
(9) The first progress report for all projects other than long-term
care beds shall include:
(a) Documentation of new services or expansion of
existing services that do not involve construction, renovation or
the installation of equipment: plans for implementation of the project;
(b) Projects for the purchase of equipment only: a copy of the
purchase order;
(c) Projects involving the acquisition of real property: evidence
of an option to acquire the site; or
(d) Construction or renovation projects: evidence that sche-
dmatic plans have been submitted to the Public Protection and
Regulation Cabinet, Department of Housing, Buildings and Con-
(10) For projects other than long-term care beds not deemed
complete, a second progress report shall include:
(a) Projects converting beds: documentation that all beds are
licensed;
(b) Projects for addition of new services or expansion of exist-
ing services that do not involve construction, renovation, or
the installation of equipment: documentation of approval for licensure
and occupancy by the Office of Inspector General or the Kentucky
Board of Emergency Medical Services; or
(c) Construction or renovation projects: the schedule for project
completion, evidence of preliminary negotiation with a financial
agency, and evidence of preliminary negotiation with contractors.
(11) For projects other than long-term care beds not deemed
complete, a third progress report shall include:
(a) Construction or renovation projects:
1. Copy of deed or lease of land;
2. Documentation of final enforceable financing agreement, if
applicable;
3. Documentation that final plans have been submitted to the
Public Protection and Regulation Cabinet, Department of Housing,
Buildings and Construction, and the Office of Inspector General; and
4. Enforceable contract with a construction contractor; or
(b) Projects for purchase of equipment only: evidence of app-
proval for licensure and occupancy by the Office of Inspector Gen-
eral.
(12) For projects other than long-term care beds not deemed
complete, a fourth progress report shall include documentation of
final plan approval by the Public Protection and Regulation Cabi-
et, Department of Housing, Buildings and Construction, and the
Office of Inspector General and evidence that construction has
begun.
(13) For projects other than long-term care beds not deemed
complete, a fifth progress report shall include documentation that
completion or renovation is progressing according to schedule.
(14) For projects other than long-term care beds not deemed
complete, a sixth progress report shall include documentation that
the project has been approved for licensure or occupancy by the
Office of Inspector General and, if required, that the appropriate
license has been approved for the health care service or facility.
(15) For projects other than long-term care beds not deemed
complete after the sixth progress report, the certificate holder shall,
upon request, provide the cabinet or its designee with a written
statement showing cause why the certificate should not be re-
voiced. The cabinet may defer revocation action upon a showing by
the certificate holder that the project shall be completed on a re-
vised schedule. The cabinet or its designee may require additional
progress reports.
(16) For projects involving long-term care beds:
(a) The first progress report shall include:
1. A copy of the deed or lease of land for projects requiring
acquisition of real property; and
2. Evidence that final plans have been submitted to the Public
Protection and Regulation Cabinet, Department of Housing, Build-
(b) For projects involving long-term care beds not deemed
complete, a second progress report shall include:
1. For conversion of beds projects, documentation that the beds
in the project are licensed; or
2. For construction projects:
   a. Schedule for project completion with projected dates;
   b. Documentation of final financing;
   c. Documentation of final plan approval by the Public Protec-
tion and Regulation Cabinet, Department of Housing, Buildings and
Construction, and the Office of Inspector General; and
   d. Enforceable construction contract.
(17) For projects involving long-term care beds not deemed
complete, a third progress report shall include documentation that
construction or renovation is progressing according to the schedule
for project completion.
(18) For projects involving long-term care beds not deemed
complete, a fourth progress report shall include documentation that
the project has been appropriately licensed and approved for oc-
cupancy by the Office of Inspector General.
(19) The cabinet or its designee may grant no more than three
(3) additional extensions of six (6) months for good cause shown if
the certificate holder of long-term care beds has failed to comply with
all relevant progress report requirements established in this
section.
(20) If the project involves a capital expenditure, a final cost
breakdown shall be included in the final progress report.
(21) If the Office of Inspector General discovers a violation of
terms and conditions listed on a certificate of need and license while
it is conducting its annual licensure inspection, it shall refer this
violation for a show cause hearing in accordance with Section
18 of this administrative regulation.

Section 21. Biennial Review. (1) Certificate of need holders
may be subject to biennial review to determine whether they are in
compliance with the terms as listed on their certificate of need.
(2) Biennial review may be conducted within sixty (60) days of
the second anniversary of the final progress report and at twenty-
four (24) month intervals thereafter.
(3) The cabinet or its designee shall provide sixty (60) days'advance written notification to the subject of any biennial review, in
cluding the following:
(a) When the biennial review shall be initiated;
(b) Request for information necessary for the review to which
the cabinet does not have ready access; and
(c) A deadline for response to the request for information.
(4) If the cabinet finds that any of the terms and conditions of a
certificate of need approval and license have been violated, the
review of, and any sanctions for, this violation shall be conducted
in accordance with Section 16(2) of this administrative regulation.

Section 22. Advisory Opinions. (1) The cabinet shall issue
advisory opinions regarding matters related to certificate of need on its own initiative or upon request from any person.

(2) Requests for advisory opinions shall be filed with the cabinet and shall be accompanied by the Request for Advisory Opinion, Form #7.

(3) In rendering an advisory opinion, a proposal shall be considered to constitute an improvement within the definition of a non-clinically related expenditure exempt from review if the proposed expenditure meets the definition of an improvement contained in Section 1 of this administrative regulation.

(4) The cabinet may require verification of information and request additional documentation at its discretion prior to issuing an advisory opinion.

(5) The cabinet shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an advisory opinion or of receipt of additional information.

(6) Public notice of the advisory opinion shall be published in the Kentucky Register.

(7) An affected person may request a public hearing regarding an advisory opinion in writing within thirty (30) days of the public notice of the advisory opinion. Health facilities established without a certificate of need pursuant to KRS 218.B.20(2)(a) shall not be considered affected persons for purposes of this section and shall not have the right to request a hearing regarding an advisory opinion.

(8) The public hearing shall be held within forty-five (45) days of the date of the filing of the request and shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(9) The cabinet shall enter a final decision regarding the advisory opinion, within forty-five (45) days of the completion of the public hearing.

(10) If a public hearing is not requested, the advisory opinion shall be the final action of the cabinet.

Section 23. Notification of the Addition or Establishment of a Health Service. (1) Health facilities that make additions to an existing health service for which there are review criteria in the State Health Plan but for which a certificate of need is not required to include TCF/MR nurse beds, or add equipment for which there are review criteria in the State Health Plan but for which a certificate of need is not required, shall notify the cabinet that a service or equipment has been added within ten (10) days of addition.

(2) Notice of Addition of a Health Service or Equipment (Form #10) shall be used in making the notification.

Section 24. Certification of Continuing Care Retirement Communities. (1) In order to be certified as a continuing care retirement community, a certificate of compliance shall be obtained from the Office of Certificate of Need.

(2) In order to obtain a certificate of compliance, a continuing care retirement community shall complete and file Form #11 thereby certifying that:

(a) All residents shall have a written agreement with the continuing care retirement community;

(b) The continuing care retirement community shall offer a continuum of residential living options and support services to its residents age sixty (60) and older and may offer these living options and services to persons below age sixty (60) on an as needed basis;

(c) None of the health facilities or health services established by the continuing care retirement community under this section shall apply for or become certified for participation in the Medicaid Program, and that this restriction shall be disclosed in writing to each of its residents;

(d) A claim for Medicaid reimbursement shall not be submitted for a person for a health service established by the continuing care retirement community under this section, and that this restriction shall be disclosed in writing to its residents;

(e) All residents in nursing home beds shall be assessed using the Health Care Financing Administration approved long-term care resident assessment instrument. The assessment shall be transmitted to the state data bank if the nursing home bed is certified for Medicare participation;

(f) Admissions to continuing care retirement community nursing home beds shall be exclusively limited to on-campus residents;

(g) A resident shall not be admitted to a continuing care retirement community nursing home bed prior to ninety (90) days of residency in the continuing care retirement community unless the resident experiences a significant change in health status documented by a physician;

(h) A resident shall not be involuntarily transferred or discharged without thirty (30) days prior written notice to the resident or the resident's guardian;

(i) The continuing care retirement community shall assist a resident upon move-out notice to find appropriate living arrangements;

(j) The continuing care retirement community shall share information on alternative living arrangements provided by the Office of Aging Services at the time a move-out notice is given to a resident; and

(k) Written agreements executed by the resident and the continuing care retirement community shall contain provisions for assisting any resident who has received a move-out notice to find appropriate living arrangements.

(3) The Office of Certificate of Need shall issue a certificate of compliance within thirty (30) days of receipt of a completed Form #11 if all conditions are met. If all conditions are not met, the cabinet shall advise the applicant of any deficiencies. Upon correction of the deficiencies, the cabinet shall issue the certificate of compliance within thirty (30) days of correction.

(4) A continuing care retirement community's nursing home beds shall be considered to have been established for purposes of KRS Chapter 216B upon the issuance of an authority to occupy by the cabinet.

(5) If, after having obtained an initial certificate of compliance, a continuing care retirement community wishes to establish additional nursing home beds, an additional certificate of compliance shall be obtained from the cabinet.

(6) Upon request, the continuing care retirement community shall provide the Office of Certificate of Need the payor source for each of its nursing home beds.

(7) Upon request, the continuing care retirement community shall provide the Office of Certificate of Need the number of each type of bed or living unit within the continuing care retirement community.

Section 25. Critical Access Hospitals. A certificate of need shall not be required for a critical access hospital to reestablish the number of acute care beds that the hospital operated prior to becoming a critical access hospital if the hospital decides to discontinue operating as a critical access hospital.

Section 26. Swing Beds. (1) An acute care hospital or a critical access hospital that has been designated as a swing bed hospital by the Office of Inspector General, having met the requirements of 42 C.F.R. 482.96 or 485.645, shall not be required to obtain a certificate of need to utilize its licensed acute or critical access hospital beds as swing beds.

(2) For a designated swing bed hospital to add new acute or critical access hospital beds which may be utilized as swing beds, the hospital's proposal shall be consistent with the State Health Plan's review criteria for hospital acute care beds and certificate of need approval shall be required.

Section 27. Pilot Angioplasty Program. (1) Hospitals participating in the pilot program must immediately (within twenty-four (24) hours of the event or on the first business day following the event) report the following events to the Office of Certificate of Need by fax at (502) 584-0362 or e-mail (ctc.nicrca@ky.gov). (a) Death within twenty-four (24) hours of the cardiac catheterization procedure or hospital discharge.

1. Cardiac death is defined as death due to any of the following:

a. Acute myocardial infarction;

b. Cardiac perforation/pencardial tamponade;

c. Arrhythmia or conduction abnormality;

d. Cerebrovascular accident related to, or suspected or being
related to the cardiac catheterization procedure. Cerebrovascular accident is defined as acute neurological deficits recorded by clinical staff that persisted more than twenty-four (24) hours. Report if these events occurred:

(i) During the index catheterization;
(ii) During the index hospitalization.

6. Death due to complication of the procedure including bleeding, vascular repair, truncation reaction, or bypass surgery; or
7. Any death in which a cardiac cause could not be excluded.
8. Noncardiac Death is defined as a death not due to cardiac causes (as defined in subparagraph 1 of this paragraph).

(b) Emergency CAGB within twenty-four (24) hours of procedure or hospital discharge. "Emergency" is defined as a sudden and often life-threatening mishap that arises in the course of and as a result of the performance of a cardiac catheterization and/or angioplasty procedure. This does not include patients either transferred from the cardiac catheterization procedure room or taken within twenty-four (24) hours to the operating room for surgical correction of emergent/life threatening cardiac disease.

(c) Shock within twenty-four (24) hours of procedure or hospital discharge.

(2) Hospitals participating in the pilot program must report to the Office of Certificate of Need in writing within seven (7) calendar days of the following events:

(a) Cerebrovascular accident. This is defined as acute neurological deficits recorded by clinical staff that persisted more than twenty-four (24) hours. Report if these events occurred within thirty (30) days after the catheterization but not clearly related to procedure.

(b) Any intracranial bleed within thirty (30) days of the cardiac catheterization procedure.

(c) Recurrent Q wave or Non-Q wave MI during the initial hospitalization.

(d) Vascular complications which occur within twenty-four (24) hours of the cardiac catheterization procedure or hospital discharge. These are defined as:
1. Hematoma more than four (4) cm;
2. Retroperitoneal Bleed;
3. False Aneuysm;
4. AV fistula;
5. Peripheral ischemic/nerve injury; and
6. Hemolysis and Hemolytic anemia (See attachment E for additional reporting information).

(3) Hospitals participating in the pilot program shall:

(a) Establish a Joint Performance Improvement Committee (Joint PI Committee) in collaboration with a tertiary hospital including Joint PI and staff education programs and

(b) Perform a minimum of thirty-six (36) primary angioplasty procedures per year. At least thirty (30) of these angioplasty procedures must be primary angioplasty procedures, excluding patients that have "rescue angioplasty" procedures performed.

(6) The time frame for measuring compliance with procedural utilization requirements begins six (6) months after the date of the physician director's notification to the Office of Certificate of Need that all training requirements have been fulfilled. Twelve (12) months from the "start date," the hospital shall have performed eighteen (18) primary angioplasty procedures or will receive a warning that approval to participate in the pilot program may be withdrawn.

(7) Within the following six (6) months, a total of eighteen (18) months from the date of the department's letter of approval, the hospital shall have performed at least another eighteen (18) procedures (a total of thirty-six (36) primary angioplasty procedures) or the program may be discontinued at that site.

(8) Each site shall continue to perform eighteen (18) primary angioplasty procedures per six (6) months and a total of thirty-six (36) primary angioplasty procedures per year, or the program may be discontinued at that site.

(9) All physicians performing PCI at a pilot program hospital shall:

(a) Continue to perform no fewer than one hundred (100) cardiac catheterization procedures per year (total diagnostic and therapeutic). At least seventy-five (75) procedures must be angioplasty procedures unless the procedures are being performed at a facility at which more than four hundred (400) angioplasty procedures are being performed per year; and

(b) Maintain credentials at a hospital at which operator performs elective angioplasty procedures.

(10) All staff that are hired after the completion of the initial training at the pilot program hospital will complete a training program that mirrors the initial training program. The relevant collaborating tertiary and pilot hospitals will develop this training program. Training of all staff including, at a minimum, all interventional cardiologists, nurses and technicians, shall be performed on the intra-aortic balloon pump annually. All staff involved in providing PCI, including the interventional cardiologists, nurses and technicians, must have a current ACLS certification. Inservice programs shall, at a minimum, be based upon need identified through staff evaluations and quality assurance process.

(11) The Office of Certificate of Need may discontinue the pilot program at a participant hospital at any time after reviewing the following:

(a) Quarterly reports made by the ACC-NQDR;
(b) Records obtained through an audit;
(c) Peer review reports; or
(d) Reports on serious adverse events.
(12) Upon notification to the hospital by the Office of Certificate of Need, the hospital must terminate the pilot program and cease to perform primary angioplasty procedures.

(13) In order to assist the Office of Certificate of Need in evaluating the pilot program, the performance of pilot hospitals, and the formulation of recommendations for continuing or modifying the project, the Office of Certificate of Need may collaborate with university based researchers to:

(a) Evaluate and compare performance data of pilot hospitals with existing Kentucky angioplasty programs; and

(b) Conduct an evaluation of the short-and-long-term outcomes of patients undergoing primary angioplasty at pilot hospitals with those patients transferred to hospitals with open heart surgical backup.

(14) The Office of Certificate of Need shall review reports from the collaborating university based researchers as well as quarterly reports made by the ACC-NQDR, records obtained through audit, peer review reports and reports of serious adverse events in order to develop recommendations for continuing, discontinuing or modifying the pilot program. If the project is continued, these recommendations would include establishing criteria for determining need to expand angioplasty services to additional hospitals without on-site surgical backup, qualifications of such hospitals, and ongoing requirements for a hospital's continued provision of this service.

(15) The Office of Certificate of Need may convene all hospitals participating in the pilot program on a regular basis for the purpose of discussing and assessing the status of the implementation of the pilot program.

(16) Three (3) years from the start date of the pilot program, the Office of Certificate of Need shall publish a report on the program. The report shall indicate whether it is in the best interest of the Commonwealth to eliminate the requirement for open heart surgery for hospitals to perform therapeutic cardiac catheterization including, but not limited to, the requirements for patient selection, procedural volume, and staffing that hospitals must continue to meet to provide this service if the Office of Certificate of Need finds that this service may be provided by hospitals in the absence of on-site open heart surgery.

Section 28. Psychiatric Residential Treatment Facilities. A letter of intent shall not be required for an application seeking to increase the number of beds at a psychiatric residential treatment facility (PRTF) as permitted by KRS 216B.450 if the application is submitted by an eight (8) bed or sixteen (16) bed PRTF licensed and operating on July 13, 2004. Such applications shall be granted a non-substantive review status provided that the application demonstrates the applicant’s ability to meet the following standards:

(1) Provision of psychiatric and nursing coverage to assure the continuous ability to manage and administer medications in crisis situations but excluding those that may only be administered by a physician; and

(2) Provision of direct care staffing with supervision to manage behavior problems in accordance with the residents' treatment plans, including an array of interventions that are alternatives to seclusion and restraint and the staff training necessary to implement them.

(3) Documentation shall be made available to each mental health professional and to the program director;

(4) Documentation shall be reviewed and revised as necessary, in accordance with the changing needs of the residents and the community and with the overall objectives and goals of the facility when reviewed or revised. Revisions in the documentation shall incorporate, as appropriate, relevant findings from the facility’s quality assurance and utilization review programs.

Section 29. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Letter of Intent (Form #1) (10/12/99);
(b) Certificate of Need Application (Form #2A) (3/6/03);
(c) Certificate of Need Application for Ground Ambulance and Air Ambulance Providers (Form #2B) (9/15/99);
(d) Certificate of Need Application for Change of Location, Replacement, or Cost Escalation (Form #2C) (3/6/03);
(e) Notice of Appearance (Form #3) (3/6/03);
(f) Witness List (Form #4) (3/6/03);
(g) Exhibit List (Form #5) (3/6/03);
(h) Cost Escalation Form (Form #6) (6/15/99);
(i) Request for Advisory Opinion (Form #7) (3/6/03);
(j) Six (6) Month Progress Report (Form #8) (6/15/99);
(k) Notice of Addition of a Health Service or Equipment (Form #10) (6/15/99); and

(l) Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC) (Form #11) (11/29/00).

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

JOHN H. GRAY, Executive Director
DUANE L. KILTY, JR., Ph.D., Undersecretary
JAMES W. HOLSINGER, JR., M.D., Secretary
APPROVED BY AGENCY: December 14, 2004
FILED WITH LRC: December 14, 2004 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street, 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7605, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John H. Gray

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends portions of the administrative procedures for the certificate of need program established by KRS 216B to create new nonsubstantive review categories for applications proposing to alleviate emergency circumstances, applications proposing to establish rehabilitation agencies which do not participate in Medicaid and applications proposing to relocate long term care beds from one health facility to another. It is also amended to clarify that a health care provider must document that an emergency exists; that the Office of Certificate of Need must determine and agree that an emergency exists; and that the provider must be licensed to provide the service necessary to alleviate the emergency. A new section is also added to establish reporting requirements for pilot angioplasty programs.

(b) The necessity of this administrative regulation: The amendments to this administrative regulation are necessary in order to update the administrative procedures governing the CON process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 216B requires the Cabinet for Health Services to promulgate necessary administrative regulations. The amendments to this administrative regulation are consistent with the legislative purposes set forth at KRS 216B.010.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The changes made to this administrative regulation will assist in the effective administration of the CON process by eliminating outdated provisions, clarifying other provisions, and adding new provisions that are responsive to the changing needs of the health care system.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amends portions of the administrative procedures for the certificate of need program established by KRS 216B to create new nonsubstantive review categories for applications proposing to alleviate emergency circumstances, applications proposing to establish rehabilitation agencies which do not participate in Medicaid and applications proposing to relocate long term care beds from one health facility to another. It is also amended to clarify that a health care provider must document that an emergency exists; that the Office of Certificate of Need must determine and agree that an emergency exists; and that the provider must be licensed to provide the service necessary
to alleviate the emergency. A new section is also added to establish reporting requirements for pilot angioplasty programs.

(6) The necessity of the amendment to this administrative regulation: It is necessary to amend the existing administrative regulation in order to address the need to update the CON process, and to make the process more understandable to health care providers.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 216B requires the Cabinet for Health Services to promulgate necessary administrative regulations. The amendments to this administrative regulation are consistent with the legislative purposes set forth at KRS 216B.010.

(d) How the amendment will assist in the effective administration of the statutes: The changes made to this administrative regulation will assist in the effective administration of the CON process by eliminating outdated provisions, clarifying other provisions, and adding new provisions that are responsive to the changing needs of the health care system.

(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 hospitals and other applicants seeking a certificate of need. It is not yet known how many hospitals will submit applications to convert nursing facility or psychiatric beds to acute care beds.

(4) Provide an estimate of how group or groups will be impacted by the implementation of this administrative regulation, if new, or by the change if it is an amendment: The changes to this administrative regulation will impact facilities being reviewed under formal review by eliminating inconsistencies with the 2003 State Health Plan. These changes will also allow hospitals wishing to convert psychiatric beds to acute care beds to do so.

(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.

(8) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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 set rates of how the any fees and does not increase any fees either directly or indirectly.

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

**CABINET FOR HEALTH AND FAMILY SERVICES**
**Department for Community Based Services**

Amended After Comments

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

RELATES TO: KRS Chapter 13B, 199.011, 199.840-199.860, 199.861, 605.080(1)(c); (d); 610.110, 42 U.S.C. 672, OMB Circular A-122.

STATUTORY AUTHORITY: KRS 194B.050(1), 199.641(4), 605.080(1)(d), 605.150(1), EO 2004-726.

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 8, 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-care facility operated by a local governmental unit or private organization willing to receive the child, upon such conditions as the cabinet may prescribe. KRS 805.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 505. 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-care 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 process" means an assessment conducted by designated cabinet staff, and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care, which includes the following:
(a) DPP-886, Private Child Care Client Interagency Referral Form; and
(b) DPP-886A, Application for Referral and Needs Assessment; and
(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]
   c) If a child has an IQ below seventy (70):
   1. Reis-Ellis Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology); and
   2. Scales of Independent Behavior Revised (SIB-R).

(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-placing agency, of the child's case record and existing documentation for the purpose of:
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 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 with the level of care payment rate;

1. As assigned by the gatekeeper within the previous six (6) months; or

2. In the event of an emergency placement, within two (2) business days of the placement [—on or before the date of placement]; and

(b) Arrange transportation for the child to the placement [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
(c) 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;

(4) 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 or child-placing agency;
3. Child's parent or custodian;
(f) Submitting written reports to:

1. Child-caring facility or child-placing agency; and
2. Cabinet;

(6) 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 in the meeting of 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 occasional violent acts;
(b) May have supervisory 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; and
(d) May occasionally require intense levels of intervention to maintain the least restrictive environment.

(e) Requires a program designed 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.

(f) A Level IV child:

(a) Has behavioral, 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 or disability or need;
(b) Is consistently unable or unwilling to cooperate in his own care; or
(c) Preserves a severe risk of causing harm to himself or others;
and

(d) Requires Level IV services and:

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 applicable rate as defined at KRS 199.641(c). Each private, nonprofit child-caring facility shall report to the cabinet annually, on Form DPP-886, 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; and

(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-caring facilities; and
2. Level of care of children served by private, nonprofit child-caring facilities that contract with the cabinet;

(c) The median number of daily treatment hours for children whose level 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 of care.

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;
(b) For an emergency shelter with a treatment license;
(c) Board;
(d) Care;
(e) Treatment components; or
(f) For an emergency shelter without a treatment license:
   (i) Board;
   (ii) Care components; and
   (iii) 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 399.641(2)(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.

7. 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 shall be:

   (a) Shalt be geared toward improved outcomes;
   (b) Shalt be tailored to fit the specific needs identified for the service region served by the child-caring facility;
   (c) Shalt be available within the geographic area encompassed by the service region; and
   (d) Shalt include case management responsibilities shared between the cabinet and the child-caring facility.

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 levels 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 agencies].

(2) The provider shall comply with 922 KAR 1:390, Section 4.

Section 7. Emergency Shelter Care. (1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380.

(2) Ninety-nine (99) dollars and eighty-seven (87) cents per day for a child-caring facility with a treatment license; and

(2) 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) If the cabinet 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 cabinet shall make a referral to the gatekeeper, by the 30th day of placement, for assignment to a permanent level of care.

(4) If a child remains in an emergency shelter child-caring facility for thirty (30) days, the emergency shelter child-caring facility with a treatment license shall:

   1. Receive the residual 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) A rate consistent with the assigned level of care for the adolescent child.
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. Medical and mental health 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. Allow a child to cope with the disability or distress;
      3. Provide access to improving 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. For a child who has an IQ above seventy (70), a behavior inventory appropriate to the child's developmental level consisting of completed forms:
      1. Child Behavior Checklist for Ages one and one-half (1 1/2) - five (5) (Achenbach); or
      2. Child Behavior Checklist for Ages six (6) - eighteen (18) (Achenbach), every six (6) months; and
   b. For a child who has an IQ below seventy (70), a behavior inventory appropriate to the child's developmental level consisting of completed forms:
      1. Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology) and Scales of Independent Behavior Revised (SIB-R), at the first utilization review due date and every twelve (12) months thereafter; and
      2. [Every twelve (12) months;]
   c. [And] To the gatekeeper and designated cabinet staff [department], a copy of the following completed forms:
      1. Application for Level of Care Payment, "CRP-001, Children's Review Program Residential [Private Child Care Quarterly Report]"; or
      2. Application for Level of Care Payment [Six-Month Progress Report];
   d. Outcomes data and information as requested by the gatekeeper;
   e. [Before October 2004 or within two (2) years of initial licensure,] Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:
      a. The Council on Accreditation; or
      b. The Joint Commission on Accreditation for Healthcare Organizations.
   f. [Emergency shelter without a treatment license shall be exempt from the accreditation requirements specified in subsection (6) of section 6.]

Section 11. Utilization Review and Authorization of Payment.

1. The child-caring facility or child-placing agency shall submit to the gatekeeper the reports specified in Section 10(3) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.
b) The date of admission whichever is most recent.

(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) Higher level is assigned by the gatekeeper with a CRP-004, 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 with a CRP-004, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper; or

(4) If the child-caring facility or child-placing agency does not agree with the redetermination as provided by the CRP-004, an appeal may be requested in accordance with Section 14 or 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:

(a) Department [by completing a level of care packet for a level assignment; or

(b) New child-caring facility or child-placing agency submitting the following, within thirty (30) days of the placement:

1. An assessment of the child; and

2. If the child has an IQ of seventy (70) or above:

a. Child Behavior Checklist For Ages one and one-half (1 1/2 - five (5) (Achenbach); or


(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) [59] If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility utilizing the gatekeeper 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 secretariat 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. [(1) A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320 [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-886, Private Child Care Client Inter-agency Referral Form, edition 10/04 (July 2002)

(c) "DPP-011 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 5-18 (Achenbach), edition 6/01", [after 10/03]

(g) "Relias Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology), edition 1990"

(h) "Scales of Independent Behavior-Revised (SIB-R), edition 1990"


(j) [(i) "CRP-001, Children's Review Program Residential Application for Level of Care Payment, edition 11/04 (Private Child Care Quarterly Report, edition March 2002)]

(j) [(ii) "CRP-002, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization, edition 11/04 (CPCO Notice of Level Assignment, edition March 2002)]

(j) [(iii) "CRP-003, Children's Review Program Foster Care Application for Level of Care Payment, edition 11/04 (Six (6) Month Progress Report, edition March 2002)]

(k) [(iv) "CRP-004, Children's Review Program Notice of Level of Care Redetermination, edition 11/04 (Redetermination, edition March 2002)]

and

(l) [(v) "CRP-005, Children's Review Program CBS Foster Care Utilization Review Notice of Level Assignment, edition 11/04 (March 2002)

(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. HOLSINGER, JR., M.D., Secretary
APPROVED BY AGENCY: December 10, 2004
FILED WITH LRC: December 13, 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) 504-7905, fax (502) 504-7573.

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 and case management services provided to children residing in private child-care 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-care facilities, in accordance with KRS 199.641(3).

(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 the 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.

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

(a) How the amendment will change this administrative regulation: This amended after comments regulation provides clarification to the definition of a "level of care packet"; provides revisions for the referral process for level of care system placement; clarifies foster care and therapeutic foster care for a child-placing agency; revises provider requirements; clarifies redetermination and reassignment; and revises forms that are incorporated by reference.
The necessity of the amendment to this administrative regulation: It is necessary to amend this regulation due to comments received during the comment period.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 605.090(1)(d) authorizes the cabinet to place a child in the custody of the cabinet in a child-caring facility that is willing to receive the child. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement provisions of KRS Ch. 605. The amended after comments regulation provides clarification for placement and levels of care of the child.

(d) How the amendment will assist in the effective administration of the statutes: The amended after comments regulation will provide clarification for the placement and levels of care of a child, in accordance with KRS 605.090(1)(d).

(3) 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.

(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: Clarification will be provided to child-caring facilities regarding placement, and levels of care of the child.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $614,307, effective October 1, 2004
(b) On a continuing basis: SFY 2006 costs $967,934

(6) 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.

(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: In SFY 2004, $700,000 general fund dollars were expended to support Medicaid-certified Level 5 children 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.

(8) 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.

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

FEDERAL MANDATE ANALYSIS COMPARISON

Contact Person: Shirley Eldridge

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
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.
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 5:033. KTG student eligibility requirements.

RELATES TO: KRS 164.753(4), 164.780, 164.785
STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)
NECESSITY, FUNCTION AND CONFIRMATION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This administrative regulation sets forth student eligibility requirements for the Kentucky Tuition Grant program.

Section 1. Eligibility of Students. In order to qualify for disbursement of a Kentucky tuition grant, a student shall:
(1) Be a resident of the Commonwealth of Kentucky;
(2) Be enrolled, as a full-time student in an eligible program of study;
(3) Be enrolled at an educational institution and not have previously earned a bachelor's or professional degree;
(4) Be determined by the authority, in accordance with 11 KAR 5:120 through 5:140, to have established financial need for the KTG program;
(5) Have remaining KHEA grant limit—For purposes of Kentucky Tuition Grant, a student enrolled in a two (2) year institution shall be limited to five (5) semesters of KHEA grant eligibility. A student enrolled in a four (4) year institution shall be limited to nine (9) semesters of KHEA grant program eligibility (including any KHEA grant limit used at a two (2) year institution).
(6) Not receive financial assistance in excess of need to meet educational expenses;
(7) Maintain satisfactory progress in an eligible program of study according to the published standards and practices of the educational institution at which the student is enrolled;
(8) Satisfy all financial obligations to the authority and to any educational institution. Ineligibility under this subsection may be waived for cause by the executive director of the authority, at the recommendation of a designated staff review committee, for cause;
(9) Be a citizen of the United States or an eligible noncitizen; and
(10) Be receiving full-time credit at an educational institution in an eligible program of study and paying full-time tuition and fees to that institution, if the student is studying abroad or off-campus and is...

(11) Is not:
(a) In default on any loan under Title IV of the federal act;
(b) LIABLE for any amounts that exceed annual or aggregate limits on any loan under Title IV of the federal act; and
(c) LIABLE for overpayment of any grant or loan under Title IV of the federal act.

JOHN PRATHER, Chair
APPROVED BY AGENCY: November 15, 2004
FILED WITH LRC: November 18, 2004 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, January 21, 2005, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Thursday, January 13, 2005, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:
Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40652-0798, phone (502) 696-7250, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Morgan
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes student eligibility requirements for the Kentucky Tuition Grant Program (KTG).
(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 to 164.785. KRS 164.753(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 establishes eligibility requirements for the Kentucky Tuition Grant Program (KTG).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that students meet certain criteria for eligibility to receive KTG grant funds.
(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 would measure accumulative KTG grant eligibility in terms of percentages. It would also require KTG grant recipients to satisfy any financial obligations to any guarantee agency and to any educational institution in the United States before becoming eligible to receive a KTG grant.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to reflect the change in measuring accumulative KTG grant eligibility to percentages and to ensure no recipient become eligible for an award if they have a financial obligation to any guarantee agency or educational institution.
(c) How the amendment: conforms to the content of the authorizing statutes: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.776 authorizes the authority to provide grants to assist especially needy part-time and full-time undergraduate students to attend private educational institutions in Kentucky. As part of KHEA's administration of the KTG program, KHEA is changing part of the eligibility criteria as set forth in 2(a) above.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by changing certain eligibility requirements.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Student who are eligible to receive KTG grants at Kentucky's independent colleges and universities.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will require all student to satisfy financial obligations to any guarantee agency or educational institution before becoming eligible for an award.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no cost associated with this amendment.
(b) On a continuing basis: Same as (5)(a) above.
(c) 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 reve-
nues 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: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or addresses financial aid to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 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.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(AMENDMENT)

11 KAR 5:034. CAP grant student eligibility.

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535
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 honoraria as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7535 authorizes the authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky. This administrative regulation establishes student eligibility requirements for the college access program.

Section 1. In order to qualify for disbursement of a college access program grant, a student shall:

(1) Be a resident of Kentucky;
(2) Be enrolled at an educational institution as at least a part-time student as determined by the educational institution, in an eligible program of study and have not previously earned a first baccalaureate or professional degree;
(3) Demonstrate financial need in accordance with 11 KAR 5:130 through 11 KAR 5:145 for CAP grant assistance;
(4) Have remaining KHEAA grant limit [ ];
(5) A student enrolled as a full-time student in each academic term of a two (2) year eligible program of study shall be limited to five (5) semesters of CAP grant program eligibility.
(6) A student enrolled as a full-time student in each academic term of a four (4) year eligible program of study shall be limited to nine (9) semesters of CAP grant program eligibility (including any KHEAA grant limit used in a two (2) year eligible program of study);
(5) Not receive financial assistance in excess of need to meet educational expenses;
(6) Maintain satisfactory progress in an eligible program of study according to the published standards and practices of the educational institution at which the student is enrolled;
(7) Satisfy all financial obligations to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.7891 and to any educational institution, except that inability for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause;
(8) Be a citizen of the United States or an eligible noncitizen;
(9) Be receiving at least part-time tuition and fees at an educational institution in an eligible program of study and paying at least part-time tuition and fees to that institution, if the student is studying abroad or off-campus;
(10) Have been eligible to receive a CAP Grant in the preceding year, if the student is enrolled in an equivalent undergraduate program of study, as defined by the Council on Postsecondary Education; and
(11) Not be
(a) In default on any loan under Title IV of the federal act;
(b) Liable for any amounts that exceed annual or aggregate limits on any loan under Title V of the federal act; and
(c) Liable for overpayment of any grant or loan under Title IV of the federal act.

JOHN PRATHER, Chair
APPROVED BY AGENCY: November 15, 2004
FILED WITH LRC: November 18, 2004 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, January 21, 2005, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Thursday, January 13, 2005, five days prior to the meeting of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 565-7290, fax (502) 565-7283.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Morgan
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes student eligibility requirements for 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 honorariums as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7535 authorizes the authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes eligibility requirements for the College Access Program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that students meet certain criteria for eligibility to receive CAP grant funds.
(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 would measure accumulative CAP grant eligibility in terms of percentages. It would also require CAP grant recipients to satisfy any financial obligations to any guarantee agency and to any educational institution in the U.S. before becoming eligible to receive a CAP grant.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to reflect the change in
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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 establishes the award determination procedures for the Kentucky tuition grant program.

Section 1. Kentucky Tuition Grant (KTG) Program Awards. An application submitted pursuant to 11 KAR 5:130 shall be reviewed for determination of eligibility for a KTG.

Section 2. KTG Need. For each KTG eligible applicant, the KTG need shall be computed according to the following formula:

KTG need equals total cost of education minus the sum of:

1. Expected Pell grant;
2. Expected family contribution; and
3. CAP grant.

Section 3. KTG Award. (1) If an applicant does not qualify for a CAP grant and the KTG need is an amount equal to or greater than $200, the KTG shall be the lesser of the KTG need or the maximum grant authorized by KRS 164.785(3), except that KTG awards shall be offered only to the extent funds are available.

(2) If an applicant does not qualify for a CAP grant, and the KTG need is an amount less than $200, an award shall not be made.

(3) If an applicant has received a CAP award and KTG need is an amount equal to or greater than fifty (50) dollars, the KTG award shall be the lesser of the KTG need or the maximum grant specified in Section 5 of this administrative regulation except that KTG awards shall be offered only to the extent that funds are available.

(4) A KTG award shall not exceed $2,400 for an academic year.

Section 4. (1) A KHEAA grant shall not exceed the cost of tuition and fees charged to the student during the academic year of the award.

(2) 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.

(3) A semester award shall not exceed tuition and fee charges for that semester.

(4) A KHEAA grant award shall not be made for a summer academic term.

Section 5. (1) A KHEAA grant award shall not exceed the applicant's total 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 educational institution's determination of financial need for that student.

(3) The KHEAA grant program officer (KGO) 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, the amount over $300 shall be considered to be an overpayment. If an overpayment occurs, this amount shall be returned to the authority immediately.

Section 6. (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 for which the student was ineligible.
Section 7. (1) If the authority receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant and the grant has not yet been disbursed, the reduction shall be made to both the fall and spring disbursements, and the student shall be notified of the reduction.

(2) If the grant for the fall academic term has already been disbursed, the reduction shall be made to the spring disbursement.

(3) If both the fall and spring disbursements have been made, the student shall repay the overaward to the authority.

Section 8. Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant. Any student who is awarded a KHEAA grant who fails to provide verification requested by the educational institution shall be deemed ineligible, and the grant shall be revoked.

JOHN PRATHER, Chair
APPROVED BY AGENCY: November 15, 2004
FILED WITH LRC: November 18, 2004 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, January 21, 2005, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Thursday, January 13, 2005, five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 attend the public hearing, you may submit written comments on the proposed administrative regulation by January 31, 2005. Send written comments to the notice person.

CONTRIBUTION 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) 696-7253.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the award determination procedures for the Kentucky Tuition Grant ("KTG") Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the award determination procedures for the KTG Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honoraria as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants.

(d) How this administrative regulation assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the KTG program by establishing the award determination procedures for the 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 regulation by providing for a $300 overpayment tolerance for recipients of a KTG program award.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow for a maximum overpayment tolerance of $300.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honoraria as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants.


RELATES TO: KRS 164.7535, 164.780, 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 honoraria as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation establishes the disbursement procedures for KHEAA grant programs.

Section 1. Eligibility Verification. (1) The KGPO shall certify the eligibility of students and submit to the authority a complete and accurate eligibility verification file (EVF), according to instructions accompanying the eligibility verification file layout provided by the authority, to indicate which KHEAA grant recipients are actually enrolled at the institution.

(2) The educational institution shall submit to the authority a properly certified eligibility verification file (EVF):

(a) For the fall academic term, by:
   (1) October 1 for educational institutions using nonquarter hour academic terms; and

   (i) October 1 for educational institutions using quarter hour academic terms
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Section 2: Disbursement and Delivery of Funds. KHEAA grant funds shall be disbursed by the authority twice during an academic year to educational institutions for subsequent delivery to eligible students, pursuant to the amounts of funds for the accounts of eligible students during the academic term for which the funds are received by the educational institution.

1. (a) Except as provided in Section 1(4) of this administrative regulation and subject to the availability of funds, the authority shall disburse in August or educational institutions, for subsequent delivery to eligible students or application of the funds to the accounts of eligible students during the academic term, the amount of KHEAA grant funds equal to the total amount of KHEAA grant funds that the institution properly paid to students for the fall academic term of the preceding academic year.

(b) Except as provided in Section 1(4) of this administrative regulation and subject to the availability of funds, the authority shall disburse in January to educational institutions, for subsequent delivery to eligible students or application of the funds to the accounts of eligible students enrolled at the institution during the spring academic term, the amount of KHEAA grant funds equal to the total amount of KHEAA grant funds that the institution properly paid to students for the spring academic term of the preceding academic year.

2. The educational institution shall deliver KHEAA grant funds to eligible students or apply KHEAA grant funds to the accounts of eligible students enrolled for the academic term beginning not earlier than ten (10) days before the first day of classes of each semester, trimester or quarter of the academic term.

3. (a) Upon receipt of the properly certified eligibility verification file for that academic term, the authority shall process the EVF data and update the grant database with award information.

(b) Based on the new updated KHEAA grant database, the authority shall generate a semester college disbursement report file for each institution.

(c) Based on this update, the authority shall determine through a reconciliation process whether any additional funds are owed to or refunds are due from the institution.

1. If additional funds are owed to the institution, the authority shall forward these funds to the institution.

2. If refunds are due from the institution, the authority shall bill the institution.

4. Not later than thirty (30) days after the end of the academic term, the KGPO shall return to the authority, according to instructions attached to the eligibility verification file layout, all funds advanced for that academic term that remain undistributed to eligible students. The authority shall then deliver such funds to the educational institution from the due date until the eligibility verification file and any funds advanced, that remain undistributed to eligible students, are received by the authority.

Section 3: A KTG awarded for the academic year shall be disbursed by the authority:

1. (a) To institutions using nonquarter hour academic terms, in the amount of one-half (1/2) for the fall academic term and one-half (1/2) for the spring academic term.

(b) (2) To institutions using quarter hour academic terms, no more than one-third (1/3) per quarter [two-thirds (2/3) for either the fall or the spring academic term].

Section 4. (1) A CAP grant awarded for the academic year shall be disbursed by the authority:

(a) To institutions using nonquarter hour academic terms, in the amount of one-half (1/2) for the fall academic term and one-half (1/2) for the spring academic term and

(b) To institutions using quarter hour academic terms, no more than one-third (1/3) per quarter [two-thirds (2/3) for either the fall or the spring academic term].

2. The educational institution shall adjust the amount of the CAP grant delivered to an eligible student or applied to the account of an eligible student enrolled at the institution if the student is enrolled part time during the academic term.

3. (1) KHEAA grants disbursed by the authority to eligible students enrolled at an educational institution that uses a short winter term in combination with longer fall and spring terms shall be applied by the authority to the student's account or delivered to the student so that the first disbursement shall be in the fall academic term and the second disbursement shall be in the spring academic term.

2. Enrollment during the shorter winter academic term shall not qualify a student for KHEAA grant assistance for that academic term. Credit hours for which the student is enrolled during the short winter academic term may be added to credit hours for which the student enrolls in the fall and spring academic terms to establish enrollment as a full-time student during those academic terms.

Section 6. (1) The educational institution shall:

(a) Be responsible for proper disbursement of KHEAA grants to the eligible students during the academic term for which the grants are intended;

(b) Not make KHEAA grant funds available to the grant recipient nor apply those funds to the recipient's account:

1. Prior to the date that the recipient has completed the registration requirements (except for the payment of tuition and fees) at the institution for each academic semester or quarter for which the KHEAA grant is awarded;

2. After the end of the academic term for which the funds are received by the institution;

(c) Be liable for disbursement to the wrong individual or to an ineligible student for or for untimely disbursement pursuant to this section;

(d) Make restitution to the authority of any amount improperly disbursed.

2. Failure of the institution to make restitution when required shall, without precluding other remedies, be deemed cause for limitation, suspension or termination of the participation of the institution in accordance with 11 KAR 4:020.

JOHN PRATHER, Chair
APPROVED BY AGENCY: November 15, 2004
FILED WITH LRC: November 18, 2004 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, January 21, 2005, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Thursday, January 13, 2005, 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 cancelled. 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2005. Send written notification of intent to be heard at the public hearing or written
comments on the proposed administrative regulation to the 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey, General Counsel

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the disbursement procedures for the College Access Program (CAP) grant program and the Kentucky Tuition Grant (KTG) program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the procedures to be followed in disbursing funds pursuant to the CAP grant and KTG programs.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the CAP grant and the KTG program by setting forth the procedures to be followed in disbursing funds awarded under these programs.

(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: Amend Section 3(1) of the Regulation to allow disbursements to students attending quarter-hour institutions in the amount of one-third per quarter, rather than the two-thirds per the semester-equivalent academic term as currently allowed.
(b) The necessity of the amendment to this administrative regulation: This is to make KHEAA's schedule of disbursement of CAP and KTG to students attending institutions using quarter hours consistent with the academic year for quarter-hour institutions.
(c) How the amendment conforms to the content of the authorizing statutes: 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.

(3) List the type and number of individuals, businesses, organizations, or states and local governments affected by this administrative regulation: This could potentially affect approximately 35 institutions using the quarter-hour system and approximately 280 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: Funds disbursed by the authority to institutions will be done according to the academic schedule of the quarter-hour institutions. This will benefit both the institutions as well as the students attending such institutions.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: It is anticipated that negligible additional administrative cost will be associated with implementing this administrative regulation related to making additional disbursements based on quarters rather than only 2 disbursements per year based on the semester and semester-equivalent schedule.
(b) On a continuing basis: Same answer as above.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for CAP and KTG is provided through the lottery proceeds appropriated by the General Assembly. Administrative expenses for operation of the grant programs are borne by the authority from agency receipts.

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

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

(9) TIERING: Is tiering applied? 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 applicable to the amendment.

HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services

11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS 164.744(2), 164.753(3), 164.759,
STATUTORY AUTHORITY: KRS 164.744(4), 164.753(3),
164.789(7), (8)(f)

American Positivism, Function, and Conformity, KRS 164.744(2) authorizes the authority to provide scholarships and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.789 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships. The award may be used to pay fees, tuition, books, and required supplies to students enrolled in Kentucky teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures, and repayment obligations related to scholarships provided under the program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).
(2) "Critical shortage area" is defined in KRS 164.789(2)
a.
(3) "Eligible program of study," is defined in KRS 164.789(2)
b.
(4) "Expected family contribution," is defined in KRS 164.789(2)
c.
(5) "Participating institution" is defined in KRS 164.789(2)
d.
(6) "Public school" means any public elementary, middle, or elementary-middle school or secondary instruction.
(7) "Qualified teaching service," is defined in KRS 164.789(2)
e.
(8) "Semester" is defined in KRS 164.789(2)
f.
(9) "Summer term" is defined in KRS 164.789(2)
g.

10. "Teaching" means providing classroom instruction as the teacher of record in a position for which appropriate regular teacher certification is required to perform the instruction, and does not mean classroom instruction performed pursuant to an emergency certification or a certificate for substitute teaching.

Section 2. Eligibility of Renewal Applicants and Selection Process. (1) Applicants shall complete the Teacher Scholarship Application 2004-2005, according to its instructions. The applicant shall ensure that the completed application and supporting data indicating the applicant’s financial need are received by the authority on or before May 1, or the next regular business day if May 1 falls on
a weekend or holiday preceding the academic year for which the award is requested.

(2) Eligibility of renewal applicants.
(a) A person who has previously received a loan or scholarship pursuant to KRS 156.611, 156.613, 164.766, 164.769 or 164.770 prior to July 1, 1996, shall be eligible to apply for and be awarded a renewal teacher scholarship without consideration of expected family contribution if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.
(b) A person who has previously received a loan or scholarship pursuant to KRS 164.769 after July 1, 1996, shall be eligible to apply for and be considered for a renewal teacher scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.

(3) After awards are made to all qualified renewal applicants, applicants shall be considered and teacher scholarships shall be awarded to recipients in the following order until funds are depleted.
(a) Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 and have been unconditionally admitted to a teacher education program shall be ranked in ascending order by expected family contribution.
(b) Initial applicants who have not yet been admitted to a teacher education program but who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program shall be ranked in ascending order by expected family contribution.
(c) Otherwise eligible initial applicants seeking admission to a teacher education program shall be ranked in ascending order by expected family contribution.

Section 3. Award Maximums. (1) The amount of a teacher scholarship award shall be calculated by determining the student's total cost of education minus expected family contribution and the amount of financial aid received or expected to be received during the academic period. The amount of financial aid received or expected to be received during the academic period shall not include any amounts available from any student loan or work-study programs.

(2) The maximum teacher scholarship award for a student classified as a freshman, postbaccalaureate, or graduate shall be $1,250 for a summer session, $2,500 for a semester, and $5,000 for an academic year (exclusive of a summer session).
(3) The maximum teacher scholarship award for a student classified as a freshman or sophomore shall be $325 for a summer session, $625 for a semester, and $1,250 for an academic year (exclusive of a summer session).
(4) The maximum teacher scholarship award for an eligible student enrolled less than full time in the last semester or summer term during which a baccalaureate, postbaccalaureate or master's degree will be completed shall be:
(a) $210 per credit hour if the student is enrolled during a regular semester; or
(b) $105 per credit hour if the student is enrolled in a summer term.

Section 4. Disbursements. (1) Disbursement of a teacher scholarship shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service prior to the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service prior to the authority.
(2) The monies awarded under the Teacher Scholarship Program shall be transmitted directly to the participating institution on behalf of all students eligible to receive the scholarship by electronic funds transfer.
(3) The authority shall send to the participating institution a disbursement roster containing each recipient's name and Social Security number.
(4) The participating institution shall hold the funds solely for the benefit of the student eligible to receive the scholarship and the authority until the recipient has rendered qualified teaching service for the period of enrollment for which the scholarship is intended.
(5) Upon the recipient's registration, the participating institution shall immediately credit the recipient's account and notify the recipient in writing that it has so credited that account, and deliver to the recipient any remaining scholarship proceeds.
(6) The participating institution shall indicate on the disbursement roster the date funds were either credited to the student's account or disbursed to the student, the name of a recipient for whom funds are being returned, the amount being returned, and the reason funds are being returned.
(7) If a recipient does not register for the period of enrollment for which the scholarship was awarded, or a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the scholarship is awarded, the school shall return the proceeds to the authority pursuant to Section 10 of this administrative regulation.
(8) The school shall retain a copy of the disbursement roster for its records and forward the original roster and any undisbursed scholarship funds to the authority not later than thirty (30) days following receipt of the roster and the funds.

Section 5. Cancellation. (1) A recipient rendering qualified teaching service in a designated critical shortage area shall remain eligible for the critical shortage credit provided by KRS 164.769(6)(c) if:
(a) The authority determines that an area is no longer a critical shortage area; and
(b) The recipient continues to render qualified teaching service in the area.
(2) A recipient who received a teacher scholarship prior to July 1, 1996, in return for agreeing to obtain the appropriate recertification and to teach in a critical shortage area upon completion of the recertification program shall receive cancellation of the repayment obligation if the recipient renders qualified teaching service in that area or in another critical shortage area.
(3) 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, the teaching requirements shall not be fulfilled concurrently. Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received. If a recipient has received a loan or scholarship pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 during the same semester as receiving a scholarship pursuant to KRS 161.165, the loan or scholarship received pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.165.
(4) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment. (1) A recipient failing to attain certification after completion of the eligible program of study or to commence rendering qualified teaching service within the six (6) month period following completion of the eligible program of study shall
immediately become liable to the authority to pay the sum of all promissory notes and accrued interest thereon, unless the author-
ity grants a deferment for cause.

(2) The interest rate applicable to repayment of a teacher
scholarship under this section shall be six (6) [twelve (12)] percent
per annum beginning April 1, 2005.

Section 7. Notifications. A recipient shall notify the author-
ity within thirty (30) days of:
(1) Change in enrollment status;
(2) Cessation of full-time enrollment in an eligible program of
studies;
(3) Employment in a qualified teaching service position; or
(4) Change of name or address.

Section 8. Repayment Schedule. Written notification of de-
mand for repayment shall be sent by the authority to the scholar-
ship recipient's last known address and shall be effective upon
mailing. The authority may, in its sole discretion, accept
repayment in installments in accordance with a schedule estab-
lished by the authority. Payments shall first be applied to interest
and then to principal on the earliest unpaid promissory note.

Section 9. Records. A participating institution shall maintain
complete and accurate records pertaining to the eligibility, enrol-
ment and progress of each student receiving aid under this pro-
grame. The institution shall disburse funds to the student for educa-
tional expenses.

(1) If the student received financial assistance administered by
the authority, all or a portion of the refund and repayment shall be
due to the authority on all its financial assistance programs in ac-
cordance with this section.

(2) The institution shall adopt and implement a fair and equita-
ble refund policy for financial assistance administered by the
authority which shall be:
(a) A clear and conspicuous written statement;
(b) Made available to a prospective student, prior to the earlier
of the student’s enrollment or the execution of the student's enrollment
agreement, and to currently-enrolled students;
(c) Consistently administered by the institution; and
(d) Made available to the authority upon request.

(3) The institution shall determine a fair and equitable
refund policy for financial assistance administered by the
authority which shall be:
(a) Use the same methods and formulas for determining the
amount of a refund as the institution uses for determining the return
of federal financial assistance funds; or
(b) Be a separate and distinct policy adopted by the institution
that is based upon:
1. The requirements of applicable state law; or
2. The specific refund standards established by the institution's
nationally-recognized accrediting agency.

(4) If the institution determines that a refund of financial assis-
tance is due in accordance with its policy, the institution shall allo-
 cate to the financial assistance programs administered by the
authority the refund and repayment in the following descending
order of priority before allocating the refund to institutional or pri-
ivate sources of financial assistance:
(a) CAP grant;
(b) KTG;
(c) Teacher scholarship;
(d) Kentucky Educational Excellence Scholarship;
(e) National Guard tuition assistance;
(f) Early Childhood Development Scholarship.

(7)(a) If a teacher scholarship recipient officially or unofficially
withdraws from or is expelled by an institution before the first day
of classes of the award period, the award shall be deemed an
overaward and a full refund and repayment of the teacher scholar-
ship shall be required, notwithstanding any institutional policy to
the contrary.

(b) If the institution is unable to document the student's last
date of attendance, any teacher scholarship disbursement for that
award period shall be subject to full refund.

(c) If a teacher scholarship recipient's enrollment is terminated
without the written consent of the student after the last date of
attendance, the institution shall relieve the recipient of any future
obligation for repayment of the amount of funds already

Section 10. Refunds. (1) A student who fails to enroll, withdraws,
is expelled from the institution, or otherwise fails to com-
plete the program on or after his or her first day of class of the period
of enrollment or changes enrollment status may be due a refund
of monies paid to the institution on behalf of that student or a repa-
ment of cash disbursements made to the student for educational
expenses.

(2) If the student received financial assistance administered by
the authority, all or a portion of the refund and repayment shall be
due to the authority on all its financial assistance programs in ac-
cordance with this section.

(3) The institution shall adopt and implement a fair and equita-
ble refund policy for financial assistance administered by the
authority which shall be:
(a) A clear and conspicuous written statement;
(b) Made available to a prospective student, prior to the earlier
of the student's enrollment or the execution of the student's enrollment
agreement, and to currently-enrolled students;
(c) Consistently administered by the institution; and
(d) Made available to the authority upon request.

(4) The institution's refund policy for financial assistance ad-
ministered by the authority shall either:
(a) Use the same methods and formulas for determining the
amount of a refund as the institution uses for determining the return
of federal financial assistance funds; or
(b) Be a separate and distinct policy adopted by the institution
that is based upon:
1. The requirements of applicable state law; or
2. The specific refund standards established by the institution's
nationally-recognized accrediting agency.

(5) If the institution determines that a refund of financial assis-
tance is due in accordance with its policy, the institution shall allo-
 cate to the financial assistance programs administered by the
authority the refund and repayment in the following descending
order of priority before allocating the refund to institutional or pri-
ivate sources of financial assistance:
(a) CAP grant;
(b) KTG;
(c) Teacher scholarship;
(d) Kentucky Educational Excellence Scholarship;
(e) National Guard tuition assistance;
(f) Early Childhood Development Scholarship.

(7)(a) If a teacher scholarship recipient officially or unofficially
withdraws from or is expelled by an institution before the first day
of classes of the award period, the award shall be deemed an
overaward and a full refund and repayment of the teacher scholar-
ship shall be required, notwithstanding any institutional policy to
the contrary.

(b) If the institution is unable to document the student's last
date of attendance, any teacher scholarship disbursement for that
award period shall be subject to full refund.

(c) If a teacher scholarship recipient's enrollment is terminated
without the written consent of the student after the last date of
attendance, the institution shall relieve the recipient of any future
obligation for repayment of the amount of funds already

Section 11. Information Dissemination and Recruitment. The
authority shall disseminate information through high school prin-
cipals, counselors, and school officials, about the availability and
eligibility for the program to potential recipients. The participating
institution shall provide assurances that program information will be disseminated to students
enrolled at the institution. The participating institution shall actively
recruit students from minority population groups for participation in
this program.

Section 12. Incorporation by Reference. (1) The Teacher
Scholarship Application 2004-2005, 12/03 edition, is incorporated by
reference.

(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort,
Kentucky 40601 on Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN PRATER, Chair
APPROVED BY AGENCY: November 15, 2004
FILED WITH LRC: November 18, 2004 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on
Friday, January 21, 2005, at 10 a.m., at 100 Airport Road, Frank-
fort, Kentucky. Individuals interested in being heard at this hearing
shall notify the agency in writing by Thursday, January 13, 2005,
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 cancelled. Any person who wishes to be heard
will be given an opportunity to comment on the proposed adminis-
trative regulation. A transcript of the public hearing will not be
made unless a written request for a transcript is made. If you do
not wish to attend the public hearing, you may submit written
comments on the proposed administrative regulation. Written
comments shall be accepted until January 31, 2005. 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: 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.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769, and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769, and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769, and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures, and repayment obligations related to scholarships provided under the program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation assists in the effective administration of the Teacher Scholarship Program by establishing the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769, and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.

(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 lowering the annual rate of interest for repayment of a teacher scholarship from 12% to 6%.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to allow Teacher Scholarship recipients who do not fulfill the requirement to teach in Kentucky to repay the scholarship at 6% interest versus the current rate of 12%.

(c) How the amendment, conforms to the content of the authorizing statutes: KRS 164.769(6)(f) requires the authority to establish by administrative regulation the terms and conditions for the repayment of Teacher Scholarships. KRS 164.769(6)(g) specifies that the maximum rate of interest shall be 12%. The amendment establishes a new rate of interest at 6%, which is below the maximum permitted by the authorizing statute.

(d) How the amendment will assist in the effective administration of the statute: The amendment will assist in the effective administration of the statute by reflecting the change in the interest rates for repayment of a teacher scholarship, allowing scholarship recipients who do not fulfill the requirement to teach in Kentucky to repay the scholarship at 6% interest versus the current rate of 12% and thereby facilitate repayment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 349 scholarship recipients who are currently in repayment, as well as all scholarship recipients going forward who either fail to render qualified teaching service or fail to attain certification as required by the terms of the Teacher Scholarship 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: The above groups will be affected by a reduction in the current interest rate.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: It is estimated that there will be no additional administrative cost to implement this administrative regulation. The proposed reduction in interest rate for repayment of Teacher Scholarships will result in an approximate decrease in income to the scholarship fund maintained by KHEAA of $113,400 per year and corresponding savings of that amount to the scholarship recipients repaying the obligation. However, the projected decrease of income to the scholarship fund may be offset by increased recovery of funds to the extent that repayment is facilitated by the lower interest rate.

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

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Teacher Scholarship Awards 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: 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 increase any fees: KRS 164.769(6)(f) requires the authority to establish by administrative regulation the terms and conditions for the repayment of Teacher Scholarships. KRS 164.769(6)(g) specifies that the maximum rate of interest shall be 12%. The amendment establishes a new rate of interest at 6%, which is below the maximum permitted by the authorizing statute.

(9) TIERING: Is tiering applied? 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 regulation 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.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services

11 KAR 14:060. Osteopathic Medicine Scholarship Program application of payments.

RELATES TO: KRS 164.7891
STATUTORY AUTHORITY: KRS 164.748(4), 164.7891(9)
NECESSITY FUNCTION, AND CONFORMITY: KRS 164.7891(9) requires the authority to promulgate administrative regulations for administration of the Osteopathic Medicine Scholarship Program. This administrative regulation establishes procedures for the application of payments made under the Osteopathic Medicine Scholarship Program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).

(2) "Disbursement" means the date the school indicates on the disbursement roster that funds were either credited to the student's account or disbursed to the student in accordance with 11 KAR 14:030, Section 2.

(3) "Full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year" means practicing in a qualified field for at least 2000 hours per calendar year.

(4) "Qualified field" means family practice, general practice, general internal medicine, general pediatrics, general obstetrics or gynecology.

(5) "Qualified service" is defined in KRS 164.7891(3)(c).

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Section 2. (1) The scholarship recipient shall immediately become liable for repayment of all outstanding promissory notes, including unpaid principal and interest accrued since the date of disbursement, if the scholarship recipient: 
(a) Ceases enrollment at the school of osteopathic medicine prior to completion of the program of study; 
(b) Begins, but fails to complete, an internship leading to licensure to provide qualified service; 
(c) Fails to begin a residency in a qualified field immediately following completion of the program of study at the school of osteopathic medicine or immediately following completion of an intervening internship; or 
2. Begins, but fails to complete, a residency in a qualified field; 
(d) Fails to obtain a license to practice osteopathic medicine in the Commonwealth; or 
(e) Otherwise fails to perform qualified service in full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year after obtaining a license to practice osteopathic medicine. 
(2) If the authority has reason to believe that an event specified in subsection (1) of this section has occurred, the authority shall send to the scholarship recipient’s last known address written notification of demand for payment of all outstanding promissory notes, including unpaid principal and interest accrued since the date of disbursement, that shall be effective upon mailing.

Section 3. If the scholarship recipient obligated for repayment remits a partial payment, the payment shall first be applied to accrued interest and then to unpaid principal on the earliest unpaid promissory note and on each unpaid promissory note in the order in which the promissory notes were executed.

Section 4. The interest rate applicable to repayment of a promissory note under this program shall be six (6) percent per annum beginning April 1, 2005.

JOHN PRATHER, Chair
APPROVED BY AGENCY: November 15, 2004
FILED WITH LRC: November 18, 2004 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, January 13, 2005, at 1:00 p.m., at the Auditor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Thursday, January 13, 2005, 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 cancelled. 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey, General Counsel
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes procedures for the application of payments made under the Osteopathic Medicine Scholarship Program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the terms and conditions for payments made under the Osteopathic Medicine Scholarship Program.
(c) How this administrative regulation conforms to the content of the authorizing statutes and any other applicable laws: This regulatory measure requires the authority to promulgate administrative regulations for administration of the Osteopathic Medicine Scholarship Program.
(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 the Osteopathic Medicine Scholarship Program by establishing uniform procedures for the application of payments made under the Osteopathic Medicine Scholarship Program.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: The amendment will change the existing administrative regulation by lowering the annual rate of interest for repayment of an osteopathic medicine scholarship from 12 percent to 6 percent.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to allow Osteopathic Medicine Scholarship recipients who do not fulfill the requirement to practice osteopathic medicine in Kentucky to repay the scholarship at 6 percent interest versus the current rate of 12 percent.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 164.789(3) requires the authority to promulgate administrative regulations for administration of the Osteopathic Medicine Scholarship Program, including the rate of repayment. KRS 164.789(3) specifies that the maximum rate of interest shall be 12 percent. The amendment establishes a new rate of interest at 6 percent, which is below the maximum permitted by the authorizing statute.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute by allowing Osteopathic Medicine Scholarship recipients who do not fulfill the requirement to practice osteopathic medicine in Kentucky to repay the scholarship at 6 percent interest versus the current rate of 12 percent and thereby facilitate repayment.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The 14 scholarship recipients currently in repayment as well as future recipients who fail to render qualified services as required by the terms of the Osteopathic Medicine Scholarship 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: Scholarship recipients who do not practice osteopathic medicine in Kentucky in repayment will repay their scholarship at a lower rate of interest.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: Initially, it is estimated that there will be no additional administrative cost to implement this administrative regulation. The proposed reduction in interest rate for repayment of Osteopathic Medicine Scholarships is expected to result in an approximate decrease in income to the scholarship fund maintained by KHEAA of $35,600 per year and corresponding savings to recipients of the scholarship repaying the obligation. However, this may be offset by increased recovery of funds to the extent that repayment is facilitated by the lower interest rate.
(b) On a continuing basis: Same answer as to (5) (a)
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the Osteopathic Medicine Scholarship Program is provided by a percentage of the coal severance tax appropriated by the General Assembly for that purpose.
(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. The amendment will change the
existing administrative regulation by lowering the annual rate of interest for repayment of an osteopathic medicine scholarship from 12 percent to 5 percent.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. The amendment to this administrative regulation does not increase any fees, KRS 164.7891(9) requires the authority to promulgate administrative regulations for administration of the Osteopathic Medicine Scholarship Program, including the rate of repayment, KRS 164.7895(10) specifies that the maximum rate of interest shall be twelve (12) percent. The amendment will change the existing administrative regulation by lowering the annual rate of interest from 12 percent to 6 percent for repayment of an osteopathic medicine scholarship by those who do not fulfill the requirement to practice osteopathic medicine in Kentucky.

(9) TIERING: Is tiering applied? 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.

GENERAL GOVERNMENT COUNCIL
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:011. Definitions for 201 KAR Chapter 11.
RELATES TO: KRS 324.010(1), 324.046(1), 324.111(1), (2), (3), (4), (6), 324.117(1), (5), 324.160(4)(j), (m), (r), 324.410(1), 324.420(1), (2), (3), (4), (5)
STATUTORY AUTHORITY: KRS 324.117(5), 324.281(5), 324.282
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation defines terms used in the implementation of KRS Chapter 324.

Section 1: Definitions. (1) "Academic credit hour" means:
(a) One (1) college semester hour,
or
(b) Sixteen (16) fifty (50) minute hours of actual classroom attendance.
(2) "Contract deposit" means money delivered to a licensed agent as part of an offer to enter a contract for the sale of real property after:
(a) The offer or counteroffer is accepted, and
(b) An executor's contract exists.
(3) "False, misleading, or deceptive advertising" means an advertisement that is prohibited pursuant to KRS 324.117(1) because the advertisement:
(a) Is contrary to fact;
(b) Leads a person to a mistaken belief or conclusion;
or
(c) Knowingly makes a representation that is contrary to fact.
(4) "Fraud" or "fraudulent dealing" means a material misrepresentation that:
(a) Is:
  1. Known to be false; or
  2. Made recklessly;
(b) Is made to induce an act;
(c) Induces an act in reliance on the misrepresentation; and
(d) Causes injury;
(5) "Gift" means an item of value that is:
(a) Offered to a prospective purchaser on a condition set forth in the offer to the prospective purchaser;
or
(b) Not a complimentary:
  1. Refreshment, including a soft drink or snack, that is offered to the general public; or
  2. Gift that:
     a. Has a value less than $100;

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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 will be 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 funding will be necessary.
(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees are or will be established.
(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Y. Denise Payne Wade
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation outlines how a licensee can properly notify the commission of certain changes, such as business and residence address.
(b) The necessity of this administrative regulation: This regulation is necessary to codify the commission’s rules on notification of changes in business and residence addresses and the like so the commission’s files will be up-to-date and the commission can contact licensees.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation merely explains in greater detail the reporting requirements of the authorizing statute.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures that licensees notify the commission of any changes in writing so that there will be no errors in communication of such information and the commission can retain a record in its files.
(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 require notice of certain changes, such as business and residence address, to be given to the commission in writing.
(b) The necessity of the amendment to this administrative regulation: This amendment will codify existing policy as required by Kentucky law.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment codifies existing policy related to notifications allowed by law.
(d) How the amendment will assist in the effective administration of the statutes: This will codify existing policy and allow the commission to have a written notification and proof of any changes to a licensee's filed information.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees will have to comply with this regulation.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: Licensees will not be affected, this is current policy that is just being codified by this amendment.
(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 will be 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 is necessary.
(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees are established by this change.
(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:030. License cancellation; reasons for.

RELATES TO: KRS 324.310, 324.330
STATUTORY AUTHORITY: KRS 324.281(5), 324.282 [Chapter 43A]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) authorizes the Real Estate Commission to promulgate regulations. KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to effectively carry out and enforce the provisions of KRS Chapter 324. This administrative regulation informs and sets (to inform and set) certain standards for the licensees and to protect the public.

Section 1. A license is automatically cancelled if the holder thereof fails to promptly notify the commission, in writing, of any of the following changes: broker's business address, a change of firm name, or sales associate's transfer from one (1) broker to another, or a change of surname.

Section 2. The commission shall be notified, in writing, of a change of a residence address. (There is no charge for this.)

SUE TEEGARDEN, Chairperson
APPROVED BY AGENCY: December 10, 2004
FILED WITH LRC: December 14, 2004 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2005 at 1 p.m., local time, at the Holiday Inn-Hurstbourne located at 1325 S. Hurstbourne Parkway, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2005, 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 January 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 425-4273, fax (502) 426-2717.

RELATES TO: KRS 324.60(4)(w)
STATUTORY AUTHORITY: KRS 324.281(5), 324.282
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.262 authorizes the Real Estate Commission to promulgate administrative regulations. This administrative regulation establishes license standards pursuant to KRS 324.160(4)(w).

Section 1. Whenever a license has entered into a written listing agreement or any other written agreement under the terms of which the licensee agrees to provide one (1) or more real estate brokerage services for the owner of the property to be brokered by the licensee that are not of a minimum value:
(1) Accept delivery and submit to the principal, owner-client, or customer, without delay, all written offers to lease or purchase the real estate that is the subject of the written agreement between the licensee and his principal, owner-client, or customer;
(2) Accept all earnest money deposits that are presented to him or her by other licensees involved in the lease or purchase of the real estate that is the subject of the written agreement between the licensee and his principal, owner-client, or customer, until a lease or purchase agreement is signed and all contingencies are satisfied or waived; and
(3) Assist his or her principal, owner-client, or customer in developing, communicating, negotiating, and presenting offers, counteroffers, and notices that relate to offers and counteroffers that are involved in the lease or purchase of the real estate that is the subject of the written agreement between the licensee and his principal, owner-client, or customer, until a lease or purchase agreement is signed and all contingencies are satisfied or waived;
(4) Answer his or her principal’s, owner-client’s, or customer’s questions relating to offers, counteroffers, notices, and contingencies that are involved in the lease or purchase of the real estate that is the subject of the written agreement between the licensee and his principal, owner-client, or customer. Each licensee shall, without delay, relay to any other licensee for the real estate into which the licensee has entered into any written agreement with the property owner/client or customer to provide a (1) or more real estate brokerage services for the property owner/client or customer for a fee, compensation or other valuable consideration (owner's real estate agent if he is represented by a real estate agent).

SUE TEEGARDEN, Chairperson
APPROVED BY AGENCY: December 10, 2004
FILED WITH LRC: December 14, 2004 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2005 at 1:00 p.m., local time, at the Holiday Inn, Hurstbourne located at 1325 S. Hurstbourne Parkway, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2005, 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 by January 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by January 31, 2005 to the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 425-4273, fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Y. Denise Payne Wade
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation requires licensees to present all written offers as soon as possible so that the clients can decide whether to accept or reject such offers and there will not be long delays.
(b) The necessity of this administrative regulation: This regulation outlines how offers are handled by licensees and ensures that there are no long delays. This regulation protects both buyers and sellers and explains to agents how to handle offers between and among offices.
(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 adds language regarding duties of licensees pertaining to all listing contracts and buyer representations.
(b) The necessity of the amendment to this administrative regulation: This amendment addresses questions that have arisen regarding licensees’ duties for listing contracts and represents buyers.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment clarifies the duties of licensees as outlined in KRS Chapter 324.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow licensees and consumers to review the specific duties required of the licensees.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees must comply with these requirements.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment modifies the commission’s current interpretation of several laws and also outlines all licensees’ duties under all types of listing agreements and arrangements.
(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 will be needed.
(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 funds is necessary.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees is necessary.
(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:082. Retention of brokers’ records.
RELATES TO: KRS 324.111, 324.160(6), 324.360
STATUTORY AUTHORITY: KRS 324.261(5), 324.282
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282
authorizes the Real Estate Commission to promulgate administrative regulations to effectively carry out the provisions of this chapter. This administrative regulation establishes broker supervision duties with regard to retention of records.

Section 1. All brokers shall preserve for five (5) years following its consummation, records in one (1) file relating to any real estate transaction, which shall include any written offers to lease or purchase the real estate, the acquisition of and disbursement of any monies, listing and sales contracts, closing sheets, property disclosure forms and agency disclosure forms.

SUE TEEGARDEN, Chairperson
APPROVED BY AGENCY: December 10, 2004
FILED WITH LRC: December 14, 2004 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2005 at 1 p.m., local time, at the Holiday Inn-Hurstbourne located at 1325 S. Hurstbourne Parkway, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2005, 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 January 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 425-4273, fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Y. Denise Payne Wade
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation requires brokers to retain copies of all transactional documents for a minimum period of 5 years.
(b) The necessity of this administrative regulation: This regulation is necessary to ensure that the commission and other regulatory entities, such as the courts, will be able to access certain legal documents for a specified period of time so that brokers and consumers will have access to such documents if complaints or lawsuits are filed.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation codifies requirements under KRS 324.160(6), outlining a broker's supervisory duties.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation outlines specifically for brokers the documents that must be retained and the number of years for such retention so there is no confusion.
(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 require a broker to retain written offers that were not accepted, in addition to other items that are already required to be retained.
(b) The necessity of the amendment to this administrative regulation: This amendment will clarify the retention requirements for brokers.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment simply adds one additional item to be retained by brokers.
(d) How the amendment will assist in the effective administra-

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tion of the statutes: This amendment will clarify the retention requirements and will ensure that brokers retain written offers that were not accepted. This will assist in investigating complaints and reviewing files.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All brokers will be required to follow this new regulation.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment should not greatly impact brokers, as most probably already retain written offers that were not accepted. All others will simply need to retain additional pages that they do not currently retain in one file.
(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: No funding will be needed.
(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 increase in fees will be needed.
(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission

(Revised)

201 KAR 11:105. Owner's consent and authorization.
RELATES TO: KRS 324.117(1), (4), 324.160(4)(w), (6)
STATUTORY AUTHORITY: KRS 324.281(5), 324.282
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282
authorizes the Real Estate Commission to promulgate administrative regulations to carry out the provisions of KRS Chapter 324 [342]. This administrative regulation establishes certain standards for advertising real estate.

Section 1. A real estate broker shall not offer real estate for sale or lease without the consent of the owner. When promoting or advertising the real estate to the general public, the broker shall have a written listing agreement signed by the owner. A buyer's agent may advertise or promote his or her participation in the sale after a binding contract is created.

Section 2. A sign shall not be placed on any property by a real estate licensee without the written consent of the owner.

Section 3. A real estate property print advertisement of a licensee, or an offer or solicitation to provide brokerage services by a licensee, related to marketing or identifying real property for sale or lease, shall include the name of the real estate company where the licensee's license is held or the name of the real estate company's principal broker with whom the licensee is affiliated. If the advertisement includes the name of the real estate company's principal broker, the principal broker's name shall include his or her title as principal broker or be followed by any other clear designation of his or her status as a broker. The requirements in this section shall apply to advertisements for listed property only - including listed property that is owned by a licensee.

Section 4. All advertisements by a licensee shall be approved by the principal broker with whom the licensee is affiliated or by an individual designated by the principal broker to approve the adver-
Section 5. Licensees may advertise public information, such as sales price, of properties that have sold and closed, even if the licensee did not have a written listing agreement on the property.

SUE TEEGARDEN, Chairperson
APPROVED BY AGENCY: December 10, 2004
FILED WITH LRC: December 14, 2004 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2005 at 1 p.m., local time, at the Holiday Inn-Hurstbourne located at 1225 S. Hurstbourne Parkway, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2005, 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 January 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 425-4273, fax (502) 428-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Y. Denise Payne Wade
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation outlines the duties of a licensee pertaining to advertising real estate for sale to the general public.
(b) The necessity of this administrative regulation: This regulation is necessary to ensure that all signage and promotion of real estate is in compliance with the wishes of the consumers and is not misleading or confusing to the public and to other licensees.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation clearly defines and outlines requirements under KRS 324.117, which mandates that real estate advertising must not be false, misleading, or deceptive.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clarifies how a licensee may promote certain real estate and what requirements they must meet for such promotion. Without this regulation, there may be confusion among the public and licensees as to what properties a licensee could advertise or promote publicly.
(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 allow buyers' agents more flexibility to promote their participation in a sale and will also allow licensees to advertise public information about properties they did not have listed, such as sales price after closing.
(b) The necessity of the amendment to this administrative regulation: Numerous licensees have requested this amendment to allow more flexibility in promotion of their business and sales.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment simply expands upon the listing agents' current ability to promote through a listing agreement.
(d) How the amendment will assist in the effective administration of the statutes: This will allow for this regulation to be in line with other current regulations and will update an outdated regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees will be allowed greater flexibility in advertising under this new administrative regulation.
(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 amendment: This regulation will allow greater flexibility, if the licensee chooses to advertise his or her participation in a sale or public information about a property.
(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 will be needed.
(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 needed.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are assessed.
(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.
(d) Pay for refreshments or the costs of meals consumed by clients, customers or prospective clients or customers;
(e) Present any gift that does not exceed a cost of $100 at or after closing to the participants in that closing;
(f) Offer a prize or free gift at an event such as a fair trade exposition, or community event so long as such advertising is done only at the specific event and the cost of the prize or free gift does not exceed $500 per event per branch office; or
(g) Offer, in a one-on-one situation, to provide any thing of value for a client or customer, so long as it is disclosed in writing and signed by the licensee and his or her client or customer, [the licensed agent's client.]

(3) To refuse or prohibit any prospective purchaser from viewing or inspecting real estate listed for sale or lease with the agent, or with the agent's company, without the written and signed direction of the owner. Nothing herein shall be construed to permit otherwise unlawful discrimination.

(4) To fail to satisfy one (1) or more of the following fiduciary duties owed to the licensee's client:
(a) Loyalty;
(b) Obedience to lawful instructions;
(c) Disclosure;
(d) Confidentiality;
(e) Reasonable care and diligence;
(f) Accounting;
(g) To advertise guaranteed sales plan without required disclosure of:
1. Whether a fee is charged for participation;
2. Whether the real estate shall meet qualifications for participation;
3. Whether the purchase price under a guarantee of purchase of the owner's real estate shall be determined by the licensee or a third party; and
4. Whether the owner of the real estate shall purchase other real estate listed for sale by the licensee or his designee.

(b) "Guaranteed sales plan" means an offer or solicitation:
1. To guarantee the sale of an owner's real estate; or
2. To guarantee the purchase of the owner's real estate if the owner's real estate is not sold by the broker.

(c) "Required disclosure" means:
1. In print advertising, that the disclosure shall be in letters at least twenty-five (25) percent the size of the largest letters in the advertisement; and
2. In radio advertising, that the disclosure shall be verbal and clearly understandable; and
3. In television advertising, that the disclosure shall:
   a. Be verbal and clearly understandable; or
   b. Be written and appearing on the screen at least three (3) seconds for the first line of lettering and one (1) second for each additional line of lettering in the following:
      (i) Which are eighteen (18) video scan lines in size for letters which are all upper case;
      (ii) Which are twenty-four (24) video scan lines in size for upper case capitals when upper case capitals and lower case letters are used.
4. To violate a statute or administrative regulation governing brokers, sales associates, or real estate transactions.
5. To serve in the dual capacity of a real estate licensee and loan originator, if the real estate licensee, while acting in that capacity:
   (a) Fails to disclose this dual role in writing and fails to indicate in that disclosure that the licensee will receive additional payment for the loan origination activities;
   (b) Fails to contact the Department of Financial Institutions to register and pay the one (1) time fee for engaging in loan origination, if the licensee is engaged in loan origination as a part of his or her real estate activities to assist his or her real estate clients in obtaining financing;
   (c) Receives payment but fails to perform at least five (5) of the following fourteen (14) specific activities, as outlined by the Department of Housing and Urban Development and as set out in the Real Estate Settlement Procedures Act Statement of Policy 1999-1.

1. Taking information from the borrower and filing out the application;
2. Analyzing the prospective borrower's income and debt and pre-qualifying the prospective borrower to determine the maximum mortgage that the prospective borrower can afford;
3. Educating the prospective borrower in the home buying and financing process, advising the borrower about the different types of loan products available, and demonstrating how closing costs and monthly payments could vary under each product;
4. Collecting financial information (tax returns, bank statements) and other related documents that are part of the application process;
5. Initiating/ordering verifications of employment and verifications of deposit;
6. Initiating/ordering requests for mortgage and other loan verifications;
7. Initiating/ordering appraisals;
8. Initiating/ordering inspections or engineering reports;
9. Providing disclosures (truth in lending, good faith estimate, others) to the borrower;
10. Assisting the borrower in understanding and clearing credit problems;
11. Maintaining regular contact with the borrower, lender, and the lender between application and closing to apprise them of the status of the application and gather any additional information as needed;
12. Ordering legal documents;
13. Determining whether the property was located in a flood zone or ordering such service; and
14. Participating in the loan closing;
   (d) Requests or receives compensation that is commensurate with the actual work performed; or
   (e) Requests or receives compensation for work that is not actually performed by him or her.

SUE TEEGARDEN, Chairperson
APPROVED BY AGENCY: December 10, 2004
FILED WITH LRC: December 14, 2004 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2005 at 1 p.m., at the Holiday Inn-Hurstbourne located at 1325 S. Hurstbourne Parkway, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2005, 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 chooses 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 January 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 425-4273, fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Y. Denise Payne Wade

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation outlines what actions constitute "improper conduct" under the licensing laws.
(b) The necessity of this administrative regulation: This regulation is necessary to further outline what activities would fall under KRS 324.160(4)(v), the statute that prohibit improper conduct by licensees.
(c) How this administrative regulation conforms to the content
of the authorizing statutes. This regulation outlines certain activities that are prohibited, which specify the actions that are not allowed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This regulation makes it clear to licensees and the public about what activities a licensee may and may not perform in order to comply with the mandate of KRS 324.160(4)(b).

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

(a) How the amendment will change this existing administrative regulation. This amendment will allow licensees greater flexibility in the use of marketing materials, meals, giveaways, negotiations of items of value and advertising of offers by others.

(b) The necessity of the amendment to this administrative regulation. This amendment allows greater flexibility in advertising, promotion and reduction.

(c) How the amendment conforms to the content of the authorizing statutes. The amendment clarifies what will and will not be allowed under the enabling statutes.

(d) How the amendment will assist in the effective administration of the statutes. This amendment will clarify and codify numerous questions and violations that have been presented to the commission. The amendment will allow licensees and consumers a very specific list of what is permitted and not permitted under the law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. All licensees will be subject to this regulation.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment. This amendment will allow greater flexibility in advertising, offering and promoting to the general public.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation of this administrative regulation? No funding will be needed.

(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 will be needed.

(8) State whether or not this administrative regulation establishes fees that are directly or indirectly increases any fees; if fees will be established.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:147. Procedure for license retention when sales associate released by broker.

RELATES TO: KRS 324.010(15), 324.160(4)(a)(i), 324.310, 324.330

STATUTORY AUTHORITY: KRS 324.281(5), 324.287

NECESSITY: FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.160(1) requires the delivery of a sales associate's license to the commission when an association with a principal broker is terminated.

Section 1. (1) Upon receipt, by regular mail, from the principal broker of the released license for [of a letter from the principal broker releasing a sales associate pursuant to KRS 324.310(1), the commission shall notify the sales associate by regular mail at his last resident address on file at the commission office that, within thirty (30) days of the date of the release letter, he shall:

(a) Reaffiliate with another broker; or

(b) Request by letter that his license be placed in escrow.

(2) Failure by the sales associate to comply with the request [order] issued by the commission pursuant to subsection (1) of this section shall:

(a) Be a violation of KRS 324.160(4)(a)(i); and

(b) Result in the cancellation [suspension or revocation] of his license.

SUE TEEGARDEN, Chairperson
APPROVED BY AGENCY: December 10, 2004
FILED WITH LRC: December 14, 2004 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2005 at 1 p.m. local time, at the Holiday Inn-Hurstbourne located at 1325 S. Hurstbourne Parkway, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2005, 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 January 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 425-4273, fax (502) 425-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Y. Denise Payne Wade

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation outlines how a sales associate can be released from his or her principal broker and how the sales associate may reaffiliate and the consequences of failing to do so.

(b) The necessity of this administrative regulation: This regulation is necessary to outline the procedures for a sales associate to be released form one broker and to reaffiliate with another broker without being cancelled.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation complies with the notification requirements of KRS 324.310 and 324.330.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation outlines the proper procedure for licensees to be released and to reaffiliate and gives certain time frames and penalties for failing to follow those time frames.

(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 are merely "housekeeping" changes to clarify language, replace an outdated statutory reference and update language.

(b) The necessity of the amendment to this administrative regulation: This amendment is merely for "housekeeping" and clarification.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment does not change any substantive nature of the regulation and merely eliminates an outdated statutory reference and terminology.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will simply provide clarity and correct outdated statutory and terminology references in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is simply a "housekeeping" amendment and therefore should not affect any licensees.

(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 amendment: This amendment will only impact groups by providing more clarity. There should be no negative impact.

(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 will be 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 funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: No fees are or will be established.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:180. Promotion of out-of-state property and time-shares, registration and prerequisites.

RELATES TO: KRS 324.142
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations necessary to enforce the provisions of KRS Chapter 324. KRS 324.142 authorizes the Real Estate Commission to promulgate administrative regulations establishing requirements and procedures for its licensees who are engaged in promotional activities in this Commonwealth for property located outside this Commonwealth. This administrative regulation establishes the [To set forth] procedure and content of registration required for promotional activities of out-of-state property and time-shares.

Section 1. Definitions. (1) "Time-share" means any arrangement under which one may acquire, for a period of time, the right to use and occupy property, for a recurring block of time. For the purpose of this administrative regulation, a time-share may be:
   (a) A time-share estate, wherein a freehold estate or an estate for years is conveyed;
   (b) A vacation lease, wherein a buyer purchases the right to occupy a specific accommodation for a specified time period over a specified number of years;
   (c) A vacation license or club membership, wherein a buyer acquires the right to occupy an undesignated unit at certain real property(ies) during a specific time each year for a specific number of years; or
   (d) Variations of the above that result in the acquisition of the right to use real property for a limited period of time in recurring intervals for a number of years.

(2) "Promotional activities" mean [-] every solicitation or attempt to bring about the sale, exchange, lease, assignment, license or award with regard to an interest in a real estate.

Section 2. To obtain commission approval for engaging in promotional activities in the Commonwealth for property located outside of the Commonwealth, each applicant shall [must] file with the commission the documents set forth below:

(1) Registration form setting forth pertinent date pertaining to legal description of property, name(s) of developers, owners and persons involved in promotional activities, type of offering, form of ownership of property, encumbrances(s) on property, current and anticipated improvements, taxes and assessments, facilities and services offered to be offered in the future, and description of promotional activities to be conducted in Kentucky.

(2) If a corporation, submit a copy of the Articles of Incorporation with all amendments thereto and current list of the names and addresses of officers and directors with their principal occupation at the current time; out-of-state corporations must also submit "certificate of authority" issued by the office of the Secretary of State of the Commonwealth of Kentucky.

(3) If a partnership or association, submit a copy of Articles of Partnership or other organizational documents.

(4) Consent to service of process; on form provided by the commission.

(5) Copies of all sales contracts, agreements, option forms, lease forms, and the prospectus currently used for the property.

(6) Consent forms for commission to inspect the real estate being promoted and to inspect and copy books and reports of the owner and/or developer at the cost of the applicant, on forms provided by the commission.

Section 3. Exemptions. The registration required under this administrative regulation shall not apply to:

(1) The making of any offer or disposition of any out-of-state property:
   (a) By an owner in a single or isolated transaction; or
   (b) By any government or government agency; or
   (c) By court order.

(2) Any applicant that has been granted an exemption by the Kentucky Real Estate Commission on the ground that their promotional activities involve property of a small amount or of such a limited character that the public interest and protection of purchasers is deemed unnecessary with regard to said offerings.

(3) Any applicant who has registered under the Federal Interstate Land Sales Full Disclosure Act shall be exempt from the registration requirements contained in Section 2 of this administrative regulation [paragraphs 2a-c of this subsection], upon the filing with the commission of a copy of an effective statement of record filed with the Secretary of Housing and Urban Development together with a filing fee of $100.

Section 4. Sellers of time-share plans in Kentucky regardless of location of property shall [must] verify, on a form provided by the commission:

(1) That each purchaser shall receive a fully completed copy of any contracts pertaining to the sale which includes the date of execution of contract, financial obligations of purchaser (including initial purchase price and any additional charges or to which purchaser may be subject), estimated date of availability of accommodation or facility which is not completed at time of contract, and a description of the nature and duration of the time-share being sold.

(2) That each purchaser shall be informed orally at the time he or she signs a contract of the purchaser's right to rescission [recession], which shall be substantially similar to that set forth in subsection (3) of this section.

(3) That all sales contracts utilized in the promotion and sale of said time-share plans shall include in underlined, bold face type of a minimum size of ten (10) points substantially the following statement: "You may cancel this contract without any penalty or obligation within three (3) business days from the date above. If you cancel, any payments made by you under the contract and any negotiable instrument executed by you will be returned within ten (10) business days following receipt by the seller of your cancellation notice. If any security interest arising out from the transaction will be cancelled. If you decide to cancel this contract, you may notify the seller in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to:

Name of seller at:
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Section 5. (1) Violation of any of the requirements of this administrative regulation or failure to comply with the provision of the notice of cancellation by a licensee shall constitute a violation of KRS 324.160(1)(a) of this administrative regulation.

(2) Pursuant to KRS 324.142, commission approval is required for a licensee to promote out-of-state property and time-shares. Violation of any of the requirements of this administrative regulation or failure to comply with the provision of the notice of cancellation or ownership interest shall result in either revocation or denial of approval, whichever is applicable, as required under KRS 324.142, and may be enforced by injunctive action under KRS 324.020(6)(a).

Section 6. A filing fee of $100 shall accompany all applications. To be tendered to the Director at the time of filing.

SUE TEEGARDEN, Chairperson.
APPROVED BY AGENCY: December 10, 2004.
FILED WITH EFC: December 14, 2004 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2005 at 7 p.m. local time, at the Holiday Inn Plushbourne located at 1325 S. Hurstbourne Parkway, in Louisville, Kentucky. Interested individuals who wish to be heard at this hearing shall notify this agency in writing by January 13, 2005, 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 be made unless 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 January 31, 2005. 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: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 203, Louisville, Kentucky 40223; phone (502) 425-4273; fax (502) 425-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Y. Denise Payne Wade.
(1) Provide a brief summary of:
(a) What this administrative regulation does; This regulation outlines the procedures for registering and promoting out-of-state properties and time-shares.
(b) The necessity of this administrative regulation; This regulation is necessary to outline the procedures for companies and individuals who wish to register with the Commission to promote out-of-state properties and time-shares.
(c) How this administrative regulation conforms to the content of the authorizing statutes; This regulation outlines the procedures necessary under KRS 324.142.
(d) How this administrative regulation currently assists or will assist the effective administration of the statutes; This regulation assists the effective administration of the statutes.
(e) How this amendment to an existing administrative regulation provide a brief summary of:
(a) The amendment to the administrative regulation; The amendments are merely “housekeeping” changes to clarify language, replace typos and outdated information.
(b) The necessity of the amendment to this administrative regulation; This amendment is merely for “housekeeping” and clarification.
(c) How the amendment conforms to the content of the authorizing statutes; The amendment does not change any substantive nature of the regulation and merely clarifies the promotion of out-of-state property as allowed by KRS 324.142.
(d) How the amendment will assist in the effective administration of the statutes; This amendment will simply provide clarity and correct outdated references in the regulation.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation; This is simply a “housekeeping” amendment and therefore should not affect any licensees or out-of-state time-share vendors.
(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; This amendment will only impact groups by providing more clarity. There should be no negative impact.
(g) Provide an estimate of how much it will cost to implement this administrative regulation:
(i) Initially: None
(ii) On a continuing basis: None
(iii) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation; No funding will be necessary.
(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 increase in funding will be necessary.
(k) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees; No fees are or will be established.
(l) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:250. Listing and purchase contracts - provisions required.

RELATES TO: KRS 324.160(4)(w), 324.281(5)
STATUTORY AUTHORITY: KRS 324.281(5), 324.282
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes standards for listing and purchase contracts.

Section 1. Listing contracts shall include the:
(1) Listing price of the property, unless the sale is to be by auction;
(2)(a) Date of the signing of the listing contract for all parties who sign, for a contract signed before September 1, 2004; or
(b) Date and time of the signing of the listing contract for all parties who sign, for a contract signed on or after September 1, 2004;
(3) Date and time of expiration of the listing contract;
(4) Fee or compensation agreed upon;
(5) Street, address or location of the real estate listed for sale;
(6) Signatures of all owners;
(7) Special directions of the owner concerning limitations on showings and subagency restrictions; and
(8) Date and time for initialing of all changes on the contract (document for a contract signed on or after September 1, 2004).

Section 2. An offer to purchase or a counteroffer prepared by
or at the direction of a licensed agent shall include the:
(1) Purchase price, the amount of contract deposit given and who is to hold the deposit;
(2) Date and time of signing of the offer or counteroffer for all parties who sign;
(3) Date and time when the offer or counteroffer expires;
(4) Street, address, or a general description of the real estate sufficient to identify the parcel;
(5) Names of the offering party and the agent who prepared the offer or counteroffer; and
(6) Provision setting forth the date by which the closing shall occur and when possession shall be given to the buyer.

Section 3. (1)(a) Prior to September 1, 2001, a licensee shall insert the following provision in a contract made after an executory contract of sale of real estate that has not lapsed according to its terms: "This contract is contingent upon the nonperformance of a contract of sale, and any signed extension, in which a person (or persons) have agreed to purchase the real estate that is the subject of this contract."
(b) Effective September 1, 2001, if a licensee presents an offer to purchase real estate for which an executory contract to sell the property is already in existence, the offer shall indicate in writing that the offer is contingent upon the nonperformance of the existing executory contract by inserting the following provision in the offer: "This offer is submitted as a back-up offer, which means the property is subject to a previously-accepted offer which has priority over this offer."
(2) The provision required in subsection (1) of this section shall be:
(a) Inserted by the licensee who prepares the offer to purchase, if he is aware of the existing contract; and
(b) Made by the listing licensee as a counteroffer.

Section 4. Contracts to Contain Financing Provisions. All contracts providing for the purchase of property shall specifically set forth:
(1) The manner in which the purchase shall be financed; and
(2) The amount of any encumbrance and whether same is to be underwritten by the seller or a commercial institution or otherwise.

SUE TEEGARDEN, Chairperson
APPROVED BY AGENCY: December 10, 2004
FILED WITH LRC: December 14, 2004 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2005 at 1 p.m., local time, at the Holiday Inn-Hurstbourne located at 1325 S. Hurstbourne Parkway, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2005, 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 January 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 425-4273, fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Y. Denise Payne Wade
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation sets out the requirements for completing a purchase contract, listing contract and a back-up offer.
(b) The necessity of this administrative regulation: This regulation mandates certain inclusions in purchase and listing contracts and back-up offers in order to clarify a licensee's duties and protect the public.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation outlines a licensee's duties to avoid a complaint for gross negligence and to protect the public.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets out a clear standard for completion of purchase and listing contracts and back-up offers so that all licensees will be on a level playing field and real estate consumers will be protected.
(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 add the financing term requirement that is currently required under 201 KAR 11:040.
(b) The necessity of the amendment to this administrative regulation: This amendment places all current requirements in one regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment is merely a merger of two already-existing regulations.
(d) How the amendment will assist in the effective administration of the statutes: This will allow licensees and consumers the ability to review all requirements in one regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will allow licensees and consumers the ability to review all requirements in one regulation.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This is merely a merger of 2 existing regulations, so there should be no impact other than to clarify matters.
(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 will be necessary.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No, or by the change, if it is an amendment. No increase in fees is needed.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fee is established.
(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Amendment)
201 KAR 11:350. Seller's disclosure of property conditions form.
RELATES TO: KRS 324.360
STATUTORY AUTHORITY: KRS 324.281(5), 324.282, 324.360(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.360(2) requires the Kentucky Real Estate Commission to promulgate an administrative regulation authorizing a "seller's disclosure of conditions form" and KRS 324.360(3) sets forth matters which the form shall contain and allows the inclusion of additional matters. This administrative regulation establishes the required "Seller Disclosure of Property Condition" form required by KRS
### HOUSE SYSTEMS

<table>
<thead>
<tr>
<th>Any—past or current problems affecting:</th>
<th>Yes</th>
<th>No</th>
<th>Unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Plumbing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) Electrical system</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) Appliances</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d) Floors and wall</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>(e) Doors and windows</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>(f) Ceiling and attic fans</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(g) Security system</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(h) Sump pump</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) Chimneys, fireplaces, inserts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(j) Pool, hot tubs, sauna</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(k) Sauna system</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(l) Heating—age</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(m) Cooling/air-conditioning—age</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### FOUNDATION/STRUCTURE/BASEMENT

<table>
<thead>
<tr>
<th>2. Any defects or problems, current or past, to the foundation or slab?</th>
<th>Explain:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3. Any defects or problems, current or past, to the structure or exterior?</th>
<th>Explain:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4. Has the basement leaked at any time since you have owned or lived in the property?</th>
<th>Explain:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5. When was the last time the basement leaked?</th>
<th>Explain:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td></td>
</tr>
</tbody>
</table>

### LAND/DRAINAGE

<table>
<thead>
<tr>
<th>4. LAND/DRAINAGE</th>
<th>Explain:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Any soil stability problems?</td>
<td></td>
</tr>
<tr>
<td>(b) Has the property ever had a drainage, flooding, or grading problem?</td>
<td></td>
</tr>
<tr>
<td>(c) Is the property in a flood plain zone?</td>
<td></td>
</tr>
<tr>
<td>(d) Is there a retention/detention basin, pond, lake, creek, spring, or water shed on or adjoining this property?</td>
<td></td>
</tr>
</tbody>
</table>

### WATER

<table>
<thead>
<tr>
<th>6. WATER</th>
<th>Explain:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Source of water supply</td>
<td></td>
</tr>
<tr>
<td>(b) Are you aware of below normal water supply or water pressure?</td>
<td></td>
</tr>
<tr>
<td>(c) Is there a water purification system or softener remaining with the house?</td>
<td></td>
</tr>
<tr>
<td>(d) Has your water ever been tested? If yes, give results</td>
<td></td>
</tr>
</tbody>
</table>

### SEWER SYSTEM

<table>
<thead>
<tr>
<th>7. SEWER SYSTEM</th>
<th>Explain:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Property is serviced by:</td>
<td></td>
</tr>
<tr>
<td>(b) Public sewer</td>
<td></td>
</tr>
<tr>
<td>(c) Private sewer</td>
<td></td>
</tr>
<tr>
<td>(d) Septic tank</td>
<td></td>
</tr>
<tr>
<td>(e) Storm sewer</td>
<td></td>
</tr>
<tr>
<td>(f) Leach field</td>
<td></td>
</tr>
<tr>
<td>(g) Aeration tank</td>
<td></td>
</tr>
</tbody>
</table>
The seller has owned this property since (date) and makes these representations only since that date. Seller agrees to immediately notify buyer of any changes which may become known to seller prior to closing.

Seller:
Date:
Sales:
Date:

THE SELLER REFUSES TO COMPLETE THIS FORM AND ACKNOWLEDGES THAT THE AGENT SHALL SO INFORM THE BUYER.

Seller:
Date:
The seller has refused to complete the form and has refused to acknowledge his failure to complete the form.

Broker/Agent:
Date:

The buyer acknowledges receipt of this form.

Buyer:
Date:

The information in this form is only for the period the undersigned owned the property beginning (date of purchase) to (date of this form).

PROPERTY ADDRESS:

This form applies to sales and purchases of residential real estate.

This form is not required for:
1. Residential purchases of new homes if a warranty is offered;
2. Sales of real estate at auction; or
3. A court supervised foreclosure.

PURPOSE OF STATEMENT: Completion of this form shall satisfy the requirements of KRS 324.360 which mandates the seller's disclosure of information about the property he is about to sell. This disclosure is based solely on the seller's observation and knowledge of the property's condition and the improvements thereon. This statement shall not be a warranty by the seller or seller's agent and shall not be intended as a substitute for an inspection or warranty the buyer may wish to obtain.

INSTRUCTIONS TO THE SELLER: (1) Complete all numbered items. (2) Report all known conditions affecting the property. (3) Attach additional pages, if necessary, with your signature and date and time of signing. (4) Complete this form yourself or sign the authorization at the end of this form to authorize the licensee to complete this form on your behalf in accordance with KRS 324.360(9). (5) If some items do not apply to your property, write "not applicable." (6) If you do not know the answer to a question, write "unknown.

SELLER'S DISCLOSURE: As seller, I/we disclose the following information regarding the property. This information is true and accurate to the best of my/our knowledge as of the date signed. Seller authorizes the agent to provide a copy of this statement to a personal or entity in connection with actual or anticipated sale of the property or as otherwise provided by law. The following are not the representations of the agent.

Please answer all questions. If the answer is yes, please explain. If additional space is needed, use the reverse side or make attachments.

1. HOUSE SYSTEMS

<table>
<thead>
<tr>
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</tr>
<tr>
<td>(c) Appliances</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

SPACE FOR ADDITIONAL INFORMATION:
### 2. FOUNDATION/STRUCTURE/BASEMENT

(a) Any defects or problems, current or past, to the foundation or slab?

(b) Any defects or problems, current or past, to the structure or exterior veneer?

(c) Has the basement leaked at any time since you have owned or lived in the property?

(d) When was the last time the basement leaked?

(e) Have you ever had any repairs done to the basement?

(f) If you have had repairs done to the basement relative to leaking, when was the repair performed?

(g) If the basement presently leaks, how often does it leak? (e.g., every time it rains, only after an extremely heavy rain, etc.)

(h) Have you experienced, or are you aware of, any water or drainage problems with regard to the crawlspace?

### 3. ROOF

(a) Age of the roof?

(b) Has the roof leaked at any time since you have owned or lived in the property?

(c) When was the last time the roof leaked?

(d) Have you ever had any repairs done to the roof?

(e) If you have ever had the roof repaired, when was the repair performed?

(f) Have you ever had the roof replaced?

(g) If you have had the roof replaced, when was the replacement performed?

(h) If the roof presently leaks, how often does it leak? (e.g., every time it rains, only after an extremely heavy rain, etc.)

### 4. LAND/DRAINAGE

(a) Any soil stability problems?

(b) Has the property ever had a drainage, flooding, or grading problem?

(c) Is the property in a flood plain zone?

(d) Is there a retention/detention basin, pond, lake, creek, spring, or watershed on or adjoining this property?

### 5. BOUNDARIES

(a) Have you ever had a staked or pinned survey of the property?

(b) Do you know the boundaries?

(c) Are the boundaries marked in any way?

(d) Are there any encroachments or unrecorded easements relating to the property of which you are aware?

### 6. WATER

(a) Source of water supply

(b) Are you aware of below normal water supply or water pressure?

(c) Is there a water purification system or softener remaining with the house?

(d) Has your water ever been tested? If yes, give results

### 7. SEWER SYSTEM

(a) Property is serviced by:

- public sewer;
- private sewer;
- septic tank;
- storm sewer;
- leach field;
- aeration tank;
- filtration bed;
- unknown

(b) If not a public or private sewer:

- Date of last inspection:
- Date last cleaned

(c) Are you aware of any problems with the sewer system?

### 8. CONSTRUCTION/REMODELING

(a) Have there been any additions, structural modifications, or other alterations made?

(b) Were all necessary permits and government approvals obtained?

### 9. HOMEOWNER'S ASSOCIATION

(a) Is the property subject to rules or regulations of a homeowner's association?

(b) If yes, what is the yearly assessment?

(c) Are any features of the property shared in common with adjoining landowners, such as walls, fences, driveways, etc.?

### 10. MISCELLANEOUS

(a) Was this house built before 1978?

(b) Are you aware of any use of ureaformaldehyde, asbestos materials, or lead-based paint in or on this home?

(c) Are you aware of any testing for radon gas?

(d) Results, if tested:

(e) Are you aware of any underground storage tanks, old septic tanks, field lines, cisterns, or abandoned wells on the property?
(e) Are you aware of any present or past wood infestation (i.e., termites, bores, carpenter ants, fungi, etc.)?

(f) Are you aware of any damage due to wood infestation?

(g) Have the house or other improvements ever been treated for wood infestation?

(2) If yes, when, by whom, and any warranties?

(h) Are you aware of any existing or threatened legal action affecting this property?

(i) Are there any assessments other than property assessments that apply to this property (i.e., sewer assessments)?

(j) Are you aware of any violations of local, state, or federal laws, codes, or ordinances relating to this property?

(k) Are you aware of any other conditions which are defective with regard to this property?

(l) Are there any environmental hazards known to seller?

(m) Are there any warranties to be passed on?

(n) Has this house ever been damaged by fire or other disaster (i.e., tornado, hail, etc.)? If yes, please explain.

SPACE FOR ADDITIONAL INFORMATION:
The seller has owned this property since (date) and makes these representations only since that date. Seller agrees to immediately notify buyer of any changes which may become known to seller prior to closing.

Seller:
Date:

Seller:
Date:

THE LICENSEE NAMED HERE (NAME) HAS BEEN REQUIRED BY THE OWNER TO COMPLETE THIS FORM AND HAS DONE SO. I HEREBY AGREE TO HOLD HARMLESS THE NAMED LICENSEE FOR ANY REPRESENTATION THAT APPEARS ON THIS FORM IN ACCORDANCE WITH KRS 324.360(9).

Seller:
Date:

THE SELLER REFUSES TO COMPLETE THIS FORM AND ACKNOWLEDGES THAT THE AGENT SHALL SO INFORM THE BUYER.

Seller:
Date:

THE SELLER HAS REFUSED TO COMPLETE THE FORM AND HAS REFUSED TO ACKNOWLEDGE HIS FAILURE TO COMPLETE THE FORM.

Broker/Agent:
Date:

THE BUYER ACKNOWLEDGES RECEIPT OF THIS FORM.

Buyer:
Date:

THE SELLER MAY DISCLOSE ADDITIONAL INFORMATION NOT REQUESTED ON THIS FORM AND MAY RESPOND TO ADDITIONAL INQUIRIES OF THE BUYER.

Section 3. (1) In addition to the information specified in Section 1 of this administrative regulation, the seller's disclosure of property condition form set out in it shall also include the following additional information:

(a) The property address, which shall appear at the top of each page of the form; and

(b) The initials of all parties who sign the form, including the date and time for the initialing, all of which shall appear at the bottom of each page of the form.

(2) If the property that is the subject of the seller's disclosure of property form is listed, the listing agent shall solicit the initials of all property owners-sellers and the date and time for the initialing at the time he or she executes any listing agreement or similar agreement by which a licensee intends to market the property.

(3) If the property that is the subject of the seller's disclosure of property form is not listed, any licensee involved in the transaction shall solicit:

(a) The initials of all property owners-sellers and the date and time for the initialing; and

(b) The initials of all prospective buyers and the date and time for initialing.

SUE TEEGARDEN, Chairperson
APPROVED BY AGENCY: December 10, 2004
FILED WITH LRC: December 14, 2004 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:
A public hearing on this administrative regulation shall be held on January 21, 2005 at 1 p.m., local time, at the Holiday Inn Westbourne located at 1325 S. Hurstbourne Parkway, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2005. 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 January 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 425-4273, fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Y. Denise Payne Wade

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation outlines the requirements for the state-mandated seller's disclosure form.

(b) The necessity of this administrative regulation: This regulation provides the content of the form, so that there will be a standard form used by all licensees in this state to avoid confusion.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation clarifies the mandate of KRS 324.360 by outlining the form that is required under that statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This regulation allows for a uniform, state-mandated form that protects all consumers and provides answers to specific questions about real property being sold by licensees in this state.

(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 add additional items that must be disclosed on the Seller's Disclosure Form.

(b) The necessity of the amendment to this administrative regulation: The added items have been the subject of concerns and complaints and therefore should be added to the disclosure form to protect consumer buyers.

(c) How the amendment conforms to the content of the
authorizing statutes. This amendment merely adds additional items to be disclosed and conforms to the requirements of the statute.

(d) How the amendment will assist in the effective administration of the statute: This amendment will allow buyers to have more disclosed information when purchasing a home.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All buyers, sellers, and licensees will be affected.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is amendment: This amendment will merely provide more information to buyers.

(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 will be 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 is necessary.

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

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:400. Agency disclosure requirements.

RELATES TO: KRS 324.160(4)(e), (n)
STATUTORY AUTHORITY: KRS 324.281(5), 324.282.
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.160(4)(f)(1)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation establishes a specific format for disclosing prior relationships, if any, [the relationship] between, or the relationship of the parties, seller, and buyer in a residential transaction to: (1) ensure that the licensee informs each party in the transaction about the nature of any prior-existing relationship between the licensee and either party; prior to any party providing his or her written consent for the licensee to act as a dual agent, representing both parties in the transaction [each party knows what relationship exists between the parties]; and (2) have documented evidence that the disclosure occurred.

Section 1. Definitions. (1) "Business relationship" means:

(a) Any [an] arrangement whereby a [the] licensee and a party have or had a mutual financial ongoing [economic] interest in any company, corporation, or other income-producing venture, including any prior representation by the licensee for the party's purchase or sale of real estate, but does not include the current real estate transaction [other than the specific real estate transaction subject to the disclosure].

(b) "Commercial transaction" means a transaction other than the sale of a single-family residential property, multifamily property containing four (4) units or less, single-family residential lot, or agricultural property.

(3) "Confidential information" means information that would materially compromise the negotiating position of a party or prospective party to a real estate transaction if disclosed to the other party.

(4) "Contact" means discussion or correspondence between a licensee and an identified prospective party involving the licensee's services related to a mutually-contemplated real estate transaction.

(5) "Delivery" means delivery of an item to a party or prospective party:

(a) Mail;

(b) Facsimile transmission;

(c) Electronic mail;

(d) Messenger; or

(e) Hand.

(6) "Family relationship" means any known familial relationship between a licensee and party regardless of distance of the relationship.

(7) "First contact" means the period:

(a) Before a contract containing a duty of representation and compensation is entered into by a:

1. Prospective party who does not have a broker or sales associate; and

2. A broker or sales associate who has offered to represent him or her;

(b) Before the beginning of discussions relating to a real estate transaction between a:

1. Prospective party who does not have a broker or sales associate; and

2. A broker or sales associate who has proposed to discuss the real estate transaction with him.

(c) First substantial contact means the period between the first contact and the period immediately preceding the presentation of a written offer to purchase.

(8) "Party" means one represented by a real estate licensee;

(9) "(10) Personal relationship" means a platonic or nonplatonic friendship between a licensee and a party.

(11) "Prospective party" means a person who:

(a) Has contact with a licensee; and

(b) Has not entered into a brokerage agreement with a licensee relative to the contemplated transaction.

Section 2. The provisions of this administrative regulation shall not apply to a:

(a) Sale of real estate at auction;

(b) Property management of real estate; or

(c) Commercial transaction.

Section 3. [Prospective Party Information. (1) Prior to September 1, 2001, the provisions established in this section shall apply; (2) A broker or sales associate shall deliver to a prospective party an Agency Information Bulletin on the first contact. The Agency Information Bulletin shall:

(a) Be prepared by a broker or sales associate; and

(b) Generally summarize the possible relationships that may exist between the broker or sales associate and the buyer and seller.

(2) A broker or sales associate shall deliver to a prospective party an "Agency Disclosure Form" on the first substantial contact. The "Agency Disclosure Form" shall:

(a) Be signed by each:

1. Prospective party to the transaction;

2. Broker or sales associate involved in the transaction; and

(b) Identify:

1. Each prospective party known to the broker or sales associate making the disclosure;

2. If a prospective party is represented by a broker or sales associate, the name of the broker or sales associate, his real estate company, and whom he represents; and

3. The real estate that is the subject of the negotiation;

(c) Describe the personal, family, or business relationships between:

1. The broker or sales associate making the disclosure; and

2. Each prospective party known to the broker or sales associate making the disclosure; and

(d) State whether the broker or sales associate making the disclosure is acting as a principal or a prospective:

1. Seller;

2. Buyer;

3. Lender; or

4. Investor;
(e) Contain a statement that:
   1. An agent owes a fiduciary duty to his client, including:
      a. A duty of loyalty;
      b. Giving the client all the information the agent knows about the
         property;
      c. Honesty and fair dealing; and
      d. Negotiating in the best interests of his client;
   2. An agent owes a duty of honesty and fair dealing to his
      customer; and
   3. The payment of a fee to an agent shall not create a fiduciary
      duty to the person paying the fee; and
   (f) Indicate whether the listing or selling licensee is acting as a
      designated agent.

(d) The "Agency Disclosure Form" and the "Agency Information
    For Consumers Bulletin" required by subsection (1) of this section
    shall be:

   (a) The "Agency Disclosure Form Approved by Kentucky Real
       Estate Commission" November 19, 1996, and the "Agency
       Information For Consumers Bulletin Approved by Kentucky Real
       Estate Commission", 1999; or
   (b) An Agency Disclosure Form, and Agency Information For
       Consumers Bulletin, that have been developed by the broker or
       sales associate and approved by the commission.

Section 4. [6] Incorporation by Reference. (1) The following
material is incorporated by reference:

(a) The "Agency Information and Disclosure Form", February
    2001 is incorporated by reference;
   (b) "Agency Disclosure Form Approved by Kentucky Real
       Estate Commission", November 19, 1996; and
   (c) "Agency Information For Consumers Bulletin Approved by
       Kentucky Real Estate Commission", 1999.

(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright by the Kentucky Real Estate
Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky
40223, Monday through Friday, 8 a.m. to 4:30 p.m.

SUE TEEGARDEN, Chairperson.
APPROVED BY AGENCY: December 10, 2004

FILED WITH LRC: December 14, 2004 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
January 21, 2005 at 1 p.m. local time, at the Holiday Inn
Hurstbourne located at 1325 S. Hurstbourne Parkway, in Louisville,
Kentucky. Individuals interested in being heard at this hearing shall
notify this agency in writing by January 13, 2005. 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 notice shall be published in the Kentucky
Register. Persons who wishes to be heard will be given an opportunity
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 January 31, 2005.

Send written notification of intent to be heard at the public
hearing or written comments on the proposed notification of intent
to be heard at the public hearing or written comments on the proposed
administrative regulation to the contact person.

CONTACT PERSON: Y. DenisePayne Wade, Staff Attorney,
Kentucky Real Estate Commission,10200 Linn Station Road, Suite 201,
Louisville, Kentucky 40223, phone (502) 425-2713, fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Y. Denise Payne Wade

(1) Provide a brief summary of:
(4) What this administrative regulation does.
This regulation outlines the proper procedure for agency disclosure in this state
and provides a form on which to do so.

(b) The necessity of this administrative regulation.
This regulation outlines how a licensee can properly disclose agency
and provides a uniform, state-mandated form for doing so. This elimi-
nates confusion among licensees, ensures disclosure is made in each transaction and protects all consumers equally.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides for a form for disclosing relationships as required by KRS 324.160(4)(e).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides a uniform, state-mandated form that must be used by all licensees. This eliminates confusion and protects consumers by ensuring that written disclosure is achieved in all transactions.

(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 clarify the correct form to be used, will further define “personal” and “business” relationships and will eliminate unnecessary terms.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to clarify the correct form to be used, to further define certain key terms and to eliminate unnecessary terms form the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments will conform to the language of the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will remove an incorrect form reference, further define “personal” and “business” relationships and eliminate unnecessary terms. All of these changes will provide clarity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

(a) The amendment will apply to all licensees and consumers using the Agency Disclosure Form.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if now, or by the change, if it is an amendment: This amendment should not negatively impact either of the above-referenced groups.

(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 will be necessary.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are or will be established.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:410. Broker duties pursuant to designated agency.

RELATES TO: KRS 324.121; 324.160(3)
STATUTORY AUTHORITY: KRS 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.121 authorizes a principal broker to designate an agent by appointing himself or a licensee with which he is associated to act as an agent for a seller, buyer or prospective buyer to the exclusion of all other licensees associated with the principal broker. This administrative regulation establishes the requirements that apply to a designated agent.

Section 1. Definitions. (1) "Confidential information" means information that:

(a) Is provided to a designated agent by a seller or prospective buyer of real estate;

(b) Describes or affects the provider's negotiation, bargaining position or motivation;

(c) Is not required by law; and

(d) Will not constitute fraud or a dishonest dealing, if not disclosed.

(2) "Designated agent" means a person designated pursuant to KRS 324.121(1).

Section 2. A principal broker who appoints a designated agent shall require:

(a) That all documents that contain confidential information relating to a client:

(1) Be kept in an individual file maintained by the principal broker and accessed only by the principal broker or the designated agent appointed by the principal broker to represent the individual and the principal broker. If the principal broker is the designated agent for a party, the other party's designated agent shall maintain the client files without access by the principal broker; and

(2) Not be accessible to another licensee except as required by KRS 324.160(3);

(b) Implement a system to maintain confidential information.

The system shall:

(a) Prohibit an employee from assisting more than one (1) designated agent in the same transaction, if the designated agents represent different clients in that transaction;

(b) Prohibit discussions between a designated agent and client concerning confidential information of the client within the office unless the conversation occurs in an environment which allows appropriate privacy;

(c) Prohibit the disclosure of confidential information by office personnel and clerical staff; and

(d) Require notification to each client involved in a transaction, if the principal broker becomes aware of an unauthorized or inadvertent disclosure of confidential information relating to that transaction;

(c) Require a licensee to disqualify himself from being appointed as a designated agent for a party if the agent has received confidential information concerning the other party to the transaction; and

(d) Not designate himself as designated agent unless the principal broker has sufficient personnel and other resources to exercise adequate supervision over the other designated agent and to maintain confidential information.

SUE TEEGARDEN, Chairperson
APPROVED BY AGENCY: December 10, 2004
FILED WITH LRC: December 14, 2004 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2005 at 1 p.m., local time, at the Holiday Inn-Hurstbourne located at 1325 S. Hurstbourne Parkway, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2005, 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 January 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 425-4273, fax (502) 426-2717.

-1341-
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Y. Denise Payne Wade

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation outlines the proper procedure for engaging in designated agency.
(b) The necessity of this administrative regulation: This regulation is necessary to outline how a brokerage can properly and effectively engage in designated agency and outlines specific means to accomplish this goal.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation specifies procedures mandated in KRS 324.121.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures the sanctity of confidential information and provides specific guidelines for brokers in establishing designated agency. This regulation protects the consumer public by ensuring that designated agency is properly conducted.
(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 eliminate the broker's ability to designate himself or herself as a designated agency, in compliance with the statute.
(b) The necessity of the amendment to this administrative regulation: The regulation is currently in contradiction of the amended statutory language.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment will comply with the statutory language of KRS 324.121. The current version contradicts the statute.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will remove a contradictory provision and will cause the regulation to be in compliance with the authorizing statute, thereby enabling licensees and consumers to better understand the law.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will apply to all brokers using designated 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: This amendment will clarify that brokers using designated agency may not designate themselves as a designated agent. Since the law changed several years ago, this should not negatively impact any of these brokers.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None
(b) On a continuing basis: None
(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be 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 fees are or will be established.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are or will be established.
(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:430. Procedure for criminal records background check - disciplinary action against licensees for acts committed before or during the application process.

RELATES TO: KRS 324.045(4), 324.999, 28 C.F.R. 16.30-16.33
STATUTORY AUTHORITY: KRS 324.045(4), 324.281(5), 324.282
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(15) authorizes the Real Estate Commission to promulgate regulations. KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulation to effectively carry out and enforce the provisions of KRS Chapter 324. KRS 324.045(4) authorizes the Real Estate Commission to promulgate an administrative regulation to require a criminal background check prior to licensure. This administrative regulation establishes requirements for a criminal background check for licensure applicants and for applicants for licensure through reciprocity and sets certain standards for the licensees and to protect the public.

Section 1. The provisions of this administrative regulation shall become effective on July 1, 2001.

Section 2. (1) Prior to taking a licensure examination, an applicant shall request a copy of the applicant's Federal Bureau of Investigation identification record from the Federal Bureau of Investigation pursuant to the provisions of 28 C.F.R. 16.30 to 16.33.
(2) An applicant seeking licensure through a reciprocal agreement shall request the Federal Bureau of Investigation identification record prior to applying for licensure with the Kentucky Real Estate Commission.

Section 3. (1) Upon receipt of the Federal Bureau of Investigation identification record, the applicant shall:

(a) Submit the original Federal Bureau of Investigation identification record to the Real Estate Commission within five (5) days of receipt of the Federal Bureau of Investigation identification record if the identification record reveals:
1. Any felony conviction regardless of when the conviction occurred; or
2. A misdemeanor conviction within the five (5) years previous to the applicant's receipt of the Federal Bureau of Investigation identification record;
(b) Submit the Federal Bureau of Investigation identification record to the Real Estate Commission at the time of application if the Federal Bureau of Investigation identification record does not indicate:
1. A felony conviction at any time; or
2. A misdemeanor conviction within the previous five (5) years.
(2) If the Real Estate Commission receives a Federal Bureau of Investigation identification record which reveals a felony conviction, or a misdemeanor conviction within the previous five (5) years, the Real Estate Commission shall investigate the conviction and may, at its discretion, investigate any charges that are revealed by the Federal Bureau of Investigation identification record or any other evidence of dishonesty, untruthfulness, or bad reputation of the applicant.

(3) Following the completion of the investigation, the Real Estate Commission shall review the investigation report and the Real Estate Commission shall:

(a) Order the applicant to appear before the commission for a hearing pursuant to KRS 324.345 and Chapter 13B; or
(b) Allow the applicant to proceed with the licensure application without a hearing if the Real Estate Commission determines the conviction does not necessitate a hearing pursuant to KRS 324.045,
(4) (a) If a hearing is ordered under subsection (3)(a) of this section, the applicant shall appear before the Real Estate Commission or the Real Estate Commission's authorized representative pursuant to KRS Chapter 13B.
(b) The hearing shall determine whether the applicant meets the standards of KRS 324.045 and shall consider:
1. The nature of the crime;
2. Whether the crime indicates the applicant's untrustworthiness or incompetence in a manner that threatens the public interest;
3. Any evidence of honesty, truthfulness, and good reputation
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of the applicant;

4. Evidence of rehabilitation by the applicant since the crime;

5. Whether the applicant has received written confirmation from a principal broker willing to accept the applicant as an associate upon licensure;

6. Whether the applicant is currently under probation, parole, or other state supervision or reporting requirements as a condition of any criminal sentence; and

7. Other information relevant to the applicant’s fitness to broker real estate.

(5) If an authorized representative conducts the hearing, the authorized representative shall recommend to the Real Estate Commission whether the applicant meets the standards of KRS 324.045. The Real Estate Commission may accept the recommendation, reject the recommendation and enter a separate order, or remand to the representative for further proceedings in accordance with KRS Chapter 13B.

(6) Following the hearing, the Real Estate Commission shall either approve or deny the application and notify the applicant of its decision along with a brief, written explanation of the reasons for its decision.

2. The applicant may proceed with the licensure application if the Real Estate Commission states in its order that the applicant may proceed with the licensure application.

3. The Real Estate Commission’s order shall provide an expiration date by which the applicant shall take the licensure examination.

4. If the Real Estate Commission denies the application, the Real Estate Commission shall indicate its order, if and when, the applicant will be eligible to submit a subsequent licensure application.

(b) If the Real Estate Commission’s order indicates the applicant may proceed with the licensure application, the applicant shall submit a copy of the order to the Real Estate Commission with the licensure application.

(c) Failure to produce the order shall constitute grounds to deny the licensure application.

(d) The applications of applicants who are, at the time of filing, under probation, parole, or other state supervision or reporting requirements may be denied by the commission, at its discretion. If the commission denies an application based upon one or more of these grounds, the applicant may reapply for licensure after the period of probation, parole, or other state supervision or reporting requirements has ended.

(7) An issued license shall be revoked if, while an applicant, the licensee:

(a) Received a Federal Bureau of Investigation identification report indicating a felony conviction, or a misdemeanor conviction in the previous five (5) years and the applicant did not submit the report to the Real Estate Commission for investigation as required by subsection (1)(a) of this section;

(b) Failed to request the report as required by this section; or

(c) Failed to submit the identification report with the application for licensure, as required by subsection (1)(b) of this section.

(8) If an applicant has engaged in any unlicensed brokerage activity within this Commonwealth, the applicant shall, prior to the issuance of any license by the commission, disgorge all fees earned or received by him or her as a result of the unlicensed brokerage activity.

(9) A principal broker affiliated with any licensee who has engaged in unlicensed real estate brokerage within this Commonwealth shall be held liable for the unlicensed brokerage activities by his or her affiliated licensee or licensees.

SUE TEEGARDEN, Chairperson
APPROVED BY AGENCY: December 10, 2004
FILED WITH LRC: December 14, 2004, 3:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2005 at 1 p.m., local time, at the Holiday Inn-Hurstbourne located at 1325 S. Hurstbourne Parkway, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2005, 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 transcription 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 January 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 425-4273, fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Y. Denise Payne Wade

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation outlines the procedures for an applicant to provide a criminal background check to supply his or her application for a real estate license, and the commission and review procedures once the licensee submits the background check for review.

(b) The necessity of this administrative regulation: This regulation is necessary to ensure the procedures for obtaining a background check and the procedures the commission will review once the background check is submitted.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms to KRS 324.045 by setting out specific procedures and guidelines for how an applicant can show his or her truthfulness, honesty and good reputation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets out specific guidelines for applicants to follow and establishes specific procedures for the commission to follow in reviewing the background checks once submitted.

(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 allow the commission to review charges as well as convictions, to deny an applicant who is currently on active probation or parole and to disgorge illegally earned fees from applicants who have engaged in unlicensed brokerage prior to application.

(b) The necessity of the amendment to this administrative regulation: This amendment codifies the commission’s current policy of denying applicants who are under active discipline from the courts. It also allows the commission to review an applicant’s background of charges that may reflect upon his or her trustworthiness, honesty or good reputation. It also allows the commission to seek disgorgement of any illegally earned fees prior to approving an applicant who has engaged in unlicensed brokerage prior to applying for licensure.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute allows the commission to deny an applicant based upon his or her lack of trustworthiness, honesty or good reputation. The first 2 changes follow this mandate by setting out certain terms that may reflect upon an applicant’s qualifications for licensure. The third amendment follows the mandate of KRS 324.990, by allowing the commission to seek disgorgement of illegally earned fees prior to approving an application for licensure.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will establish guidelines that can be used by applicants and the commission. This amendment may also discourage unlicensed brokerage in this state.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All applicants who have criminal convictions or charges and all applicants who have engaged in unlicensed bro-
kerage will be affected.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment. This will positively impact these applicants by allowing them to know the guidelines that will be used by the commission in reviewing their applications. This will also impact any applicant who has previously engaged in unlicensed real estate brokerage by forcing them to disgorge illegally-earned fees.
(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 will be necessary.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if not the change, if it is an amendment: No increase in funds is necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No additional fees are established by these changes. Applicants are already required to supply an FBI report.
(9) TIERING: Is tiering applied? Tiering was not used as this regulation should not disproportionately affect any particular group of people.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Amendment)

201 KAR 30:040. Standards of practice.

STATUTORY AUTHORITY: KRS 324A.035(3)(d)
NECESSITY, FUNCTION, AND CONFORMANCE: KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 U.S.C. 331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65 require that real estate appraisals in connection with federally-related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. This administrative regulation establishes the standards of professional practice.

Section 1. A licensed nonfederal real property appraiser shall not be required to comply with the "Uniform Standards of Professional Appraisal Practice."

Section 2. The following certificate holders or licensees shall comply with the "Uniform Standards of Professional Appraisal Practice":
(1) A certified general real property appraiser;
(2) A certified residential real property appraiser;
(3) A certified local property appraiser; and
(4) An associate real property appraiser.

Section 3. An appraisal report made with regard to a federally related transaction shall be in writing.

(2) The board shall accept an allowance not to exceed five (5) percent of the square footage of the subject property for measurements made under subsection (1) of this section.

Section 5. Incorporation by Reference. (1) The following ma-

rual is incorporated by reference:
(a) Uniform Standards of Professional Appraisal Practice, 2005 [2004] edition, and
(7) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 2480 Fortune Drive, Suite 120, Lexington, Kentucky 40509, (859) 543-8943, Monday through Friday, 8 a.m. to 4:30 p.m.
(8) This material may also be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005-3517, (202) 347-7722.

C.W. WILSON, Chair
APPROVED BY AGENCY: October 22, 2004
FILED WITH LRC: December 14, 2004 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on January 21, 2005 at 2 p.m., at 2480 Fortune Drive, Suite 120, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing five weekdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 2480 Fortune Drive, Suite 120, Lexington, Kentucky; phone (859) 543-8943, fax (859) 543-0028.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grave
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the standards of practice for certified and licensed appraisers.
(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the standards of practice required of certified and licensed appraisers.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that establishes the board to promulgate regulations regarding the standards of practice.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation will assist the board in administering this program by identifying the standard of practice required for certificate holders.
(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 updates the reference to the 2005 edition of the "Uniform Standards of Professional Appraisal Practice" and the most recent edition of the "Square Footage Method for Calculating, ANSI Z765-2003".
(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to specify the standards of practice for certificate holders.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that establishes the board to promulgate regulations necessary to administer the law.
(d) How the amendment will assist in the effective administra-

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tion of the statutes: The standards of practice will assist by clearly identifying the practice required of certificate holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately one thousand five hundred persons certified by the board.

(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 impact will be felt by this amendment as the certificate holders because the standards identified by this amendment have previously existed.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operations are funded by fees paid by certificate holders.

(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 required to implement the changes made by this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all certificate holders in the class.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate:

(2) State compliance standards. This administrative regulation requires compliance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(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 imposition of the stricter standard or additional or different responsibilities or requirements. No stricter standard or additional or different responsibilities or requirements imposed.

OFFICE OF THE GOVERNOR
Kentucky Department of Veterans Affairs

(Amendment)

201 KAR 37:010. Kentucky Veterans’ Program Trust Fund, administration of fund.

RELATES TO: KRS 40.460(2)(b), 141.444
STATUTORY AUTHORITY: KRS 40.460(2)(b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.460(2)(b) establishes the Veterans’ Program Trust Fund and authorizes the Kentucky Department of Veterans Affairs to administer the fund and programs financed by the proceeds and interest derived from the fund. This administrative regulation establishes a board of directors to administer the fund and establishes criteria for programs financed by the fund.

Section 1. Definitions. (1) "Fund" means the Kentucky Veterans’ Program Trust Fund.

(2) "Commissioner" means the Commissioner of the Kentucky Department of Veterans Affairs.

Section 2. Criteria for Programs. (1) Money derived from the fund may be expended for an approved program that:
(a) Provides an item for recreation use, services a center, or is for an organization that provides a service to a veteran if the item is not provided by a program, center, or organization established by federal or state law or appropriation;
(b) Organizes and fosters a program that assists a veteran, including assistance in the use of existing resources, that do not duplicate assistance available from a program established by federal or state law or appropriation;
(c) Encourages and assists a veteran to volunteer for a program dealing with a problem encountered by the veteran;
(d) Works with the public and private sectors to honor and recognize the service and sacrifice of veterans;
(e) Provides a service, supply, program, equipment or other expenditure deemed essential to the operation of the Kentucky Veterans Center other Kentucky veterans nursing homes that would otherwise not be available; or
(f) Provides financial support to the construction or operation of state veterans cemeteries if the support would not otherwise be available.

(2) Fundraising.
(a) The fund may accept a gift, donation, or grant from an individual, a corporation, or government entity.
(b) Solicitation of funds or fundraising on behalf of the fund shall not be made unless approved by the commissioner.

Section 3. Board of Directors. (1) The board of directors shall consist of ten (10) members, including:
(a) The commissioner;
(b) The commissioner’s designee from Kentucky Department of Veterans Affairs. [Deputy Commissioner of the Kentucky Department of Veterans Affairs:]
(c) A member of the:
1. Joint Executive Council of Veterans Organizations of Kentucky; and
2. Governor’s Advisory Board for Veterans Affairs;
(d) A representative of the following organizations appointed by the Governor pursuant to subsection (3) of this section:
1. The American Legion, Department of Kentucky;
2. The Veterans of Foreign Wars, Department of Kentucky; and
3. The Disabled American Veterans, Department of Kentucky; and
4. AMVETS, Department of Kentucky; and
(e) Two (2) at-large members appointed by the Governor.

(2)(a) The commissioner shall serve as chairman of the board of directors.
(b) The board of directors shall hold an election to fill the position of vice-chairman.
(c) An organization specified in subsection (1)(d) of this section shall recommend two (2) members of that organization for appointment to the board of directors. The governor shall appoint one (1) member of each organization from the names submitted by the organization.

(3) A member of the board of directors shall be an honorably separated veteran, as defined by KRS 36.310.

(4) Terms of members.
(a) The initial appointments to the board of directors shall be as follows:
1. A member appointed pursuant to subsection (2)(c) of this section shall serve for a period of three (3) years.
2. A member appointed pursuant to subsection (2)(d) of this section shall serve for a period of two (2) years.
3. A member appointed pursuant to subsection (2)(e) of this section shall serve for a period of one (1) year.
(b) After the initial appointments established under paragraph (a) of this section, a member shall serve for a period of three (3) years.

(c) A member shall serve until his successor is appointed.
(d) The board of directors shall:
1. Meet at the call of the chairman;
(b) Inform organizations represented on the board of each action considered or taken by the board;
(c) Review projects and recommend approval or disapproval;
(d) Prioritize projects;
(e) Investigate the need for a specific project or program;
(f) Establish guidelines for a project;
(g) Make a recommendation to the commissioner for the utilization and control of funds in the Veterans’ Program Trust Fund; and
(h) Prepare an annual report providing an accounting of the Veterans’ Program Trust Fund assets and financial activity for each fiscal year.

(7) The chairman of the fund shall assign duties as appropriate to his staff or members of the board for the conduct of business by the board including maintaining the records of the fund that are required for the administration of the Veterans’ Program Trust Fund and approved projects.

LESLIE E. BEAVERS, Commissioner
APPROVED BY AGENCY: December 7, 2004
FILED WITH LRC: December 7, 2004 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2005 at 10 a.m. at the Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2005. Five working days prior to 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 January 31, 2005. 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: Pamela Luce, Executive’s Staff Advisor, Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203, fax (502) 564-9240.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Pamela Luce

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides for the effective administration of the veterans program trust fund and programs financed by the proceeds and interest derived from the fund.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to enable the board of directors to administer the fund and to establish criteria for programs financed by the fund.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 40.460(2)(b), which establishes a veterans program trust fund, the proceeds and interest therefrom to be used for veterans programs administered by the Department of Veterans Affairs.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides for the effective administration of the veterans program trust fund established under KRS 40.460(2)(b).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this administrative regulation: This amendment allows the commissioner to designate an individual from the Kentucky Department of Veterans Affairs other than the deputy commissioner to serve as a member of the board of directors for the veterans program trust fund.
(b) The necessity of the amendment to this administrative regulation: The current administrative regulation designates the deputy commissioner of the Kentucky Department of Veterans Affairs to serve on the board of directors. The position of deputy commissioner is not filled within the department.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 40.460(2)(b), which continues to allow the fund to be used for veterans programs administered by the Department of Veterans Affairs.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the board of directors in providing uniform administration of the veterans program trust fund established under KRS 40.460(2)(b).

(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: The board of directors will consist of 10 members as was the intent of the original administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment will allow the full 10 members of the board of directors to administer the veterans program trust fund.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There is no cost in implementing this amendment.
(b) On a continuing basis: There is no cost in implementing this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This amendment does not establish fees and will not increase funding.

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

(9) TIERING: Is tiering applied? Tiering was not applied since application of policy is applied in a like manner throughout the state.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:221. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.630(1), 150.990, 50 C.F.R. Parts 20, 21

STATUTORY AUTHORITY: KRS 150.025(1), 150.600(1), 50 C.F.R. Parts 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to establish waterfowl season dates and limits. This administrative regulation establishes the limits and dates within federal waterfowl hunting frameworks established by 50 C.F.R. Part 20.

Section 1. Definitions. (1) "Conservation Snow Goose Order" is defined by 50 C.F.R. Parts 20 and 21.
(2) "Dark goose" means a Canada goose, white-fronted goose, or brant.
(3) "Snow goose" means a snow goose or Ross' goose.
(4) "Waterfowl" is defined in KRS 150.010(40).

Section 2. (1) Except as authorized by 301 KAR 2:222, 301 KAR 2:225, or 301 KAR 2:225, a person shall not take waterfowl except on the dates and within the limits prescribed by this administrative regulation.
(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2:224.

Section 3. Gun and Archery Season Dates and Bag Limits for Duck, Coot, and Merganser Except Canvasback and Pintail. (1) Season dates. There shall be a split season statewide.
(a) November 25 through November 28; and
(b) December 6 through [Statewide, Thanksgiving Day until the last Sunday in January.]

(2) Canvasback season dates. Statewide, January 1 through January 30 [December 27 through January 26].

(3) Pintail season dates. Statewide, January 1 through January 30 [December 27 through January 26].

(4) The gun and archery daily bag limit shall be:
(a) Six (6) ducks, which shall not include more than:
   1. Four (4) mallards, which shall not include more than two (2) hen mallards;
   2. Two (2) wood ducks;
   3. One (1) black duck;
   4. Two (2) redheads;
   5. One (1) pintail;
   6. Three (3) scaup;
   7. Three (3) mottled ducks;
   8. One (1) canvasback.
(b) Fifteen (15) geese.
(c) Five (5) mergansers, which shall not include more than one (1) hooded merganser.

(5) The possession limits shall be double the daily bag limit.

Section 4. Gun and Archery Seasons Dates and Bag Limits for Geese. (1) White-fronted goose and brant season dates: Thanksgiving Day through January 31 [February 4]; except that hunting for dark geese in the Western Goose Zone shall cease if a quota specified in Section 7 of this administrative regulation is reached.

(2) Snow goose season dates.
(a) Regular season: Thanksgiving Day through January 31 [February 4]; except for the part of Fulton County in the Western Goose Zone, which shall have an ending date of February 15.
(b) Conservation Snow Goose Order.
1. The Conservation Snow Goose Order in the Western duck zone shall be February 1 [2] through February 4 [6] and February 7 [9] through March 31, unless otherwise specified below:
   a. If the Canada goose quota is reached in either the Henderson Union or Ballard reporting area on or after January 30 [26], then the Snow Goose Season will also close in that reporting area and the Snow Goose Conservation Order will begin one-half (1/2) hour before sunrise on the following day; and
   b. In the Western Goose Zone, if the quota is reached and the season for Canada geese is closed on or after January 30 [26], the Snow Goose Season will also close and the Snow Goose Conservation Order will begin one-half (1/2) hour before sunrise on the following day.[and]
   c. If the Canada Goose Season closes on or after February 1 in the part of Fulton County in the Western Goose Zone, then the Conservation Snow Goose Order will open one-half (1/2) hour before sunrise on the following day.

(3) Canada goose season dates shall be from the starting date listed below through January 31, except as provided in subparagraphs 5 and 6 of paragraph (a) of this subsection.
(a) The season shall not open until:
   1. December 6 in the Western Goose Zone, including the portion of Fulton County which is in the Western Goose Zone;
   2. December 13 in the Eastern Goose Zone;
   3. December 13 in the Pennroyal-Coafield Goose Zone;
   4. December 13 in the West-Central Kentucky Hunt Zone; and
   5. The last day of hunting shall be February 15 in that part of Fulton County which is in the Western Goose Zone.
   6. There shall be a split season in the northeast Kentucky goose zone:
      a. January 1 [December 27] through January 9 [4]; and
(b) Hunting for dark geese in the Western Goose Zone shall cease if a quota specified in Section 7 of this administrative regulation is reached.

(4) A person shall not goose hunt in:
(a) The areas of Laurel River Lake as posted by sign; and
(b) Cave Run Lake and the public land inside a boundary formed by Highways 801, 1274, 35, 211, US 60 and Highway 826.

(5) The gun and archery daily bag limit shall be:
(a) Six (6) dark geese, to include no more than:
   1. Two (2) Canada geese;
   2. Two (2) white-fronted geese; and
   3. Two (2) brant.
(b) Twenty (20) snow geese; except there shall be no daily limit on snow geese during the Conservation Snow Goose Order.
(c) The possession limit shall be double the daily bag limit, except that there shall not be a possession limit on snow geese.

Section 5. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:
(1) 2 p.m. in the Northeast Kentucky Hunt Zone during a Canada goose season;
(2) Sunset in the remainder of the state, except as specified in 301 KAR 2:222; or
(3) One-half (1/2) hour after sunset while hunting snow goose during the Conservation Snow Goose Order.

Section 6. Falconry Waterfowl Season and Limits. (1) Season dates:
(a) Snow goose: November 5 through February 1, except in the part of Fulton County which is in the Western Goose Zone which shall have an ending date of February 15;
(b) Conservation Snow Goose Order:
   1. Western duck zone: February 1 [4] and February 7 [9] through the last day of March;
   2. The part of Fulton County which is in the Western Goose Zone: February 16 through March 31;
   (c) Canada Goose season, November 5 through February 1, except for that part of Fulton County in the Western Goose Zone where the Canada Goose season shall be November 10 [8] through February 15;
   (d) Other waterfowl: November 5 through February 1.
(2) Daily limit: three (3) waterfowl; except that there shall be no limit on snow goose during the Conservation Snow Goose Order.
(3) Possession limit: six (6) waterfowl; except that there shall be no limit on snow goose during the Conservation Snow Goose Order.

Section 7. Quotas and Early Goose Season Closings. (1) If hunters reach a quota of 6,700 [8,000] Canada geese in the Ballard Reporting Area before January 31, dark goose hunting shall cease in the Ballard Reporting Area.

(2) If hunters reach a quota of 2,600 [3,200] Canada geese in the Henderson-Union Reporting Area before January 31 dark goose hunting shall cease in the Henderson-Union Reporting Area.

(3) If the quotas are reached for both the Ballard and Henderson-Union reporting areas, dark goose hunting shall cease in the western goose zone:
   (a) Seven (7) days after the reporting area closes; or
   (b) On the scheduled closing date, whichever occurs first.
(4) The department shall provide at least a twenty-four (24) hour notice of the time and date of an early closure.

Section 8. Permit for Conservation Snow Goose Order. (1) A person hunting snow goose during the Conservation Snow Goose Order shall first obtain a free permit from the department by contacting the Ballard WMA office at (270) 224-2244.

(2) A hunter during the Conservation Snow Goose Order shall submit a Conservation Snow Goose Order report by April 10.

W. JAMES HOST, Secretary
C. THOMAS BENNETT, Commissioner
APPROVED BY AGENCY: August 27, 2004
FILED WITH LRC: November 23, 2004 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2005 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to
comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by January 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the limits and season dates within the federal waterfowl hunting frameworks established in 50 C.F.R. Part 20. This administrative regulation establishes the 2004-2005 early waterfowl season dates and bag limits according to the United States Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: To establish the 2004-2005 waterfowl season in accordance with the USFWS.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) and 150.600(1) authorize the Department to establish the waterfowl season dates and limits.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing the waterfowl hunting seasons and area specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with national management goals.

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

(a) How the amendment will change the existing administrative regulation: This is an amendment to an existing administrative regulation. Each fall the USFWS issues a federal mandate establishing the migratory bird season. This amendment reflects the federal mandate. There are few changes from last year’s waterfowl season. The changes include splitting the statewide season for duck, coot, and merganser (November 25-December 6-January 30); accommodating a calendar shift for canvasback (January 1-January 30) and pintail (January 1-January 30); accommodating a calendar shift for white-fronted goose and brant (November 25-January 31); accommodating the calendar shift for the conservation snow goose order (and deleting repetitious language regarding the Western Goose Zone); and accommodating the calendar shift for falconry. References to the “calendar shift” simply mean that the dates were changed to accommodate changes on this year’s calendar. The amendment does little to change the existing administrative regulation. It simply accommodates the 2004-2005 calendar shift. Due to declines in canvasback and pintail duck populations, the USFWS has mandated a shortened season on canvasback and pintail ducks to be held concurrent with regular duck season dates.

(b) The necessity of the amendment to this administrative regulation: To implement the federal mandate from the USFWS and continue efforts to increase quality hunting opportunity for waterfowl.

(c) How does the amendment conform to the authorizing statutes: The amendment establishes season dates as KRS 150.025(1) and 150.600(1) provide.

(d) How the amendment will assist in the effective administration of the statutes: See "D" above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons who waterfowl hunt in Kentucky will be affected by this administrative regulation.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be little impact on waterfowl hunters in comparison with last year’s administrative regulation. The changes are consistent with efforts to increase quality hunting opportunity for waterfowl hunters.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The Department’s Divisions of Law Enforcement and Wildlife already oversee law enforcement and waterfowl management. It will not be necessary to draw upon another budget or source of funding for implementation of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not used. There is not a need to apply tiering, because there are not different groups of waterfowl hunters. The same guidelines and limits contained in this administrative regulation apply to all waterfowl hunters.

FEDERAL MANDATE ANALYSIS COMPARISON

CONTACT PERSON: Ellen F. Benzing

1. Federal statute or administrative regulation constituting the federal mandate: 50 C.F.R. Part 20.

2. State compliance standards. State seasons and bag limits are within federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. The USFWS annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in the regular waterfowl season. The regular migratory bird season opens November 15. The framework is necessary to allow State selections of specific final seasons and limits to allow recreational harvest at levels compatible with population status and habitat conditions. This administrative regulation opens the regular migratory bird season November 15 and splits the statewide season for duck, coot, and merganser (November 25-December 6-January 30); accommodates a calendar shift for canvasback (January 1-January 30) and pintail (January 1-January 30); accommodates a calendar shift for white-fronted goose and brant (November 25-January 31); accommodating the calendar shift for the conservation snow goose order (and deleting repetitious language regarding the Western Goose Zone); and accommodates the calendar shift for falconry. References to the “calendar shift” simply mean that the dates were changed to accommodate changes on this year’s calendar. The amendment does little to change the existing administrative regulation. It simply accommodates the 2004-2005 calendar shift. Due to declines in canvasback and pintail duck populations, the USFWS has mandated a shortened season on canvasback and pintail ducks to be held concurrent with regular duck season dates.

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. No

COMMERCETABINET
Department of Fish and Wildfire Resources

(Amendment)

301 KAR 2:222. Waterfowl hunting requirements.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 50 C.F.R. Parts 20, 21

STATUTORY AUTHORITY: KRS 150.025(1)(a), (b), 150.340(4)(d)-(g), 150.600(1), 50 C.F.R. Parts 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to establish statewide waterfowl hunting requirements and to specify seasons and other requirements on Wildlife Management Areas. KRS 150.340 authorizes the department to establish bag and creel limits for waterfowl. This administrative regulation establishes waterfowl
seasons in the Ballard Wildlife Management Area, Central Kentucky Wildlife Management Area, Cumberland Lake Wildlife Management Area, Addington Enterprises Wildlife Management Area, Land Between the Lakes, Ohio River Waterfowl Refuge, Robinson Forest Wildlife Management Area, and Yellowbank Wildlife Management Area which differ from and are shorter than federal regulations to optimize public use within sound waterfowl conservation practices.

Section 1. Definitions. (1) "Blind" means:
(a) A concealing enclosure;
(b) A pit; or
(c) A boat.
(2) "Party" means:
(a) A person hunting alone; or
(b) From two (2) to four (4) persons who share a blind.
(3) "Permanent blind" means a blind left in place more than two (2)-four (24) hours.
(4) "Regular waterfowl season" means the late migratory bird hunting seasons referred to in 50 C.F.R. Part 20.
(5) "Statewide waterfowl seasons" means the provisions of this administrative regulation and of 301 KAR 2:221.
(6) "Waterfowl" is defined in KRS 150.010(40).

Section 2. A waterfowl hunter shall not use or carry a shotgun shell:
(1) Longer than three and one-half (3 1/2) inches; or
(2) Containing shot:
(a) Made of lead;
(b) Not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
(c) Larger than size "T."

Section 3. In the Ballard Reporting Area, as described in 301 KAR 2:224:
(1) A waterfowl hunter shall:
(a) Hunt from a blind unless hunting in flooded, standing timber;
(b) Not hunt from or establish a blind:
1. Within 100 yards of another blind; or
2. Within fifty (50) yards of a property line; and
(c) Not possess more than one (1) shotgun while in a blind.
(2) More than five (5) persons shall not occupy a blind.
(3) The requirements of subsection (1) of this section shall not apply when the Conservation Snow Goose Order is the only waterfowl season open, excluding falconry seasons.

Section 4. (1) Except as specified in this section or in Section 5 of this administrative regulation, on a Wildlife Management Area:
(a) A waterfowl hunter shall not establish or hunt from:
1. A permanent blind; or
2. A blind within 200 yards of:
   a. Another blind; or
   b. A waterfowl refuge;
(b) A person shall not hunt in a designated recreation area or access point;
(c) More than four (4) persons shall not occupy a blind; and
(d) A hunter shall remove decoys and personal effects from the Wildlife Management Area daily, except that a hunter drawn for a multi-day hunt may leave decoys in place for the duration of his hunt.
(2) A person wishing to establish or use a permanent blind on Barkley Lake, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, [er] Rough River Lake, or Sloughs Wildlife Management Areas:
(a) Shall first obtain a permit from the U.S. Army Corps of Engineers or the Department;
(b) May designate one (1) other person as a partner;
(c) Shall not hold more than one (1) permit per area; and
(d) Shall participate in a drawing for a blind permit on the Barkley, Barren, [er] Paintsville, or Sloughs Wildlife Management Areas:
1. At the time of the drawing, the hunter shall possess a valid hunting license, a Kentucky waterfowl permit and a federal waterfowl permit; and
2. Shall be eighteen (18) years of age or older.
(3) The holder of a blind permit shall:
(a) Construct or establish his blind before November 20 or forfeit the permit;
(b) Not lock a blind; and
(c) Unless an extension of time is granted, remove his blind and blind materials within thirty (30) days of the close of the regular waterfowl season or be ineligible for a permit the following year.
(4) A blind not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-serve basis.
(5) A blind restriction specified in this section shall not apply to a falconer if a gun or archery season is not open.

Section 5. On a Wildlife Management Area:
(1) (a) Statewide waterfowl seasons shall apply unless otherwise stated in this section.
(b) If specific hunting dates and times are given in this section, a person shall not hunt waterfowl except on those dates and times.
(c) Paragraph (b) of this subsection shall not apply to a waterfowl hunting season opening before October 15.
(2) A person shall:
(a) Hunt on an area or portion of an area marked by a sign as closed to hunting;
(b) Enter an area or a portion of an area marked by signs as closed to public access;
(c) Hunt a species on an area or a portion of an area marked by signs as closed to hunting for that species.
(3) Wildlife management areas in Ballard County.
(a) Sliding shell limit scales:
1. The shell limit shall be twenty-five (25) when the daily bag limit for ducks is greater than three (3) and the Canada goose limit is greater than or equal to two (2); and
2. The shell limit shall be fifteen (15) when the daily bag limit for ducks is less than or equal to three (3) and the Canada goose limit is less than or equal to two (2) [A person shall not have more than fifteen (15) shotgun shells in one (1)-day while waterfowl hunting].
(b) At least one (1) person in a blind shall be eighteen (18) years of age or older while hunting from a department blind at Ballard WMA or Boatwright WMA.
(c) At Ballard Wildlife Management Area:
1. Waterfowl hunting shall be permitted during an open waterfowl season occurring before October 15.
2. The duck, coot, and merganser season shall be:
   a. December 8 [44] through January 30 [26]; or
   b. Until the Ballard Reporting Area Canada Goose quota is reached.
3. The goose season shall be:
   b. Until the Ballard Reporting Area Canada Goose quota is reached.
4. Youth waterfowl season shall be the first weekend in February.
5. A waterfowl hunter shall not hunt on a Monday, Tuesday, Christmas Day, or New Year's Day.
6. A waterfowl hunter shall:
   a. Apply in advance in accordance with Section 6 of this administrative regulation;
   b. Case his gun while using department-supplied transportation to and from a blind;
   c. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15; and
   d. Not hunt after 12 noon.
(c) At Boatwright Wildlife Management Area, including the Olmsted, Peal and Swan Lake units:
1. A person shall:
   a. Not hunt on a Monday, Tuesday, Christmas Day or New Year's Day;
   b. Check in daily at the designated check station by 8 a.m. during duck and Canada Goose season; and
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c. Check out after 8 a.m. by depositing a card at a department designated drop point.

2. Duck season shall be open one-half (1/2) hour before sunrise to sunset Thanksgiving Day for four (4) consecutive days on portfolios of Boatwright Wildlife Management Area open to hunting.

3. A department blind assignment shall be made in accordance with Section 6 of this administrative regulation.

4. A blind shall be made offered to another hunter on a first-come, first-served basis, if the original assignee has not checked in by 5 a.m.

5. Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

6. Waterfowl hunters shall hunt from department blinds or within twenty-five (25) feet of designated points as marked by the department.

7. Boat blinds shall not be permitted in flooded timber, except during periods of flood where no other access is possible. When boat blinds are permitted, there shall be a 200 yard distance between boat blinds.

8. (7.) On the Olmsted unit, a person shall not:
   a. Hunt waterfowl except from a permanent department blind or within twenty-five (25) feet of department blinds if the area is under flood and only accessible by boat; and
   b. Hunt waterfowl except from a blind location assigned by the department during Canada Goose season.

9. (8.) On the Peal unit:
   a. More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;
   b. More than four (4) parties shall hunt at the same time on Fish Lake;
   c. More than three (3) parties shall not hunt at the same time on First Lake or Second Lake;

10. (9.) On the Swan Lake Unit, a person shall not hunt duck, coot, merganser, or goose other than a Canada Goose except from a blind assigned by the department and unless:
    a. The season for these species is open; and
    b. The season for Canada Goose is also open.

    (a) A permanent blind may be used as specified in Section 4 of this administrative regulation.
    (b) A person shall establish a permanent blind within ten (10) yards of his assigned and numbered blind marker within:
        1. An area bounded by the mouth of Donaldson Creek, the east side of the Cumberland River Channel and the boat ramp at Linton.
        2. An area bounded by the Pryor's Creek Light, the west side of the Cumberland River Channel, Land Between the Lake Road 204 and river mile 73.5.
    (c) The following refuge areas are closed to the public:
        1. From November 1 through February 15 within an area west of the main river channel between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light):
           a. Including the row of islands on the west side of the main river channel; and
           b. Not including Taylor Bay and Jake Fork Bay.
        2. From November 1 through March 15 within Honker Bay and Fulton Bay as marked by buoys and signs.
    (d) From October 15 through March 15, a person shall not hunt:
        1. Within 200 yards of; or
        2. Within the area defined by the levee between river mile 68.4 and river mile 70.4.

    (a) A permanent blind may be used as specified in Section 4 of this administrative regulation.
    (b) A waterfowl hunter:
        1. May use a breech-loading shotgun along the shoreline of the Pendelis Unit; and
        2. Shall not use a breech-loading firearm elsewhere on the area.

13. Buckhorn Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.


15. Cumberland Lake Wildlife Management Area. The following sections shall be closed to the public from October 15 through March 15:
        (a) Wesley Bend, the area bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road.
        (b) Yellowhole, the area bounded by Fishing Creek Road and Hickory Nut Road.

    (a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and
    (b) Shall not use a breech-loading firearm elsewhere on the area. Addington Enterprises Wildlife Management Area shall be closed to waterfowl hunting.

17. Grayson Lake Wildlife Management Area. A person shall not hunt waterfowl:
    (a) Within the no wake zone at the dam site marina;
    (b) From the shore of Camp Webb;
    (c) From the shore of the state park;
    (d) On Deer Creek Fork;
    (e) Within three-quarters (3/4) of a mile from the dam.

18. Green River Lake Wildlife Management Area.
    (a) A permanent blind may be used as specified in Section 4 of this administrative regulation.
    (b) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

19. Kaler Bottoms Wildlife Management Area. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

20. Land Between the Lakes.
    (a) The following portions shall be closed to the public from November 1 through March 15:
        1. Long Creek Pond;
        2. The eastern one-third (1/3) of Smith Bay; and
        3. The eastern two-thirds (2/3) of Duncan Bay.
    (b) The following portions shall be closed to waterfowl hunting:
        1. The Environmental Education Center; and
        2. Energy Lake.

21. A person shall possess an annual Land Between the Lakes Hunting Permit when hunting waterfowl:
    1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or
    2. From a boat over a flooded portion of Land Between the Lakes when the lake level is above elevation 359.
    (d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.
    (e) A person shall not establish or use a permanent blind:
        1. On an inland area; or
        2. Along the Kentucky Lake shoreline of Land Between the Lakes.

22. A waterfowl hunter shall remove decoys and personal effects daily.

23. Nolin River Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.

24. Obion Creek Wildlife Management Area. Shooting hours are one-half (1/2) hour before sunrise until 2 p.m.

25. Ohio River Waterfowl Refuge.
    (a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing at approximately river mile 811.5.
    (b) Stewart Island shall be closed to the public from October 15 through March 15, except for quota deer hunting.

    (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
    (c) The following portions, as posted by signs, are closed to the public from October 15 through March 15:
        1. Gibraltar Mine, as bounded by Rockport Road, the Western Kentucky Parkway, Pond Creek and the P&M Haul Road;
        2. Sinclair Mine, as bounded by railroad tracks, the haul road and posted signs; and
        3. Homestead, as bounded by the haul road and the Green
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River.

(18) [Daniel Boone National Forest Pioneer Weapons Wildlife Management Area. A waterfowl hunter:
(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake, and
(b) Shall not use a breech-loading firearm elsewhere on the area.
(46)] The main block of Robinson Forest Wildlife Management Area shall be closed to waterfowl hunting.
(19) (66) Sloughs Wildlife Management Area.
(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
(b) Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.
(c) On the Grass-Land Peterson’s Lake Unit, a waterfowl hunter: 1. Shall use a permanent blind provided by the department;
[and]
2. Shall remove decoys and personal effects from a blind or the vicinity of a blind daily; and
3. A permanent blind may be used as specified in Section 4 of this administrative regulation.
(d) On the Jenny Hole-Highlands Creek Unit, a waterfowl hunter:
1. Shall not establish or hunt from a blind closer than 200 yards from another hunting party; and
2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.
3. A permanent blind may be used as specified in Section 4 of this administrative regulation.
(e) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:
1. May hunt from a boat without regard to department blinds; and
2. Shall not hunt closer than 200 yards from another boat.
(f) A waterfowl hunter on the Crenshaw and Duncan Tracts of the Sauerheber Unit:
1. Shall hunt from the blind assigned by the department through a drawing as stipulated in Section 6 of this administrative regulation;
2. May occupy a blind not claimed by the permiitee one (1) hour before sunrise;
3. Shall be limited to twenty-five (25) shells when the daily bag limit for ducks is greater than three (3) and the Canada goose limit is greater than or equal to two (2); 4. Shall be limited to fifteen (15) shells when the daily bag limit for ducks is less than or equal to three (3) and the Canada goose limit is less than or equal to two (2) (Shall not have more than fifteen (15) shells in one (1) day); 5. Shall be accompanied by an adult if under eighteen (18) years of age; and
6. The waterfowl blind for mobility-impaired persons will be open to the public only if the permit holder or another mobility-impaired person has not shown up to hunt on that day one (1) hour before sunrise.
(g) The Crenshaw and Duncan Unit of the Sauerheber Unit shall be closed to hunting except waterfowl from November 1 through March 15.
(h) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.
(20) South Shore Wildlife Management Area.
(a) Closed to hunting November 15 through January 30, except quota hunt waterfowl and dove hunting.
(b) The quota hunt requires advance application and selection.
(c) Hunters shall use department blinds.
(d) Department blinds are allocated by preseason draw. Applicants shall mail a three (3) by five (5) white index card in an envelope to Grayson Lake WMA post marked between November 1 and November 15.
(21) Starfire Wildlife Management Area shall be closed to waterfowl hunting.
(22) Taylorsville Lake Wildlife Management Area. The portion east of Van Buren Boat Ramp as marked by a sign shall be closed to the public from November 1 through the last day of February, except for the waters from the boat ramp to the Highway 248 bridge are open to fishing until November 15 and the entire area is open for quota deer hunting.
(23) [56] Westvaco Wildlife Management Area.
(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
(b) The portion south of the Westvaco Road as posted by a sign shall be closed to the public from November 1 through March 15.
(c) A person shall obtain a Westvaco Permit before hunting.
(24) White City Wildlife Management Area. Shooting hours shall be from one-half (1/2) hour before sunrise until 2 p.m.
(25) Yatesville Lake Wildlife Management Area. The Greenbrier Creek Branch of Yatesville Lake, and Yatesville Lake, including all of the islands, north of the mouth of the Greenbrier Creek Branch is closed to all waterfowl hunting.
(26) Yellowbank Wildlife Management Area. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

Section 6. (1) A person wishing to apply to hunt waterfowl on Ballard, Boatwright or the Sauerheber Unit of Sloughs Wildlife Management Areas shall:
(a) Apply to the vendor supplied by the department by calling (877) 599-2401;
(b) Register between September 1 and September 30; and
(c) Pay a three (3) dollar application fee for each application.
(2) A person shall not apply more than one (1) time for each hunt.
(3) Each hunter drawn may bring up to three (3) additional hunters.

Section 7. State Parks. (1) There shall be no waterfowl hunting on state parks except as specified in the subsection (2) of this section.
(2) Greenbo State Park.
(a) There shall be an open waterfowl hunt December 13 through January 15 on selected portions of Greenbo Lake and adjacent shoreline.
(b) Hunters shall check in each day at the front desk of the Greenbo Lake State Park no sooner than 4 a.m.
(c) During check-in hunters shall be provided a map showing portions of the lake that are open to waterfowl hunting.
(d) Hunters shall check out each day at the front desk of the Greenbo Lake State Park.
(e) Statewide waterfowl hunting requirements apply. The requirements specified in Section 4 of this administrative regulation shall apply in addition to the requirements listed below.
(b) There shall be a department waterfowl lottery where only those applicants who are drawn shall hunt all waterfowl for selected periods established each year by the Department of Parks; December 13 through January 15.
(c) Hunters shall check in and out at designated department sites and times.

Section 8. Mentor Waterfowl Hunts at Minor Clark and Peter W. Pfeiffer Fish Hatcheries. (1) There shall be youth waterfowl mentor hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries.
(2) Dates shall be determined and published in the current Waterfowl Hunting Guide.
(3) Youth shall register in advance and carry postcard notification the day of the hunt.
(4) Youth shall be accompanied by an adult eighteen (18) years or older.
(5) One (1) youth shall not be accompanied by more than one (1) adult.
(6) One (1) adult may accompany two (2) youths.
(7) Hunting shall only be permitted from established blinds and hunters shall not change blinds.
(8) Four (4) hunters shall be permitted per blind.
(9) Hunters may only discharge firearms from the blind.
(10) Hunters may only have fifteen (15) shotshells per hunter.
(11) Hunters shall immediately retrieve downed birds. Chasing or harassing waterfowl outside the blinds is strictly prohibited.
Firearms shall be encased when traveling to and from the blind.

Hunting shall end at noon and hunters shall be off the premises by 1 p.m.

All decoys and equipment shall be removed at the end of each day’s hunt.

Hunters shall report harvest by dropping hunt permit at designated location.

W. JAMES HOST, Secretary
C. THOMAS BENNETT, Commissioner
APPROVED BY AGENCY: Dec 27, 2004
FILED WITH LRC: November 23, 2004 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2005 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by January 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of: This administrative regulation establishes the waterfowl hunting requirements, seasons and limits for hunting waterfowl on Wildlife Management Areas within the federal waterfowl hunting frameworks established in 50 C.F.R. Part 20.

(a) What the administrative regulation does: establishes the 2004-2005 regular waterfowl season dates and bag limits according to the United States Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: To establish the 2004-2005 waterfowl season in accordance with the USFWS.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) and 150.600(1) authorize the department to establish waterfowl season dates and limits. KRS 150.340 authorizes the department to establish bag and creel limits for waterfowl.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing the waterfowl hunting seasons and limits and area specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with national management goals on the department’s Wildlife Management Areas.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is an amendment to an existing administrative regulation. Each fall the USFWS issues a federal mandate establishing the migratory bird season based on last season’s migratory bird harvest data. This amendment reflects the federal mandate. There are few changes from last year’s migratory bird season. The changes include creating a sliding shell limit for Ballard, Boatwright and Sloughs Wildlife Management Areas; changing the shooting hours during the duck season to one-half hour before sunrise to sunset; issuing department waterfowl blinds to preregistered hunters during a draw at Sloughs Wildlife Management Area; and opening the South Shore Wildlife Management Area to waterfowl hunting. The Wildlife Management Areas were alphabetized in this regulation.

(a) How the amendment will change the existing administrative regulation: The amendment does little to change the existing administrative regulation. Shell limits were changed for Ballard, Boatwright and Slougs Wildlife Management Areas. A shell limit is useful in deterring "sky biasing" by reducing conflicts to adjacent hunters and reducing the potential number of crippled birds. The initial shell limit was set when the daily bag was 3 ducks (2 mallards) and 2 Canada geese. Under the liberal season option used to set seasons the last several years the daily duck bag limit has increased to 6 (4 mallards) while the Canada goose limit is unchanged. Raising the shell limit from 15 to 25 will maintain the ratio of approximately 1 bird per 3 shots fired, the ratio first used in this regulation. The area specific changes to Boatwright, Sloughs and South Shore WMA’s will increase hunter opportunity. The alphabetization of the WMAs within the regulation should assist with organization of the regulation.

(b) The necessity of the amendment to this administrative regulation: To implement the federal mandate from the USFWS and continue efforts to increase quality-hunting opportunity for waterfowl on the department's WMAs.

(c) How does the amendment conform to the authorizing statutes: The amendment establishes season dates and limits as KRS 150.025(1), 150.600(1) and 150.340 provide.

(d) How will the amendment assist in the effective administration of the statutes: See "D" above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons who waterfowl hunting on Department WMAs will be affected by this administrative regulation. Those persons shall be minimally affected in comparison to last year's waterfowl season, with the exception of the shot shell limit discussed above and increased waterfowl hunting opportunity created at South Shore WMA.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, now, or by the changes if it is an amendment: There will be little impact on waterfowl hunters in comparison with last year's administrative regulation, with the exception of the shot shell limit discussed above and increased waterfowl hunting opportunity created at South Shore WMA.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The Commissions of Law Enforcement and Wildlife budgets already include law enforcement and conservation management of Kentucky's waterfowl. There will not be a need to draw upon another budget or source of funding for implementation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the changes if it is an amendment: It will not be necessary to increase a fee or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied: Tiering was not used. There is not a need to apply tiering because there are not different groups of waterfowl hunters. The same guidelines and limits contained in this administrative regulation apply to all waterfowl hunters.

COMMERCE CABINET
Department of Fish and Wildlife
(Amendment)

301 KAR 2:223. Waterfowl reporting requirements.

RELATES TO: KRS 150.010, 150.015, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 15.603, 150.630, 150.990, 50 C.F.R. Parts 20, 21
STATUTORY AUTHORITY: KRS 150.025(1), 150.600(1), 50 C.F.R. Parts 20, 21
NECESSITY, FUNCTION, AND CONFORMITY: 50 C.F.R. Parts 20 and 21 establish Canada goose quota and require the state to close goose hunting season if those quotas are reached. KRS 150.025(1) and 150.600(1) authorize the department to promulgate administrative regulations governing the taking of waterfowl. This administrative regulation is necessary to assure that complete harvest data are collected in a timely manner.

Section 1. Definitions. (1) "Commercial waterfowl hunting area" means private lands or waters where a fee is charged for hunting waterfowl.
(2) "Noncommercial waterfowl hunting area" means private land or water where a fee is not charged for hunting waterfowl.
(3) "Operator" means:
(a) The owner, manager or other person in charge of a commercial waterfowl hunting area.
(b) The owner or tenant of a noncommercial waterfowl hunting area.
(c) A person to whom the owner or tenant has assigned, in writing, the farmers provided by the department, exclusive control of waterfowl hunting rights on a noncommercial waterfowl hunting area.

Section 2. When Canada goose season is open in the Ballard Reporting Area or the Henderson-Union Reporting Area, as described in 301 KAR 2:224:
(1) The operator of a commercial waterfowl hunting area shall obtain a commercial waterfowl shooting area permit for each area he operates.
(a) A tract of land divided by a public road may operate under one (1) permit.
(b) Tracts of land separated by property belonging to another person shall require a separate permit for each tract.
(2) The operator of a commercial waterfowl hunting area shall:
(a) Display the permit openly on the area; and
(b) Maintain complete and accurate records of waterfowl harvested on a daily waterfowl shooting register form.
(3) The operator of a noncommercial waterfowl hunting area shall:
(a) Obtain a noncommercial migratory goose hunting permit from the department.
(b) Display the permit openly on the area.
(c) Make a daily waterfowl harvest register form available to hunters.
(d) Require a goose hunter to enter:
   1. His name, address, hunting license number and the date on the register before hunting; and
   2. The number of geese taken by species before leaving the area.
(4) The operator of a commercial or a noncommercial waterfowl hunting area shall:
(a) Close the waterfowl harvest register after shooting hours on Wednesday and Sunday.
(b) Mail or hand-deliver:
   1. The harvest report card to the address indicated so that it shall arrive no later than the following Monday or Thursday; and
   2. The original to the address indicated so that they shall arrive within five (5) days after the close of goose season.
(c) Retain a form for two (2) months after the close of goose season.
(d) Allow an agent of the department or the U. S. Fish and Wildlife Service to inspect his permit and harvest record.
(5) A person goose hunting on a commercial or a noncommercial waterfowl hunting area shall:
(a) Enter his name, address, hunting license number and the date on the register form before hunting; and
(b) Record the number of geese taken by species on the register form before leaving the area.
(6) A person goose hunting on a public area [here], including the Ohio or Mississippi Rivers or their overflow areas, within the Ballard or Henderson-Union Reporting Areas shall:
(a) Obtain a daily waterfowl harvest register form;[1]
(b) Before hunting, enter on the register:
   1. His name, address, and hunting license number; and
   2. The name, address and hunting license number of each member of the hunting party; and
   3. The date.
(c) Shall record on the register the number of geese by species taken each day; and[1]
(d) Shall mail or hand deliver the completed harvest report card to the address indicated on the form so that it arrives no later than the following Monday or Thursday.

Section 3. A person goose hunting in the [Western] or Northeast Special Hunt Zone, as defined in 301 KAR 2:224 shall:
(1) Carry a permit to hunt Canada Geese on special areas.
(2) Complete and return the harvest survey portion of the permit within ten (10) days after the season closes.
(3) Not be eligible for permits the following year if they do not return harvest surveys within ten (10) days after the season closes.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Kentucky Permit to Hunt Canada Goose on Special Areas, August, 1995.
(b) Noncommercial Migratory Goose Hunting Permit, August, 1995.
(c) Daily Waterfowl Harvest Register, August, 1995.
(d) Application for Commercial Waterfowl Shooting Area Permit, August, 1995.
(e) Assignment of Waterfowl Hunting Rights, August, 1995.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 4:30 p.m.

W. JAMES HOST, Secretary
C. THOMAS BENNETT, Commissioner
APPROVED BY AGENCY: August 27, 2004
FILED WITH LRC: November 29, 2004 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2005 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. No notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by January 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Ellen F. Benzing
(1) Provide a brief summary of:
(a) What the administrative regulation does: This administrative regulation establishes the reporting requirements for waterfowl hunters. The US Fish and Wildlife Service establishes Canada goose quotas and requires the state to close goose hunting season if these quotas are reached. This administrative regulation establishes the procedures to assure that complete harvest data is collected in a timely manner. The collected data is used for closing quota areas and establishing the next season’s waterfowl hunting dates.
(b) The necessity of the administrative regulation: To assure that complete harvest data is collected in a timely manner.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) and 150.600(1) authorize the department to establish the taking of waterfowl. This administrative regulation establishes the procedures for reporting waterfowl taken.

(d) How will this administrative regulation assist in the effective administration of the statutes: This regulation will assist in the administration of the statutes by establishing reporting requirements for waterfowl which can then be used to establish seasons and limits for the continued conservation and management of waterfowl.

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

(a) How the amendment will change the existing administrative regulation: The amendment does little to change the existing administrative regulation. It simply deletes the requirement that a special free Canada goose permit is required in the West-Central Goose Zone.

(b) The necessity of the amendment to this administrative regulation: The Canada goose numbers have increased in the West-Central Goose Zone making the requirement for a special free Canada goose permit no longer necessary.

(c) How does the amendment conform to the authorizing statutes: KRS 150.025 and 150.600 authorize the department to promulgate administrative regulations governing the taking of waterfowl. The amendment deletes a reporting requirement regarding the taking of waterfowl.

(d) How the amendment will assist in the effective administration of the statutes: See "D" above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons who waterfowl hunt on the West-Central Canada goose zone will be affected (they will no longer need to acquire a free Canada goose permit).

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be little impact on waterfowl hunters in comparison with last year's administrative regulation. There changes are consistent with efforts to increase quality hunting opportunity for waterfowl hunters.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The divisions of Law Enforcement and Wildlife currently oversee law enforcement and management of waterfowl. It will not be necessary to draw upon another budget or source of funding for implementation.

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

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

(9) TIERING: Is tiering applied? Tiering was not used. There is no need to apply tiering, because there are not different groups of waterfowl hunters. The same guidelines and limits contained in this administrative regulation apply to all waterfowl hunters.

FEDERAL MANDATE ANALYSIS COMPARISON

Contact Person: Ellen F. Benzing
1. Federal statute or administrative regulation constituting the federal mandate. 50 C.F.R. Part 20.
2. State compliance standards. State seasons and bag limits are within federal frameworks.
3. Minimum or uniform standards contained in the federal mandate. The USFWS annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in the regular waterfowl seasons. The regular migratory bird season opens November 15. The framework is necessary to allow state selections of specific final seasons and limits to allow recreational harvest at levels compatible with population status and habitat conditions. This administrative regulation deletes the requirement of a permit to hunt Canada geese on the West Central Special Hunt Zone and deletes the requirement that the hunter return the harvest survey portion of the permit. Canada goose numbers have increased on the West Central Special Hunt Zone no longer making it necessary to collect the harvest data.

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. N/A

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

( Amendment )

401 KAR 63:005. Open burning.

RELATES TO: KRS 149.400, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 U.S.C. 7401-7671q
STATUTORY AUTHORITY: KRS 149.400, 224.10-100, 224.20-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 149.400 prohibits setting fires within 150 feet of woodland or brushland during fire-hazard seasons except under certain prescribed conditions. KRS 224.10-100 requires the [Natural Resources and] Environmental and Public Protection Cabinet to promulgate [prescribe] administrative regulations for the prevention, abatement, and control of air pollution. KRS 224.20-100 prohibits any person from directly or indirectly, emitting into or discharging into the air under the jurisdiction of the Commonwealth, or causing, permitting, or allowing to be emitted or discharged into such air, any contaminant as provided for in subsection (1) of KRS 224.01-010 that shall cause or contribute to the pollution of the air of the commonwealth in contravention of any of the rules, administrative regulations, or orders of the cabinet. This administrative regulation provides for the control of open burning.

Section 1. Definitions. Terms not defined in this section shall have the meaning given them in 401 KAR 63:001.

1. "Clean lumber" means wood or wood products that have been cut or shaped and includes wet, air-dried, and kiln-dried wood products and does not include commercial or industrial waste or wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chrome, copper, arsenate, pentachlorophenol, and creosote.

2. "Fire training" means the instruction of industrial, public and private firefighters conducted in accordance with safety standards and procedures as accepted by the Kentucky Fire Commission or the National Wildfire Coordinating Group.

3. "Garbage" means putrescible animal and vegetable matter accumulated by a family in a residence in the course of ordinary day-to-day living.

4. "Household rubbish" means waste material and trash[ not to include garbage] normally accumulated by a family in a residence in the course of ordinary day-to-day living, not to include garbage, cans, glass, plastic, or other potentially hazardous waste materials.

5. "Land clearing" means clearing of land for agricultural, residential, industrial, or commercial development purposes, including the construction of roads.

6. "Open burning" means the burning of any matter without an approved burn chamber and a stack or chimney with approved control devices.

7. "Priority I Region" means a region classified as Priority I in 401 KAR 50:020, Appendix A.

8. "Recognized agricultural, silvicultural, range or wildlife
management practices" means burning recognized by the Kentucky Department of Agriculture, the United States Department of Agriculture, the Kentucky Division of Forestry, the United States Forest Service, the Kentucky Department of Fish and Wildlife, or the United States Fish and Wildlife Service as necessary to promote cultivation of crops, range, and forest lands, weed and understorey abatement and pest control and prevention.

(3) "Waste wood" means untreated wood and untreated wood products, including tree stumps (whole or chipped), felled trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings and shavings. Waste wood does not include:

(a) Yard waste;
(b) Construction, renovation, or demolition wastes; or
(c) Clean lumber.

(10) "Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs, which come from residential, commercial, retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include:

(a) Construction, renovation, and demolition wastes; or
(b) Clean lumber.

Section 2. Applicability. This administrative regulation shall apply to all open burning that is not subject to another administrative regulation in 401 KAR Chapters 50 through 65.

Section 3. Allowable Open Burning. Subject to the limitations contained in this section and the restrictions contained in Section 4 of this administrative regulation, open burning will be allowed for:

(1) Fires set for the cooking of food for human consumption;
(2) Fires set for recreational or ceremonial purposes;
(3) Small fires set by construction and other workers for comfort heating purposes if:
   (a) The ambient temperature is below fifty (50) degrees Fahrenheit;
   (b) Excessive or unusual smoke is not created;
   (c) Only clean lumber or vegetative matter is burned; and
   (d) The fire is burned in a container not exceeding fifty-five (55) gallons in size;
(4) Fires set for the purpose of weed abatement, disease, and pest prevention;
(5) Fires set for prevention of a fire hazard, including the disposal of dangerous materials if no safe alternative is available;
(6) Fires set for the purpose of instruction and training of public and industrial employees in the methods of fighting fires as set forth in Section 5 of this administrative regulation;
(7) Fires set for recognized agricultural, silvicultural, range, and wildlife management practices;
(8) Fires set by individual homeowners for burning of leaves except in cities greater than 8,000 population located in a Priority I Region;
(9) Fires for disposal of household rubbish, not to include garbage, originating at dwellings of five (5) family units or less, if the fires are maintained by an occupant of the dwelling at the dwelling, except in cities greater than 8,000 population located in a Priority I Region;
(10) Fires set for the purpose of disposing of accidental spills or leaks of crude oil, petroleum products or other organic materials, and the disposal of absorbent material used in their removal, if no other economically feasible means of disposal is available and practical. Permission shall be obtained from the cabinet prior to burning;
(11) Fires set for disposal of natural growth for land clearing, and trees and tree limbs felled by storms. In regions classified Priority I, with respect to particulate matter pursuant to 401 KAR 50-020, Appendix A, the emissions from such fires shall not be equal to or greater than forty (40) percent opacity;
(12) Heating pipes that are set on fire to repair steel rails during cold weather; and
(13) Fires set by county or municipal governments to dispose of wood waste or clean lumber.

Section 4. Restrictions to Open Burning. (1) For those counties, or portions of counties, which are, or were previously, designated moderate nonattainment for the one (1) hour ozone or nonattainment for the PM10 standards or those counties, or portions of counties, which are, or were designated moderate nonattainment for the eight (8) hour ozone or PM10 national ambient air quality standards, pursuant to 401 KAR 51:010, fires may be set in accordance with this administrative regulation except during the months of May, June, July, August, and September. During these months, the only open burning activities allowed are:

(a) Fires set for the cooking of food for human consumption;
(b) Fires set for prevention of a fire hazard, including disposal of dangerous materials if no safe alternative is available;
(c) Fires set for the purpose of bona fide instruction and training of public and industrial employees in the methods of fighting fires;
(d) Fires set for recognized agricultural, silvicultural, range, and wildlife management practices;
(e) Fires set for the purpose of disposing of accidental spills or leaks of crude oil, petroleum products or other organic materials, and the disposal of absorbent material used in their removal, if no other economically feasible means of disposal is available and practical. Permission shall be obtained from the cabinet prior to burning; and
(f) Fires set for recreational or ceremonial purposes.

(2) In accordance with KRS Chapter 149.400; During the period commencing February 15 through April 30 and October 1 through December 15 each year, open burning shall not be conducted closer than 150 feet of any woodland or brushland between the hours of 6:00 a.m. and 6:00 p.m. except when the ground is covered with snow. These restrictions do not apply to fires set for the purpose of burning plant beds, fires set in conjunction with the construction, operation, or maintenance of railroads, pipelines, power lines, and other projects in the public interest, or fires set by a state government agency for wildlife or plant habitat improvement, ecological site restoration, site preparation for natural or artificial re-generation, or fuel reduction.

(3) Open burning for land clearing purposes associated with residential, commercial, or industrial development shall be limited to a maximum of two (2) contiguous acres at any one (1) time.

(4) Open burning shall not be conducted in contravention of any local ordinance.

Section 5. Procedures for Fire Training. Burning conducted in conjunction with training for public, private and industrial firefighters is subject to the following criteria:

(1) All fire training shall be conducted in accordance with safety standards and procedures accepted by the Kentucky State Fire Commission or the National Wildfire Coordinating Group.

(2) Excluding fire training sanctioned by the Kentucky State Fire Commission or conducted in accordance with standards adopted by the National Wildfire Coordinating Group, any entity intending to conduct fire training shall submit written notification to the local Division for Air Quality regional office a minimum of fifteen (15) days prior to the scheduled training. The written notification shall state the location and the date of the proposed fire training, the name and contact information for the on-site training coordina
tor, the number of firefighters to be trained, the goals and the objectives of the training, and a brief summary of what is to be taught. No fire training shall take place without the Division for Air Quality's written approval.

(3) Any materials commonly known to contain asbestos shall not be burned unless the entity conducting the fire training can demonstrate that the materials do not contain asbestos.

(4) Materials likely to produce hazardous or toxic emissions must be removed prior to the fire training burning event, to the extent practicable, and properly disposed.

(5) Excluding fire training sanctioned by the Kentucky State Fire Commission or conducted in accordance with standards adopted by the National Wildfire Coordinating Group, entities conducting fire training shall be limited to one burning event related to training per year for every ten firefighters under their supervision.

(6) Excluding fire training sanctioned by the Kentucky State Fire Commission or conducted in accordance with standards adopted by the National Wildfire Coordinating Group, between May 1 and September 30, fire training shall not be conducted in any
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COUNTIES, or PORTIONS OF COUNTIES, WHICH ARE, OR WERE PREVIOUSLY DESIGNATED MODERATE NONATTAINMENT FOR OZONE, OR DESIGNATED, OR PREVIOUSLY DESIGNATED, NONATTAINMENT FOR THE EIGHT (8) HOUR OZONE OR PM 2.5 (PARTICULATE MATTER) NATIONAL AMBIENT AIR QUALITY STANDARD, PURSUANT TO 401 KAR 51:010:

PROHIBITION OF OPEN BURNING. Except as provided in this section, open burning is prohibited. Fire shall be set for the purposes specified in this section throughout the year in any area of the Commonwealth which is not designated, or was not previously designated, moderate nonattainment for ozone pursuant to 401 KAR 51:010, if the fires do not violate KRS Chapters 149, 150, 227, and other laws of the Commonwealth of Kentucky or local ordinances. Purposes for which open burning is allowed are:

1. Fires set for the cooking of food for human consumption;
2. Fires set for recreational or ceremonial purposes;
3. Small fires set by construction and other workers for comfort-heating purposes if excessive or unusual smoke is not created;
4. Fires set for the purpose of weeding, abatement, disease, and pest control;
5. Fires set for prevention of a fire hazard, including the disposal of dangerous materials if a safe alternative is available;
6. Fires set for the purpose of bona fide instruction and training of public and industrial employees in the methods of fighting fires;
7. Fires set for recognized agricultural, silvicultural, range, and wildlife management practices;
8. Fires set by individual home owners for burning of leaves except in cities greater than 8,000 population located in a Priority I Region;
9. Fires for disposal of household rubbish, not to include garbage, originating at dwellings of five (5) family units or less, if the fires are maintained by an occupant of the dwelling at the dwelling, except in cities greater than 8,000 population located in a Priority I Region;
10. Fires set for the purpose of disposing of accidental spills or leaks of crude oil or petroleum products or other organic materials, and the disposal of absorbent material used in their removal, if no other economically feasible means of disposal is available and practical. Permission shall be obtained from the cabinet prior to burning;
11. Fires set for disposal of natural growth for land clearing, and trees and tree limbs felled by storms, if no extraneous materials such as tires or heavy oil which tend to produce dense smoke are used to cause ignition or aid combustion and the burning is done on days when conditions do not pose a threat of igniting a forest fire. In regions classified Priority I with respect to particulate matter pursuant to 401 KAR 50:020, Appendix A, the emissions from these fires shall not be equal to or greater than forty (40) percent opacity;
12. Heating ropes that are set on fire to repair steel rails during cold weather.

SECTION 4. ADDITIONAL RESTRICTIONS FOR OZONE NONATTAINMENT AREAS AND AREAS PREVIOUSLY DESIGNATED NONATTAINMENT FOR OZONE. For those areas which are, or were previously designated moderate nonattainment for ozone pursuant to 401 KAR 51:010, fires may be set according to the provisions of Section 3 of this administrative regulation except during the months of May, June, July, August, and September. During these months, the only open burning activities allowed are:

1. Fires set for the cooking of food for human consumption;
2. Fires set for prevention of a fire hazard, including disposal of dangerous materials if a safe alternative is available;
3. Fires set for the purpose of bona fide instruction and training of public and industrial employees in the methods of fighting fires;
4. Fires set for recognized agricultural, silvicultural, range, and wildlife management practices;
5. Fires set for the purpose of disposing of accidental spills or leaks of crude oil, petroleum products or other organic materials, and the disposal of absorbent material used in their removal, if no other economically feasible means of disposal is available and practical. Permission shall be obtained from the cabinet prior to burning.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: December 10, 2004
FILED WITH LRC: December 13, 2004 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 31, 2005 at 10 a.m., at the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days before 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 to the contact person, no later than January 31, 2005. Send written notification of intent to hear at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Sean Alteri, Environmental Control Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3392, fax (502) 573-3787.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sean Alteri

1. Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation allows for the open burning of specific materials within certain limitations and restrictions.
   (b) The necessity of this administrative regulation: The cabinet is required to adopt and enforce administrative regulations that protect human health and the environment. This administrative regulation prescribes the types of material that can be burned, and the time and places where burning can occur to minimize the impact on human health and the environment.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation minimizes the release of air contaminants resulting from open burning.

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 to this administrative regulation will clarify those instances when open burning is permitted. The amendment will also provide added flexibility for municipal and county governments in disposing of vegetative matter.
   (b) The necessity of the amendment to this administrative regulation: Problems involving the disposal of debris from storms and of other similar materials indicated that the existing administrative regulation required clarification. Also, the open burning of cans, glass, plastic, or other potentially hazardous waste materials was not addressed in the existing administrative regulation.
   (c) How the amendment conforms to the content of the authorizing statutes: The existing administrative regulation already conforms to the content of the authorizing statutes. The proposed amendment does not affect the intent of the existing administrative regulation. The amendment serves to clarify certain sections of the administrative regulation.
   (d) How the amendment will assist in the effective administration of the statutes: The proposed amendment will provide both the cabinet and affected sources more specific administrative regulations governing open burning issues. The language and format of
the proposed amendment is also simplified for understanding by all of the citizens of the commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. All individuals, entities and organizations with the potential to open burn are affected by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. The amended administrative regulation will provide residences and municipal or county governments with an alternative disposal method of yard waste, wood waste, and clean lumber.

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

(a) Initially: The division will not incur any additional costs to implement the proposed amendment to this administrative regulation.

(b) On a continuing basis: There will not be any continuing costs associated with the implementation of the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division's operating budget will continue to be used to implement and enforce the administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increase any fees. The amended administrative regulation will not establish any fees, nor will it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not applied to the amendment of this administrative regulation. The concept of tiering is not applicable to this administrative regulation. Any person is allowed to open burn if they follow the requirements of the proposed administrative regulation.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does the amendment to this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this amendment to the administrative regulation will affect. Local governments engaging in waste disposal activities may be affected by the proposed amendment to this administrative regulation. The amendment will provide flexibility for municipal and county governments in disposing of vegetative matter.

3. State the aspect or service of local government to which this amended administrative regulation relates. Local governments will have the option to burn wood waste, yard waste, and clean lumber. Also, the materials that are allowed to be burned are defined more clearly in this amended administrative regulation.

4. Estimate the effect of this amended administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues. Expenditures (+/-): There may be a reduction in local government expenditures as a result of this proposed amendment.

Other Explanation: There is no further explanation.

EDUCATION CABINET
Board of Education
(Amendment)

704 KAR 7:120. Home/hospital instruction.

RELATES TO: KRS 159.030, 160.290

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 requires the Kentucky Board of Education (state board) to establish policies or act on all matters relating to the administrative responsibility of the Department of Education. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.220 requires the Kentucky Board of Education to promulgate administrative regulations for the program administered under KRS 157.200 to 157.280 concerning special educational programs. KRS 159.030 provides exemptions from compulsory attendance for students whose physical or mental condition prevents or renders inadvisable attendance at school or application to study. This administrative regulation establishes minimum requirements for home/hospital instruction programs.

Section 1. General Provisions. A local board of education shall operate a program for home/hospital instruction for children of school age pursuant to KRS 157.200 and the criteria listed below.

Section 2. Eligibility for Home/hospital Instruction. (1) A child or youth shall be provided home/hospital instruction if the condition of the child or youth prevents or renders inadvisable attendance at school as verified by a signed statement in accordance with KRS 159.030(2).

(2) The Home/Hospital Review Committee shall accept and review applications to determine student eligibility for home/hospital services. This committee shall consist of a local director of pupil personnel, [and a] home/hospital teacher or home instruction program director, medical or mental health personnel, and other professionals relevant to the application being reviewed [in conjunction with health personnel, shall review available information to confirm or reject the need for home/hospital instruction].

(3) Eligibility for home/hospital instruction for students with disabilities shall be determined by the Admissions and Release Committee (ARC) in accordance with the Individual Education Program (IEP), with the services being determined to be in the least restrictive environment. The ARC decision for home or hospital instructional services eligibility shall be based on appropriate documentation of student need, including medical or mental health evaluation information. The ARC chairperson shall provide written notice of this eligibility and documentation to the local director of pupil personnel for purposes of program enrollment.

(4) An application for mental health reasons may be considered completed by a licensed psychologist or psychiatrist.

(5) [44] A student referred for home/hospital instruction and not in attendance at school shall not be counted for average daily attendance (ADA) prior to the date on which eligibility for such services is approved.

(6) [65] An application for home/hospital instruction shall be accepted only for a student for whom there is an expectation of an inability to attend regular school for more than five (5) consecutive school days.

(7) [66] Eligibility for home/hospital instruction shall cease if the student works or participates in athletic activities.

(7) The application for home/hospital instruction shall be provided by the Kentucky Department of Education (KDE).]

Section 3. Temporary Placement for Children or Youth on Home/Hospital Instruction. (1) Pursuant to its authority established in KRS 160.290, a local board of education shall implement referral and placement procedures in accordance with local board policy for children or youth with temporary conditions, including fractures, surgical recuperation, or other physical, health, or mental conditions.

(2) The condition of pregnancy shall not be considered a physical or health impairment in and of itself, and the nature and extent of any complication shall be delineated prior to consideration of home/hospital instruction for this condition.

(3) A student with a recurring condition, which results in periods in which the need for home/hospital instruction is intermittent and the student is able to attend school for short periods, may be exited and reentered on home/hospital instruction, and the follow-
ing shall apply:
(a) Initial approval by the home/hospital instruction review committee shall be required;
(b) The review committee shall review the need for an alternative schedule of services based on verification by the professional statement in the application for home/hospital instruction of the need for intermittent services;
(c) If a health professional who completed the initial application for a student to be served on home/hospital determines the student needs additional time for services, the health professional shall submit a written statement, either mailed or faxed, to the Director of the program requesting additional time up to two (2) weeks for services and provide a brief explanation for the extension;
(d) The home/hospital review committee shall meet to review this extension and either approve or deny the request for an extension, prior to provision of any extended services;
(e) The home/hospital instruction review committee shall review intermittent placement at least every six (6) months, and at that time a statement from a second professional, shall be required for continued program eligibility; and
(f) The parent or student shall notify the principal or director of pupil personnel prior to the need for school reentry to or exit to home/hospital instruction. Failure to provide this notice to school staff may terminate the student's eligibility for home/hospital instruction and the student shall return to regular school attendance.

Section 4. Extended Placement for Children or Youth on Home/Hospital Instruction. (1) A local board of education shall implement referral, placement, and review procedures for children or youth whose physical or mental health condition results in placement in a home or hospital setting more than six (6) months.
(2) For secondary students served on home/hospital instruction for extended periods, a local board of education shall adopt a policy regulating the amount of credits that may be earned per semester towards graduation while served on home/hospital instruction, pursuant to the board's authority established in KRS 160.290.
(3) For students on extended placement, the use of Kentucky Virtual High School (KVHS) or other electronic instruction, as approved by the local board of education, may be considered as a mechanism to continue course credit.
(4) The use of Kentucky Virtual High School (KVHS) or other electronic instruction, as approved by the local board of education, shall be in addition to the minimum of two (2) one (1) hour visits per week.
(5) A child or youth who is exempted from school attendance more than six (6) months shall have two (2) signed statements, from two (2) health professionals, prior to receiving services, unless a medical professional believes that the student's physical condition is unlikely to substantially improve within one (1) year. A mental health condition shall not be regarded as chronic physical condition and shall require two (2) signed statements for exemptions beyond six (6) months.
(6) The exemption shall be reviewed annually with a plan and timeline developed for returning the child or youth to school or documentation maintained verifying why return is not feasible, except that a child with a disability who is certified by a medical professional to have a chronic physical condition unlikely to substantially improve within three (3) years may continue to be eligible for home/hospital instruction services, based on the admissions and release committee's annual review of documentation to determine if updated evidence is required. Updated documentation of need for home/hospital services for children with chronic physical conditions shall be provided as requested by the admissions and release committee or at least every three (3) years.

Section 5. Home/Hospital Instruction Operation. (1) In addition to the teacher and student, an adult shall be present in the home/hospital room during the time the home/hospital instruction teacher is present.
(2) A home/hospital instruction teacher shall complete a visitation and planning schedule on a weekly basis. This schedule shall include specific times for instruction, travel, planning and conferences. A copy of this schedule shall be on file in the central office.
(3) Attendance records and services descriptions shall be maintained and summarized on an annual basis on the home/hospital program form for submission to the department at the end of each school year.
(4) The school's records of daily attendance and the teacher's monthly attendance reports shall be maintained and summarized on a monthly basis as to home/hospital instruction.
(5) Pursuant to its authority established in KRS 160.290, a local board of education shall develop timelines for determination of student eligibility for home/hospital instruction, provision of services if eligible, and for committee review of continued eligibility at least every six (6) months or sooner as needed, except as provided in KRS 159.030. The home/hospital instruction committee may schedule a review of continued student eligibility for home/hospital instruction at any time based on changes in the student's condition.
(6) A teacher serving students in a home instruction shall not exceed a caseload of twelve (12) students. A teacher on hospital instruction shall not exceed a caseload of fifteen (15) students. For a teacher serving a combination of home and hospital students, the caseload maximum shall be determined by the setting in which the majority of his students are served.
(7) Children or youth with communicable diseases found eligible for home/hospital instruction may be served by alternative means such as correspondence, computer assisted instruction, or video during the period of contagion, if documentation from a health professional verifies the student's condition poses a serious health threat to a home/hospital teacher providing regular visita.
tive regulation aligns with new statutory requirements of KRS 159.030 (2004 GA-HB 10). It eliminates redundancy of paperwork and process for determination of local eligibility of reimbursement for home care service for students with disabilities. It further avoids excess local paperwork and burden on parents of children to document when students with chronic medical or physical conditions are in need of home or hospital services longer than 6 months due to the severity of their condition.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement the new provisions of KRS 159.030.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the direction to local schools on changes in determination of home or hospital service reimbursement eligibility for students with disabilities and also clarifies conditions under which one evaluation is sufficient for documenting the need for extended services for students with more severe disabilities, and differences in determination of need for extended services for students with chronic conditions. The document incorporated by reference also reflects the changes in the regulation.

(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 allow:

1. The decision and documentation by an Admissions and Release Committee (ARC) that a student with disability needs to be served in a home or hospital setting in accordance with their Individual Education Program (IEP) to be sufficient evidence for local reimbursement for services. Services for students with more severe disabilities, and differences in determination of need for extended services for students with chronic conditions. The document incorporated by reference also reflects the changes in the regulation.

2. Previously if a student with a chronic physical condition needed to be served longer than six months in home or hospital instruction, the child must be seen on a current professional evaluation. The ARC may now determine that a student has a chronic physical condition unlikely to substantially improve within 1 year then there is no need for a second medical professional to attest that this need before the student can receive the extended service.

3. An ARC may also determine a child with a chronic physical condition is eligible for home or hospital services based on a current professional evaluation, and may determine another evaluation is not necessary for up to 3 years. This provision does not apply to students with mental health conditions. The ARC still needs to review and document the need for the service in the child’s IEP on an annual basis.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was necessary to implement the new (2004 GA-HB 10) provisions of KRS 159.030.

(c) How the amendment conforms to the content of the authorizing statute: Conformity is achieved by deletion of previous regulatory language in conflict and replacing new language reflecting the intent of the statute. Changes are made in process for home or hospital program reimbursement eligibility for students with disabilities, and changes are made in requirements for extended services of 6 months or longer by children with chronic physical conditions.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides direction and new language consistent with the new statutory requirements.

(3) List the 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: There will be a reduction in paperwork and process required of local school district staff and families of children with disabilities or chronic physical conditions.

(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 regulation, if new, or by the change if this is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly increases any fees: No fees are established by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Office of the Commissioner
(Change)

907 KAR 1:018. Reimbursement for drugs.

RELATES TO: KRS 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5636, 205.5638, 205.5639, 205.6316(4), 217.015, 311.550, 311.560, 42 C.F.R. 440.120, 447.331, 447.332, 447.333, 42 U.S.C. 256b, 1396a-d


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 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 citizens. KRS 205.6316(4) requires the department to promulgate an administrative regulation to establish a dispensing fee for prescriptions. This administrative regulation establishes the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program and the dispensing fees.

Section 1. Definitions. (1) "[A-rated generic product] means a product that the FDA has found to be bioequivalent.

(2) "Average wholesale price" or "AWP" means the average wholesale price published in a nationally-recognized comprehensive drug data file for which the department has contracted.

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

(4) "Direct price" means the estimated acquisition cost for which the pharmacist can purchase a drug product directly from the manufacturer as listed in a nationally-recognized comprehensive drug data file for which the department has contracted.

(5) "Dispensing fee" means a professional fee paid to reimburse a pharmacy for costs associated with the dispensing of a prescribed drug.

(6) "Food and Drug Administration" or "FDA" means the

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Section 2. Reimbursement. (1) Except as specified in subsection (4)(e) of this section, reimbursement to a participating provider shall be comprised of a dispensing fee and the cost of the drug product. If a recipient is required to pay a copayment for a drug in accordance with 907 KAR 1:604, the reimbursement to the participating provider [for the dispensing fee] shall be reduced by the amount of the copayment or [for the drug product] shall be reduced by the amount of the copayment.

(2) The department [shall]:
(a) May establish a state maximum-allowable cost for a drug, including a generic drug:
   1. If two (2) or more multi-source drugs with a significant cost difference exist for the given drug; and
   2. By reviewing the pricing sources AWP, WAC, and direct price for the drug as identified in a nationally-recognized comprehensive drug data file for which the department has contracted and utilizing the weighted majority of volume purchased; and
(b) Shall maintain a current listing of drugs and their corresponding state maximum allowable costs via a link from the department web site located at the following address: http://www.chfs.ky.gov/dms.

   [For which a federal upper limit does not exist; and
   2. For which at least one (1) readily and nationally-available A-rated generic product exists;
   (b) Determine a state maximum-allowable cost for a drug by identifying the lowest price for a drug regardless of manufacturer, including both generic and brand name, and multiplying that price by 150 percent. The lowest price for a drug shall be:
   1. Identified in a nationally-recognized comprehensive drug data file for which the department has contracted; and
   2. Determined by reviewing the pricing determinations of AWP, WAC, and direct price for the drug;
   (c) Remove a state maximum-allowable cost for a drug if a federal upper limit becomes available for the drug; and
   (d) Maintain a current listing of drugs and their corresponding state maximum-allowable costs at the department web site located at the following address: http://www.chfs.ky.gov/dms.

   (3) A provider may submit drug acquisition cost or product availability information to the department. Upon receipt of accurate documentation (including recent drug purchase summaries, invoices, or remittance advices) from the provider, the department:
   (a) Shall review the referenced product and its corresponding state maximum-allowable cost value to ensure it reflects an accurate market price and availability; and
   (b) May consider adjusting or removing the state maximum-allowable cost for the drug if the department determines that the state maximum-allowable cost does not accurately reflect current market price or conditions.

(4) Reimbursement to a pharmacy participating in the Medicaid Program for a drug listed in the Kentucky Medicaid Outpatient Drug List [Frequently established in 907 KAR 1:609 and provided to an eligible recipient shall be determined in accordance with the requirements established in this subsection.

(a) An appropriate rebate agreement shall be signed by the drug manufacturer or the drug shall be provided based on a prior authorized exemption from the rebate requirement in accordance with 907 KAR 1:609.
(b) Drug costs shall be determined in the Pharmacy Program using drug pricing and coding information obtained from a nationally-recognized comprehensive drug data file for which the department has contracted with pricing based on the actual package size utilized.

(c) Except as provided in paragraphs (d) and (e) of this subsection, reimbursement for a drug shall be the lesser of:

   1. The federal upper limit plus a dispensing fee and unit dose add-on as appropriate;
   2. The state maximum-allowable cost plus a dispensing fee and unit dose add-on as appropriate [if a federal upper limit is unavailable];
   3. The estimated acquisition cost (EAC) which shall equal the AWPP minus twelve (12) percent, plus a dispensing fee and unit dose add-on as appropriate; or
   4. The usual and customary billed charge; or
   5. The gross amount due.

(d) Except as provided in paragraph (e) of this subsection, if a prescriber has met the requirements specified in 907 KAR 1:019 for obtaining a brand name drug for which one (1) or more generic forms of the drug are available and has hand written "brand medically necessary" or "brand necessary" on the Brand Name Drug Request Form or other form in accordance with 907 KAR 1:019, the reimbursement shall be the lesser of:

   - The estimated acquisition cost (EAC) which shall equal the AWPP minus twelve (12) percent, plus a dispensing fee and unit dose add-on as appropriate; or
   - The usual and customary billed charge; or
   - The gross amount due.

(e)1. Reimbursement for the dispensing of an emergency supply of a drug shall be made only outside normal business hours of the department's drug prior authorization office and as permitted in accordance with 907 KAR 1:019, Section 4.

   2. Except as specified in subparagraph 3 of this paragraph, reimbursement for the dispensing of an emergency supply of a drug shall be the lesser of:

      a. The federal upper limit plus the dispensing fee for the prescription and, if applicable, a unit dose add-on;
      b. The state maximum-allowable cost plus a dispensing fee and unit dose add-on as appropriate;
      c. The estimated acquisition cost (EAC), which shall equal the average wholesale price (AWPP) minus twelve (12) percent, plus the dispensing fee for the prescription and, if applicable, a unit dose add-on; or
      d. The usual and customary billed charge; or
      e. The gross amount due.

3. If a prescriber has met the requirements specified in 907 KAR 1:019 for obtaining a brand name drug for which one (1) or more generic forms of the drug are available and has hand written "brand medically necessary" or "brand necessary" on the Brand Name Drug Request Form or other form in accordance with 907 KAR 1:019, the reimbursement for the dispensing of an emergency supply of a drug shall be the lesser of:

   a. The estimated acquisition cost (EAC), which shall equal the average wholesale price (AWPP) minus twelve (12) percent, plus the dispensing fee for the prescription and, if applicable, a unit dose add-on; or
   b. The usual and customary billed charge; or
   c. The gross amount due.

4. If the dispensing of an emergency supply results in partial filling of the quantity or amount prescribed, reimbursement for the partial filling of the remainder of the prescription shall utilize the methodology specified in subparagraphs 2 and 3 of this paragraph, except that only one (1) dispensing fee shall be allowed for the combined partial fill and subsequent completion fill [reimbursement shall not include a dispensing fee].

5. Reimbursement shall be denied if:

   a. The recipient is ineligible on the date of service; or
   b. The drug is excluded from coverage in accordance with 907 KAR 1:019, Section 3; or
   c. Prior authorization is required by the department and has been denied or has not been requested.

6. For a nursing facility resident meeting Medicaid nursing facility level of care criteria in accordance with 907 KAR 1:022, there shall not be more than:

   a. One (1) dispensing fee allowed per drug within a calendar month for a drug classified by the Medicaid Program as a maintenance drug unless the prescribed dosage has been changed; or
   b. Except as specified in subparagraphs 2 and 3 of this paragraph, two (2) dispensing fees allowed per drug within a calendar month for other drugs; and
3. Four (4) dispensing fees per drug within a calendar month for a nonsolid dosage form, a Schedule II, III or IV controlled substance or a legend intravenous drug.

4. For a nursing facility resident meeting Medicaid nursing facility level of care criteria and if appropriate and in accordance with 201 KAR 2:190 and 902 KAR 55:065, an unused drug, paid for by Medicaid, shall be returned to the originating pharmacy and the department shall be credited for the cost of the drug and the unit dose packaging cost.

5. (a) On an outpatient or personal care recipient there shall not be more than:
   (1) One (1) dispensing fee allowed per drug per calendar month for a drug classified by the Medicaid Program as a maintenance drug unless there is an exception described in subparagraph 3 of this paragraph;
   (2) Four (4) dispensing fees allowed per drug within a calendar month for a legend intravenous drug or a Schedule II, III or IV controlled substance; or
   (3) a. Two (2) dispensing fees allowed per drug within a six (6) month period for refill of a maintenance prescription requested less than twenty-three (23) days from the last date the medication was dispensed; or
   b. Four (4) dispensing fees allowed per maintenance drug in one (1) month if a prescriber requests prescription less than a thirty (30) day supply. The medical specialty, best practice standards, and appropriateness of care.

6. Reimbursement shall not be made for more than one (1) prescription to the same recipient on the same day for a drug with the same:
   (1) National Drug Code (NDC); or
   (2) Generic name, strength, and dosage form.

7. (a) For a Medicaid recipient participating in a hospice program, payment for a drug shall be in accordance with 907 KAR 1:340.
   (b) A pharmacy claim shall meet the point of sale (POS) requirements for services in accordance with 907 KAR 1:673.

8. If a payment is made for a drug for which there is no authorization as required in accordance with 907 KAR 1:019, the provider shall reimburse the department the amount of the payment.

9. A timely claim payment shall be processed in accordance with 42 C.F.R. 447.45.

10. (a) A claim in which retroactive eligibility is established shall be submitted up to twelve (12) months from the issue date noted on the Medicaid recipient’s medical assistance identification card. If the date of service is greater than twelve (12) months old, the claim shall be submitted as a paper claim with a copy of the retroactive medical assistance identification card attached.

11. (a) Pursuant to KRS 205.622, prior to billing the department, a provider shall submit a bill to Medicare if the provider has knowledge that Medicare may be liable for payment.

12. (a) If the medical assistance identification card indicates that the Medicaid recipient has additional insurance, the provider shall submit a bill to the third party in accordance with KRS 205.622.

13. (a) A provider who is aware that a recipient has other insurance, but no insurance is indicated on the medical assistance identification card, shall submit a Third-party Liability Lead Form to the department’s fiscal agent.

14. Adherence to the requirements established in this section shall be monitored through an on-site audit, postpayment review of the claim, a computer audit or an edit of the claim.

15. (a) A pharmacy of a covered entity as defined in 42 U.S.C. 256b which purchases drugs through the United States Public Health Service Discount Program in accordance with 42 U.S.C. 256b shall bill the department the pharmacy’s actual acquisition cost for a drug; and
   (b) The department shall reimburse the pharmacy’s actual acquisition cost for the drug plus a dispensing fee in accordance with Section 3 of this administrative regulation.

16. (a) If a covered entity as defined in 42 U.S.C. 256b notifies the United States Office of Pharmacy Affairs that its pharmacy is not included under 42 U.S.C. 256b:
   (b) The pharmacy shall bill its usual and customary amount and gross amount due for a drug; and
   (c) The department shall reimburse for a drug in accordance with Section 2 of this administrative regulation plus a dispensing fee in accordance with Section 3 of this administrative regulation.

Section 3. Dispensing Fees. (1) To determine a dispensing fee, the department shall comply with KRS 205.561.

(2) Except as provided in subsection (3) of this section, based on the conclusion of the dispensing fee study of the report conducted in accordance with KRS 205.561, the dispensing fee, unless included by Section 2(4)(e) of this administrative regulation, shall be four (4) dollars and fifty-one (51) cents per prescription for a drug reimbursed through the outpatient drug program if dispensed to an eligible recipient, including an eligible recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022.

(3)(a) For a recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022, a unit dose addition to the usual reimbursement shall be made for a drug dispensed through the Pharmacy Outpatient Drug Program in the amount of:
   (1) Two (2) cents per unit dose for a unit dose drug packaged in unit dose form by the manufacturer; and
   (2) Four (4) cents per unit dose for a unit dose drug packaged in unit dose form by the pharmacist.

   The unit dose addition shall be paid, as appropriate, even though the usual dispensing fee of four (4) dollars and fifty-one (51) cents is not paid due to monthly limits on dispensing fees or in accordance with Section 2(4)(e) of this administrative regulation.

Section 4. Reimbursement to Dispensing Physicians. A participating dispensing physician who practices in a county where a pharmacy is not located may be reimbursed for the cost of the drug, with the cost computed:

(1) As the lesser of:
   (a) The maximum-allowable cost or estimated acquisition cost established in Section 2(4) of this administrative regulation; or
   (b) The physician’s usual and customary amount and gross amount due (charge to the general public for the drug); or
   (c) The federal upper limit.

(2) In accordance with 907 KAR 3:010 for a free immunization through the Vaccines for Children Program.

SHANNON TURNER, Acting Commissioner
DUANE L. KILTY, JR., Ph.D., Undersecretary
JAMES W. HOLINGER, JR., M.D., Secretary
APPROVED BY AGENCY December 3, 2004
FILED WITH LRC: December 3, 2004 at 3 p.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 6V-B, Frankfort, Kentucky 40621, phone (502) 564-7505, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Stuart Owen or Teresa Goodrich (564-6204)

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists and will continue to assist in the effective administration of the authorizing statutes by establishing
the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy 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 to this administrative regulation establishes that DMS may establish a state maximum allowable cost (MAC) for a drug if 2 or more multi-source drugs (including generic) with a significant cost difference exist for the given drug; that a state MAC shall be established by reviewing average wholesale price (AWP), wholesale acquisition cost (WAC), and direct price for a given drug and utilizing the weighted majorly of volume purchased; that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only one dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and adds gross amount due to drug reimbursement options.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to control rising pharmacy reimbursement costs in the Medicaid program in order to maintain the financial viability of the Department for Medicaid Services.

c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statute by establishing that DMS may establish a state maximum allowable cost (MAC) for a drug if 2 or more multi-source drugs (including generic) with a significant cost difference exist for the given drug; that a state MAC shall be established by reviewing average wholesale price (AWP), wholesale acquisition cost (WAC), and direct price for a given drug and utilizing the weighted majorly of volume purchased; that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only one dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and by adding gross amount due to drug reimbursement options.

d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by establishing that DMS may establish a state maximum allowable cost (MAC) for a drug if 2 or more multi-source drugs (including generic) with a significant cost difference exist for the given drug; that a state MAC shall be established by reviewing average wholesale price (AWP), wholesale acquisition cost (WAC), and direct price for a given drug and utilizing the weighted majorly of volume purchased; that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only one dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and by adding gross amount due to drug reimbursement options.

(3) List the type and number of individuals, businesses, organizations, state and local government affected by this administrative regulation: All Medicaid outpatient pharmacy providers will be affected by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Pharmaceutical providers shall be affected in that the prior methodology for determining a state maximum allowable cost is being replaced; that a state maximum allowable cost may now be implemented by DMS even if a federal upper limit exists for a given drug; and that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only one dispensing fee shall be allowed for the combined partial fill and subsequent completion fill.

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

(a) DMS estimates that the amendment to this administrative regulation could reduce expenditures as much as $21.0 million annually ($14.66 million federal funds; $6.34 million state funds).

(b) On a continuing basis: DMS estimates that the amendment to this administrative regulation could reduce expenditures as much as $21.0 million annually ($14.66 million federal funds; $6.34 million state funds).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XX, and matching funds of general fund appropriations and collections will be used to fund the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering 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 is subject to the federal rules and regulations contained in 42 U.S.C. 1396a et. seq. This administrative regulation complies with federal statutes/regulations governing the Medicaid Program and drug reimbursement.

2. State compliance standards. This administrative regulation establishes the Department for Medicaid Services reimbursement for drugs in compliance with federal regulations governing drug reimbursement.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation establishes standards for the Department for Medicaid Services reimbursement for drugs in compliance with federal regulations governing drug reimbursement.

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 impose stricter requirements than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter (than federal) requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(Amendment)

921 KAR 1:410. Child support collection and enforcement.

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 5, 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.

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Section 1. Collection. (1)(a) Income withholding shall be used for collection of an assigned support obligation or health insurance coverage as defined by KRS 921 KAR 1:001, Section (3), (24), and (29).

(2) The cabinet shall notify an employer or other income source of a request for income withholding for an assigned support obligation or health insurance coverage within:

(a) Fifteen (15) calendar days of a request for income withholding with a
   1. "CS-89, Order/Notice to Withhold Income for Child Support"; and
   2. "CS-72, National Medical Support Notice"; or
   (b) Two (2) days after entry of an obligor into the State Directory of New Hires for health insurance with the notice specified in paragraph (a)(2) of this subsection.

(3) The employer or other income source shall:

(a) Implement income withholding no later than the first pay period that occurs after fourteen (14) working days following the date the "CS-89, Order/Notice to Withhold Income for Child Support" is mailed; and
(b) Transfer the "CS-72, National Medical Support Notice" to the employer's health plan administrator within twenty (20) working days after receipt of the notice.

(4) The cabinet shall notify the obligor within fifteen (15) calendar days, in accordance with 405.467(4), of a request for income withholding for an assigned support obligation or health insurance coverage with a "CS-89, Order/Notice to Withhold Income for Child Support" and "CS-164, Notice of Income Withholding" that:

(a) An obligor may contest the withholding by requesting an administrative hearing as specified in Section 4 of this administrative regulation; and
(b) If the obligor does not contest, as specified in paragraph (a) of this subsection, withholding and ordered health care coverage shall apply to the current and any subsequent employer.

(5) The health plan administrator shall notify the obligor and the cabinet of the health insurance coverage within forty (40) working days of receipt of the "CS-72, National Medical Support Notice".

(6) If an obligor terminates employment, the employer or other income source shall take action pursuant to KRS 405.465(5).

(7) (1) As a primary tool for collection of child support:

    1. If necessary, to enroll a child in a health insurance plan by forwarding a "CS-72, National Medical Support Notice" to an obligor's employer;
    2. To collect spousal support if spousal support meets the definition of "duty of support" in KRS 265.710(5).

    (b) An obligor shall inform the cabinet of any changes in:

        1. A current employer or source of income; and
        2. Access to health insurance,

    (c) [8] and

    3. Changes to either:

        (c) As specified in KRS 405.060.

(8) If an obligor transfers or assigns income or income-producing property after receipt of notification of a child support obligation, the cabinet shall take action pursuant to KRS 405.060.

(9) To obtain:

    1. Judicial modification of the transfer; or
    2. A settlement in favor of the creditor.

(c) As specified in KRS 405.060.

(e) If only an arrearage amount is subject to withholding, the arrearage payment and frequency of payment shall be equal to the payment and frequency last designated by judicial or administrative order.

(10) [6] If the address of an obligor is unknown, and the cabinet is unable to comply with the notice provisions of KRS 405.467(4), the cabinet shall provide forms "CS-89, Order/Notice to Withhold Income for Child Support", "CS-164, Notice of Income Withholding", and "CS-72, National Medical Support Notice" within fifteen (15) calendar days of locating the obligor notifying the

An obligor may contest the withholding by requesting an administrative hearing as specified in Section 4 of this administrative regulation; and

2. If the obligor does not contest, withholding and ordered health care coverage shall apply to the current and any subsequent employer.

(g) The cabinet shall notify the employer or other income source, within fifteen (15) days of the request for income withholding, of the two (2) days after entry of an obligor into the State Directory of New Hires for medical support, of the following:

1. The employer or other income source shall implement:

   a. Income withholding no later than the first pay period that occurs after fourteen (14) working days following the date the notice is mailed; and
   b. Transfer of the "National Medical Support Notice" within twenty (20) working days after the date of the notice to the health plan administrator.

2. The employer or other income source shall, within seven (7) working days from the date an amount is withheld, forward:

   a. An assigned support obligation to the state disbursement unit in the child support agency; or
   b. [b.] A medical insurance premium to the health insurance carrier or notify the cabinet prior to payment if more than one (1) option is available under a plan.

(11) [3] The employer or other income source:

(a) Shall include on the transmittal to the cabinet the obligor's:

    1. Name;
    2. Social Security number; and
    3. Cabinet-assigned case number; and

(b) Shall not be:

   i. Name;
   ii. Social Security number; and
   iii. Cabinet-assigned case number; and

   b. Date the money was withheld.

4. The employer or other income source is not required to change payroll frequency but shall withhold at least once monthly.

5. The employer or other income source may combine amounts due the cabinet into one (1) payment if the amount attributable to each obligor is not paid or a medical insurance premium is not paid or the premium is not paid to the correct health insurance

6. If the obligor terminates employment, the employer or other income source shall:

    a. Notify the cabinet promptly; and
    b. Provide the information required by KRS 405.465(5).

(12) [6] If the obligor terminates employment, the employer or other income source shall:

    a. Notify the cabinet promptly; and
    b. Provide the information required by KRS 405.465(5).

(2) Allocation of income withheld payments in IV-D and non-IV-D cases:

(a) The cabinet shall allocate an income withheld payment among an obligor's cases that include an income withholding order by:

    1. Totaling the obligor's current support obligations subject to income withholding;
    2. Dividing each current support obligation by the total amount from subparagraph 1 of this paragraph, to determine a percentage; and
    3. Multiplying the withheld payment received from the employer by the percentage from subparagraph 2 of this paragraph, to determine the portion of the payment to be applied to each current support obligation subject to income withholding.

(b) The cabinet shall allocate the payment amount determined in paragraph (a)(3) of this subsection to each of the obligor's current support obligation amounts subject to income withholding.

(c) If the obligor's current support obligations subject to income
2. Nonexempt federal payments shall be denied to individuals owing a child support arrearage as defined in paragraphs (a) and (b) of this subsection.

[2] [66] State income tax refund offset.
(a) A public assistance case for past-due child support, medical support ordered by specific dollar amount, spousal support, K-TAP, Kinship Care, or foster care child support shall qualify for offset if:
1. There is an arrearage on a legally established child and medical support obligation;
2. The obligor’s name and Social Security number are known;
3. The arrearage is verified as accurate; and
4. The amount of the arrearage is at least $150.
(b) A nonpublic assistance support arrearage shall qualify for offset if the:
1. Case meets the criteria specified in subsection (1)(b)(1), (2) and (4) [66(e)] of this section; and
2. Required arrearage amount is not less than $150.

[3] [67] Tort claim settlements and administrative offset. The cabinet shall:
(a) The cabinet shall:
1. Identify a child support case for administrative offset, including tort claim settlements, if a child support case meets the criteria specified in subsection (1)(5)(a) or (b) of this section;
2. By mail form “CS-122, Advance Notice of Intent to Collect Past-Due Support” to an obligor notifying that the obligor may contest the accuracy of a past due amount by requesting an administrative hearing as specified in Section 4 of this administrative regulation; and
3. Notify the Finance and Administration Cabinet to offset administrative payments, including tort claim settlements, in accordance with KRS 205.712(17), for a case identified in paragraph (a) of this subsection [66] of this paragraph.

[4] Financial Institution Data Match. The cabinet shall:
(b) An obligor may contest the accuracy of a past due amount by requesting an administrative hearing as specified in Section 9 of this administrative regulation.
(c) If an administrative payment is intercepted by the Finance and Administration Cabinet:

1. The payment shall be:
   a. Distributed according to applicable provisions of Sections 2 through 6 of this administrative regulation; and
   b. An obligor may be sent a notice by mail advising that:

(a) The obligor’s administrative payment is intercepted; and
(b) The obligor may request an administrative hearing as specified in Section 9 of this administrative regulation.

Section 2. K-TAP and Kinship Care Accounts Distribution. (1) A child support payment collected on behalf of a K-TAP or Kinship Care recipient shall be:
(a) Payable to the Division of Child Support; and
(b) Reported to the K-TAP or Kinship Care agency within ten (10) working days of the end of the month in which an escrow payment is disbursed to a recipient.
(c) Upon receipt of a notice of payment, the K-TAP or Kinship Care agency shall re-determine eligibility for assistance payments and report the result to the child support agency.
(a) If the K-TAP or Kinship Care case becomes ineligible, the child support agency shall:
1. Distribute the family to the end of the month the amount of child support collected; and
2. Notify the family of continuation of child support services as specified in 921-KAR-1380, Section 4(2).
(b) Unless a hearing is requested or a case remains eligible for assistance, the child support agency shall distribute the collection as specified in Section 5 of this administrative regulation.

Section 3. Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:
(a) Payable to the Division of Child Support; and
(b) Distributed and disbursed to the foster care agency.
Section 4. Distribution of Tax Refund Intercept Amounts. (1) A tax refund intercepted in a public assistance account shall be:

(a) Applied to assigned arrearage and forwarded to the public assistance agency within thirty (30) calendar days of the date of initial receipt; or

(b) If no assigned arrearage remains, the amount collected shall be:

1. Distributed to the family within thirty (30) calendar days, unless a joint income tax return is filed; or

2. Held by the collection officer for sixty (60) months before being distributed if a joint income tax return is filed.

(2) A tax refund intercepted for a nonpublic assistance account shall be:

(a) Applied to assigned arrearage; or

(b) If no assigned arrearage remains:

1. Held by the collection officer for sixty (60) months, if a joint income tax return is filed, before being distributed; or

2. Forwarded to the family within thirty (30) calendar days of the date of initial receipt.

(3) An obligor may contest the accuracy of a past due amount by requesting an administrative hearing as specified in Section 9 of this administrative regulation. The cabinet shall, within fifteen (15) calendar days of the date of resolution of an obligor’s appeal, forward the ordered amount to:

(a) The obligor, if resolution is in the obligor’s favor; or

(b) The agency or family, if resolution is against the obligor.

Section 5. Treatment of Escrow and Excess Payments. (1) A child support payment shall be applied to the obligation amount for the month in which the support is received.

(2) In a K-TAP or Kinship Care case, if the obligation for current support and the collection for current support exceed the grant paid for the month in which the collection was made, the difference between the grant and the obligation or the collection, whichever is less, shall be considered escrow and distributed as follows:

(a) The portion that represents the federal share, as determined by the Medicaid match rate, shall be sent to the federal government for reimbursement of public assistance previously paid.

(b) The portion that represents the state share, as determined by the Medicaid match rate, shall be sent to the family.

(c) An amount in excess of the current obligation shall be applied to arrearage.

Section 6. Interstate Case Payment Distribution. A child support payment received in the court-ordered support account of an obligor residing in another state shall be forwarded to the location specified by the child support agency in the initiating state, within two (2) business days of initial receipt.

Section 7. Financial Institution Data Match. (1) The cabinet shall, if conducting a data match with a financial institution for the purpose of locating a delinquent obligor’s assets:

(a) Use the following criteria to identify a case for seizure of assets:

1. The obligor owes an arrearage equal to at least six (6) months obligation or $1,000, whichever is less; and

2. The obligor is not complying with the most recent support order;

(b) Issue a [the forms] “CS-68, Order to Withhold”, and “CS-69, Answer to Withhold”, to a financial institution holding the obligor’s account[es] or accounts;

(c) Issue a [copy of forms] “CS-68, Order to Withhold” and “CS-121, Noncustodial Parent’s [Parent–or–Obigor] Answer to Withhold” to the obligor by certified mail within two (2) working days;

1. After both of the forms specified in paragraph (b) of this subsection are issued to the financial institution; and

2. Notifying the (d) Notify-an obligor that to retain an account with a financial institution an order to withhold may be contested by requesting an administrative hearing as specified in Section 2 (9) of this administrative regulation;

(d) Refer the case for parentlocator service, if a “CS-68, Order to Withhold” is returned and the forwarding address for the obligor is unknown;

(e) Send to the financial institution a [the form] “CS-83, Order to Deliver” if:

1. There is no dispute; or

2. The obligor does not take an action specified in paragraph (g) of this subsection [2(2)] of this section;

(f) Send [to the financial institution the form] “CS-83, Order to Deliver” within twenty (20) days of if an administrative hearing decision is “CS-83, Order to Deliver” to the financial institution, if a results in a find that the case qualifies for the withhold and deliver process; or

2. “CS-70, Release of Order to Withhold” to the financial institution and an obligor, if a case does not qualify for the withhold and deliver process; and

(g) Notify an obligor that [Refer the case for parentlocator service, if the order to withhold is returned and the forwarding address for the obligor is unknown; and

(h) Notify the financial institution and the obligor by form “CS-70, Release of Order to Withhold”, within twenty (20) working days of the Division of Administrative Hearings decision or the obligor’s action in the case:

1. Makes full payment;

2. Posts a bond for the full arrearage; or

3. Signs a form “CS-78, Payment Agreement” as specified in subsection (2)(d) of this section and makes the first payment within seven (7) calendar days of the agreement.

(3) To obtain an account with a financial institution, an obligor shall take one (1) of the following actions within twenty (20) working days from the date of receipt a “CS-68, Order to Withhold”:

1. Pay the total arrearage;

2. Post a bond for the total arrearage; or

3. Sign a “CS-78, Payment Agreement” to pay within fifteen (15) days:

a. Current support;

b. A $1000 lump sum payment which may be negotiated if the amount;

(c) Places an unjust burden on the obligor; or

2. Prevents the obligor from obtaining or retaining employment;

3. A negotiated percentage of the remaining arrearage balance which shall be agreed upon by the obligor and the cabinet; and

4. An arrearage payment for subsequent months as determined by one (1) of the following:

(i) An amount established by a court order;

2. If there is not a court order for arrearage judgment, the payment shall be twenty-five (25) percent of the court-ordered current support obligation; or

(iii) If current support is not owed, the minimum payment shall be equal to the most recent court-ordered support obligation.

(5) If a seizure of assets request is identified as specified in subsection (1)(a) of this section, and is initiated from outside the commonwealth as a result of a Federal Institution Data Match, the cabinet shall use the Administrative Enforcement of Interstate Cases process to issue:

(a) A “CS-68, Order to Withhold” and a “CS-69, Answer to Withhold” to a financial institution holding the obligor’s account or accounts;

(b) A “CS-68, Order to Withhold” and a “CS-121, Noncustodial Parent’s Answer to Withhold–Limited Enforcement of Interstate Cases”, to the obligor by certified mail within two (2) working days after both of the forms specified in paragraph (a) of this subsection are issued to the financial institution; and

(c) To the financial institution a: 1. “CS-83, Order to Deliver” if there is no dispute; or

2. “CS-70, Release of Order to Withhold” if the initiating state’s request is withdrawn.

Section 3. Administrative Enforcement Actions.

1. Of the order to withhold:

(a) Contests the order to withhold by writing to the CSP;

(b) Pay the total arrearage specified in the order to withhold; or

(c) Post a bond for the total arrearage specified in the order to withhold.
(d) Sign a form "CS-78, Payment Agreement" to pay current support plus a monthly payment on arrearage, if the arrearage is:
1. Less than $1,000, fifty (50) percent;
2. Equal to or greater than $1,000 and less than $2,000, fifty-five (55) percent plus twenty-five (25) percent of the amount over $1,000;
or
3. Equal to or greater than $2,000, seventy-five (75) plus ten (10) percent of the amount over $2,000.

Section 9. Administrative Enforcement Actions. (a) If an obligor of a child-receiving public assistance owes past-due support, the obligor shall be obligated to participate in a minimum of twenty (20) hours of work, education, or vocational training activities per week as established in KRS 405.420(9).
(b) If an obligor owes an arrearage equal to or greater than one (1) month's obligation, the cabinet shall:
  (a) File a lien on the obligor's interest in personal or real property;
  (b) Provide a [form] "CS-119, Noncustodial Parent's Notice [Obligor's Notice] of Lien" to the obligor notifying that:
    1. The obligor may contest the lien as specified in Section 4[9] of this administrative regulation;
    2. A transfer of property in order to avoid payment shall be considered an act of fraud, in accordance with KRS 405.060(2); and
  3. If the obligor makes full payment of the arrearage, including interest, penalties, and fees, as [form] "CS-120, Release of Lien", shall be provided to the obligor;
(c) Provide a [form] "CS-122, Advance Notice of Intent to Collect Past-due Support" to the obligor notifying that:
  1. Past-due amounts shall be reported to a certified consumer reporting agency; and
  2. The obligor may contest the accuracy of the information by requesting an administrative hearing as specified in Section 4[9] of this administrative regulation;
(d) Not submit the obligor's information for inclusion on the periodic report made available to certified consumer reporting agencies as specified in KRS 205.785;
(e) Submit the obligor's name and arrearage amount for inclusion on a periodic report made available to a certified consumer reporting agency, if the obligor does not pay in full or appeal within thirty (30) calendar days from the date of notice;
(f) If an obligor owes an arrearage equal to or greater than six (6) months' obligation, as established in KRS 205.712(9) and (10), the cabinet shall:
  (a) Determine if an obligor holds and, if so, take action against one (1) or more of the following:
    1. Professional license or certificate;
    2. Occupational license or certificate;
    3. Recreational license; or
    4. Sporting license; or
    5. Driver's license, for arrearages that have accrued since January 1, 1994;
(b) Send to the obligor, by certified mail:
  1. A [form] "CS-44, Notice of Intent to Request Denial or Suspension", which includes a section for an Answer to Notice of Intent;
  2. Notification that the obligor may request an administrative hearing contesting the action as specified in Section 4[9] of this administrative regulation; and
  3. Notification that the [form] "CS-63, Notice of Licensing/Certification Board or Agency" shall be rescinded if the obligor:
    a. Takes action as specified in Section 2(4)(g)(3) of this administrative regulation;
or
    b. Pays the total arrearage accrued;
or
    c. Signs a form "CS-78, Payment Agreement" to pay current support plus a monthly payment on arrearage, if the arrearage is:
      (i) Less than $1,000, fifty (50) percent of the arrearage;
or
      (ii) Equal to or greater than $1,000 and less than $2,000, fifty-five (55) percent plus twenty-five (25) percent of the amount over $1,000, or
      (iii) Equal to or greater than $2,000, seventy-five (75) plus ten (10) percent of the amount over $2,000;
or
    d. Complies with a subpoena or warrant;
(c) Refer the case for parent-locator service, if the notice of intent is returned and the forwarding address unknown;
(d) Send to the issuing agency or board of licensure or certification a [form] "CS-63, Notice to Licensing/Certification Board or Agency", if:
  1. There is no dispute; or
  2. The obligor does not take an action specified in paragraph (b)3 of this subsection; or
(e) Send to the issuing agency or board of licensure or certification a [form] "CS-63, Notice to Licensing/Certification Board or Agency", within twenty (20) days of the date of administrative hearing decision, if an administrative hearing results in a finding that the case qualifies for:
  1. A license or certificate denial;
  2. Suspension; or
  3. Revocation; and
(f) Notify the issuing board or agency that the obligor is no longer deemed by the cabinet to be subject to denial, suspension, or revocation, if the obligor:
  1. Takes action as specified in Section 2(4)(g)(3) of this administrative regulation; or
  2. Complies with a subpoena or warrant;
  3. [Makes full payment;]
  4. Posts a bond for the full arrearage;
  5. Makes a good faith payment equal to three (3) month's current support, and enters into an agreement as specified in paragraph (b)3 of this subsection; or
  6. Complies with a subpoena or warrant.

(4) If an obligor owes an arrearage equal to or greater than six (6) months' obligation and fails to comply with a subpoena or warrant relating to a child support proceeding, the cabinet may enforce a lien on a vehicle registered to the obligor by immobilization with a vehicle boot as established in KRS 205.745(9).

(a) The cabinet shall give prior notice in accordance with paragraph (b)1 of this subsection to the obligor of the date the appropriate local law enforcement personnel intend to boot a vehicle.
(b) The delinquent obligor shall:
  1. Have ten (10) days to respond to a notice of intent to boot a vehicle; and
  2. Take action as specified in Section 2(4)(g)(3) of this administrative regulation to release the vehicle boot; [Enter into an agreement with the cabinet to release the vehicle boot if the obligor:
    a. Pays the total arrearage accrued; or
    b. Posts a bond for the total arrearage; and
    c. Signs a form "CS-78, Payment Agreement" to pay current support plus a monthly payment on arrearage, if the arrearage is:
      (i) Less than $1,000, fifty (50) percent of the arrearage;
or
      (ii) Equal to or greater than $1,000 and less than $2,000, fifty-five (55) percent plus twenty-five (25) percent of the amount over $1,000, or
      (iii) Equal to or greater than $2,000, seventy-five (75) plus ten (10) percent of the amount over $2,000; and]
(c) If [any of] the requirements in paragraph (b) of this subsection are met, the [the] Obligor shall pay the:
  1. [the] Obligor shall pay the:
    a. Forty (40) dollar cost of the removal of a vehicle boot to the appropriate local law enforcement personnel; and
    b. [the] Obligor shall pay the:
    2. [the] Obligor enters into an agreement with the cabinet, the Cabinet shall send a cancellation notice to the obligor and to the appropriate local law enforcement personnel to terminate the booting of the vehicle.

(4) (59) A newspaper publication of a list of delinquent obligors, as established in KRS 405.411, provided by the Cabinet for Health and Family Services, [and the Department for Community Based Services, Division of Child Support, shall:
  1. Identify an obligor as specified by subsection (7) [(6)](a) of this section;
  2. Include the name, last known address and the amount owed of the obligor meeting the criteria; and
(c) Be published no less than twice yearly.

(5) ([7]) If an obligor owes an arrearage equal to or greater than one (1) year's obligation, the cabinet shall take action against a license to carry a concealed deadly weapon as specified in KRS 237.110(4).

(6) ([7]) If the obligor owes an arrearage of $5,000 or more the cabinet shall:
(a) Send in advance, a (form) "CS-122, Notice of Intent to Collect Past Due Support" notifying the obligor that his name is being submitted for passport denial, revocation, or limitation, as established in KRS 205.712(8);
(b) Forward the certified name and supporting documents to the Secretary of the U.S. Department of Health and Human Services for passport denial, revocation, or limitation; and
(c) Notify the Secretary of the U.S. Department of Health and Human Services that the cabinet rescinds its request for passport denial, revocation, or limitation if:

1. The obligor's timely appeal is resolved with a finding that the arrearage is less than $5,000;
2. The obligor is in compliance with payments ordered in an existing arrearage judgment;
3. A payment reduces the arrearage to less than $5,000; or
4. The obligor takes action as specified in Section 2(4)(c)13 of this administrative regulation.

(7) ([8]) There is no ordered arrearage payment, the obligor:
(a) Posts a bond for the total amount due;

(b) Signs a form "CS-78, Payment Agreement!" to pay current support plus a monthly payment on the arrearage specified as follows:

(i) In the first month, a $750 lump sum plus ten (10) percent of the arrearage balance as of the date of the agreement; and
(ii) In successive months, ten (10) percent of the arrearage balance as of the date of the agreement, or the remaining balance if less than ten (10) percent.

(8) ([8]) If an obligor owes an arrearage equal to or greater than $10,000, the cabinet shall:
(a) Use the following criteria to designate an obligor for a delinquent listing:
   1. The obligor's nonpayment within the last six (6) months;
   2. The obligor's known address;
   3. The cabinet is the payee for support; and
   4. Audited arrearages by the cabinet within the last year;
(b) Provide to the Office of the Attorney General a delinquent listing no less than twice yearly for publication on the Internet, as established in KRS 205.712(16); and
(c) Send to an obligor meeting the criteria in paragraph (a) of this subsection the (form) "CS-175, Notice to Place Noncustodial Parent's Name on [of Intent To Place the Obligor's Name on a Delinquent Listing];"
(d) Not include the obligor in the delinquent listing if the obligor takes action as specified in Section 2(4)(c)13 of this administrative regulation; i.e.
1. Pays the total arrearage accrued;
2. Posts a bond for the total arrearage; or
3. Signs a form "CS-78, Payment Agreement!" to pay current support plus a monthly payment on the arrearage, specified as follows:
   (a) In the first month, a $750 lump sum plus ten (10) percent of the arrearage balance as of the date of the agreement; and
   (b) In successive months, ten (10) percent of the arrearage balance as of the date of the agreement, or the remaining balance if less than ten (10) percent;
(e) Accept an obligor's request for an administrative hearing as specified in Section 4 [9] of this administrative regulation;
(f) Refer the case for parent-locator service if the notice is returned and the forwarding address is unknown;
(g) Include the obligor in the delinquent listing provided to the Office of the Attorney General if there is:
   1. No dispute;
   2. A hearing that results in a finding that the case qualifies for the delinquent listing; or
   3. No action taken by the obligor as specified in Section 2(4)(c)13 of this administrative regulation (paragraph (d) of this subsection); and
(h) Advise the Office of the Attorney General to remove an obligor from the listing, if the obligor Section 2(4)(c)13 of this administrative regulation.

(8) If:
1. Pays the total arrearage accrued;
2. Posts a bond for the total arrearage; or
3. Makes a good faith payment equal to three (3) month's current support, and enters into an agreement as specified in paragraph (c) of this subsection.
(9) If a person fails to comply with a subpoena or warrant relating to a paternity or child support proceeding, the cabinet shall:
(a) Pursue action in accordance with the provisions of subsection (2) [3] of this section; and
(b) Notify the person that a license or certificate may be retained by complying with the subpoena or warrant.

Section 4. (9) Appeal Procedures. (1) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.
(2) An obligor may request and be granted an administrative hearing in accordance with KRS 405.450 based upon a mistake in fact, as defined in KRS 205.712(13), pertaining to an incorrect:
(a) Person identified as an obligor; or
(b) Current or past due support obligation.
(3) A request shall be made to the cabinet:
(a) In writing;
(b) In person; or
(c) Orally, later reduced to writing within the time frames as specified in subsection (4) of this section.
(4) The written request for an administrative hearing shall be considered timely if made within the timeframe established in an initial notice as follows:
(a) Ten (10) days for:
   1. Income withholding; or
   2. Intent to boot a vehicle; [1]
(b) Fifteen (15) days for unemployment insurance withholding;
[1]
(c) Twenty (20) days for:
   1. Order to withhold;
   2. Lien;
   3. Intent to request denial or suspension of a license or certificate; or
   4. Intent to place the obligor's name on a delinquent listing; or
[1]
(d) Thirty (30) days for intent to collect past-due support.
(5) Prior to a hearing, the cabinet shall schedule and hold an informal dispute conference with an obligor within ten (10) days to attempt to resolve a dispute.
(6) If the cabinet's [cabinet] informal dispute conference does not resolve the hearable issue, the cabinet shall schedule an administrative hearing.

Section 5. Return of Overpayment. The cabinet shall return an overpayment to the obligor in accordance with 45 C.F.R. 303.100(a)(8).

Section 6. [10] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "CS-44 Notice of Intent to Request Denial or Suspension, edition 4/05 [12/03];"
(b) "CS-63 Notice to Licensng/Certification Board or Agency, edition 4/05 [12/03];"
(c) "CS-68 Order to Withhold, edition 4/05 [12/03];"
(d) "CS-69 Answer to Withhold, edition 4/05 [12/03];"
(e) "CS-70 Release of Order to Withhold, edition 4/05 [12/03];"
(f) "CS-72 National Medical Support Notice, edition 4/05 [3/02];"
(g) "CS-73 Unemployment Insurance Letter, edition 4/05 [12/03];"
(h) "CS-76 Unemployment Insurance Notice of Withholding, edition 4/05 [12/03];"
(i) "CS-78 Payment Agreement, edition 4/05 [12/03];"
(j) "CS-83 Order to Deliver, edition 4/05 [12/03];"
(k) "CS-85 Notice of Lien, edition 4/05 [12/03];"
(l) "CS-89 Order and Notice to Withhold Income for Child Sup-
port, edition 4/05 [4/03];
(m) "CS-92 Infratrace Notice of Lien, edition 4/05 [4/03]."
(n) "CS-119 Noncustodial Parent’s Notice of Lien, edition 4/05
[Obligor’s Notice of Lien, edition 12/03]."
(o) "CS-120 Notice of Lien, edition 4/05 [4/03]."
(p) "CS-121 Noncustodial Parent’s Parent or Obligor Answer to
Withhold, edition 4/05 [4/03]."
(q) "CS-121.1 Noncustodial Parent’s Answer to Withhold-
Limited Enforcement of Interstate Cases, edition 4/05."
(r) "CS-122 Advance Notice of Intent to Collect Past Due Supp-
port, edition 4/05 [4/03]."
(a) [6] "CS-154 Notice of Income Withholding, edition 4/05;"
and
(b) [1] "4/2003."
(c) "CS-175 Notice to Place Noncustodial Parent’s [or Intent to
Place Obligator’s] Name on Delinquent Listing, edition 4/05 [4/03]."
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Cabinet for Health and Fam-
ily Services [Families and Children], 275 East Main Street, Frank-
fort, 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. HOLSINGER, Jr., M.D., Secretary
APPROVED BY AGENCY: December 10, 2004
FILED WITH LRC: December 13, 2004 at noon
PUBLIC HEARING AND COMMENT PERIOD: A public hear-
ing on this administrative regulation shall be held on January 21,
2005, 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 January 13, 2005, five
weekdays prior to the hearing, of their intent to attend. If no notifi-
cation 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 ad-
mnisterative regulation. Written comments will be accepted until
due of business, January 31, 2005. Send written notification of
intent to be heard at the public hearing or written comments to:
CONTACT PERSON: Jill Brown, Office of Legal Services, 275
East Main Street SW-B, Frankfort, Kentucky 40621, phone (502)-
564-7905, fax (502)-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge, (502) 564-7536

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-
tive regulation establishes procedures for collection of child support
payments, including means of enforcement and management of
disputes and appeals.
(b) The necessity of this administrative regulation: This admin-
istrative regulation is necessary pursuant to provisions of KRS
205.712(2) which requires the cabinet to enforce and collect child
support obligations.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: This administrative regulation is neces-
sary to establish procedures for the collection of child support
payments in conformity with KRS 205.712.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This admin-
istrative regulation currently provides the processes for the various
means of collection of child support payments according to the
type of IV-D case, e.g. KTAG, Foster Care, etc. pursuant to KRS
205.712.
(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this administrative regu-
lation: The amendment changes the Financial Institution Data Match
(FIDM) process to include a new form, to assist in seizing assets.
The amendment also standardizes the terms and conditions for
payment agreements with child support enforcement remedies.
Distribution of child support has been deleted from this regulation
to be included in a new administrative regulation 921 KAR 1:420,
Child Support Distribution. This regulation also adds a new section
regarding the return of overpayments to the obligor when there is no
arrearage owed.
(b) The necessity of the amendment to this administrative
regulation: The amendments are necessary to allow the state of
Kentucky to assist other states in undertaking a quick seizure and
return of an assets to another state, to establish the same criteria for
all enforcement remedies to expedite and simplify the payment
agreement process, to comply with KRS Chapter 15A by removing
the distribution language from this regulation to its own regulation,
to add a new section to allow for the return of overpayments to the
obligor when there is no arrearage.
(c) How the amendment conforms to the content of the
authorizing statutes: KRS 205.712(2) authorizes the cabinet to
collect and enforce child support obligations. The amendment es-
tablishes procedures for collection of child support payments, in-
cluding means of enforcement.
(d) How the amendment will assist in the effective adminis-
tration of the statutes: The amendment will assist in the effective ad-
inistration of the statutes by providing a process for collection and
enforcement of child support obligations in accordance with KRS
205.712(2).
(e) The type and number of individuals, business, organiza-
tions, or state and local governments affected by this administra-
tive regulation: This administrative regulation affect delinquent
obligors, of whom an exact number is not known, and it will also
affect approximately 120 local contract child support officials who
are primarily county attorneys.
(f) An assessment of how the above group or groups will be
impacted by either the implementation of the administrative regu-
rlation, if new, or by the change, if it is an amendment: The
amendments to this administrative regulation will expedite the col-
lection of child support and simplify the payment agreement pro-
cess for noncustodial parents and allow for the return of overpay-
ments to an obligor when there is no arrearage.
(g) An estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: There are no additional costs.
(b) On a continuing basis: There are no additional costs.
(3) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: Funding
for child support collection and enforcement is 66% federal
funds and 34% state funds.
(4) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regu-
rlation, if new, or by the change, if it is an amendment: No additional
funding is required. The regulation does not involve fees.
(5) State whether or not this administrative regulation estab-
ishes any fees or directly or indirectly increases any fees: This
regulation does not establish fees or directly, or indirectly, increase
any fees.
(6) TIERING: Is tiering applied? Tiering was not applied be-
because the Child Support Program requires uniformity in the ap-
lication of policy as specified in C.F.R. 302.33(c).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mand-
ate. 42 U.S.C. 654, 659, and 666.
2. State compliance standards. KRS 205.712(2).
3. Minimum or uniform standards contained in the federal
mandate. Minimum standards stated in 42 U.S.C. 654, 659 and
666 have been met.
4. Will this administrative regulation impose stricter require-
ments, 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. No stricter
standards, requirements or responsibilities are imposed.
FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. If yes, complete questions 2 to 4. If no, you do not need to file this form.

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation affects local contract child support officials whom are primarily county attorneys.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation requires child support contracting officials as specified in KRS 205.712(2) to follow established procedures for the collection of child support payments, including means of enforcement.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
   - Revenues (+ / -): None
   - Expenditures (+ / -): None
   - Other Explanation: None
NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, DECEMBER 15, 2004

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Repealer)

RELATES TO: KRS 324.160(4)(w)
STATUTORY AUTHORITY: KRS 324.281(5), 324.282
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and 324.282 authorize the Real Estate Commission to promulgate administrative regulations. The functions of 201 KAR 11:040 are no longer required by promulgation of a separate regulation. Administrative regulation 201 KAR 11:250, Listing and purchase contracts-provisions required, will be amended to include the language in 201 KAR 11:040.

Section 1. 201 KAR 11:040, Contracts to contain financing provisions, is hereby repealed.

SUE TEEGARDEN, Chairperson
APPROVED BY AGENCY: December 10, 2004
FILED WITH LRC: December 14, 2004 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2005 at 1 p.m., local time, at the Holiday Inn-Hurstbourne located at 1325 S. Hurstbourne, in Louisville, Kentucky. Interested persons interested in being heard at this hearing shall notify this agency in writing by January 13, 2005, 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 January 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 425-4273, fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Y. Denise Payne Wade
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation is repealing 201 KAR 11:040.
(b) The necessity of this administrative regulation: This regulation outlines for licensees how written offers should be handled.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation complies with the requirements for a repealer regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation protects both buyers and sellers and explains to agents how to handle offers between and among offices.
(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 eliminate the need for 201 KAR 11:040.
(b) The necessity of the amendment to this administrative regulation: The requirements of 201 KAR 11:040 are being added to 201 KAR 11:250 to provide clarity and ease of reference.
(c) How the amendment conforms to the content of the authorizing statutes: The language will still be found in the regulations but it will now be located under 201 KAR 11:250. This regulation complies with LRC’s requirements for a repealer regulation.
(d) How the amendment will assist in the effective administration of the statute: The repeal of 201 KAR 11:040 will allow licensees and consumers to find all the requirements for purchase contracts in one regulation rather than having to review more than one regulation to find all of the requirements.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There will be no net effect as this regulation is a repeal of an existing regulation.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: There should be no net effect.
(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 will be needed.
(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 funding will be necessary.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees will be necessary.
(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Adult and Child Health Improvement
(New Administrative Regulation)


RELATES TO: KRS 211.735, 211.736, 211.737, 211.738, 211.739, 200.550, 200.560
STATUTORY AUTHORITY: KRS 194A.050, EO 2004-726
NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and created the Department for Public Health under the Cabinet for Health and Family Services. KRS 211.735 to 211.739 provides that the Cabinet for Health and Family Services promulgate any necessary administrative regulations in accordance with KRS Chapter 13A to implement the provisions of KRS 211.735 to 211.739. This administrative regulation establishes the protocol by which the Kentucky Diabetes Research Board will review research grant proposals from the University of Kentucky and the University of Louisville. It further establishes the guidelines by which grant proposals from the universities are rated and the mechanism by which funds are allocated for the appropriate grant proposals.

Section 1. Definitions. (1) "Applicant" means the entity within the University of Kentucky or University of Louisville applying for the grant award;
(2) "Board" means the Kentucky Diabetes Research Board;
(3) "Grantee" means the entity receiving a grant award;
(4) "PI" means the principle investigator;
(5) "Trust" means the Kentucky Diabetes Research Trust Fund;

Section 2. Proposal Submission Process. (1) A research project proposal shall be submitted to the board on an application form developed by the board in consultation with the Cabinet for Health
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and Family Services.

(2) The submission deadline for research proposal applications shall be 5:30 p.m. on September 30 of each year.

(3) The board shall seek the services of an outside, independent research organization with expertise in peer reviewed diabetes research for review, recommendations, and rating of applications.

(4) The board shall transmit a project proposal to the chairperson with a request that he transmit the: (a) Project proposal to the members of the independent research organization for their review; and (b) Rating recommendations for each project made by the members of the independent research organization to the board.

(5) After review of the rating recommendations submitted to the board, the board shall determine whether a project proposal shall be funded.

(6) An applicant shall be notified of the board's decision by December 31 of each year.

Section 3. Project Proposal Review Criteria. (1) A project proposal shall be reviewed by the board for scientific merit and adherence to the research priorities established by subsections (2) and (3) of this section.

(2) A project proposal shall be reviewed for scientific merit as follows:

(a) Adequacy of prior research and theory in providing a basis for the research;

(b) Adequacy of methods;

(c) Adequacy of environment, facilities, equipment, available expertise, research atmosphere;

(d) Qualifications and productivity of the PI and key staff;

(e) Time commitments of the PI and key staff;

(f) Availability of subjects or patients where relevant;

(g) Adequacy of procedures for assessing the effect of interventions on recovery; and

(h) Other factors that affect the potential of the applicant to address successfully the research aims.

(3) A project proposal shall be reviewed by the board for adherence to research priorities relating to in vivo and in vitro studies on naturally occurring phenomena that may:

(a) Predict the development of diabetic vascular, neuronal or muscular-skeletal complications

(b) Define the response of diabetic vascular, neuronal, or muscular-skeletal complications to existing therapies or

(c) Reverse diabetic vascular, neuronal, or muscular-skeletal complications.

Section 4. Research Grantee Responsibilities. (1) A research contract shall be granted for a one (1) year period, with renewal for two (2) additional years subject to the conditions established by this section. Renewal in years two (2) and three (3) shall depend upon fulfillment of contract terms.

(2) A grantee shall submit to the board an annual progress report, including a narrative and financial report of any progress.

(3) The annual progress report shall be due sixty (60) days prior to the effective date of the contract of the following year.

(4) (a) A grantee shall submit a final narrative progress report (30) days after completion or termination of the contract: and a financial report no later than ninety (90) days after completion or termination of the contract.

(b) The financial report shall be completed by the contracting institution.

(5) The PI shall transmit to the board a copy of any document published as a result of the funded research, during or after the period of the contract.

(6) A grantee shall acknowledge the source of funding from the trust in all publications and presentations.

JAMES W. HOLISINGER Jr., M.D., Secretary
NICHOLAS Z. KAFOGLOS, M.D., Chairman
WILLIAM D. HACKER, MD, Acting Commissioner
DUANE L. KILTY, Jr., Ph.D. Undersecretary
APPROVED BY AGENCY: December 14, 2004
FILED WITH LRC: December 14, 2004 at 4 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Theresa Renn (502) 564-7996, Ext. 3818
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Diabetes Research Board and sets up the requirements for its administration.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to meet the requirements of KRS 211.735 to 211.739 to establish a Diabetes Research Board and set the guidelines by which grant proposals are rated and funds allocated for diabetes research. This statutory requirement was passed in the 2004 regular session of the legislature.

(c) How this administrative regulation conforms to the content of the statutes: This administrative regulation establishes the board and sets its guidelines as required in KRS 211.735 to 211.739.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in administering KRS 211.735 to implement a mechanism for the review and funding of diabetes research via the University of Kentucky and the University of Louisville.

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

(a) How the amendment will change this existing regulation: A new regulation to implement a recently passed statute HB 685.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to implement HB 685 requiring a Diabetes Research Board to be established and requiring the Department for Public Health to promulgate regulations that support that goal.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms to the content of the authorizing statutes to develop guidelines and processes for the Diabetes Research Board to review research topics and receive and distribute funds for diabetes research.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in administering KRS 211.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will potentially impact the estimated 378,100 Kentuckians with diabetes as well as the estimated 611,000 Kentuckians aged 40-74 who have prediabetes and are at a high risk for developing diabetes. In addition, Universities, advocacy groups (such as the American Diabetes Association - Southern Region, the Juvenile Diabetes Research Foundation) and any person or group interested in the outcomes of diabetes research may be impacted. State and local public health departments providing prevention and control efforts and medical facilities that provide treatment for diabetes will also potentially be impacted. This administrative regulation may also impact public and private insurers.

(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 those treating or receiving treatment for diabetes can benefit from new research. Those who fund anc support research will be impacted
as well as this board will review proposals and distribute funds.

(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: The Cabinet for Health and Family Services will
absorb all the costs associated with setting up and staffing this board.
No additional funds will be necessary to implement this administra-
tive regulation.
(b) On a continuing basis: The board will be self-sustaining
from grants and monies received and distributed. No additional
funds will be necessary to implement the amendments to this admin-
istrative regulation.
(c) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: State
funds will be used to implement this regulation.
(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 fees or
increased funding will be necessary to implement this administrative
regulation.
(8) State whether or not this administrative regulation estab-
tlishes any fees or directly or indirectly increases any fees: This
administrative regulation does not establish any fees directly or
indirectly.
(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 adminis-
trative regulation could raise questions of arbitrary action on the
part of the agency. The "equal protection" and "due process"
clauses of the Fourteenth Amendment of the U.S. Constitution may
be implicated as well as Sections 2 and 3 of the Kentucky Consti-
tution.

FISCAL NOTE ON LOCAL GOVERNMENT
1. Does this administrative regulation relate to any aspect of a
local government, including any service provided by that local gov-
ernment? No
2. State whether this administrative regulation will affect the
local government or only a part or division of the local government.
3. State the aspect or service of local government to which this
administrative regulation relates.
4. Estimate the effect of this administrative regulation on the
expenditures and revenues of a local government for the first full
year the regulation is in effect. If specific dollar estimates
cannot be determined, provide a brief narrative to explain the fiscal
impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(New Administrative Regulation)

921 KAR 1:420 Child Support Distribution.

RELATES TO: KRS 13B.010(2), 13B.170, 205.720, 205.760,
205.765, 205.795, 405.220, 407.5101, 45 C.F.R. 302.32, 302.38,

STATUTORY AUTHORITY: KRS 194B.050(1), 205.765(1), 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 Community Based
Services under the Cabinet for Health and Family Services. KRS
205.755(1) authorizes the cabinet to distribute payment of support
consistent with state and federal law and regulations. KRS
194B.050(1) authorizes the secretary to promulgate, administer,
and enforce those administrative regulations necessary to imple-
ment programs mandated by federal law or to qualify for the receipt
of federal funds and necessary to cooperate with other state and
federal agencies for the proper administration of the cabinet and its
programs. This administrative regulation establishes procedures for
distribution of child support payments.

Section 1. Allocation of income withheld payments in IV-D and
non-IV-D cases. (1) The cabinet shall allocate an income withheld
payment among an obligor's cases that include an income with-
holding order by:
(a) Totaling the obligor's current support obligations subject to
income withholding;
(b) Dividing each current support obligation by the total amount
from paragraph (a) of this subsection, to determine a percentage;
and
(c) Multiplying the withheld payment received from the em-
ployer by the percentage from paragraph (b) of this subsection, to
determine the portion of the payment to be applied to each current
support obligation subject to income withholding.
(2) The cabinet shall allocate the payment amount determined in
subdivision (1) (c) of this section to each of the obligor's current
support obligation amounts subject to income withholding.
(3) If the obligor's current support obligations subject to income
withholding are satisfied for the current month, the cabinet shall
allocate a remaining income withholding amount among the obli-
gor's ordered arrears obligations subject to income withholding by:
(a) Totaling the obligor's ordered arrears obligations subject to
income withholding;
(b) Dividing the monthly arrears obligation for each child sup-
port case by the total amount from paragraph (a) of this subsec-
tion, to determine a percentage;
and
(c) Multiplying the remaining income withholding amount by the
percentage from paragraph (b) of this subsection, to determine the
portion of the payment to be applied to each arrears obligation
subject to income withholding.
(4) The cabinet shall allocate the payment amount determined in
subdivision (3) (c) of this section to each of the obligor's arrears
obligations subject to income withholding.
(5) If the obligor's current support and arrears obligations sub-
ject to income withholding are satisfied for the current month, the
cabinet shall allocate a remaining income withheld amount propor-
tionately according to subsections (1) and (2) of this section.
(6) Upon receipt of a notice of payment, the K-TAP or Kinship
Care agency shall redetermine eligibility for assistance payments
and report the result to the child support agency.
(a) If the K-TAP or Kinship Care case becomes ineligible, the
child support agency shall:
1. Distribute the family at the end of the month the amount of
child support collected; and
2. Notify the family of continuation of child support services as
specified in 921 KAR 1:380, Section 4(2).
(b) Unless a hearing is requested or a case remains eligible for
assistance, the child support agency shall distribute the collection
as specified in Section 6 of this administrative regulation.

Section 3. Distribution of Foster Care Accounts. A child support
payment collected on behalf of a foster care recipient shall be:
(1) Payable to the Division of Child Support; and
(2) Distributed and disbursed to the foster care agency.

Section 4. Distribution of Tax Refund Intercept Amounts. (1) A
tax refund intercepted in a public assistance account shall be:
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge

Provide a brief summary of:

What this administrative regulation does: This administrative regulation establishes procedures for distribution of child support payments.

The necessity of this administrative regulation: This administrative regulation is necessary to provide standards for distribution of child support payments in accordance with KRS 205.755(1).

How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.755(1) authorizes the secretary to distribute payment of support consistent with state and federal law and regulations. KRS 194.050(1) authorizes the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds necessary for the proper administration of the cabinet and its programs.

How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide standards for distribution of child support payments in accordance with KRS 205.755(1).

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

How the amendment will change this administrative regulation: This is a new administrative regulation.

The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 96,448 cases for child support distribution.

Provide an assessment of how the above groups 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 will assist in the effective administration of the statutes by providing a process for the distribution of child support.

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

Initially: There are no additional cost.

On a continuing basis: There are no additional cost.

What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the child support distribution is 66% federal funds and 34% general state funds.

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 funding is required. This regulation does not involve fees.

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

TIERING: Is tiering applied? Tiering was not applied because the Child Support Program requires uniformity in the application of policy as specified in C.F.R. 302.53(c).

FEDERAL MANDATE ANALYSIS COMPARISON

1 Federal statute or regulation constituting the federal mandate. 42 U.S.C. 651
2 State compliance standards. KRS 205.755(1)
3 Minimum or uniform standards contained in the federal mandate. Minimum standards stated in 42 U.S.C. 651 have been met.
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. No stricter standards, requirements, or responsibilities are imposed.
The December meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, December 14, 2004, at 10:30 a.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 November 9, 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 Brucato, and Jon David, Clerk.

**LCR Staff:** Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Karen Howard, Jenifer Harrison and Emily Harkenrider.

**Guests:** Ryan M. Halloran, Sandy Milburn, State Board of Elections; Michael Plumley, Office of the Attorney General; Andy Crocker, Personnel Board; Jamie Link, Ed Ross, Secretary Robbie Rudolph, Mark Treesh, Finance and Administration Cabinet; Becky Klusch, Board of Physical Therapy; Philip J. Anderson, Robert Amato, Jason Bentley, Richard Fisher, Dennis O'Brien, Sara Evans, Dennis O'Brien, Tony Hatton, Nell Hughes, Leslie J. King, Michael Mullins, Les Renkney, Bruce Scott, Environmental and Public Protection Cabinet; Steve Coffey, Joe England, Dana Fugazzi, Doug Sutton, Transportation Cabinet; Timothy K. Lucas, Kevin Noland, Education Cabinet; Dave Fleener, Angela Kirkland, Jason Milligan, Stuart Owen, Shannon Turner, Dr. Steve Davis, Germaine O'Connell, Rebecca Randell, Department of Public Health; Virginia Garling, Shirley Eldridge, Jason Moseley, Department for Community Based Services; Bryan Miles, Robert Rasmussen, Mary F. Schinkie, SWACK; Bart Baldwin, Children's Alliance; Joe Lord, ABC, Wade Johnson, Woodford County Solid Waste/SWACK; Larry Morris, Ohio County Solid Waste; Bill Londrigan, Kentucky State AFL-CIO; Larry L. Roberts, Kentucky State Building Trades; Marie Allen, Advocacy Group for Persons with Developmental Disabilities; Melissa Bowman, Heidi Schissler, Protection and Advocacy; Bob Rowland, Kentucky Association of Tobacco Outlets; Richard Tanner; Kentucky Magistrates and Commissioners; Charles R. Lovorn, Kentucky Association of Highway Contractors.

**Administrative Regulations reviewed by the Subcommittee:**

**Kentucky State Board of Elections: Forms and Procedures**

31 KAR 4:140 & E. Submitting absentee ballot applications to the Department of Defense Interim. Sandy Milburn, Assistant Director, and Ryan Halloran, Assistant Attorney General, represented the Board. In response to a question by Senator Roeding, Mr. Halloran stated that soldiers were informed about this new method to submit absentee ballots by the Department of Defense and by a special officer in every unit. The Board had instituted the new method with an emergency administrative regulation prior to the November elections. The new method had worked well, but the Board hoped for greater use in future elections. Ms. Milburn added that nine ballots were completed in November using the new method. A motion was made and seconded to approve the following amendments: to amend Sections 1 and 4 to move requirement language out of the "Definitions" section; (2) 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.

**Office of the Attorney General: Department of Law: Tobacco Product Manufacturers**

40 KAR 8:010. Nonparticipating manufacturer quarterly escrow deposit and certification. Michael Plumley, Assistant Attorney General, represented the Department. Bob Rowland, Executive Director, Kentucky Association of Tobacco Outlets, appeared in opposition to this administrative regulation.

In response to questions by Representative Lee, Mr. Plumley stated that he did not believe this administrative regulation would be affected by the pending lawsuit. The lawsuit addressed releases from escrow which was a separate issue from this administrative regulation.

Mr. Rowland stated that he believed this administrative regulation would be impacted by the lawsuit because the lawsuit would be amended to include it. He requested that the Subcommittee defer consideration of this administrative regulation until the lawsuit was settled.

In response to a question by Co-Chair Pullin, Mr. Plumley stated that the Department wanted to proceed with the administrative regulation. Because it would not require any escrow deposits until May, the Department would have adequate time to assess the impact of the lawsuit before any deposits were made. A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Personnel Board: Board**

101 KAR 1:325. Probationary Periods. Andy Crocker, General Counsel, represented the Board.

**Finance and Administration Cabinet: Office of the Secretary; Purchasing**

200 KAR 5:375. Multi-step competitive sealed bidding. Robbie Rudolph, Secretary, Mark Treesh, Commissioner of Revenue, and Jamie Link, Office of Administrative Services, represented the Cabinet.

In response to a question by Co-Chair Pullin, Secretary Rudolph stated that the Cabinet had no intention of using reverse auctions to determine a price on complex construction projects. A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 4 to move requirement language out of the "Definitions" section; (2) to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A; (3) to amend Section 4 to clarify that documents related to the bid evaluation process were preliminary and may only be disclosed to authorized state personnel or those involved in the evaluation process who had a legitimate interest in a particular matter; and (4) to amend Section 4 to state that any bidder who had submitted an offer found acceptable or potentially acceptable may submit supplemental information until the closing date. Without objection, and with agreement of the agency, the amendments were approved.

**Statewide Accounting**


**Office of the Controller**

200 KAR 38:020 & E. Allocation of driving under the influence service fees. Ed Ross, State Controller, represented the Office.

200 KAR 38:030 & E. Allocation and distribution of criminal court fees. A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to correct statutory citations; and (2) to amend the RELATES TO paragraph and 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.

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

**General Government Cabinet: Board and Commissions: Board of Physical Therapy**

201 KAR 22:020. Eligibility and credentialing procedure. Becky Klusch, Executive Director, represented the Board.

In response to a question by Senator Roeding, Ms. Klusch stated that the amendments to these administrative regulations did not change the Board's policies on eligibility and credentialing procedures. They merely combined all of the procedures into one.
administrative regulation to make them easier to understand. 
A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to insert authorizing language and clearly state the necessity for and function served by this administrative regulation; and (3) to amend Sections 1 to 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. 201 KAR 22:091. Repeal of 201 KAR 22:031, 201 KAR 22:061, 201 KAR 22:101, or 201 KAR 22:106.

Environmental And Public Protection Cabinet: Division of Waste Management: Solid Waste Planning 401 KAR 49:080. General provisions relating to solid waste management plans. Bruce Scott, Director, Sara Evans, Manager, and Leslie King, Supervisor, represented the Division. Mary Schinkle, SWACK, appeared in favor of these administrative regulations. Ms. Schinkle stated that she wanted to publicly thank the Subcommittee for deferring this administrative regulation. It enabled her and her organization to work with the Cabinet to resolve her concerns with these administrative regulations. She also thanked the Cabinet for their cooperation. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to insert authorizing language and correct statutory citations; (2) to amend Sections 1 to 7 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to amend Section 3 to increase the amount of time a governing body had to correct a deficient solid waste management plan from 30 days to 90 days; (4) to amend Section 4 to establish the types of solid waste plan amendments that shall and shall not require public notice; (5) to amend Section 7 to establish the effective date for the 2005 Annual Report; and (6) to amend the Fiscal Note on Local Government to explain in detail the effect of this administrative regulation on Section 1, the supervisory exemption. Without objection, and with agreement of the agency, the amendments were approved.

Environmental And Public Protection Cabinet: Department of Labor: Labor Standards; Wages and Hours 803 KAR 1:070. Executive, administrative, supervisory or professional employees; salesmen. Philip Anderson, Commissioner, and Les Renkey, General Counsel, represented the Department. Bill Londergan, Kentucky State AFL-CIO, and Larry Roberts, Kentucky State Building Trades, appeared in opposition to this administrative regulation. Mr. Londergan stated that the Kentucky State AFL-CIO had concerns with the impact of this amended administrative regulation. They questioned how many workers would be denied or entitled to overtime benefits as a result of the amendments to this administrative regulation. Because the estimates on the amount of affected workers varied widely, they requested that the Subcommittee defer consideration of this administrative regulation until the Department had an opportunity to provide a better estimate, perhaps by conducting an employer survey to determine a more accurate amount of impacted employees. Mr. Roberts stated that he had concerns with how the supervisory exemption from overtime was established in Section 5 of this administrative regulation. Because it appeared to conflict with other provisions in Section 1, the supervisory exemption would lead to confusion and eventually litigation by employers and employees. He requested that the Subcommittee defer consideration of this administrative regulation until those conflicts could be resolved.

Mr. Renkey stated that the Department had addressed Mr. Robert's concerns with an amendment they had filed to Section 5 of this administrative regulation. The amendment clarified that supervisors shall be any employee whose primary duty consists of customarily and regularly directing the work of two (2) or more employees. The amendment returned the supervisory exemption back to its original regulatory definition. The Department requested that the Subcommittee approve that change.

In response to a question by Senator Roeding, Mr. Roberts stated that the prior text defining the supervisory exemption was more specific than the new suggested text. The proposed text failed to adequately define "primary duty." In response to a question by Co-Chair Pullin, Commissioner Anderson stated that the Department did not want to defer consideration of this administrative regulation. This administrative regulation was based on a federal regulation which had already been implemented by five (5) border states. If Kentucky failed to do the same, border employers would be disadvantaged.

In response to a question by Senator Roeding, Mr. Renkey stated that this administrative regulation was no more stringent than the federal regulation. In response to questions by Representative Lee, Mr. Renkey stated that under this administrative regulation, firefighters and other first responders were eligible for overtime regardless of rank or pay level. In response to a question by Representative Reinhardt, Mr. Roberts stated that he agreed that this administrative regulation was no more stringent than the federal regulation.

A motion was made and seconded to approve the following amendments: (1) to amend Section 5(1) to specify that a supervisor shall be any employee whose primary duty consists of customarily and regularly directing the work of two (2) or more employees;
Department for Public Health: Kentucky Early Intervention System

911 KAR 2:110 & E. Kentucky Early Prevention Program point of entry. Germaine O'Connell, Program Manager, and Steve Davis, Physician Director, represented the Department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraphs and 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.

911 KAR 2:120 & E. Kentucky Early Intervention Program evaluation and eligibility. A motion was made and seconded to approve the following amendments: 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.

911 KAR 2:130 & E. Kentucky Early Intervention Program assessment and service planning. A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 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.

Department for Community Based Services: KTAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP). Jason Moseley, Director of Policy Development, and Virginia Carrington, Division of Policy Development, represented the Department.

In response to questions by Senator Roeding, Mr. Moseley stated that this administrative regulation authorized the collection of overpaid benefits to KTAP recipients. Overpayments could result from an applicant providing misinformation, an applicant failing to update his or her information, or departmental error. Before collection, the applicant received due process through notice and a hearing. The applicant could choose to repay the overpayment in a lump sum or set up a payment schedule. Additionally, being a state employee would not render an applicant ineligible for K-TAP if the employee otherwise met the eligibility criteria.

In response to questions by Senator Roeding, Ms. Carrington stated that through welfare reform, the Program had reduced its caseload by about fifty (50) percent, which was an average reduction in comparison to other states.

A motion was made and seconded to approve the following amendments: (1) to amend Section 5 to specify that Reception and Placement Program grants and reimbursement payments for vocational rehabilitation under the Preparing Adults for Competitive Employment program shall be excluded under the gross income test; and (2) to amend Sections 3, 5, 6, and 13 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:

General Government Cabinet: Board and Commissions: Board of Examiners of Psychology

201 KAR 26:115. Definition of psychological testing.

201 KAR 26:145. Code of conduct.

201 KAR 26:155. Licensed psychologist: application procedures and temporary license.

201 KAR 26:165. Inactive Status.

201 KAR 26:171. Requirements for supervision.
201 KAR 26:175. Continuing education.
201 KAR 25:180. Requirements for granting licensure as a psychologist by reciprocity.
201 KAR 25:190. Requirements for supervised professional experience.
201 KAR 26:290. Licensed psychological associate: application procedures and temporary license.
201 KAR 26:320. Licensed psychological practitioner: application procedures.

Environmental And Public Protection Cabinet: 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
405 KAR 10:001. Definitions for 405 KAR Chapter 10.
Inspection and Enforcement
405 KAR 12:001. Definitions for 405 KAR Chapter 12.
Performance Standards for Surface Mining Activities
405 KAR 16:001. Definitions for 405 KAR Chapter 16.
Performance Standards for Underground Mining Activities
405 KAR 18:001. Definitions for 405 KAR Chapter 18.
Special Performance Standards
405 KAR 20:001. Definitions for 405 KAR Chapter 20.
Areas Unsuitable for Mining

Division of Waste Management: Petroleum Storage Tank Environmental Assurance Fund
415 KAR 1:060E. Financial responsibility account.

Council On Postsecondary Education: Adult Education and Literacy
785 KAR 1:130. GED Eligibility requirements.

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: Kentucky Early Intervention System
911 KAR 2:140 & E. Kentucky Early Intervention Program primary service coordination and assistive technology. Gemainne O'Connell, Program Manager, and Steve Davis, Physician Director, represented the Department. Heidi Schissler, Legal Director, Protection and Advocacy, and Melissa Bowman, Staff Attorney, Protection and Advocacy, appeared in opposition to these administrative regulations.

Ms. Bowman stated that Protection and Advocacy had several legal concerns with these administrative regulations and requested that the Subcommittee find them deficient. First, there was an internal appeals process established on the program's website that had not been incorporated by reference into the administrative regulations. Second, the internal appeals process actually conflicted with the appellate process established by the administrative regulations. Third, in conflict with federal law, the administrative regulations did not require that parents be notified of their rights to due process and to retain services during the internal appeals process. Lastly, the Department had not conducted the public notice and hearings required by federal law before implementing the policy changes in these administrative regulations.

Ms. Schissler added that Protection and Advocacy had provided a letter to Subcommittee members in November specifying their concerns.

Dr. Davis stated that the Department respectfully disagreed with Protection and Advocacy on several issues. The Department had conducted twelve regional provider meetings with over 1200 providers before implementing any policy changes. Families also were informed of their rights upon entry into the program by their family's primary service coordinator. Additionally, the Department had been in written and verbal contact with their federal oversight agency and had not received any feedback suggesting they were not in compliance with federal requirements. Lastly, as of July 1 of this year, the program had been transferred to the Department. The Department had utilized a work group of parents, providers, and early childhood university specialists to quickly establish a program that served the children and their families, and that operated within their allocated budget.

In response to a question by Co-Chair Pullin, Dr. Davis stated that the Department was willing to work with Protection and Advocacy to address any of their concerns that had not already been resolved.

In response to questions by Representative Lee, Ms. O'Connell stated that the Program had procedures in place to notify families of their rights. Upon their entry into the program, families were given a family rights handbook informing them of their rights and how to access them. Thereafter, their rights were summarized and reviewed with them each time their plan was reviewed or at least every six (6) months. Before a change was made in a family's plan, the family was provided with written notice of the change and had ten (10) days before any services were altered. 911 KAR 2:140 established these parental notice procedures.

Ms. Bowman stated that Protection and Advocacy was not concerned about the family rights handbook. They were concerned about the Program's separate policy and procedures manual and its internal appeals process which was on the Program's website but which was not incorporated by reference into any of the administrative regulations. Parents were not being informed about that process or about their rights during that process.

In response to questions by Representative Lee, Dr. Davis stated that the Department's intent was to apprise families of all necessary information and their rights. The only issue was whether that notification was occurring or not. The Department would be willing to amend their administrative regulations to guarantee appropriate notification. The administrative regulations affected were 911 KAR 2:140 and 2:200.

Senator Roeding stated that in the future, speakers requesting amendments to administrative regulations needed to be more specific in their requests. The Subcommittee needed to be informed of the particular administrative regulation or portion of administrative regulation that was at issue.

To provide an opportunity to draft any necessary amendments, Representative Lee made a motion to defer consideration of 911 KAR 2:140 and 2:200. The administrative regulations were deferred, with agreement of the agency, and with Senator Roeding voting not to defer.

911 KAR 2:200 & E. Coverage and payment for Kentucky Early Intervention Program services. Representative Lee made a motion to defer consideration of this administrative regulation. The administrative regulation was deferred, with agreement of the agency, and with Senator Roeding voting not to defer.

The subcommittee adjourned at 12:10 p.m., until Tuesday, January 11, 2005 at 10:30 a.m.
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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(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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